

Don't Let Perfect Be the Enemy of the Good

By AMY LIN MEYERSON



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SECTION 1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the supreme court of the United States shall consist of a chief justice and five associate justices,¹ any four of whom shall be a quorum, and shall hold annually at the seat of government two sessions, the one commencing the first Monday of February, and the other the first Monday of August.

—Judiciary Act of 1789

My 13-year-old daughter and I had the honor of participating in a special Reading & Robes program with US Supreme Court Justice Sonia Sotomayor hosted online by the National Judicial College and NJC President Benes Z. Aldana, the former chief trial judge of the US Coast Guard. Connecticut was one of the 13 states that participated. Appellate Judge Nina F. Elgo hosted our group of ten middle school students in collaboration with the Hartford Youth Scholars.²

Justice Sotomayor spoke to us from her chambers at the Supreme Court via an iPad. She was dressed not in a black robe but in the same outfit we saw her wearing earlier that morning on TV during a memorial for US Supreme Court Justice Ruth Bader Ginsburg whose body was lying in repose at the Supreme Court in Washington, DC.

Justice Sotomayor told the students that she asks herself two questions every night before she goes to sleep: Whom did she help today and what new things did she learn today? We were inspired and thought about what good we could do for our community.

On the morning of Tuesday, October 27, 2020, in the Supreme Court Building's East Conference Room, US Supreme Court Chief Justice John Roberts administered the judicial oath of office to Judge Amy Coney Barrett, formally swearing her in as the 115th justice to serve on the US Supreme Court.³ The Judicial Oath, under 28 U.S.C. § 453, reads: "I, _____, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _____ under the Constitution and laws of the United States. So help me God." US Supreme Court Justice Clarence Thomas swore in Justice Barrett under a constitutional oath at the White House event on the evening of Monday, October 26, 2020. Under 5 U.S.C. § 3331, all federal employees, other than the president, take the constitutional oath: "I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and

faithfully discharge the duties of the office on which I am about to enter. So help me God."⁴

At 48, Justice Barrett is not the youngest U.S. Supreme Court Justice. John Jay was the youngest at 44 years old when he took his oath of office in 1789. As a graduate of Notre Dame Law School, she is the only current justice who did not receive a law degree from Harvard Law School or Yale Law School.⁵

Having clerked for Justice Antonin Scalia during the 1998 Term, Justice Barrett is one of the six current justices who clerked for the Supreme Court. Justice Stephen G. Breyer clerked for Justice Arthur J. Goldberg during the 1964 Term. Justice John G. Roberts, Jr. clerked for Justice William H. Rehnquist during the 1980 Term. Justice Elena Kagan clerked for Justice Thurgood Marshall during the 1987 Term. Justice Neil M. Gorsuch clerked for then-retired Justice Byron R. White and Justice Anthony M. Kennedy during the 1993 Term.⁶ Justice Brett M. Kavanaugh clerked for Justice Anthony M. Kennedy during the 1993 Term.

On lifetime appointments of federal judg-

es⁷ and the independence of the judiciary, US Supreme Court Chief Justice William H. Rehnquist, in his 19th and final annual report assessing the state of the judiciary, wrote: “By guaranteeing judges life tenure during good behavior, the Constitution tries to insulate judges from the public pressures that may affect elected officials. The Constitution protects judicial independence not to benefit judges, but to promote the rule of law: judges are expected to administer the law fairly, without regard to public reaction.”⁸

There has been much speculation about what the addition of Justice Barrett to the US Supreme Court will mean to our country, democracy, and the rule of law. As the fifth woman to serve on the US Supreme Court, will Justice Barrett be mindful of those who came before her? These are questions we will answer together as cases before the US Supreme Court are decided.

In testimony before the 2020 Connecticut Judicial Compensation Commission, I noted that a fundamental principle of our democracy is that the public is entitled to justice rendered by a qualified, independent, fair, and impartial judiciary. US Supreme Court Chief Justice John Roberts said in support of increasing judicial pay, “I simply ask once again for a moment’s reflection on how America would look in the absence of a skilled and independent Judiciary. Consider the critical role of our courts in preserving individual liberty, promoting commerce, protecting property, and ensuring that every person who appears in an American court can expect fair and impartial justice.”⁹

The disparity in compensation between public service and private law practice is well documented. Our judges literally pay a price when they choose a path of servant leadership. Judicial compensation that is fair and appropriate enables our state to attract and retain qualified, experienced, and diverse lawyers drawn from every segment of the legal profession to a career in judicial service. Our judges are the backbone of a fair, effective, and efficient judicial system. The Connecticut Bar Association reiterates its commitment to supporting the needs of the courts and

our Judicial system. We continue to work collaboratively with the Branch to address the technology and personal health and safety issues of our members and their clients.

The CBA also is committed to creating a sustainable pipeline of students from high school to college, and, thereafter, to law school and the practice of law through our Pathways to Legal Careers.¹⁰ Our inaugural class of LSAT Scholars is hard at work preparing for their law school journey and engaging with the Connecticut legal community. Many thanks to Kaplan Partner Solutions and Updike Kelly & Spellacy PC for their contributions that enabled the CBA to launch this program. We look forward to growing and ensuring the longevity of this pipeline program with the support of the signatories to the Connecticut Legal Community’s Diversity & Inclusion Pledge & Plan and others.

Our 2020 LSAT Scholars:

- **Elizabeth Castro**, University of Connecticut August 2020; Major: Political Science
- **Natasha Claudio**, Connecticut College Class of 2021; Major: English
- **Maman Cooper**, University of Connecticut Class of 2017; Major: Political Science
- **Christina Cruz**, Connecticut College Class of 2020; Major: Sociology and Latin American Studies
- **Frankie De Leon**, Wesleyan University Class of 2020; Major: American Studies
- **Debaditta Ghosh**, Wesleyan University Class of 2020; Major: Government
- **Fernecia Smith**, University of Bridgeport Class of 2020; Major: Political Science

We are excited to begin preparations for the upcoming terms of Cecil J. Thomas as CBA president and Daniel J. Horgan as CBA president-elect that begin on July 1, 2021. Our CBA officers and section and committee members who lead with vision, empathy, and integrity have contributed to the success of the Connecticut Bar Association as the preeminent organization of attorneys and legal professionals in Connecticut. Volunteer to serve with us to

continue the tradition! Self-nominations are welcome. Leadership experience with other CBA committees, voluntary bar associations, or the bar’s sections is highly desirable. Contact Carol DeJohn at (860) 612-2000 or cdejohn@ctbar.org with any questions about the process.

The CBA leadership, staff, and volunteer members who are giving generously of their time and expertise are working full tilt to provide services to our members and care for the health and vitality of our legal profession. Visit www.ctbar.org/members for details about our member services and newly-added member benefits. If you have an issue that needs to be addressed or if you have any suggestions on what more we can be doing, please let us know at communications@ctbar.org.

There is no doubt that these are uncertain, and unprecedented times. Now is the time when strong leadership and creative solutions are more important than ever. The Connecticut Bar Association will continue to strive to provide high-quality services and do the good and right work for our members and our communities. With an eye to perfection, join us as we endeavor to get many things done imperfectly rather than do nothing perfectly.

Stay safe and be well. ■

NOTES

1. The Judiciary Act of 1869 fixed the number of Justices at nine and no subsequent change to the number of Justices has occurred. www.supremecourt.gov/about/faq_general.aspx
2. www.judges.org/news-and-info/supreme-courts-sotomayor-inspires-at-special-online-reading-ropes
3. www.cnn.com/2020/10/27/politics/justice-amy-coney-barrett-sworn-in-supreme-court/index.html
4. www.supremecourt.gov/about/oath/oath-soffice.aspx
5. Chief Justice John G. Roberts, Jr. - Harvard (J.D.); Justice Clarence Thomas - Yale (J.D.); Justice Stephen G. Breyer - Harvard (LL.B); Justice Samuel A. Alito, Jr. - Yale (J.D.); Justice Sonia Sotomayor - Yale (J.D.); Justice Elena Kagan - Harvard (J.D.); Justice Neil M. Gorsuch - Harvard (J.D.); Justice Brett M. Kavanaugh - Yale (J.D.); Justice Amy Coney Barrett - Notre Dame (J.D.)

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President's Message

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- Justice Gorsuch is the first to have served as a member of the Supreme Court alongside a justice for whom he clerked.
- www.archives.gov/founding-docs/constitution-transcript
- William H. Rehnquist, 2004 Year-End Report on the Federal Judiciary, January 1, 2005, available at www.supremecourt.gov/publicinfo/year-end/2004year-endreport.pdf.
- www.supremecourt.gov/publicinfo/year-end/2007year-endreport.pdf
- www.ctbar.org/about/diversity-equity-inclusion/pathways-to-legal-careers

Lincoln

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"My best friend is the man who will get me a book I have not read."

- See Michael Burlingame, *Abraham Lincoln: A Life*, Volume 1, p. 36 (2008).
- "The judgments of the Lord are true and righteous altogether."
- See Robert Bray's comprehensive study, "What Abraham Lincoln Read," *Journal of the Abraham Lincoln Association*, Volume 28, No. 2 (2007), and Bray's *Reading with Lincoln* (2010).
- Harkness, supra note 1.
- Harold Holzer, *Lincoln at Cooper Union: The Speech that Made Abraham Lincoln President* (2006).
- Professor Masur points out that Lincoln had little military experience, but, as president, he read several treatises on warfare to improve his knowledge of tactics.

Technology and Ethics

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Connecticut Appellate Courts and the Second Circuit Court of Appeals. Along with his appellate work, he represents attorneys before grievance panels and in public hearings before the Statewide Grievance Committee and also represents candidates for bar admission before the Bar Examining Committee.

Michael Taylor is a partner at Horton, Dowd, Bartschi & Levesque, P.C. He handles all aspects of appellate civil litigation in the Connecticut Appellate and Supreme Courts, and in the Second Circuit Court of Appeals. He also counsels clients and attorneys at the trial stage regarding the identification and preservation of issues for appeal.

- Bray, p. 56.
- Poe had published "The Murders in the Rue Morgue" in 1841, and this story and subsequent Poe works appealed to Lincoln.
- He would recite "A Man's a Man for A'That" and "Auld Lang Syne."
- See Burlingame, Vol. 2, p. 47, who assumes that Lincoln relied on Dickens for the phrase.
- Bray is not sure of how much Lincoln read of *The Pickwick Papers*, but Harkness states that Lincoln read the book.
- This was a "heart balm" suit that Connecticut abolished in 1967. See General Statutes Sec. 52-572b. England followed the American trend by ending such suits in 1970. Gilbert and Sullivan's *Trial By Jury* also satirized a breach of promise action.
- See Mark E. Steiner, *An Honest Calling* (2006).
- Mr. Pickwick became the central figure in the Broadway play *Pickwick*, with its hit song, "If I Ruled the World."

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- womenlawyersonguard.org/wp-content/uploads/2020/07/Still-Broken-Full-Report.pdf; "First Phase Findings From a National Study of Lawyers With Disabilities and Lawyers Who Identify as LGBTQ+" (2020), www.americanbar.org/content/dam/aba/administrative/commission-disability-rights/bbi-survey-accessible.pdf; International Bar Association, "Us Too? Bullying and Sexual Harassment in the Legal Profession" (May 2019) www.ibanet.org/bullying-and-sexual-harassment.aspx
- Lauren A. Rivera, András Tilcsik, "Class Advantage, Commitment Penalty: The Gendered Effect of Social Class Signals in an Elite Labor Market," *American Sociological Review*, Vol. 81, No. 6 (2016)
- Dr. Arin N. Reeves, *Written in Black and White: Exploring Confirmation Bias in Racialized Perceptions of Writing Skills* (2014) nexitions.com/wp-content/uploads/2017/05/written-in-black-and-white-yellow-paper-series.pdf
- You Can't Change What You Can't See: Interrupting Racial and Gender Bias in the Legal Profession* (ABA, MCCA 2018) (Executive Summary) www.americanbar.org/content/dam/aba/administrative/women/Updated%20Bias%20Interrupters.pdf
- See e.g., Destiny Peery, Paulette Brown, and Eileen Letts, *Left Out and Left Behind: The Hurdles, Hassles, and Heartaches of Achieving Long-Term Legal Careers for Women of Color* (2020), www.americanbar.org/content/dam/aba/administrative/women/leftoutleftbehind-int-f-web-061020-003.pdf; Chung, et al. *A Portrait of Asian Americans in the Law*, Yale Law School/National Asian Pacific American Bar Association (2017) APortraitofAsianAmericansintheLaw.apaportraitproject.org

Supreme Deliberations

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solved because of Mr. Foisie's death and by operation of Conn. Gen. Stat. § 46b-40 (a marriage is dissolved by "the death of one of the parties"); and 3) if the marriage was automatically dissolved based on the death of Mr. Foisie, the court could not then re-dissolve it based on the motion to open. "That's some catch...."

The flaw in the trial court's analysis was, according to the Court, in step number one, because a motion to open a dissolution judgment only for the limited purpose of reconsidering the financial orders does not reinstate the parties' marriage.

The motion to substitute was controlled by Conn. Gen. Stat. § 52-599, which states, with three exceptions, that a civil action will not abate upon the death of one of the parties. The exception at issue in *Foisie* applied to any proceeding, "the purpose or object of which is defeated or rendered useless by the death of any party...." Getting to the meat of the matter, the Court noted that it has permitted substitution where the death of a party would have "no effect on the continuing vitality of the proceeding because the estate could fill the shoes of the decedent, such as when the pending civil case sought monetary damages...." Contrast this to cases where the action "sought specific relief that was

unique to the parties, such as seeking an injunction for specific performance" and, in which case, substitution would not be appropriate.

Within these contours, the Court had little trouble concluding that Ms. Foisie's motion to open sought only reconsideration of the financial orders and not reinstatement of the marriage. And because the end result would involve only money, the action would not be "defeated" or "rendered useless" by the death of Mr. Foisie. Thus, once the map became clear, the end result became obvious. ■