Don’t Let Perfect Be the Enemy of the Good

By AMY LIN MEYERSON

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. 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.”

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.


On lifetime appointments of federal judg-
es 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.”

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.”

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. 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
4. www.supremecourt.gov/about/oath/oath-sofoffice.aspx
5. Chief Justice John G. Roberts, Jr. - Harvard (J.D.); Justice Clarence Thomas - Yale (J.D.); Justice Stephen G. Breyer - Harvard (L.L.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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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, Bartski & Levouse, 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.

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Lincoln

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“My best friend is the man who will get me a book I have not read.”
3. “The judgments of the Lord are true and righteous altogether.”
5. Harkness, supra note 1.
7. 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.
8. Bray, p. 56.
9. Poe had published “The Murders in the Rue Morgue” in 1841, and this story and subsequent Poe works appealed to Lincoln.
10. He would recite “A Man’s a Man for A’That” and “Auld Lang Syne.”
12. Bray is not sure of how much Lincoln read of The Pickwick Papers, but Harkness states that Lincoln read the book.
13. 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.
15. Mr. Pickwick became the central figure in the Broadway play Pickwick, with its hit song, “If I Ruled the World.”

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 reconstitution 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.

President’s Message

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6. Justice Gorsuch is the first to have served as a member of the Supreme Court alongside a justice for whom he clerked.
7. www.archives.gov/lousing-docs/constitution-transcript