

Volume 31 | Number 1

September | October 2020

# CT LAWYER

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## **Coming together is the beginning...**

At the onset of the nationwide health pandemic, the Connecticut Bar Association created the 2020 COVID-19 Pandemic Task Force to champion our members and the legal profession. The dedicated leaders who make up the task force worked tirelessly to provide resources and programming on the ability to practice law, operate a law firm, and respond to the epidemic while courthouses were closed and executive orders were enacted.

They listened to their colleagues and crafted legislation and guidance for our judicial and executive branches to help Connecticut attorneys continue to serve their clients and those unable to represent themselves.

## **Sticking together is progress...**

The CBA continues to bring educational programming, provide access to an exclusive online legal research software, and support over 40 practice area sections for attorneys to network and learn about the latest changes in the law.

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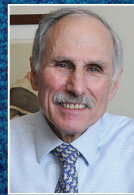
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# CT LAWYER

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## SEND US YOUR IDEAS

Contact editor@ctbar.org.

Article submissions or  
Topic ideas are welcome.

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# Connect to Succeed!

## Champion Our Communities Broaden Networks Advance Justice

I hope you and your loved ones are staying safe and healthy as we continue to navigate through this unprecedented time of great social unrest and racial injustice during a global pandemic. Despite these extraordinary circumstances, I am honored to have taken on this leadership role as the 97th president of the Connecticut Bar Association and to be part of our dynamic CBA Executive Committee with Cecil J. Thomas, president-elect; Daniel J. Horgan, vice president; Margaret I. Castinado, treasurer; Erin O'Neil-Baker, secretary; Amanda G. Schreiber, assistant secretary-treasurer, and Ndididi Moses, im-

*Amy Lin Meyerson is the 97th president of the Connecticut Bar Association. She is a sole practitioner in Weston, practicing business and general corporate law.*



mediate past president. I also am excited to continue to work with and learn from our CBA staff and to volunteer with the entire CBA leadership team.

It has been almost 30 years since, as a law student, I got involved with the American Bar Association (ABA). And, 20 years since I founded the Connecticut Asian Pacific American Bar Association; 15 years since I served as president of its parent organization, the National Asian Pacific American Bar Association or NAPABA; and five years since I chaired the ABA's Solo, Small Firm and General Practice Division.

Throughout my career, I've seen firsthand the power of connecting with others involved in the law and legal community and the resulting success in promoting justice and strengthening our legal profession. It is with this in mind that this year's theme is **Connect to Succeed!**

**Connect to Succeed!** re-enforces the CBA's commitment to serve as the voice of the legal profession within the organized bar and with the public, and to en-

sure that the benefits of bar membership are realized.

We are committed to advancing justice. In these disturbing times when political leaders are undermining fundamental American values and civil and human rights issues have become hyper-partisan, the CBA as a nonpartisan organization faces the challenging task of working effectively with people on both sides of the aisle. As we continue to shape CBA policy, our unquestioned focus is to protect and promote the principles of the rule of law, democracy, and our justice system against those who are attacking it.

It is because of these divisive times that I believe that our theme of **Connect to Succeed** is now more important than ever. Our country's foundation is based on the rule of law, which we will vigilantly defend. We must stand together to advance justice and protect liberty for all.

The CBA is committed to supporting the operational needs of the courts and our Judicial Branch as traditional means of access to our courts has been cut off

**Connect to Succeed!**

**Champion Our Communities,  
Broaden Networks, and  
Advance Justice**

by this coronavirus pandemic and at this time of civil unrest where there is an even greater need to have access to the legal system. Our clients are desperate for answers to when their legal issues will be resolved, especially the increasing number of our most vulnerable neighbors who need access to basic human necessities. Through the provision of pro bono services, we continue to work diligently to get people the legal help they need and to narrow the justice gap. Learn more about the CBA's pro bono efforts in Time to Go Pro Bono on page 33 of this issue.

Through the CBA's Secretary's Legal Assistance Program, the CBA continues to assist the Connecticut Secretary of the State Denise W. Merrill and her office by providing volunteer attorneys at polling places across Connecticut to protect and ensure our right to vote on Election Day. Volunteer attorneys work with the Office of the Secretary of the State to respond to issues at Connecticut polling places to assess situations, report back to Secretary Merrill, and then communicate her directives to the voting moderator. Ninety lawyers volunteered to assist at the polls for Primary Election Day on August 11, 2020. We invite CBA members to volunteer as nonpartisan designees of the Secretary of the State to help ensure the success of the general election on November 3, 2020.

We are committed to broadening networks through the provision of professional development and networking opportunities that are crucial to exchange ideas and information to equip you with the knowledge and resources to serve your clients while staying connected, resilient, and motivated. The CBA continues to deliver the outstanding services and programs you need to be the exceptional legal professionals our citizens and communities rely upon.

The newly established CBA In-House Counsel Task Force has CBA Assistant Secretary-Treasurer Amanda G. Schreiber of CIGNA stepping forward to take the lead and participating attorneys



Amy Lin Meyerson with her husband, Brandon; son, Garrett; and daughter, Ashley.

from the Connecticut Children's Medical Center, Eversource, Legrand, MasterCard, Stanley Black & Decker, The Hartford, and United Health Group; and former general counsels of Hubbell and The United Illuminating Company. The purpose of this task force is to harness CBA resources to further demonstrate that the CBA is a cost-effective source of high-quality, current content for in-house attorneys that is relevant and easy to access; to assist in-house counsel to do their jobs better and more cost-effectively; to promote diversity and inclusion in corporations; and to provide leadership opportunities for corporate counsel. This task force is not intended to promote a law firm or a particular point of view.

To further support solo and small firm practitioners, we created the CBA Solo and Small Firm Resource Center working with the Solo and Small Firm Section and other solo and small firm attorneys in sections throughout the CBA membership. Take a look at the resource portal at [ctbar.org/SoloSmallFirmResourceCenter](http://ctbar.org/SoloSmallFirmResourceCenter). We welcome your feedback and suggestions for additional resources.

We also are grateful for our committee of experienced lawyers lead by Linda Randell, former general counsel of UIL Holdings and The United Illuminating Company, that will promote the public interest and the profession by leveraging the skill sets and experience of "senior lawyers." This committee will work to implement a framework for

projects and programs through collaboration with law schools, governmental entities, and non-governmental organizations and oversee the CBA Emeritus Pro Bono Attorney program. The committee's projects and programs are intended to benefit non-lawyers, law students, or younger lawyers—and the participating experienced lawyers themselves.

Many thanks to Peter Arakas, Livia Barn-dollar, Samuel Braunstein, Ernie Mattei, Fred Ury, An-Ping Hsieh, Robert Langer, Mark Dubois, Penny Mason, Lou Pepe, Carmine Perry, Bill Prout, John Rose, and Helen Ryan for sharing their collective knowledge, experience, and judgment.

With your overall well-being in mind, we have added "Be Well," a new well-being feature in *The CBA Docket*. The CBA Lawyer Well-Being Committee will be sharing knowledge, experiences, insights, and tips to help you think about what you are doing to promote your well-being and how you may do more to improve self-care and to promote it within your workplace. The committee co-chairs, Traci Cipriano, JD, Ph.D., LLC, of the Yale School of Medicine and Tanyee Cheung, partner, Finn Dixon & Herling, invite you to:

- Share how your firm or organization is addressing well-being in general, COVID-related anxiety, or diversity and inclusion;
- Share your healthy strategies for managing your stress; or
- Ask a question about how to better manage stressors and stress or a work-life related challenge.

Please send your stories and questions to [communications@ctbar.org](mailto:communications@ctbar.org). If you have

*Continued on page 40* →

# Upcoming Education Calendar

Register at [ctbar.org/CLE](http://ctbar.org/CLE)

## SEPTEMBER

**24** Constance Baker Motley  
Series: How the Law Structures  
Educational Inequities\*

## OCTOBER

**1** Drafting Effective Engagement  
Letters\*

**2** CT Bankruptcy Conference  
Series

**6** Succession Planning Series

**9** CT Bankruptcy Conference  
Series

**16** CT Bankruptcy Conference  
Series

**21** 2020 Diversity and Inclusion  
Summit

**22** Details of Pursuing Permanent  
Residency

## NOVEMBER

**5** Recognizing and Avoiding  
Conflicts\*

**10** Succession Planning Series

**12** Dividing Retirement Assets  
& Stock & Other Executive  
Compensation in Divorce

**17** Female Managing Partners:  
A Different Perspective on Law  
Firm Life

**18** Social Security Rulings Update

## DECEMBER

**1** Succession Planning Series

**3** Intermediate VA Benefits  
Training

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# News & Events

## CBA Establishes The Karen Lynn DeMeola Diversity, Equity, and Inclusion Fund



Karen Lynn DeMeola

The Connecticut Bar Association (CBA)'s Diversity and Inclusion Committee (the Committee) has established The Karen Lynn DeMeola Diversity, Equity, and Inclusion Fund (DeMeola Fund) at

the Connecticut Bar Institute (CTBI). The DeMeola Fund is named for Karen Lynn DeMeola, the first person of color to serve as president of the Connecticut Bar Association (2017-2018 bar

year), and a longstanding champion of diversity, equity, and inclusion within the Connecticut legal community. Interested persons and groups can provide financial donations to the DeMeola Fund to support the efforts and initiatives of the Committee.

The DeMeola Fund will be used to support the mission and purposes of the Committee, including its advancement of the CBA's Diversity and Inclusion Policy, Strategic Plan, and Connecticut Legal Community's Diversity and Inclusion Pledge and Plan. The DeMeola Fund may establish and fund fellowships or scholarships, educational programming and events, or other diversity and inclusion initiatives related to the Connecticut legal profession. Initial contribution from the CBA Diversity and Inclusion Summit donations have assisted with the establishment of the DeMeola Fund and will be funded by other donations to the CBA's diversity initiatives, from the Committee's events, or the public.

To learn more about the DeMeola Fund and to make a donation, visit [ctbar.org/DeMeola-Fund](http://ctbar.org/DeMeola-Fund).

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GET THE NEWS and JOIN THE CONVERSATION  
[www.ctbar.org](http://www.ctbar.org)

## CBA DONATES \$8,000 TO LEGAL SERVICE PROVIDERS

The CBA has donated \$8,000 to the Connecticut Bar Foundation (CBF) to benefit their legal service grantees who provide pro bono civil legal services to Connecticut's low-income residents. This donation will be beneficial to the legal service providers that anticipate an increase in the public's need for pro bono services as a result of the COVID-19 pandemic.

The donation to the legal service provider is just one of the many initiatives the CBA has undertaken as a result of the COVID-19 pandemic. The CBA has trained lawyers to take on pro bono cases, helped established a small business virtual legal clinic, answered questions through an anonymous online portal, and raised funds for local food banks.

"The economic impact of COVID-19

has greatly amplified the access to justice gap, creating significant anticipated increases in evictions, foreclosures, family and domestic violence matters, among other legal issues," said CBA President-elect and Pro Bono Committee Chair Cecil J. Thomas. "This is a crucial time for the Connecticut legal profession to increase our pro bono engagement, and our support for our legal aid providers."

## CONSTANCE BAKER MOTLEY SPEAKER SERIES ON RACIAL INEQUALITY



Judge Constance Baker Motley

The CBA and Connecticut Bar Foundation have founded the Constance Baker Motley Speaker Series on Racial Inequality to explore issues of racial inequality and systemic racism. This series is named in honor of civil rights trailblazer, Judge Constance Baker Motley, with the goal of supporting and fostering renewed commitment to advancing civil rights and social justice.

The inaugural event, "A Virtual Conversation on Racial Injustice," was held on July 15 and featured Chief Justice Richard A. Robinson and Justice Maria A. Kahn. The panel, moderated by Dean Timothy Fisher of UConn School of Law and

Professor Marilyn Ford of Quinnipiac University School of Law, explored issues of racial inequality and systemic racism.

The second event of the series, "Segregated Communities and Opportunity," held on August 12, examined the lasting effect discriminatory land use and development policies have on housing choice and the lives of people of color, particularly lower income Black and Latino families, who have few options to move to areas with high performing schools and safe neighborhoods, and the necessary changes needed to ensure that every community is a community of opportunity.

The series' third event, "Systemic Racism, Voting Rights, and American Democracy," was held on August 25 and featured a panel discussion that explored the systems that perpetuate racial inequality in voting rights and political access and what we can do to promote a truly fair and free electoral democracy in our communities.

Scheduled for September 24, the fourth event, "How the Law Structures Educational Inequities," will discuss the inequities in primary and secondary educational systems, how school districts are organized and funded, and how inequities manifest in differential school funding, resources, and outcomes.

Visit [ctbar.org/ConstanceBakerMotleySeries](https://ctbar.org/ConstanceBakerMotleySeries) to learn more and register for an upcoming event.

## CBA MEMBERS HELP ENSURE CONNECTICUT RESIDENTS' RIGHT TO VOTE ON ELECTION DAYS

Elections require a large team of dedicated volunteers to ensure our citizens are able to exercise their right to vote. Eight years ago, the CBA and Secretary of the State Denise W. Merrill formed a joint program called the "Secretary's Legal Assistance Program" to train volunteer attorneys to be on call to respond to

**CBA members can learn more and sign up to volunteer on Election Day, November 3, at [ctbar.org/Election-Day](https://ctbar.org/Election-Day).**

polling issues. The role of the volunteer attorney is to serve as a neutral source of information, sort out the facts of a situation, report back to Secretary Merrill, and then communicate her directives.

On August 11, approximately 90 volunteers assisted with Primary Election Day. This is the first time since the program's inception that the CBA has assisted with the primaries. ■

DIVERSITY &  
INCLUSION  
SUMMIT



*We are a Richer  
and More Effective  
Association Because  
of Diversity*

Don't miss the

## 2020 Diversity and Inclusion Summit

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## A Letter from Chief Justice Robinson

*For many Americans, the tragic death of George Floyd on May 25, 2020, was a tipping point in their understanding that equal justice under the law is an ideal that too often is unrealized. Having watched our nation's grief and pain in the weeks that followed the death of Mr. Floyd, I was moved to send an open letter to the judges and employees of the State of Connecticut Judicial Branch, asking them to join me in doubling—and even tripling—our efforts to provide equal justice for all who are served by the Judicial Branch. I am honored to have been asked by the CT Lawyer Advisory Committee to share that letter with you, the members of the Bar of the State of Connecticut. I hope that you will continue to be our partners in the continued struggle to assure that all who come into contact with Connecticut's legal system—in any matter civil or criminal—have an assurance that they will be treated fairly and with respect.*

*Dear Judicial Branch Family:*

I am writing to you in response to the recent events in our country that are affecting each one of us. I believe that in some ways the pain being felt by the members of our Judicial Branch family is unique because of the nature of our work and for what I hope is a commitment of every one of us to provide equal justice to all.

These are very troubling times. Our senses have been bombarded with a constant stream of scenes of horrific injustices that have been and still are occurring across this nation. It was fifty-five years ago that Reverend Doctor Martin Luther King Jr. came to Middletown, Connecticut, to deliver a sermon at Wesleyan University. During that sermon, Dr. King said, "Injustice anywhere is a threat to justice everywhere."

I know that there are some people who do not believe that there is racial injustice in the United States. However, as events in my own life, as well as events in this country throughout the years have informed me, indeed there is. People who do not believe that we have a racial injustice problem are entitled to their own opinions, but they are not entitled to their own facts. Simply put the facts are with me. I love this country enough to speak out when it is not living up to its ideals. I love this country despite its imperfections, but that does not mean that I am willing to accept them. In fact, I am ready, willing and able to do the work to eradicate them. To paraphrase Albert Camus, I can love my country and still love justice.

I must make it clear that I am not disparaging law enforcement or our judicial systems, but I am saying that they are not perfect institutions. I am outraged by some of the things that I have seen and heard. With each new revelation my heart breaks even more and like many of you, I have long since reached the point

**“There is a need for real and immediate improvement. America can—  
and must—do a better job of providing ‘equal justice under law,’  
the very words that are engraved on the front of the United States  
Supreme Court Building in Washington, D.C.”**

that, as Fannie Lou Hamer once said, “I am sick and tired of being sick and tired.”

The existing imperfections in our justice systems have profound and lasting effect on all of us, but it is more severe on those of us who are the most vulnerable. There is a need for real and immediate improvement. America can—and must—do a better job of providing “equal justice under law,” the very words that are engraved on the front of the United States Supreme Court Building in Washington, D.C. I believe that our justice system is one of the best in the world, however, to quote Victor Hugo “Being good is easy, what is difficult is being just.”

Worse yet the problems that we are facing today are not new ones. During his speech at the 1963 March on Washington, Dr. King said it far better than I ever could:

“In a sense we have come to our nation’s capital to cash a check. When the architects of our republic wrote the magnificent words of the Constitution and the Declaration of Independence, they were signing a promissory note to which every American was to fall heir.

This note was a promise that all men would be guaranteed the inalienable rights of life, liberty, and the pursuit of happiness. It is obvious today that America has defaulted on this promissory note insofar as her citizens of color are concerned. Instead of honoring the sacred obligation, America has given the Negro people a bad check

which has come back marked ‘insufficient funds.’ But we refuse to believe that the bank of justice is bankrupt. We refuse to believe that there are insufficient funds in the great vaults of opportunity in this nation.

So, we have come to cash this check—a check that will give us upon demand the riches of freedom and the security of justice.”

Like many of you, when I was child, I believed that that check would soon be cashed. I believed that we would be past moments like the crises that we are facing today. I believed that Dr. King’s dream would have been long since fulfilled. I believed that my two boys would be living in a nation where they would not be judged by the color of their skin, but by the content of their character. I still believe in the promises of that dream even though they have been deferred. We must not let that dream “dry up like a raisin in the sun.” (*Harlem*, by Langston Hughes)

As I have publicly said before, we have come a long way, but there is still a long way to go. My life is bookended by the torture and killing of Emmett Till, and the election of America’s first Black president. We are a better country than we have ever been, but there is still a lot of work to do. Every one of us can make a difference in the fight to eradicate racial injustice. Robert F. Kennedy once said, “Few will have the greatness to bend history itself, but each of us can work to change a small portion of events. It is from numberless diverse acts of courage and belief that human history is shaped.

Each time [someone] stands up for an ideal, or acts to improve the lot of others, or strikes out against injustice, [they send] forth a tiny ripple of hope, and crossing each other from a million different centers of energy and daring those ripples build a current which can sweep down the mightiest walls of oppression and resistance.”

Many of you have heard me talk about race, implicit bias and my own life experiences facing these issues. Many of you have attended Judicial Branch trainings and programs that were designed to help us deal with these issues in our own lives and in order to fulfill the mission of the Branch to serve the interests of justice and the public by resolving matters brought before it in a fair, timely, efficient and open manner.

I am proud of the work that we have started, but there is so much more to do. I know that I am asking a lot of you. I know that you are tired, you are weary and maybe even rightfully disillusioned, but this is a battle for the nation’s soul. We must double and even triple our efforts to provide equal justice for all those whom we serve. We have but two choices: to keep working hard and succeed; or to quit and fail. As for me, the latter is not an option.

As President Barack Obama once said: “Change will not come if we wait for some other person, or if we wait for some other time. We are the ones we’ve been waiting for. We are the change that we seek.”

Chief Justice Richard A. Robinson

# To Celebrate The We Must Honor Its

By Alan H. Bowie, Jr.

On February 3, 2020, the United States celebrated the 150th Anniversary of the ratification of the 15th Amendment to the United States Constitution, which gave Black men the right to vote. In celebrating the anniversary and understanding the promise of the amendment, it is important to understand the history of voting rights for Black Americans, the United States' failure at times to enforce the amendment, and the continued fight for equal access to the ballot.

## A Brief History of Black Voting Rights

The 15th Amendment was passed during the Reconstruction Era as the United States was wrestling with how to integrate and whether to provide rights to its newly found citizens. In the five years prior to its ratification, the United States also ratified the 13th Amendment abolishing slavery and involuntary servitude (except as punishment for a crime) and the 14th Amendment, which purported<sup>1</sup> to give Black Americans





S.R. 8.

Pub. Res. 10.

# Fortieth Congress of the United States of America;

At the *Third* Session,

Begun and held at the city of Washington, on Monday, the *seventh* day of *December*, one thousand eight hundred and *sixty-eight*.



## A RESOLUTION

*Proposing an amendment to the Constitution of the United States.*

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two-thirds of both Houses concurring) that the following article be proposed to the legislatures of the several States as an amendment to the Constitution of the United States, which, when ratified by three-fourths of said legislatures shall be valid as part of the Constitution, namely:

### Article XV.

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

*Spencer Co. Fox*

Speaker of the House of Representatives.

*J. B. Hoar*

President of the Senate pro tempore.

*Attest:*

*John W. McKim*

Clerk of House of Representatives.

*Geo. C. Graham*

Secy of Senate U.S.

The House Joint Resolution proposing the 15th amendment to the Constitution, December 7, 1868; Enrolled Acts and Resolutions of Congress, 1789-1999; General Records of the United States Government; Record Group 11; National Archives.



citizenship and equal rights under the law. These amendments collectively became known as the “Reconstruction Amendments” and were meant to transform the United States into a nation that extended civil and legal protections to the formerly enslaved. History has shown that we have fallen far short of extending fully these protections without significant activism, additional legislation, and significant legal intervention.

The 15th Amendment proved initially successful. In 1870, there were approximately four million Black Americans. With access to the ballot, Black men were successful in exercising their new-found right and elected other Black men to federal, state, and local offices. These successes, however, were quickly met with resistance and violence. White supremacist groups, such as the Ku Klux Klan, began using acts of violence and terror, including killing Black men exercising their rights to vote, to discourage and suppress voting rights. In response, the federal government intervened by passing the Enforcement Acts, which were criminal codes protecting Black men’s right to vote, hold office, serve on juries, and receive equal protection under the law. Federal intervention became key in ensuring that the 15th Amendment lived up to its promise and that Black men were not prevented from exercising their rights. This changed abruptly after the 1877 presidential election.

To ensure victory in a hotly contested election, President Rutherford B. Hayes pledged to southern states that he would no longer enforce federal protections of Black voting rights and allowed states to introduce racially discriminant voting laws. As a result, the federal government no longer protected Black men at the polls from acts of intimidation, violence, and terror. Instead, Black male voters were introduced to additional forms of voter suppression, such as poll taxes, literacy tests, and “grandfather clauses,” which would limit the 15th Amendment by ensuring that most Black men were disenfranchised. These forms of voter suppression persisted for nearly a century and served as a blueprint for suppressing the Black vote. In that period, significantly fewer Black men were elected to federal, state, and local offices.

### Failures of the Amendment

One of the initial failures of the 15th Amendment is that it did not apply to women. The plain text of the Amendment states that it applies to “citizens,” however, women did not have the right to vote until nearly 50 years later. It became clear after the passage of the Amendment that voting rights were reserved only for men despite the plain text.

One of the fundamental failures of the 15th Amendment is that we have too often ignored it. We have failed to fulfill the promise of the Amendment by failing to protect adequately the rights of Black voters. We have far too often allowed racially (whether facially neutral or otherwise) discriminatory voting laws and practices to prevent equal access to the ballot. Voting is one of

the most powerful rights an American citizen can exercise and the place where we are all equal. It is, therefore, imperative that federal and state governments make real the mandate of the 15th Amendment and ensure that voters’ rights are not suppressed based on their race (or sex.)

### Continued Fight for Access to the Ballot

History has shown that the fight for equal access to the ballot is not yet over. This year we also celebrate the 55th Anniversary of the Voting Rights Act of 1965 (VRA), which made illegal the discriminatory practices that marginalized the Black vote for nearly a century and is one of the most important pieces of legislation in American history. In celebrating these anniversaries, we must be honest about our history and our failure to provide equal voting rights.

We must be honest about the way the laws we enact affect people of color and those who have historically had their voting rights suppressed. We must question whether the laws we pass and the legal opinions we reach have some resemblance to the discriminatory laws and decisions that once so diluted the power of the 15th Amendment that it had almost no effect and many Black voters were disenfranchised for no justifiable purpose. We must critically question the ways and the reasons for which we (or others) draw voting districts, particularly before key elections. In recognizing the power of the right to vote as one of the most important exercises in our society, we must have a broad enough vision that we can all share fully, fairly, and equally in the process.

We have made progress by the concerted and enduring efforts of many individuals, like the late Congressman John Lewis, and those individuals who we will never come to know by name but made similar sacrifices. In honoring their sacrifices and fulfilling the promise of the 15th (and 19th) Amendment, we must continue to make equal access to the ballot a priority.

Our Constitution does not explicitly reference a right to vote. However, the first thing it seeks to establish after a more perfect Union is Justice.<sup>2</sup> Based on our history, we should revel at the prospect of disenfranchisement of those who have fought hard for the right to vote and should aim to fulfill the promise of the 15th Amendment by creating and enforcing equitable voting laws. ■

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#### NOTES

1. See *Plessy v. Ferguson*, 163 U.S. 537 (1896)
2. See Preamble to the United States Constitution.



SHEDDING NEW  
LIGHT ON THE

# Suffrage Centennial Celebration

BY HON. HENRY S. COHN

ON AUGUST 26, 1920, US SECRETARY OF STATE BAINBRIDGE COLBY declared that the 19th Amendment, which prohibits federal or state governments from denying anyone the right to vote based on sex, had been ratified by the necessary 36 states and was now adopted into the federal Constitution. This year marks centennial celebration of this event, which was also the theme of the American Bar Association's Law Day program in May.

There have been two recent developments in this celebration that are of interest to the Connecticut bar. First, the state archivist, Lizette Pelletier, has released materials relating to Connecticut's role in the ratification of the 19th Amendment. Second, a new book on the role of imaging in the fight for ratification has been issued by the University of Chicago Press, titled *Picturing Political Power*, by Allison K. Lange, a professor at Wentworth Institute of Technology in Worcester, MA. Lange addressed the Connecticut Historical Society in November 2019 and will speak at the annual meeting of the Connecticut Supreme Court Historical Society on April 29, 2021.



Image credit: The Library of Congress

## Suffrage Centennial Celebration



The documents from the archivist show that Connecticut's role in adopting the 19th Amendment was full of controversy. In the 1870s, some people in public positions opposed the right of women to vote. Joseph R. Hawley, a former Connecticut governor and chairman of the 1876 Centennial Convention in Philadelphia, tried in vain to prevent Susan B. Anthony from speaking at the convention at a Fourth of July program. Anthony rushed to the stage and gave her address, which she called a "Declaration of Rights of Women in the United States." Another opponent of suffrage was the Reverend Horace Bushnell, who in 1869 published *Women's Suffrage: The Reform Against Nature*.

Many Connecticut citizens favored suffrage and attended meetings and rallies in support of it. The leader of the pro-suffrage movement in Connecticut from the 1870s until her death in 1907 was Harriet Beecher Stowe's half-sister, Isabella Beecher Hooker, whose efforts were backed by her husband, John Hooker. John drafted the Married Women's Property Act, passed by the General Assembly in 1877, removing the common law

provision of coverture. He also trained and supported the admission to the Connecticut bar, Mary Hall. John Hooker wrote that the right of women to vote was the most important issue of his day.

Unfortunately, both Isabella and John died before 1920. In the summer of 1920, the suffragists turned to Connecticut for our state to be designated the "perfect 36th"—the state that would, by legislative action, complete the necessary ratification to make the 19th Amendment part of the Constitution.

Although our General Assembly was willing to ratify, three men stood in the way of this accomplishment. The first was J. Henry Roraback, who controlled patronage in this state. He feared that giving women the vote would increase the pool of voters and diminish his political power.

The second opponent was the man known as "Senator No," Frank Brandegee of New London. He had earned his nickname by voting in the US Senate against any federal progressive legisla-

tion, including income taxation, direct election of senators, and child welfare laws. He had repeatedly issued statements in the Senate mocking the suffragists for "bleating around here about their saving democracy by forcing their way into caucuses and conventions."

The third major opponent of ratification was the governor, Marcus Holcomb. Governor Holcomb had served as a superior court judge until he turned 70. He then ran for and won the governorship in 1914, 1916, and 1918. As governor, he was seen as the protector of the home front during World War I, looking out for food supplies for Connecticut residents and watching out for residents who might be German spies. For these activities, he was everyone's "Uncle Marcus," revered as a hero. Holcomb's public stance was that he would not call a special session of the legislature in 1920, and that any ratification vote should occur in 1921 at the regular session established by the Connecticut Constitution.

Although suffragists and others called on Governor Holcomb through the summer of 1920 to hold a special session, he

remained adamant. Writing to a prominent businessman in New Haven who had asked Holcomb to act, Holcomb declared: “A special emergency cannot be manufactured by insistent and persistent appeals. Otherwise, in these temperamental times, the General Assembly would be in continuous session.”

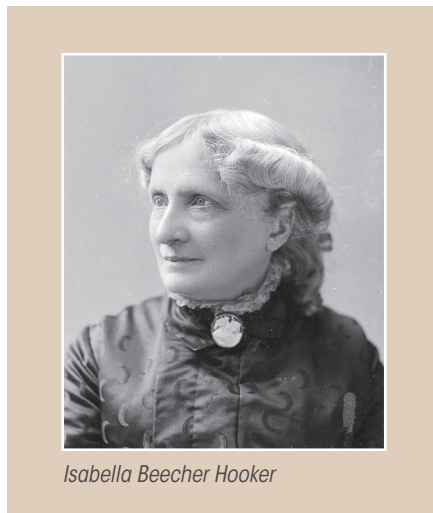
The suffragists gave up on Connecticut and moved on to Tennessee. In a special session on August 9, 1920, the Tennessee State Senate ratified the 19th Amendment. Then, on August 18, 1920, by a mere one vote, the Tennessee House of Representatives ratified. On August 24, 1920, Tennessee Governor Albert Houston Roberts certified to US Secretary of State Colby that Tennessee had ratified, and, on August 26, 1920, Colby announced the adoption of the 19th Amendment. Tennessee claimed the honor of being the 36th state to ratify.

It was after Secretary Colby’s announcement of adoption that Connecticut played an important role. Connecticut Governor Holcomb learned in early September that Tennessee’s House of Representatives, on a motion to reconsider, had taken another vote, and this time overwhelmingly rejected ratification. Holcomb then received two letters informing him that a Tennessee group opposed to suffrage had gone to court to argue that Colby’s announcement of the adoption of the 19th Amendment was defective.

Governor Holcomb agreed at last to call a special session, but he inexplicably stated that the purpose of the special session was to reconcile differences between the Connecticut election laws and the provisions of the 19th Amendment. But, when a vote was taken on September 14, 1920, both houses of the General Assembly did more than merely change the election laws; they voted to ratify the 19th Amendment. Because of the disparity between Governor Holcomb’s announced call of the legislature and the vote that occurred, Governor Holcomb was forced

to call the legislature again into special session on September 21, 1920, to legalize the ratification vote. Connecticut became the 37th state to ratify.

Connecticut’s ratification vote, coming after the announcement of Tennessee’s ratification by Secretary Colby, rendered moot the pending court challenge to Tennessee’s ratification. This was recognized by Justice Louis Brandeis in *Leser v. Garnett*, 258 U.S. 130 (1922). The documents released by the state archivist demonstrate that Connecticut, though slow to respond, did play a role in securing the vote for women.



Isabella Beecher Hooker

Professor Lange’s excellent book takes a look at another aspect of the struggle of women to obtain the right to vote: the role of imagery in the suffragists’ campaign. Throughout most of the 19th century, images of heroic males, such as George Washington, dominated books and magazines. The exceptions were portraits of Martha Washington and of the opera singer Jenny Lind, whom P.T. Barnum of Connecticut had brought to the United States. According to Lange, activist women became the subject of cartoons that portrayed them as “man-hating harridans” and home-wreckers.

Among the examples Lange gives is a cartoon of Susan B. Anthony as a disolute Uncle Sam, published when she cast

her vote in the 1872 presidential election. It was captioned: “The woman who dared,” which would have been taken as an insult to her. In the background are suffragists rallying under the glance of a policewoman, and two men, one who appears homeless and the other struggling to care for an infant.

The suffragists fought back first by following Frederick Douglass’ advice regarding African Americans. In an address delivered in Boston in 1861 entitled “Pictures and Progress,” Douglass pointed to pictures as a “mighty power” that if used correctly would lead to a “wondrous conquest.”

With Douglass’ words in mind, the National Woman’s Suffrage Association raised funds and, beginning in 1881, published a six-volume work edited by Elizabeth Cady Stanton and entitled *History of Woman Suffrage*. These books displayed photographs that made women look equal to men in leadership roles. Several other photographs, published separately from the *History*, especially one of Susan B. Anthony at her desk, also improved the image of the suffrage movement.

After 1913, when Alice Paul formed the Women’s Party, cartoons, lithographs, and photographs in the media became more favorable to women and were able to offset the still-present anti-suffrage forces. Lange sets forth the images used by the suffragists and the response in the press to the massive parade for women staged by Alice Paul in 1913.

Lange concludes: “Though the suffrage movement seems distant, their visual campaign illuminates the roots of today’s gendered political imagery and its constraints.” ■

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*Hon. Henry S. Cohn is a Connecticut judge trial referee assigned to New Britain. He has given two lectures on suffrage, one at the fall meeting of the Association for the Study of Connecticut History and another at a program sponsored by the Connecticut Women’s Centennial Commission.*

# The ADA at 30:

## *My Perspective*



Image credit: greenwatermelon/iStock/GettyImage Plus



By Michelle Duprey

The day I'm writing this article is July 26th and it marks the 30th anniversary of the signing of the Americans with Disabilities Act (ADA). For most of the people reading this article, the day went by without any fanfare or even knowledge of its historic significance for me as a disabled person or my community. But for me, and nearly one in four Americans who live with a disability, it is the single most impactful civil rights legislation since the passage of the Civil Rights Act of 1964.

On July 26, 1990, I distinctly remember watching the news with my parents at their kitchen table. The story came on marking the event and showing footage of George H. W. Bush signing the bill that ultimately was designed to provide significant increases in accessibility to public buildings, state and local government programs, services and activities, and to open up a world of employment opportunities for people with disabilities by ridding the workplace of discrimination.

At that moment, I had not heard of the years-long struggle by disability rights advocates to get the legislation passed. But I was well aware of the barriers. I knew that there were lots of establishments I could not get my mobility scooter into nor a way to access public transportation options. In primary school, I had been bussed across town to the only accessible school. I had a great deal of difficulty finding a college that was accessible enough for me to attend. There were multiple colleges with whom I had scheduled interviews and discovered, after my family had driven for hours, that not even the admissions office was accessible to me. This meant we left without the interview. I had great hope for this new law that something would change and the doors would miraculously open up, figuratively and literally.

That night I sat at my parent's dinner table, I was wrapped up in my own world. I had just graduated college where I studied

economics and marketing and was just weeks away from starting law school at the University of Connecticut School of Law. I intended to be a corporate lawyer, working on international trade, as I had focused my undergraduate senior year on taking Chinese and studying the pacific rim. That plan got changed in 1992. During my second year of law school, I took Professor Jon Bauer's life-altering employment discrimination law class. I quickly forgot about international trade and focused on employment discrimination law and the Americans with Disabilities Act.

I grew up in Avon and went to Bryant University in Rhode Island. During that time, as a person with a significant physical disability, I did not believe and still don't that I was denied any opportunity to participate or excel because of my disability. I attended classes without issue, was heavily involved in student government, had a long list of other clubs and activities, and had a rich social life. But during my second year of law school while I was looking for a summer associate position, I was struggling to find a job. I was discussing my difficulties with one of my law professors who bluntly said to me, "Did it ever occur to you that you were being discriminated against because of your disability?" No. No, it had not. And this reality was a punch in the gut. Something I've had to get used to over the past 30 years, as do most people who disclose their disability or for whom the presence of a disability is self-evident.

I graduated law school and passed the bar. Afterward, I practiced law as a solo for a few years and, in 1998, I took my current position with the City of New Haven where I am the city's director of the Department of Services for Persons with Disabilities and the ADA coordinator. At the time, then Mayor John DeStefano was under pressure to hire someone with a disability for my position and the city had several lawsuits against it claiming the ADA had been violated. The hope was I could help on both accounts. The ADA was only eight years old at the time. The caselaw governing the ins and outs of the ADA and its regulations were still just unfolding.

Cases from the effective date of the ADA until it was amended in 2008 were mostly focused on who was covered under the law. Disability advocates found that the arguing over who was covered and who was not in cases all over the country a bit unexpected. Other civil rights laws, like the Civil Rights Act of 1964, didn't get the microscopic analysis of how much African American someone truly was, or ethnicity was in question like people with disabilities received when trying to assert they



## The ADA at 30

were disabled and their rights had been violated.

In 1998 *Bragdon v. Abbott* 524 U.S. 624 (1998) and in June of 1999, *Sutton v. United Airlines, Inc.* 527 U.S. 471 (1999) began to define who was disabled and who was not. In *Bragdon*, the court found that HIV is a disability because it substantially limited the plaintiff's ability to reproduce. In *Sutton*, the definition of disability was narrowed to include only people with substantial impairments of a major life activity whose affects could not be reduced by mitigating measures. Which, to many people with disabilities, seemed like a tortured conclusion. And as wheelchair-using writer, John Hockenberry, so perfectly opined in his June 29, 1999 piece entitled "Disability Games"<sup>1</sup> in the *New York Times*, about how the court framed disability, because he used a mitigating measure of a wheelchair to get around despite his paralysis, he would not be considered disabled under the Court's logic. Other cases followed that shredded who the courts considered disabled.

Meanwhile on June 22, 1999, the Supreme Court decided *Olmstead v L.C.* 527 U.S. 581 (1999). This case was brought by two women in the State of Georgia. One was institutionalized for her mental illness and the other for her developmental disability by the State of Georgia for several years after their treatment had concluded and professionals had deemed that the most appropriate setting for them would be in the community. The Court held that public entities must provide the most integrated setting possible for those individuals with disabilities when appropriate, when it is wanted, and when necessary resources are available. Sadly, in my opinion, the outcome of *Olmstead* has not been fully realized here in Connecticut some 21 years later.

Since *Olmstead*, advocates in Connecticut have been working to move people with disabilities from residential facilities like nursing homes, psychiatric hospitals, and Southbury Training School to community settings—to communities like the City of New Haven where they can be more integrated. This was depicted in the 2017 Connecticut Public Television special "Building a Great Life,"<sup>2</sup> funded through the Connecticut Council on Developmental Disabilities. Other initiatives include nursing home transition programs and Money Follows the Person that help support people to move out of those institutions and into the community and ensure that the funding that would have been dedicated to housing them in an institution "follows" them to the community for support. Connecticut has had "rebalancing" plans for more than a decade and yet we still find people with disabilities living in institutions unnecessarily.

The ADA is not just about getting into stores and restaurants or not being asked discriminatory questions during an interview. I have been thinking about *Olmstead* a lot during this time of COVID-19 and wonder how many lives of nursing home residents and other institutions for people with disabilities would

have been saved had we truly met the mandate of the ADA as delineated in *Olmstead* 21 years ago.


The ADA cases continued, starting the new decade off with the *Trustees of Univ. of Ala. v. Garrett*, 531 U.S. 356 (2001) decision. This was an employment discrimination case based on disability against the State of Alabama. The state asserted Eleventh Amendment immunity. Here in Connecticut, disability advocates, including myself, worked closely with then Attorney General Richard Blumenthal to support the rights of people with disabilities, including his decision that Connecticut would sign on to a pro-disability rights amicus brief written by the attorney general in Minnesota. Unfortunately, the court sided with the state in that it determined that in disability employment discrimination cases, sovereign immunity prevented money damages from being awarded on equal protection grounds.

Working with the attorney general's office on *Garrett* convinced me that lawyers with disabilities, like myself, needed to be at the ready to argue cases before the US Supreme Court. Anyone with a marketing background can tell you there is an unconscious component impacting decisions here. I truly believe that disability community members need to be representing our issues before such tribunals. Shortly thereafter, I was admitted to the US Supreme Court bar.





A couple of years later, another ADA case made its way to the US Supreme Court. The case was *Tennessee v. Lane* 541 U.S. 509. Mr. Lane was forced to crawl up the courthouse steps in Tennessee where the courthouse was not accessible. He sued the state for the inaccessibility, because the ADA provided that he could not be excluded from any government service, program, or activity by reason of his disability. Again, the state raised sovereign immunity under the Eleventh Amendment based on *Garrett*.

For oral arguments in *Lane*, I and many other advocates decided to go to Washington, DC. I was admitted to the US Supreme Court bar and would be able to hear the entire oral argument in space reserved for bar members. They have a separate line to wait to enter the courtroom for bar members. I and a handful of other lawyers were waiting for entry. I was the only one in the line with a visible disability as I sat there patiently in my power wheelchair. Suddenly, I was approached by a court staff person, who said to me in a scolding voice that this line was only for lawyers admitted to the bar. He clearly assumed because I was a person with a disability that I could not be a lawyer. This was one of the biggest gut punches of my career. I sternly said that I was a member of the bar and he sheepishly scurried off without making the same assumption to the able-bodied lawyers who were also waiting. The ADA had been in affect more than a decade and yet, at that moment, I felt as though the law never existed.





“...the ADA is a starting point, not an end. That more legislation needs to be passed, our culture has to begin to see disability differently, and social and political leaders with disabilities need to be elevated to prominence to effectuate real change.”



*Lane* was decided differently than *Garrett*, where the court found that Congress had effectively abrogated Eleventh Amendment immunity under due process and that Mr. Lane’s rights had been violated. This is a big victory under the ADA, but here in Connecticut it seems to have had little effect as several state court houses still have significant barriers for people with disabilities to enter, move around the building, use the restrooms, serve on juries, represent clients, serve on the bench, be a witness, and more.

In 2008, the ADA was amended to correct the corrosion of the law started in 1999 by *Sutton* and so many other cases. The ADA Amendment Act, in the employment setting, leaves employers the ability to focus on how to accommodate employees rather than whether they are disabled or not. This helped clear up ambiguity in the law and made it easier for employers like the City of New Haven to administer accommodations for employees.

Normally I see July 26th as a celebration and try to emphasize how far we have come in our employment, community access, transportation options, and public engagement. But I’ve grown weary of that. In the past two years, I’ve had other gut punches, small and big ones. I’ve had a bartender refuse to sell me a drink without the permission of my “caretaker.” I’ve had a lawyer ask me in an interview multiple questions that violate the ADA. I’ve had difficulty getting into state buildings. While I was called to jury duty a few months ago in New Haven, I faced numerous barriers. On breaks I had to travel two blocks to New Haven City Hall for an ADA compliant bathroom because the courthouse’s is not. I’ve argued with top state officials about what the state’s ADA obligations are. I’ve filed an ADA complaint against an inaccessible retailer. I’ve been on numerous calls with disability rights leaders in the state about health care rationing under COVID-19 that has caused people with disabilities to not receive equal care as those without disabilities. As we start to reopen in this COVID-19 era, I’m told to stay home while others can go out. I sometimes still feel like that kid so many years ago that had to ride without her friends on the short school bus.

I agree with the former head of the Disability Rights Section at the US Department of Justice, John Wodatch, and longtime disability rights activist and author, Judy Heumann, in their piece

printed recently in the *New York Times*, “We’re 20 Percent of America, and We Are Still Invisible”<sup>3</sup> in which they argue that the ADA is a starting point, not an end. That more legislation needs to be passed, our culture has to begin to see disability differently, and social and political leaders with disabilities need to be elevated to prominence to effectuate real change.

One starting point for the readers of this publication might be to embrace disability and incorporate it in all the legal community’s diversity, equity, and inclusion initiatives. Employers need to understand the value of disability inclusion. The latest CBA poll regarding diversity shows that only about one percent of lawyers self-identify as having a disability.

Making the world inclusive for all isn’t only the right thing to do, it’s also good for business. The Accenture report “Getting to Equal: The Disability Inclusion Advantage,” produced in partnership with Disability:IN and the AAPD, found that companies that offered inclusive working environments for employees with disabilities achieved an average of: 28 percent higher revenue, 30 percent higher economic profit margins, and two times net income of industry peers.<sup>4</sup>

It is going to take all of us—those with disabilities and without—to truly meet the expectations I had at that dinner table with my parents 30 years ago, to assure I and those like me have equal opportunity. And if I am fortunate enough to write for the 40th celebration of the ADA, I truly hope I will announce that with your partnership, support, and encouragement, we have finally gotten there together. ■

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*Michelle Duprey is the head of the City of New Haven’s Department of Services for Persons with Disabilities and a long-time disability rights lawyer, trainer, public speaker, and advocate.*

#### NOTES

1. [www.nytimes.com/1999/06/29/opinion/disability-games.html](http://www.nytimes.com/1999/06/29/opinion/disability-games.html)
2. [www.pbs.org/video/building-a-great-life-kvp9i2/](http://www.pbs.org/video/building-a-great-life-kvp9i2/)
3. [www.nytimes.com/2020/07/26/opinion/Americans-with-disabilities-act.html](http://www.nytimes.com/2020/07/26/opinion/Americans-with-disabilities-act.html)
4. [www.globenewswire.com/news-release/2020/07/15/2062514/0/en/Disability-Equality-Index-reveals-2020-Best-Places-to-Work-for-Disability-Inclusion.html?fbclid=IwAR2h2\\_fZduCk9WifMJUoBZF-rfuafdcy-BYMXjxVU9jcNjiAaxlly7Qq1EPA](http://www.globenewswire.com/news-release/2020/07/15/2062514/0/en/Disability-Equality-Index-reveals-2020-Best-Places-to-Work-for-Disability-Inclusion.html?fbclid=IwAR2h2_fZduCk9WifMJUoBZF-rfuafdcy-BYMXjxVU9jcNjiAaxlly7Qq1EPA)

# BOSTOCK IN BLUE STATES:

## Understanding the Employee Rights Decision in Connecticut and Beyond

BY JOSHUA GOODBAUM



**L**ESBIAN, GAY, AND TRANSGENDER AMERICANS AND their allies rejoiced on June 15 when the US Supreme Court announced—by a vote of 6-3—that the prohibition on sex discrimination in Title VII of the Civil Rights Act of 1964 extends to discrimination on the basis of sexual orientation and gender identity, because “it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.”<sup>1</sup> The decision—*Bostock v. Clayton County*—immediately extended civil rights protections to millions of LGBTQ employees who work in the nearly 30 states without such express safeguards for sexual minorities.<sup>2</sup> But for lesbian, gay, and transgender people who work in jurisdictions (like Connecticut) that already prohibited discrimination based on sexual orientation and gender identity as a matter of state or local law (and for lawyers who practice in those jurisdictions),<sup>3</sup> does *Bostock* have anything to offer?

My answer is an emphatic yes.

Most obviously, the Supreme Court’s ruling about what it means to discriminate “because of [an] individual’s ... sex” will have ramifications far beyond employment law. That’s because the textualist explication in Justice Neil M. Gorsuch’s opinion for the Court is not limited to workplace protections. Accordingly, whenever federal law prohibits discrimination “because of [an] individual’s ... sex,” we can expect that those protections now will extend to lesbian, gay, and transgender people, too.

That is an extraordinary development. According to Justice Alito’s dissent in *Bostock*, “[o]ver 100 federal statutes prohibit discrimination because of sex.” And these laws regulate a wide swath of American life, from housing, to small business loans, to military operations. Indeed, LGBTQ rights advocates exploring future impact litigation need look no further than Appendix C to Justice Alito’s opinion, which helpfully lists all 100+ statutes.

Chief among these—at least in the near term—are statutes regulating discrimination in healthcare and education. Indeed, just

Image credit: Sean Pavone/123rf.com

three days before the Supreme Court issued *Bostock*, the Trump administration finalized a regulation permitting healthcare providers to discriminate against LGBTQ patients, based on a reinterpretation of the meaning of “sex” in the Affordable Care Act.<sup>4</sup> *Bostock* puts the legality of this narrowing of the ACA’s civil rights protections in serious doubt. Likewise, Title IX’s prohibition on sex discrimination by educational institutions that receive federal funding is likely to be extended to protect LGBTQ students, which would represent a sea change for many LGBTQ people—particularly transgender youth—and their families. And as with healthcare, that ruling—if it comes—would reverse the Trump administration’s current interpretation that Title IX does not protect sexual minorities.<sup>5</sup>

Circling back to employment law, the *Bostock* opinion seems to confirm the viability of so-called “sex stereotyping” claims, based on the Supreme Court 1989 opinion in *Price Waterhouse v. Hopkins*.<sup>6</sup> In that case, Ann Hopkins alleged that she was denied partnership at the storied accounting firm because her aggressive interpersonal communication style and gender-neutral attire did not conform to stereotypes about how a woman should act and dress. The Supreme Court agreed that her case could proceed, but it couldn’t agree on the precise reasoning, with Justice Brennan’s plurality opinion gathering only four signatures for its articulation of the “sex stereotyping” rationale. In *Bostock*, Justice Gorsuch seems to pick up where *Price Waterhouse* left off, writing that Title VII prohibits employers from terminating employees for “failing to fulfill traditional sex stereotypes.”<sup>7</sup> This anti-essentialist theory will be useful to employment and civil rights plaintiffs of all stripes, especially those members of the LGBTQ community (such as intersex or gender non-conforming people) who might be excluded from *Bostock*’s focus on “homosexuality and transgender status.”<sup>8</sup>

Along similar strategic lines, the reasoning in *Bostock* likely will have the practical effect of lessening the burden on employment and civil rights plaintiffs across the board—whether or not they are LGBTQ. For the last ten or so years, following a duo of US Supreme Court opinions, employment lawyers in Connecticut and around the country have disagreed about the meaning and significance of “but-for causation,” which is the standard of proof in many employment cases.<sup>9</sup> The defense bar has characterized the “but for” standard as a high threshold (in an effort to win more summary judgment motions), while the plaintiff’s bar in turn has tried to downplay its demands.

*Bostock* ends that debate. “[A] but-for test,” Justice Gorsuch’s opinion tells us, “directs us to change one thing at a time and see if the outcome changes. If it does, we have found a but-for cause.”<sup>10</sup> *Bostock* continues, importantly, that events “often” have “multiple but-for causes.”<sup>11</sup> Accordingly, “a defendant cannot avoid liability just by citing some other factor that contributed to its challenged employment decision,” because a protected status

or action need only be “one but-for cause” of a decision “to trigger the law.”<sup>12</sup> Far from being an onerous burden, then, but-for causation actually offers what Chief Justice Roberts had already acknowledged is a “boundless theory of liability.”<sup>13</sup>

Finally, beyond the consequences for future litigation, the symbolic significance of *Bostock* should not be

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**The US Supreme Court has now stated unequivocally what many LGBTQ workers—in Connecticut as much as anywhere else—have been waiting decades for their federal government to say: that lesbian, gay, and transgender people are entitled to the same protections as their straight and cisgender colleagues.**

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underestimated. The US Supreme Court has now stated unequivocally what many LGBTQ workers—in Connecticut as much as anywhere else—have been waiting decades for their federal government to say: that lesbian, gay, and transgender people are entitled to the same protections as their straight and cisgender colleagues. And for LGBTQ Americans, regardless of where in the country they work, that undeniably matters. ■

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*Joshua Goodbaum is a partner at Garrison Levin-Epstein Fitzgerald & Pirrotti PC in New Haven, where he represents individuals in employment and civil rights matters and assists other lawyers with appeals. He is an elected member of the CBA House of Delegates and previously served as chair of CBA’s Labor & Employment Law Section.*

#### NOTES

1. *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731 (2020).
2. See, e.g., Human Rights Campaign, “State Maps of Laws & Policies,” <https://www.hrc.org/state-maps/employment>.
3. For LGBTQ anti-discrimination protections in Connecticut, see Chapter 814c of the General Statutes.
4. 85 Fed. Reg. 37160 (Jun. 19, 2020).
5. See “Dear Colleague” Letter, U.S. Dep’t of Justice & Education (Feb. 22, 2017).
6. 490 U.S. 228 (1989).
7. *Bostock*, 140 S. Ct. at 1742-43.
8. E.g., *id.* at 1742.
9. See *Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167 (2009) (Age Discrimination in Employment Act); *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 570 U.S. 338 (2013) (retaliation under Title VII).
10. *Bostock*, 140 S. Ct. at 1739.
11. *Id.*
12. *Id.*
13. *CSX Transp., Inc. v. McBride*, 564 U.S. 685, 706 (2011) (Roberts, C.J., dissenting).

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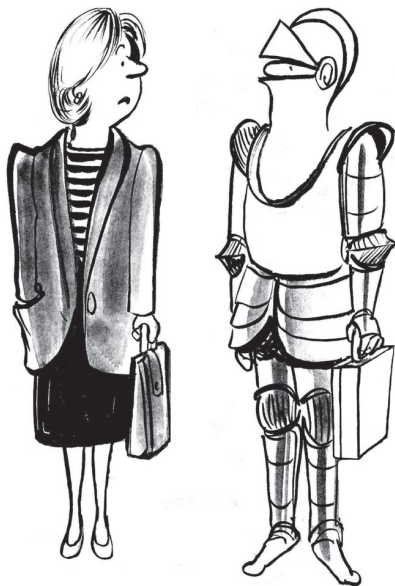


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# New Standard of Title Approved for Trust/Trustee Conveyances

By ELLEN L. SOSTMAN

**A**T ITS MEETING ON FEBRUARY 20, 2020, the Special Committee on the Standards of Title adopted a proposed new standard, Standard 7.6, to address the changes made to the Connecticut General Statutes that specifically recognize as valid conveyances made to a trust rather than to its trustees. With the codification of the biennial Validating Acts, effective July 1, 2000, Conn. Gen. Stat. Sec. 47-36aa provided that a conveyance to a trust would only be valid to pass full legal title two years after the date on which it was recorded. The adoption of Conn. Gen. Stat. Sec. 47-36bb, effective October 1, 2016 and subsequently revised October 1, 2017, eliminated the two-year validating period by recognizing a conveyance of an interest in land to a trust as a valid, enforceable transfer when made. Further, Sec. 47-36bb provides that such a conveyance made by a trust and executed by a duly authorized trustee shall be treated as though made by the trustee, and, if made and executed by a duly authorized trustee, shall be treated as a transfer by the trust.

Notwithstanding a directive contained in Sec. 47-36bb(c) to town clerks to index any instrument to which a trust is a party in the names of the trust and all named trustees, the committee recognizes that unmarketability of title will occur due to breaks in the chain of title as indexed where such cross-indexing is not done, inadvertently or because the instruments presented for recording do not contain all such names, and some instruments in the chain are to or from trustees while others are to or from the trust. To address this potential problem, the headnotes of Proposed Standard 7.6 read as follows:



## CONVEYANCE TO A TRUST

**A.** Although a trust is not a statutorily recognized entity in Connecticut, nonetheless it is authorized by statute to acquire and convey legal title to an interest in real property either in the name of the trust or in the name(s) of the trustee(s).

**B.** Title to an interest in real property that is conveyed by one instrument to a trust in its own name and subsequently conveyed in another instrument by the duly authorized trustee(s) of that trust or conversely, conveyed to the trustee(s) of a trust in one instrument and subsequently conveyed in another instrument by the trust in its own name, is marketable provided that in each instance the instrument of transfer is indexed in both the name of the trust and the name(s) of the trustee(s), to avoid a break in the chain of title.

**C.** Title not so cross-indexed may be made marketable by the recording of appropriate documents that address the break in the chain of title.

**Comment 3** of the proposed standard identifies appropriate documents to ad-

dress the break in the chain as an affidavit of facts prepared in accordance with Conn. Gen. Stat. Sec. 47-12a or a certificate of trust. Comment 4 addresses the need for a party accepting an instrument executed by a trustee or trustees to establish that such party or parties are duly authorized and have full power and authority to execute the instrument, but further notes that such an instrument, once recorded, is entitled to the presumption that the signatory did have such power and authority.

Pursuant to the CBA's bylaws, the publication of this article starts a 60-day comment period during which comments on this proposed standard may be addressed to the chair of the Committee, Attorney Ellen L. Sostman, at [esostman@catic.com](mailto:esostman@catic.com), or to any other member of the committee. A full copy of the proposed standard is also available from the chair or any other committee member. ■

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*Ellen L. Sostman is a senior title counsel at Connecticut Attorneys Title Insurance Company, a member of the CBA's Real Property Section's Executive Committee and Chair of the Standards of Title Committee. She has been a member of the Connecticut Bar since 1975.*

# Celebrate with the Stars: Seventh Annual Event Goes Virtual



BY JESSE PIORKOWSKI

ON WEDNESDAY, JULY 22, THE SEVENTH ANNUAL “Celebrate with the Stars” was held virtually for the first time. President Amy Lin Meyerson began the night with her introduction, followed by Executive Director Keith J. Soressi, who welcomed attendees and acknowledged the support of event sponsors: headline sponsor Kronholm Insurance Services, gold sponsor Quinnipiac University School of Law, silver sponsor Green & Sklarz LLC, and supporter George W. Crawford Black Bar Association.

Immediate Past President Ndidi N. Moses then gave her remarks and honored attorneys observing the 50th anniversary of their admission to practice in Connecticut.

The awards presentation began with the signature awards, which were presented by Immediate Past President Moses, President Meyerson, and President-elect Cecil J. Thomas.

The Honorable Alvin W. Thompson, United States District Judge for the District of Connecticut, received the Henry J. Naruk Judiciary Award for his substantial contributions to the administration of justice in Connecticut. During his acceptance speech, Judge Thompson shared: “As a judge I have not only found it satisfying, but personally enriching, to strive in putting aside my personal views and preferences and find facts and apply the law fairly and impartially, hoping to further the goal of equal justice for all. Lawyers can make important contributions to our society by being role models on how to disagree without being disagreeable, and for how to engage with critical thinking, and make informed decisions.”

The Edward F. Hennessey Professionalism Award was presented to The Honorable Kenneth L. Shluger, judge for the New London District Superior Court, for his significant dedication to



(Clockwise from the top left) Among the night's many 2020 Celebrate with the Stars award winners: The Honorable Alvin W. Thompson, Judith Altmann, Joanna M. Kornafel, Austin Berescik-Johns, and Kristi D. Kelly.

the highest ideals and standards of the legal profession. Judge Shluger frequently speaks to civic organizations in schools, has coached an inner-city team in a statewide mock trial competition, and mentors and encourages school children in underserved communities.

The Tapping Reeve Legal Educator Award went to Jennifer G. Brown, interim executive vice president and provost at Quinnipiac University, for her commitment and contributions to legal education. She joined the Quinnipiac University School of Law faculty in 1994, has served in numerous roles since, and

was appointed dean in 2013. She has also taught as a visiting professor in the law schools at Yale, Georgetown, and Harvard.

The John Eldred Shields Distinguished Professional Service Award was given to John Rose, Jr. for his outstanding service on behalf of the CBA, for the benefit of the legal community, and the community at large. He received many adulations from his colleagues, along with a special surprise message from his daughter. Attorney Rose has achieved many milestones throughout his long legal career, including being Hartford's first Black full-time corporation counsel and the first Black lawyer representative on the state's Judicial Selection Commission. Additionally, he is a founder and past president of the George W. Crawford Black Bar Association and a founder and past vice president of the Connecticut Law Firm Group, which became the Lawyers Collaborative for Diversity.

The winner of this year's Charles J. Parker Legal Services Award was Erin E. Kemple, executive director of the Connecticut Fair Housing Center. Throughout her career, she has dedicated herself to providing legal services to those who are disadvantaged in Connecticut. For over three decades, she has committed herself to working with those living in low-income communities to ensure that all have access to housing opportunities, free from discrimination.

Audrey B. Blondin was honored with the Citizen of the Law Award for her public service with VOSH-Connecticut (Volunteer Optometric Services to Humanity). With the help and contributions of her husband, they continue to carry out eye care missions and serve those in need in Nicaragua.

The final signature award of the night was the Citizen for the Law Award, which was presented to Holocaust survivor and human rights advocate Judith Altmann, who has dedicated her life to speaking about her harrowing experience and encouraging others to "stand up" to injustice and acts of intolerance.

The Young Lawyers Section Vanguard Award was presented by Vice President Daniel J. Horgan to this year's two winners—Austin Berescik-Johns and Joanna M. Kornafel—for their significant contributions to both the CBA and the YLS. Attorney Berescik-Johns has been involved with the YLS for eight years, serving in many roles, including various substantive law committees and chairing the YLS' legislative affairs efforts. Attorney Kornafel received the YLS' Rookie of the Year Award in 2014, the Commercial Law & Bankruptcy Section's Rising Star Award in 2017, and the YLS' Star of the Year Award in 2019.

"When I first entered the legal profession, it was like entering a dark room and being able to see very little. Now I can make out quite a bit in the room, and the CBA as much as anything, has been the light allowing me to slowly see," stated Attorney Berescik-Johns.

The final award of the evening was The Honorable Anthony V. DeMayo Pro Bono Award. The winners of this award, as se-

## 50-Year Awardees

These CBA member attorneys are observing the 50th anniversary of their admission to practice in Connecticut

Robert M. Axelrod	Joel Martin	Lewis M. Platt
David L. Belt	Hartstone	Martin Rader, Jr.
Bruce E. Bergman	Geoffrey Hecht	Robert J.
Louis Blumenfeld	Wesley W. Horton	Reardon, Jr.
Andrew B.	D. Seeley	Herbert
Bowman	Hubbard	Rosenberg
Ward F. Cleary	Paul A. Hudson	Edward F.
Sanford Cloud, Jr.	Peter A. Janus	Rosenthal
Robert P. Cohen	Hon. Clarence	Dennis A.
Hon. Henry S.	Jones	Sadlowski
Cohn	Ivar Jozus	Jack Scherban
James S. Corbett	Gerald H. Kahn	Daniel A. Silver
Lanny J. Davis	Hon. Timothy R.E.	Mark G. Sklarz
Brenda A. Draghi	Keeney	Richard Stabnick
Richard Emanuel	W. Wilson	John F. Strother
Kathryn Emmett	Keithline	Peter F. Stuart
Ellice Fatoullah	John C. Linderman	Shaun Sullivan
Gerald Field	Edward T.	Donald Tamis
Mark I. Fishman	Lynch, Jr.	Charles C. Vail
Hon. Gerald M.	George J. Markley	Raymond F.
Fox, Jr.	Jeffrey McCormick	Voelker
John P. Fracassini	John F. McKenna	David Wallman
Fredric J.	Edward Mellick	Robert W.
Friedberg	Thomas	Weeks, Jr.
Richard Gerken	Mulligan, Jr.	Thomas Weihing
Marshal D. Gibson	Neil F. Murphy, Jr.	Richard P.
Brian Gildea	Mitchell Pearlman	Weinstein
Marc J. Glass	Louis R. Pepe	Donald P. Wilmot
Raymond J.	Harold J.	Martin Zeldis
Gustini	Pickerstein	

lected by the Pro Bono Committee, exhibit commitment to pro bono service and serve as role models for the profession. This year's winners were: Gayle C. Carr, Mark A. Healey, Kristi D. Kelly, and Susan M. Williams.

President Amy Lin Meyerson concluded the event by congratulating all the award winners, encouraging pro bono service, and thanking sponsors and CBA staff for their contributions to the inspiring night.

The testimonial videos shown during the event can be found at [ctbar.org/awards-videos](http://ctbar.org/awards-videos). ■

*Jesse Piorkowski is the communications associate at the Connecticut Bar Association.*

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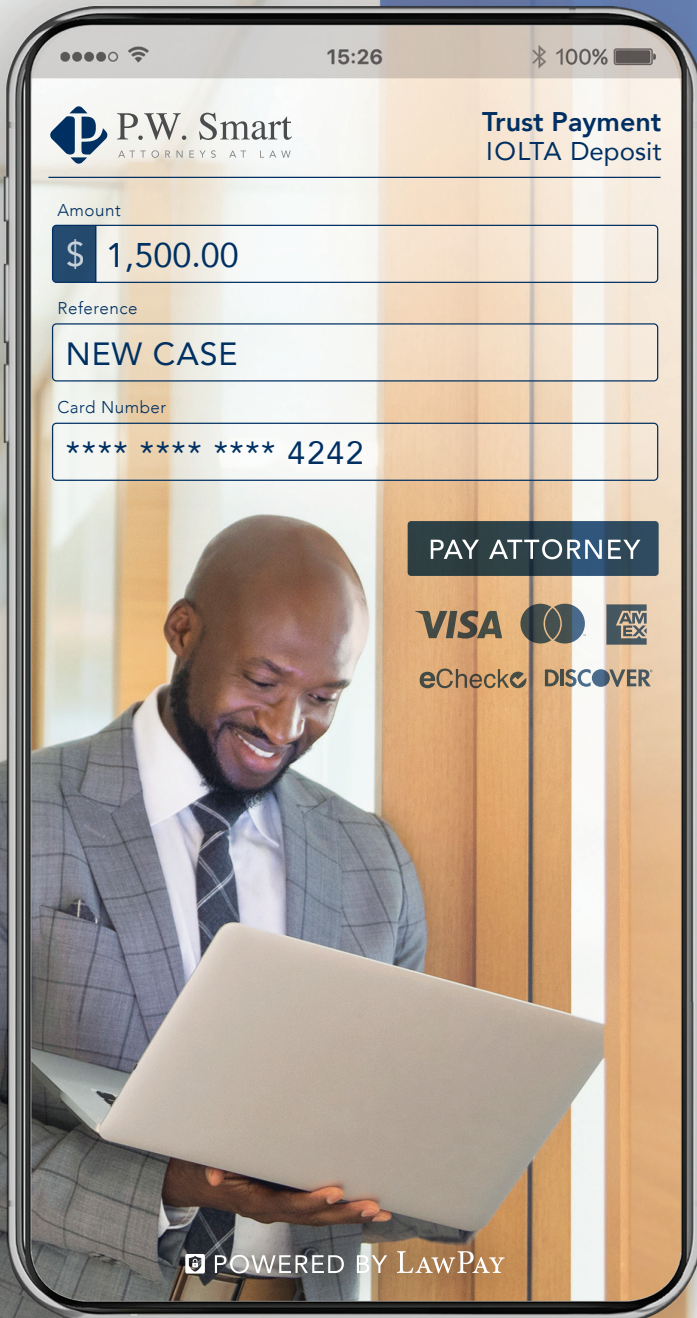
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# Advancing Diversity, Equity, and Inclusion in the Connecticut Legal Community

By CECIL J. THOMAS AND KAREN DEMEOLA



**A**s we write this, our country continues to wrestle with the legacy and impact of racial injustice. The tragic deaths of George Floyd, Ahmaud Arbery, and Breonna Taylor, among so many other Black men and women, have awakened a broader consciousness, started or continued difficult conversations, and invited us to understand and address the manifestations of racial injustice in our society. These events have also added a greater sense of urgency to our profession's diversity, equity, and inclusion efforts. Lawyers have always stood on the front lines of efforts to obtain true justice and equality before the law. For the last several decades, lawyers have also worked tirelessly to address our own profession's struggles with achieving true diversity, equity, and inclusion. While we have made significant progress, we also have much to do.

Necessary change will necessarily take time, support, and sustained effort. This article marks the launch of a new recur-

ring column in *CT Lawyer* magazine focused on diversity, equity, and inclusion in the Connecticut legal community. In this introduction, we hope to share some of our vision for this column with you.

should be a familiar one. Our profession pursues ideals such as truth, equality, and justice. As with any ideal, these words mean different things today than they did five, ten, 50, or 244 years ago. The pursuit

**“Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly.”**

—The Rev. Dr. Martin Luther King, Jr.  
“Letter from Birmingham Jail” April 16, 1963

Any successful diversity, equity, and inclusion effort must be an ongoing one; a sustained and permanent effort to advance an essential and core value. This is true on every level: in our individual personal and professional efforts, as well as those undertaken by our organizations and the profession as a whole. This type of effort

of truth, equality, and justice are professional core values. Diversity, equity, and inclusion are the same: ideals we pursue tirelessly, with the understanding that our commitment is to the journey.

The Connecticut Bar Association was formed in 1875 with 58 founding mem-

bers.<sup>1</sup> This original group did not include women, people of color, or many other diverse perspectives and identities that were not yet admitted or acknowledged within the privileged ranks of the profession at that time. Attorney Edwin Archer Randolph, the first Black attorney in Connecticut, was admitted five years later in 1880.<sup>2</sup> Attorney Mary Hall, the first woman to be admitted to the Connecticut bar, was admitted seven years later in July of 1882.<sup>3</sup>

The Connecticut Bar Association has focused more significantly on diversity and inclusion in recent years. The CBA implemented the affinity bar delegate certification process, in an effort to diversify its House of Delegates, in 2012. The CBA enacted its first Diversity and Inclusion Policy in 2015,<sup>4</sup> and its first Diversity and Inclusion Strategic Plan<sup>5</sup> in 2016. The Connecticut Legal Community's Diversity and Inclusion Pledge and Plan<sup>6</sup> was also launched in 2016, and now features close to 40 signatory organizations. The CBA has made progress in the diverse identities represented within our leadership, in the diversity of our many sections and committees, in the policies we have adopted, in the sustained efforts of our Diversity and Inclusion Committee, and in the many diversity and inclusion events and initiatives the CBA sponsors and pro-

duces. While all of this represents positive progress, we cannot declare "mission accomplished" for diversity, equity, and inclusion for the same reason that we cannot do so for our professional and organizational commitment to the pursuit of truth, justice, and equality.

The Connecticut legal profession and our bar association are examples of "an inescapable network of mutuality, tied in a single garment of destiny." All of us work together to serve and uphold the rule of law. Together we form a tapestry, richer and stronger, more capable of meeting our mission, by the full inclusion of all. We hope that this recurring column will be instructive to those interested in advancing diversity, equity, and inclusion within the Connecticut legal profession in a sustained and strategic fashion. We acknowledge the limitations of our own perspectives, and so will invite others to share their insights as this column develops. Finally, we envision this to be a cumulative presentation, building and evolving over time, towards a fuller and more meaningful understanding of diversity, equity, and inclusion. Of course, we also welcome the opportunity to hear from you, and hope you will share your own reactions, thoughts, and feedback with us at [info@ctbar.org](mailto:info@ctbar.org). ■



*Cecil J. Thomas is president-elect of the CBA and an attorney at Greater Hartford Legal Aid. Karen DeMeola is a past president of the CBA and the assistant dean for finance, administration, and enrollment for the UConn School of Law.*



*Attorney Thomas is the co-chair of the CBA's Diversity and Inclusion Committee, having previously served as co-chair of the Committee from 2015 through 2018, including with Attorney DeMeola in 2017. Attorneys Thomas and DeMeola have been instrumental in the development of many of the CBA's diversity and inclusion initiatives, and regularly speak and teach on diversity, equity, and inclusion in the legal profession.*

**NOTES**

1. Victor M. Gordon, "A History of the First One Hundred Years of the Connecticut Bar Association: 1875-1975," 49 *Conn. Bar Journal* 201, 215 (1975)
2. Connecticut Bar Foundation, "History Project on Attorneys of Color Timeline" (2012).
3. ConnecticutHistory.org, "Mary Hall: Connecticut's First Female Attorney" (May 29, 2020)
4. <https://www.ctbar.org/about/diversity-inclusion>
5. [https://www.ctbar.org/docs/default-source/resources/strategic\\_diversity\\_and\\_incl.pdf?sfvrsn=37a9d7cd\\_0](https://www.ctbar.org/docs/default-source/resources/strategic_diversity_and_incl.pdf?sfvrsn=37a9d7cd_0)
6. <https://www.ctbar.org/about/diversity-inclusion/diversity-inclusion-pledge-plan>

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# Navigating Pro Bono Connect: Narrowing Connecticut's Access to Justice Gap

By CECIL J. THOMAS



CBA Pro Bono Connect

**C**OVID-19's economic impact will be significant and enduring. As Connecticut's courts begin to re-open in the coming months, tens of thousands of Connecticut residents will be forced to fight for their homes, resolve child custody and family relationships disputes, seek protection from domestic violence, and address consumer finance claims without the means to secure the assistance of a lawyer. Connecticut lawyers must respond to this crisis to ensure access to justice, to protect the rule of law, and to preserve public confidence in our justice system. Join us in providing pro bono representation to our most vulnerable residents through Pro Bono Connect, a recently launched Connecticut Bar Association initiative.

## What is Pro Bono Connect?

Pro Bono Connect allows volunteer attorneys to connect with legal service providers to receive a pro bono case referral, and offers volunteers relevant, on-demand trainings to prepare for pro bono representation. Pro Bono Connect was developed by the Legal Aid Subcommittee of the CBA Covid-19 Taskforce.

## How do I sign up?

Visit [ctbar.org/ProBonoConnect](http://ctbar.org/ProBonoConnect) to start the process. Under **For Attorneys**, click on the **Learn More** button and then select the **Sign Up Now** button. This will bring you to an online form, where you will be able to provide your basic contact information and express your interest in the types of referral you would like to receive as well as your preferred geographical service area in Connecticut. Once you submit the form, your name

and selections will be shared with State-wide Legal Services, which will contact you with appropriate case referrals.

## What is the Pro Bono Pledge?

As you are completing the sign-up form, you will notice the option to take the Pro Bono Pledge. The Pro Bono Pledge is a personal commitment to take at least one pro bono referral per year in each of your selected areas of interest. If you take the pledge, you will be able to access on-demand webinar training videos and supporting materials, relevant to the case referral preferences you selected, at no cost to you.

## How do I access the trainings?

If you have taken the pledge, the trainings, based on the case referral preferences you have selected, will appear automatically in your CBA Education Portal Dashboard (accessible at [ctbar.org/EducationPortal](http://ctbar.org/EducationPortal)). Alternatively, you may pay to access the trainings within the "CBA Pro Bono Connect" portion of the CBA Education Portal Course Catalogue. All of the revenue generated from these trainings is designated to the Connecticut Bar Foundation to benefit Connecticut's legal services providers.

## What trainings are available?

Currently, ten on-demand webinar trainings, featuring video presentations and supporting written resources, are available in the CBA Pro Bono Connect course catalogue. Topics include eviction and foreclosure defense, emergency custody

hearings, domestic violence protective and restraining orders, introductions to immigration law, immigration detention and bond hearings, consumer bankruptcy, auto repossessions, and Veterans Administration benefits. We will work to expand and update these offerings in the coming year, so please check back in periodically. If there is an area that you can help us expand, please get in touch!

## How long will I have to prepare?

The pledge allows you up to one year to take your first case, and once you sign up, the associated trainings will remain accessible in your CBA Education Portal Dashboard for one year. If your professional or personal obligations do not allow you to take a case when you are first contacted, communicate this with your referring legal services provider. There is no shortage of need, and you will be contacted again at your preference to check on your availability.

*Continued on page 40 →*



*Cecil J. Thomas is the 2020-2021 president-elect of the Connecticut Bar Association and chair of its Pro Bono Committee.*

*He is an attorney at Greater Hartford Legal Aid, where he has represented thousands of low-income clients, predominantly in housing matters, since 2006, and has obtained significant appellate and class action victories on behalf of low-income Connecticut residents. Attorney Thomas also co-chairs the legal aid subcommittee of the Covid-19 taskforce, which led the development and launch of Pro Bono Connect in April and May of 2020.*

# Stuffing “Stuff” in a Brief

## The Bluebook Rides to the Rescue!

By CHARLES D. RAY and MATTHEW A WEINER

**W**e’re taking a bit of a hiatus with this column to bring you news from the world of case citation and, more specifically, a revision to section B6 of *The Bluebook: A Uniform System of Citation*. That section covers abbreviations, numerals, and symbols for practitioners. The new addition is far from earth shattering (some might disagree) but is worthy of at least passing consideration. Here’s the new proviso: “Because many court systems impose word limits on briefs and other documents submitted to the court, abbreviations in reporter names may optionally be closed to conserve space, even if they would normally be separated under this rule.” Ever helpful, *The Bluebook* goes on to tell us that what would ordinarily be “S. Ct.” and is, in fact, just that in the immediately preceding paragraph of section B6, can now become “S.Ct.” and “F. Supp. 2d” can now become “F.Supp.2d.”

The reason for this is obvious—under a word limit regime, “F. Supp. 2d” counts as three words, while “F.Supp.2d” counts as only one. Much the same as “getoffmydamnlawn” only counts as one word rather than five. But why would the members of the Harvard, Columbia, and University of Pennsylvania law reviews possibly care one way or the other? What on earth was the impetus for this change in the rule? Were job offers from prestigious law firms involved? We think an investigation is in order, especially considering that the new compactor rule is “optional” and does not purport to take a position on the subject one way or the other. The rule as it was didn’t make much more sense, but it at least took a



stance: “Close up adjacent single capitals (U.S.), but do not close up single capitals with longer abbreviations (S. Ct.)” We’re looking forward with great anticipation to the day when a rules-minded federal judge gets hold of a brief that exceeds the word limit by taking advantage of the new “optional” rule. The seriousness of all this is hard to overstate!

But let’s back up a moment. Judges like to remind us from time-to-time that shorter is mostly better when it comes to brief writing. And while the same might be said about crafting opinions (not by us, of course), the fact remains that getting ten pounds of argument to fit in a five-pound brief is hard work. Why say something only once when the power of repetition will surely win the appeal? Or, why say something clearly when long-winded obfuscation might just turn a loser into a winner, even if nobody understands clearly what the claim is? As it

turns out, there is a bit of history between judges and lawyers who try to stuff too much stuff in federal court briefs.

As is true with much that is wrong in the world today, blame lies with the personal computer and, especially, the advent of word processing software, which gave brief writers the ability to manipulate, on a seemingly infinite basis, the size of letters, the spacing between them, as well as the spacing between lines of text. With these tricks available, briefs were no longer being typed on IBM Selectrics (see Wikipedia) and commercially printed pamphlet briefs gave way to copy machines and 8½ by 11 paper (except in the US Supreme Court) The changeover also ushered in, however, a small, but dedicated group of lawyers who were seemingly content to flout the rules and cram as much as they could into a brief that was constrained only by a limit on the number of pages available to them.

The creative efforts of these space bandits did not amuse federal judges. See *Westinghouse Electric Corp. v. N.L.R.B.*, 809 F.2d 419, 425 (7th Cir. 1987) (12-word citation) (“The effect [of rule violations] was to stuff a 70-page brief into 50 pages. One has the sense that the lawyers wrote what they wanted and told the word processing department to jiggle the formatting controls until the brief had been reduced to 50 pages.”)

The fear of trusting the amount of content in a brief to enterprising and creative lawyers resulted in a rule change in 1998 that imposed a word count rather than a page count on appellate briefs. As it currently stands, Rule 32(a)(7) of the Federal Rules of Appellate Procedure allows a safe harbor for any principal brief that does not exceed 30 pages or a reply brief that does not exceed 15 pages. If your brief will not fit within the safe harbor, a principal brief is acceptable if it contains no more than 13,000 words using proportional typeface (with serifs and **14-point or larger**). A reply brief gets you only 6,500 words. The obvious questions then become “what counts” and “what’s a word.”

Rule 32(f) helps answer the first question, but it didn’t take long for lawyers to get into trouble. In *DeSilva v. DiLeonardi*, 185 F.3d 815 (7th Cir. 1999), counsel certified that his brief contained 13,824 words, 176 short of the then limit of 14,000. The Court did its own count and came up with 15,056 words. The culprit? Twenty footnotes (1,232 words worth) that did not get counted when counsel made his certification because, at the time, Microsoft Word did not automatically count words contained in footnotes embedded in highlighted text for which a word count was being made. After a thorough review of the problem, the Court let counsel off the hook but suggested that either Microsoft or the rule-makers should fix the problem. Microsoft Word now counts words in footnotes (thank goodness).

In the time since we learned what counted and how to count it, efforts to skirt the

word limitation seem to have fallen off, but the violations seem also to be just a bit more brazen. For example, in *Roth Development Corp. v. Department of Defense*, 413 F.3d 1327 (Fed. Cir. 2005) the court held that a fee issue had not been preserved for appellate review where the argument consisted of a single sentence in the brief, accompanied by citations to filings from the district court that were contained in the joint appendix. Incorporation of arguments by reference to papers in the appendix is not a proper way to gain extra space for arguments. Nor is the seemingly simple method of certifying an incorrect number of words contained in the brief and then arguing that mistakes were made when called out on the more than 4,000 extra words. See *Abner v. Scott Memorial Hospital*, 634 F.3d 962 (7th Cir. 2011).

Our favorite, however, is *Pecher v. Owens-Illinois, Inc.*, 859 F.3d 396 (7th Cir. 2017). Just as a side note, be warned that the Seventh Circuit seems to take word limitations very seriously. They certainly did in *Pecher*, where counsel asked for and received permission to file a brief not to exceed 16,500 words. According to counsel, the brief came in at 16,453 words. According to the court, however, it would have come in at well over 17,000 words had counsel not eliminated all the spaces contained in string citations scattered throughout the 77-page brief. As the court noted at oral argument, “one string citation without spaces counted as a single word; the same string citation, cleaned up, counted as sixty-eight.” *Id.* at 403. Whoops. Maybe the folks at *The Bluebook* can look into this issue for their next edition. Us word count aficionados would be grateful if they would.

Finally, if you think Connecticut is immune from all this folderol because we have page limits instead of word limits, we beg to disagree. Practice Book § 67-2 tells us that a brief “shall be fully dou-

ble spaced and shall not exceed three lines to the vertical inch or twenty-seven lines to the page....” Based on our calculations, the rule’s first standard—“fully double spaced”—yields 23 lines to the page using Microsoft Word. Under the rule’s second standard—“three lines to the vertical inch or twenty-seven lines to the page”—the obvious advantage (we use that term loosely in this context) is an additional four lines per page. Not much, you say? Think again. At 27 lines per page, a 35-page brief could contain up to 945 lines of text. At 23 lines per page it would take 41 pages to get you 943 lines of text. Just think of all the loquacious nuggets that could be included in those extra six pages! Unfortunately, the end product also looks very much like a 35-page brief with six extra pages packed into it. Are the judges reading it going to notice the difference? We find it hard to believe that they wouldn’t. Are they going to think less of our arguments if they do notice? We don’t know, but our preference is to not take the chance.

Perhaps instead of two standards that bear little resemblance to each other, the rule writers could compromise on a single standard—say 25 lines to the page? We’d tell you how to set that up in Microsoft Word, but it’s a closely guarded family secret. Or, perhaps, we could join the federal courts and use a word count rather than a page count. We’d be in favor of that, if only because it presents the possibility of the Supreme or Appellate Court having to decide whether “F.Supp.2d” is one word or three. Just think of the fun we’ll have! ■



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■ Any views expressed herein are the personal views of DASA Weiner and do not necessarily reflect the views of the Office of the Chief State’s Attorney and/or the Division of Criminal Justice.

# Highlights

## Recent Superior Court Decisions

The Connecticut Law Reporter is a weekly publication containing the full text of Superior Court opinions. For copies of the opinions described here, or information about the reporting service, call (203) 458-8000 or write The Connecticut Law Book Company, PO Box 575, Guilford, CT 06437.

### ■ Administrative Law

The Connecticut Uniform Trade Secrets Act does not apply to state agencies, even with respect to private trade secret information that is exempt from disclosure under the Freedom of Information Act. Therefore, neither CUTSA nor the FOIA provides a private cause of action to prevent disclosure by state agencies of private trade secret information in response to FOIA requests. Rather, the FOIC and other agencies retain the discretion to release private party trade secrets in the possession of government agencies, unless specifically prohibited from doing so by other more specialized statutes. *GR Vending CT, LLC v. Department of Consumer Protection*, 69 CLR 449 (Cobb, Susan Quinn, J.). The opinion also holds that the FOIA's exemptions from disclosure are not mandatory unless an agency is specifically prohibited from releasing information by other federal or state statutes.

### ■ Arbitration

An arbitration clause of an employment contract is unenforceable with respect to disputes involving rights under the Workers' Compensation Statute. *Baladimas v. Balos, LLC*, 68 CLR 905 (Epstein, Constance L., J.T.R.).

### ■ Bankruptcy and Foreclosure

*Wells Fargo Bank v. Morrill*, 69 CLR 258 (Taylor, Mark H., J.), holds that an agreement to modify a loan secured by a real estate mortgage incorporated into an approved Chapter 11 bankruptcy restructure plan is enforceable against a lender, not as an independent contract but as an

obligation established by the bankruptcy decree. The decree adopting the restructure plan therefore has a res judicata effect, which may be asserted as a special defense or counterclaim in post-discharge foreclosure actions allegedly violating the bankruptcy decree. The lender seeks to foreclose the mortgage in a post-discharge action based on the borrower's alleged failure to comply with an obligation in the original loan agreement to reimburse real estate taxes paid by the lender prior to and during the bankruptcy proceeding.

### ■ Civil Rights

*Hasiuk v. Colt Defense, LLC*, 69 CLR 355 (Budzik, Matthew J., J.), holds that the provision of the Connecticut Discriminatory Practices Act reciting that an award of attorneys fees to a plaintiff that prevails on a discrimination complaint "shall not be contingent upon the amount of damages requested by or awarded to the complainant," Conn. Gen. Stat. § 46a-104, establishes a strong public policy in favor of awarding attorneys fees as an incentive to attorneys to prosecute such claims, even for prevailing plaintiffs who recover only nominal damages. This opinion awards attorneys' fees of approximately \$95,000 to a plaintiff who recovered damages on a workplace hostile environment claim for discrimination based on national origin in the very nominal amount of \$1.00.

### ■ Civil Procedure

*Cronin v. Pelletier*, 69 CLR 395 (Sferrazza, Samuel J., J.T.R.), holds that the authorization for the recovery of reasonable attorneys' fees by a defendant who has

successfully obtained the dismissal of a complaint pursuant to the Connecticut Anti-SLAPP Suit Statute, Conn. Gen. Stat. § 52-196a, authorizes fees for *all work* performed by defense counsel in the suit and not just for fees incurred to prosecute the Anti-SLAPP Suit motion.

A clause of a pretrial "case management plan" agreed upon between the parties to a suit, reciting that the plaintiff "shall withdraw its application for a prejudgment remedy and each party waives any right to seek a prejudgment remedy against any other party *for the duration of the action*," does not constitute a waiver of the prevailing plaintiff's right to seek a post-trial PJR. *Stone Key Group, LLC v. Taradash*, 69 CLR 422 (Lee, Charles T., J.).

### ■ Criminal Law and Procedure

*Khuth v. State*, 69 CLR 384 (D'Andrea, Robert A., J.), holds that a petition for a new trial on a criminal conviction is a civil proceeding and therefore there is no statutory or constitutional requirement for appointment of counsel for the prosecution of such a petition by an indigent criminal defendant.

### ■ Labor Law

An employer's unilateral imposition of an oversight program for an employer's employee medical insurance constitutes an unfair labor practice for failing to engage in collective bargaining, where the four-tier oversight program (a) requires prior approval to confirm the efficacy of drugs before a physician-recommended drug may be used by an employee; (b)

adds oversight for the use of opioids; (c) requires that employees try generic drugs before using a brand specified by a physician; and (d) requires oversight of the quantity and concentration of drugs prescribed for employees. *Waterbury v. State Board of Labor Relations*, 69 CLR 347 (Cordani, John L., J.).

## ■ Landlord and Tenant

A host municipality is not liable for premises liability claims arising out of injuries incurred on a housing authority's property, because a housing authority is separate and distinct from the host municipality in which it is located. *Morgester v. Bristol Housing Authority*, 69 CLR 402 (Wiase, Peter E., J.).

The statutory requirement that a notice to quit include a statement of the grounds for termination, Conn. Gen. Stat. § 42a-23(a) (mandating that the notice describe the reasons for termination by using "the statutory language or words of similar import"), is satisfied by a literal reproduction of the statutory language; it is not necessary that details be added to clarify the precise events upon which the termination notice is based. *Tolland Housing Authority v. Stager*, 69 CLR 426 (Sferazza, Samuel J., J.T.R.). The opinion is also useful for its observation that pursuant to Conn. Gen. Stat. § 47a-15 a second pretermination notice is not required for a termination within six months following a tenant's correction of an earlier default for substantially the same conduct.

The "Nondelegable Duty" doctrine applies to the owner of leased premises only if the owner is in "possession and control" of the premises. *Maynard v. Colvest/Bloomfield, LLC*, 69 CLR 484 (Noble, Cesar A., J.).

## ■ Trade Regulation

*Prucker v. American Economy Insurance Co.*, 68 CLR 626 (Farley, John B., J.), holds

that allegations that a property insurer denied coverage of damage caused by the use of defective concrete when pouring the home foundation, while ignoring numerous rulings by local courts enforcing similar coverage provided by other insurers, are sufficient to state an unfair insurance practice claim under CUIPA and an unfair trade practice claim under CUTPA.

CUTPA's three-year limitations period is not tolled by either the continuing course of conduct doctrine or the fraudulent concealment statute. *Pastrana v. Johnson & Johnson*, 68 CLR 659 (Bellis, Barbara N., J.).

## ■ Trusts & Estates

*Foisie v. Foisie*, 69 CLR 343 (Knox, Kimberly Ann, J.), holds that longarm jurisdiction over a foreign executor of a decedent's estate is based on the *decedent's* ties to Connecticut, not the *executor's* ties. The matter involves an action between former spouses for one spouse's fraudulent nondisclosure of offshore assets during the negotiation of a stipulated judgment in their Connecticut dissolution action. The opinion holds that longarm jurisdiction may be exercised against the two executors of the deceased spouse's estate, even though they are located in Antigua and have no ties to Connecticut.

## ■ Workers' Compensation Law

*Lavette v. Stanley Black & Decker, Inc.*, 69 CLR 272 (Noble, Cesar A., J.), holds that a complaint by an employee against an employer for common-law relief for work-related injuries caused by the negligence of a managerial employee, brought pursuant to the "intentional misconduct" exception to the exclusive remedy provision of the Workers' Compensation Act, Conn. Gen. Stat. § 31-284, must include specific allegations sufficient to establish that the managerial employee was acting as the corporate defendant's alter ego, i.e.,

that either the "instrumentality" or the "identity" rule has been satisfied; a simple allegation stating the legal conclusion that the active wrongdoer was an alter ego of the employer is insufficient. The opinion grants a motion to strike a complaint alleging that the intentional conduct of two mid-level supervisors caused the plaintiff's injuries.

## ■ Zoning

A zoning commission has standing pursuant to Conn. Gen. Stat. § 8-8 to appeal from zoning board of appeals decisions granting variances or ruling on zoning enforcement matters. The defendants unsuccessfully argued that a zoning commission has standing to appeal only decisions that involve its own rulings. *Plainfield PZC v. Plainfield ZBA*, 69 CLR 405 (Berger, Marshall K., J.T.R.). The opinion is also useful for its holding that the proper procedural vehicle to challenge the standing of only one of several plaintiffs named in a complaint is a motion to strike for misjoinder pursuant to P.B. § 11-3, not a motion to dismiss the complaint.

*Tillman v. Shelton PZC*, 69 CLR 409 (Domnarski, Edward S., J.), holds that the requirement that a Planned Development District "shall be uniform for each class or kind of buildings, structures or use of land throughout each district," Conn. Gen. Stat. § 8-2, is not defeated by the fact that a proposed PDD is divided into sub-areas subject to differing combinations of zoning restrictions. The opinion seems to reason that a PDD with a variety of sub-areas subject to a general set of standard restrictions, any of which may be imposed on individual sub-portions of the PPD, is "uniform" at the moment the PPD is created because all of the sub-districts are simultaneously subject to a uniform *collection* of restrictions, even though each sub-area may be subject to different subset of the collection. ■

# The Young Lawyers Section Is Equipped to Take on Change

By CINDY M. CIESLAK

**E**ven though my term as chair of the Young Lawyer Section did not commence until July 1, 2020, like many leaders before me, I started planning ahead for the 2020-2021 bar year at least six months in advance. I proposed an annual budget, and I had substantial conversations with other bar leaders about new and restructured series or programs that the YLS could offer. When the CBA went virtual in late March, I was initially disappointed that the year I was looking forward to for so long—the year I was going to lead a group of talented young lawyers—had been upended.

I am a creature of habit, and I did not immediately welcome the changes that came with life during a pandemic. While I follow social distancing, wear a face mask, and practice other cautionary behaviors, and while I felt fortunate to be able to work remotely, I was initially extremely eager to get back to what life was before the pandemic grounded it to a halt. Working from home full-time without childcare was exhausting and overwhelming. I never really felt like I was giving 100 percent to my family or my work, but I was completely physically, emotionally, and intellectually depleted. I used to think that I struggled with work/life balance, but once all of my responsibilities were hovering over me 24/7, my life knew no boundaries like never before.

As the YLS immediate past chair described in her first Young Lawyers column last year, “[s]ometimes a young lawyer’s life feels a little like keeping 100 spinning plates in the air,” and the burdens young lawyers face certainly did not

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decrease when emergency orders were issued in Connecticut. Suddenly, young lawyers had to juggle full-time work, managing a household when stores and facilities had limited hours, often home schooling or caring for children because schools and daycares were closed, all while maintaining their own health and well-being, among other things.

I still have not mastered this juggling act, and I was concerned that section engagement would decrease since participation in bar association activities is voluntary and young lawyers faced increased career and personal demands during a pandemic. But my concerns were quickly dispelled—several young lawyers reached out to offer assistance with virtual events and to discuss new and revamped programming that our section could offer.

I was impressed by the eager young lawyers with whom I spoke. While many areas of life have slowed down or otherwise changed courses in order to combat the spread of COVID-19, young lawyers face a unique challenge: they are still in the early stages of building their legal careers. Yet, many young lawyers are

working from home or in a reduced office setting and thus, they might be deprived of critical mentorship from more experienced attorneys or supervisors in their office. Additionally, in-person networking events have been canceled. Therefore, young lawyers are finding new ways to make connections, such as Zoom happy hours and LinkedIn messaging.

Connections and mentors are critical to success in the legal industry, even without the additional burden of a struggling economy, and if fewer connections are made today, it may negatively impact the career growth for a young lawyer. However, true mentorship is difficult when working remotely, and changes are being made to cope with the effects of the pandemic. I regularly read legal columns and articles explaining how the economic downturn during the pandemic has affected the legal industry, and specifically, young lawyers. Bar exams have been postponed, summer associate programs canceled, and associates furloughed or laid off. According to one recent article, “[l]ess than half of attorneys and legal industry professionals feel positive about the future of the industry ... with the big-



gest concerns being technology, economic uncertainty and the industry's ability to adapt to change."<sup>1</sup>

Despite these headlines, the 2020-2021 Young Lawyers Section Executive Committee remains as engaged as ever. Half of our section's Executive Committee chairs are brand new to the Executive Committee, but I have had both returning members and new members reach out to express their excitement for this bar year and to inquire how they can start the year off on the right track given the circumstances, even before we held our first virtual meeting to plan for the year. I am truly honored to be able to work with some very engaged and creative individuals.

Nonetheless, I have had the opportunity to speak to many active members of the CBA, many of whom were former leaders of the Young Lawyers Section. Some of the challenges young lawyers face have not changed, despite years of researched articles and programs designed to mentor and encourage young lawyers to take a more active role in the bar. Young law-

yers are often viewed as less experienced, not trusted, and sometimes overlooked when opportunities are available. In fact, some of my predecessors have written on this exact topic. This generalized view of young lawyers, coupled with a pandemic, causes me concern.

But the pandemic is no reason to stop trying to effectuate change, and in fact, it might even be a better time to welcome it. To any mentors and senior attorneys reading this article, I strongly encourage you to check in on the young lawyers in your network and offer guidance. Alternatively, inquire how the young lawyer might be able to help you or your firm or company. Young lawyers may be critical to your firm or company in overcoming the challenges the legal industry faces during the pandemic. It is also important to evaluate your firm or company's diversity and inclusion efforts during this challenging time.

I am energized by the willingness of the YLS Executive Committee to not only offer more time to our association, but also

in its members' excitement to take on new roles and ability to brainstorm and develop creative ideas for programs in this virtual world. The practice of law has not stopped during the pandemic, and neither will young lawyers.

The YLS has traditionally hosted many successful programs, which unfortunately, will need to be postponed or modified this year due to restrictions on large group gatherings. Nevertheless, we are excited about the changes that we have made and will continue to make, and we anticipate that you will find our new virtual programs enjoyable, useful, and beneficial to our association. ■

#### NOTES

1. Emma Cueto, *Many In Atty Ranks Down About The Future Of Their Industry*, Law360, July 13, 2020, [www.law360.com/employment/articles/1291371/many-in-atty-ranks-down-about-the-future-of-their-industry?nl\\_pk=73fd15d3-9073-416c-b0b3-2c2d9f9a387d&utm\\_source=newsletter&utm\\_medium=email&utm\\_campaign=employment](http://www.law360.com/employment/articles/1291371/many-in-atty-ranks-down-about-the-future-of-their-industry?nl_pk=73fd15d3-9073-416c-b0b3-2c2d9f9a387d&utm_source=newsletter&utm_medium=email&utm_campaign=employment).

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## President's Message

Continued from page 5

privacy concerns, you can e-mail Traci directly at [drcipriano@optimum.net](mailto:drcipriano@optimum.net).

We are committed to championing our communities as we continue to strengthen, grow, and elevate the standing of Connecticut's legal profession. In facing our current challenges, we also will guide our clients to good and right results on legal issues facing our communities and staunchly support our colleagues who have the passion for public service and the protection of our human and civil rights.

As the first Asian Pacific American (or APA) to serve as CBA president, I am particularly sensitive to the surge in racism we are experiencing. The CBA endeavors to protect and provide relief to

all of our communities who are affected by the forces of racism, dehumanization, violence, and scapegoating during this already disturbing time. Additionally, increasing diversity in the legal profession results in better service to our clients, facilitates access to justice, and improves the legal profession as a whole. To keep you apprised of our ongoing diversity and inclusion efforts, please see our new Diversity, Equity, & Inclusion column on page 31, which is launching in this issue and will appear in future issues of *CT Lawyer*.

The feedback we receive is helpful as we shape this new legal landscape. We are grateful for the good and special people in our CBA membership for your dedication and commitment, not only to the association's causes but also to the vitality and health of the legal profession and our communities.

Although our physical CBA offices remain closed to the public, the CBA staff continues to keep the Connecticut Bar Association fully operational and have implemented new protocols for everyone's well-being and safety in preparation for when our offices can reopen and in-person meetings may resume. Please do not hesitate to reach out if there is anything we may do to assist you by e-mailing [info@ctbar.org](mailto:info@ctbar.org) or calling (844)469-2221.

Please stay safe, be well, and thank you for your patience. ■

## Pro Bono

Continued from page 33

### What if I need additional support or a case consultation?

Contact your local legal aid office. You'll find a list of Connecticut civil legal aid providers on the CBA website at [ctbar.org/probonoorganizations](http://ctbar.org/probonoorganizations). Attorneys within these organizations have deep expertise and significant experience, and may be able to consult with you on individual case questions or direct you to further supporting materials.

### What about malpractice insurance?

The CBA does not provide malpractice insurance coverage. However, some of Connecticut's legal aid providers are able to offer malpractice insurance coverage with a case referral.

### Why should I get involved?

Many words have been devoted to our ethical obligations, as attorneys, to provide pro bono legal representation.<sup>1</sup> We could also discuss, at great length, the broader philosophical and policy considerations, our responsibilities as officers of the court, the proper administration of justice, the rule of law, or the obligations arising from our status as an independent and self-regulated profession. Each of these reasons have been addressed before, and will undoubtedly be addressed again in the future. For now, I will give you the simplest reason. Applying your expertise to the aid of those at risk of homelessness, those seeking relief from violence, those overwhelmed by the odds and facing financial crisis, those who have no other hope of a level playing field, is deeply fulfilling. This is our calling as a profession, and when we are at our best. I hope you will join the fight by taking the Pro Bono Pledge, and lending your legal talents to Connecticut's most vulnerable residents. Now, more than ever, we need your experience, your skills, and your compassion in the pursuit of justice for all. ■

## NOTES

1. See Connecticut Rules of Professional Conduct Rule 6.1.

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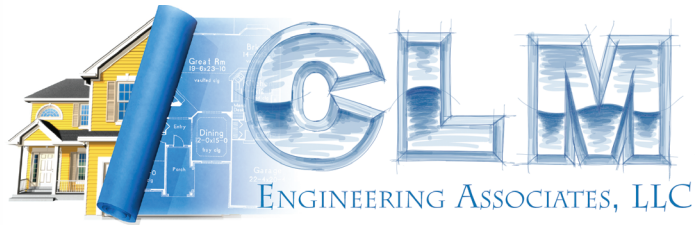
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