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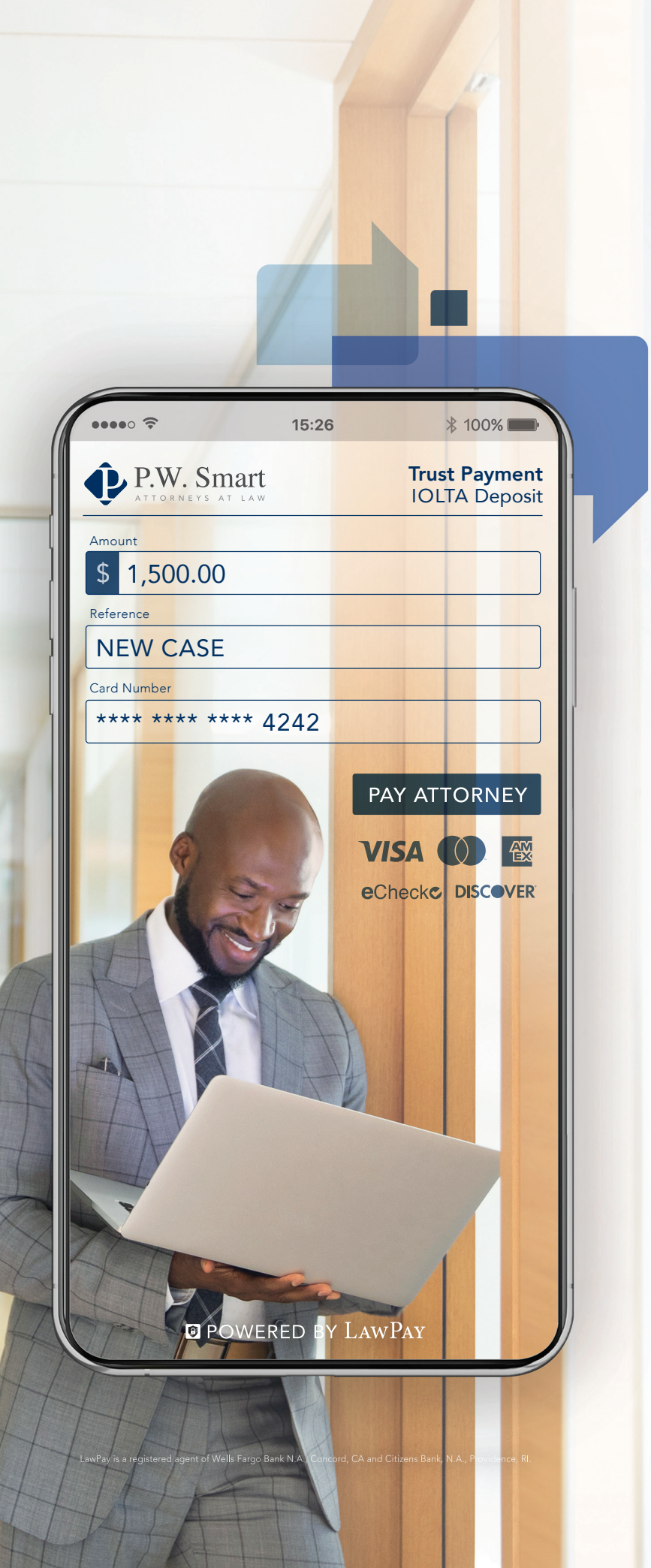

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SEND US YOUR IDEAS
Contact editor@ctbar.org.

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Don't Let Perfect Be the Enemy of the Good

By AMY LIN MEYERSON

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

Amy Lin Meyerson *is the 2020–2021 President of the Connecticut Bar Association. She is a sole practitioner in Weston, Connecticut, practicing business and general corporate law.*

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-

es[7] 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-robes
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-sofoffice.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.)

Continued on page 40 →

Upcoming Education Calendar

Register at ctbar.org/CLE

FEBRUARY

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9 Construction Coverage for Owners and Contractors

11 Unpacking Apportionment: Mages Tricks to Pull Out of a Hatt

17 Negotiation—The Value Creation Approach

**Ethics credit available*

MARCH

9 Solutions for Post-Pandemic Debt Relief: Consumer and Small Business Bankruptcy Basics

24 Be a Trusted Advisor—How to Make Decisions under Uncertainty

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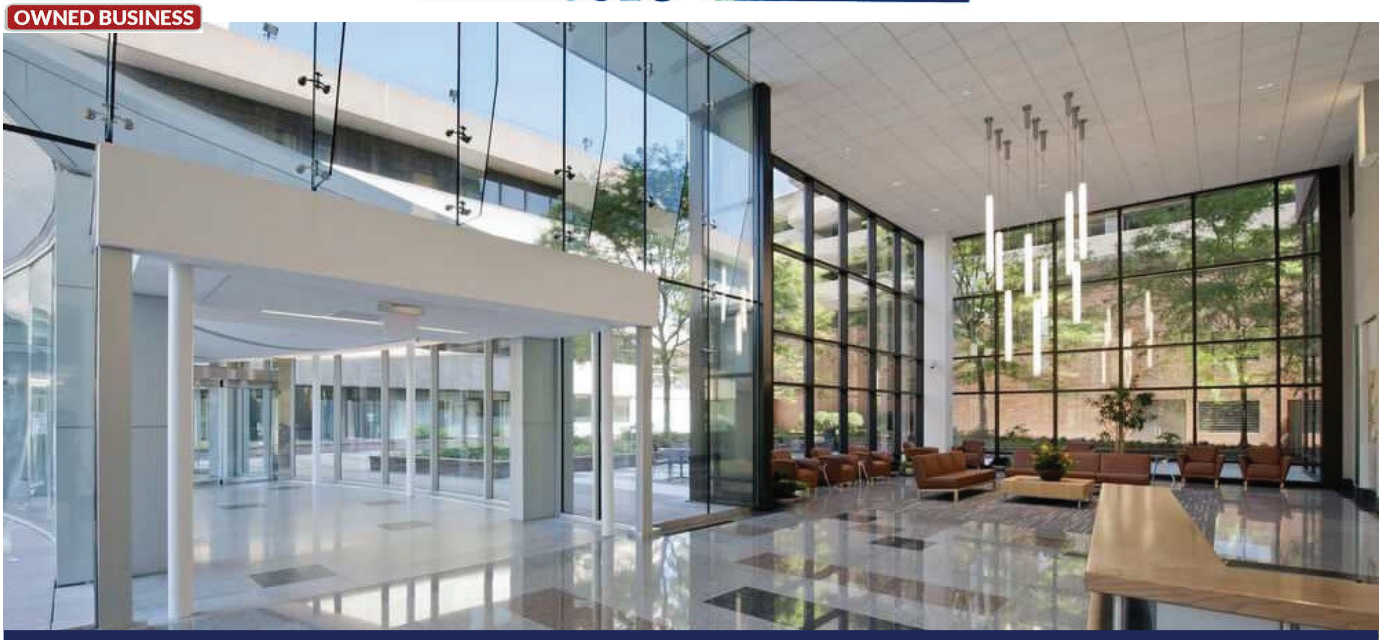

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CBA Hosts Fifth Annual Diversity & Inclusion Summit

On Wednesday, October 21, more than 125 people attended the CBA's fifth annual Diversity & Inclusion Summit: The Collaborative Blueprint. The interactive and engaging virtual Summit explored retention in legal organizations, with a specific focus on understanding the factors that lead diverse attorneys to leave their organizations and the actions organizations can take to not only retain diverse attorneys, but create an environment for them to grow and succeed.

Neeta M. Vatti, co-chair of the CBA's Diversity and Inclusion Committee, began the Summit by explaining the event's significance for not only the Connecticut legal community, but diversity and inclusion work in general. She shared her personal story of coming to the United States with her family, traveling through multiple countries to finally reach the US. Even as a child, she understood that diversity and inclusion issues would remain important for how she navigated life.

The first presentation was by CBA president-elect and Diversity & Inclusion Committee co-chair, Cecil J. Thomas. Similar to years past, President-elect Thomas presented the data from the Connecticut Legal Community's Diversity & Inclusion Pledge & Plan Signatories, which showed an increase in diversity in signatory organizations. Though there is still progress to be made in the hiring and retention of diverse associates, President-elect Thomas noted that the pandemic had changed the course of many firms' diversity and inclusion efforts. Therefore, the signatories would revisit the topic of retention at the following year's Summit. The Diversity & Inclusion Pledge & Plan reflects a reaffirmation of the legal profession's commitment to approaching diversity and inclusion strategically, collaboratively, and with accountability. The Pledge & Plan, along with the 40 organizations that have signed on, may be viewed at ctbar.org/pledgeandplan.

Aleria PBC, a diversity and inclusion firm, delivered the Summit's plenary workshop. The company's co-founders, Paolo Gaudiano and Lisa Magill, presented an interactive workshop, which focused on the organizational dynamics that create and hinder diversity and inclusion efforts. Aleria used Zoom polls to better understand the diversity of the attendees and their interactions and diverse experiences in their organizations. Aleria also utilized a simulation to show the effects of discriminatory policies on the retention of diverse employees. The second half of their workshop analyzed personal and organizational environment data provided anonymously by attendees. After, the presenters showed the experiences of the attendees and their interactions with other colleagues in their organizations, highlighting positive experiences and some instances of discrimination. Aleria's key message was that even with programs and initiatives focused on diversity and inclusion, changing the organizational environment and practices was key to retaining diverse attorneys.

The afternoon keynote presentation featured Attorney Sharon Jones of Jones Diversity Inc. and was moderated by Attorney Sandra Yamate of the Institute for Inclusion in the Legal Profession. The keynote address focused on forming and fostering positive mentor-mentee relations in law firms, challenging both mentors and mentees to take certain action steps to better understand each other and thrive in the organization. The facilitators participated in a candid dialogue sharing personal experiences and suggesting possible courses of action to the attendees.

Thank you to the presenters and Diversity & Inclusion Summit Committee members for organizing an interactive and engaging event and to all of our sponsors, including platinum sponsor Kronholm Insurance Services, gold sponsor Wiggin and Dana, and silvers sponsors Hinkley Allen and Pullman and Comley, for their support.

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CBA MEMBERS HELP CT RESIDENTS EXERCISE THEIR RIGHT TO VOTE

More than 175 CBA members helped Connecticut residents exercise their constitutional right to vote this past fall through the Secretary Legal Assistance Program in partnership with the Office of the Secretary of the State Denise W. Merrill. Attorneys were on call to respond to issues at the polls, serve as an objective source of information, report back to the Secretary of the State, and communicate her directives.

"Volunteer attorneys stood at the ready on Election Day from 6:00 a.m. to 8:00 p.m. until the polls closed and the last person in line had voted. We objectively assessed voting situations or inconsistencies brought to us by the Secretary of the State's office, reported back, and resolved issues promptly by communicating Secretary Merrill's directives to the voting moderator," said CBA President Amy Lin Meyerson. "We were grateful for these opportunities to defend democracy and protect the rule of law and were dedicated in assisting Secretary Merrill and the Secretary of the State's Office to safeguard the integrity of our elections and ensure that the ballot of every registered Connecticut voter was counted."

Image credit: studiostock/iStock/Getty Images Plus

Volunteers responded to a handful of incidents on Election Day.

Prior to Election Day, the Young Lawyers Section (YLS) implemented a virtual voter registration drive on their social media channels. Beginning in September, each week, they informed their followers on how to check their voter registration status, register to vote, apply for and return absentee ballots, make a plan to vote on Election Day, register to vote on Election Day, and provided a reminder to vote. They created original videos and shared photos of themselves completing their civic duty.

"The YLS was happy to help encourage others to exercise one of their most important civic duties. While we as lawyers might be accustomed to getting out on Election Day and more keenly aware of the importance of exercising the right to vote, we recognized that there are others that are not, and focused on spreading information about voting to our non-lawyer networks," said YLS Public Service Co-Director Kyle McClain. "Thank you to everyone that 'liked' and 'shared' our posts and special thanks go to Jermaine Brookshire, Jr. and my public service co-director, Alison Toumekian, for getting in front of the camera and generating enthusiasm for the cause with their videos!"

CBA Pro Bono Clinics Go Virtual

The ongoing COVID-19 pandemic did not prevent more than 25 attorneys and paralegals from volunteering at the CBA's Pro Bono Clinics held virtually during the National Celebration of Pro Bono Week, October 25 through November 1, 2020.

Throughout the three-day event, more than 50 clients received pro bono services in Zoom breakout rooms. The volunteer paralegals provided telephonic intakes prior to the event. On the days of the clinic, the volunteer attorneys provided free legal advice in a range of practice areas, including consumer law, employee rights/unemployment, immigration law, landlord/tenant, family law, tax law, bankruptcy, and pardons.

"Despite the pandemic and technology challenges, the Connecticut Bar Association was pleased to provide our virtual free legal clinics during National Pro Bono Week," said CBA President Amy Lin Meyerson. "Through the provision of pro bono services, the CBA continues to work diligently to get legal help to those in need and to narrow the access to justice gap. We also staunchly support our members who have the passion for public service and for the protection of our human and civil rights."

Thank you to all of those who volunteered at this important community event.

Young Lawyers Hike Ragged Mountain

Members of the YLS hiked Ragged Mountain, in Berlin, on a beautiful fall day.

The Young Lawyers Section (YLS) organized a hike on Ragged Mountain on Saturday, October 24. More than 25 members signed up to get outside, completed a 5.5-mile loop, and networked with their peers at their only in-person event of the fall.

"The event was a perfect opportunity to achieve networking, social, and wellness goals," said YLS Membership Co-Director Jonathan E. Friedler. "YLS members met at Ragged Mountain in Berlin, Connecticut to traverse the Blue and Red Blazed Loop Trail on a beautiful fall morning."

The YLS held multiple virtual networking events, including a trivia night and their annual holiday party, during fall 2020.

CBA Sections Support Food Donation Organizations

The Workers' Compensation and Young Lawyers Sections' annual events raised nearly $13,000 for Connecticut Food Bank and Foodshare at a time when the number of food insecure Connecticut residents is on the rise, as a result of the ongoing pandemic.

The Workers' Compensation Section's 22nd Annual Verrilli-Belkin Workers' Compensation Charity Golf Event, held on September 17, raised more than $9,500 for Connecticut Food Bank and Foodshare.

The Young Lawyers Section's annual Horn of Plenty Food Drive collected over $3,300 in monetary donations for Foodshare during their two-week virtual food drive.

These donations resulted in approximately 32,260 meals for Connecticut residents who rely on food assistance this past holiday season.

TEN MEMBERS PARTICIPATE IN YEAR-LONG LEADERSHIP ACADEMY

Ten CBA members were a part of the inaugural class of the Connecticut Professionals' Leadership Academy for emerging leaders. Members of the CBA, along with the Connecticut Society of Certified Public Accountants, Hartford County Bar Association, CFA Society Hartford, Connecticut Chapter of the American Institute of Architects, and Connecticut Young Insurance Professionals, participated in the year-long development program to strengthened leadership skills, build relationships, cultivate talent, and create a collaborative community among several professions. Jeremy L. Brown, Cindy M. Cieslak, Carrie M. Coulombe, Aigné S. Goldsby, Cody N. Guarnieri, Kaitlin M. Humble, Karissa L. Parker, Kimberly T. Smith, Meghan E. Smith, and Matthew K. Stiles represented the CBA in this program. ■

Thank You to the 2020-2021 1875 Society Members for All of Your Support

The 1875 Society, aptly named for the Connecticut Bar Association's (CBA) founding on June 2, 1875, is a group of members committed to sustaining the CBA and the legal profession in Connecticut. The society's financial donation supports the delivery of essential programs for members and the public, and enables the CBA to maintain its high standards for ethics, professionalism, and civility; advance the effective administration of justice; and build diversity and inclusion in the legal community.

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Join a growing group of leaders in the CBA who have joined the 1875 Society by contacting our Member Service Center at (844)469-2221 or msc@ctbar.org.

UPDATE TO
The Lawyers' Principles of Professionalism

Twenty-six years ago, the Connecticut Bar Association had the wisdom to memorialize those principles which do and should define our profession, regardless of whether they are imposed by a regulatory body. The honor of our profession is, in part, largely dependent upon these behavioral norms. Preservation and advancement of the rule of law require their strict observance by all those who are fortunate to call themselves lawyers.

In 2020, the Bar Association's Professionalism Committee undertook to update and expand the Rules. While they reflect a change in the times, at their core, the Principles are the same—a statement of those values that makes us who and what we are as members of this honorable profession.

We have reproduced the Principles below. Please observe them in your daily activities and share with all your colleagues.

LAWYERS' PRINCIPLES OF PROFESSIONALISM

As a lawyer, I have dedicated myself to making our system of justice work fairly and efficiently for all. I am an officer of this Court and recognize the obligation I have to advance the rule of law and preserve and foster the integrity of the legal system. To this end, I commit myself not only to observe the Connecticut Rules of Professional Conduct, but also conduct myself in accordance with the following Principles of Professionalism when dealing with my clients, opposing parties, fellow counsel, self-represented parties, the Courts, and the general public.

Civility:

Civility and courtesy are the hallmarks of professionalism. As such,

- I will be courteous, polite, respectful, and civil, both in oral and in written communications;
- I will refrain from using litigation or any other legal procedure to harass an opposing party;
- I will not impute improper motives to my adversary unless clearly justified by the facts and essential to resolution of the issue;
- I will treat the representation of a client as the client's transaction or dispute and not as a dispute with my adversary;
- I will respond to all communications timely and respectfully and allow my adversary a reasonable time to respond;
- I will avoid making groundless objections in the discovery process and work cooperatively to resolve those that are asserted with merit;
- I will agree to reasonable requests for extensions of time and for waiver of procedural formalities when the legitimate interests of my client will not be adversely affected;
- I will try to consult with my adversary before scheduling depositions, meetings, or hearings, and I will cooperate with her when schedule changes are requested;
- When scheduled meetings, hearings, or depositions have to be canceled, I will notify my adversary and, if appropriate, the Court (or other tribunal) as early as possible and enlist their involvement in rescheduling; and
- I will not serve motions and pleadings at such time or in such manner as will unfairly limit the other party's opportunity to respond.

Honesty:

Honesty and truthfulness are critical to the integrity of the legal profession – they are core values that must be observed at all times and they go hand in hand with my fiduciary duty. As such,

- I will not knowingly make untrue statements of fact or of law to my client, adversary or the Court;
- I will honor my word;
- I will not maintain or assist in maintaining any cause of action or advancing any position that is false or unlawful;
- I will withdraw voluntarily claims, defenses, or arguments when it becomes apparent that they do not have merit or are superfluous;
- I will not file frivolous motions or advance frivolous positions;
- When engaged in a transaction, I will make sure all involved are aware of changes I make to documents and not conceal changes.

Competency:

Having the necessary ability, knowledge, and skill to effectively advise and advocate for a client's interests is critical to the lawyer's function in their community. As such,

- I will keep myself current in the areas in which I practice,

Image credit: Designer/DigitalVision Vectors

and, will associate with, or refer my client to, counsel knowledgeable in another field of practice when necessary;

- I will maintain proficiency in those technological advances that are necessary for me to competently represent my clients.
- I will seek mentoring and guidance throughout my career in order to ensure that I act with diligence and competency.

Responsibility:

I recognize that my client's interests and the administration of justice in general are best served when I work responsibly, effectively, and cooperatively with those with whom I interact. As such,

- Before dates for hearings or trials are set, or if that is not feasible, immediately after such dates have been set, I will attempt to verify the availability of key participants and witnesses so that I can promptly notify the Court (or other tribunal) and my adversary of any likely problem;
- I will make every effort to agree with my adversary, as early as possible, on a voluntary exchange of information and on a plan for discovery;
- I will attempt to resolve, by agreement, my objections to matters contained in my opponent's pleadings and discovery requests;
- I will be punctual in attending Court hearings, conferences, meetings, and depositions;
- I will refrain from excessive and abusive discovery, and I will comply with all reasonable discovery requests;
- In civil matters, I will stipulate to facts as to which there is no genuine dispute;
- I will refrain from causing unreasonable delays;
- Where consistent with my client's interests, I will communicate with my adversary in an effort to avoid needless controversial litigation and to resolve litigation that has actually commenced;
- While I must consider my client's decision concerning the objectives of the representation, I nevertheless will counsel my client that a willingness to initiate or engage in settlement discussions is consistent with zealous and effective representation.

Mentoring:

I owe a duty to the legal profession to counsel less experienced lawyers on the practice of the law and these Principles, and to seek mentoring myself. As such:

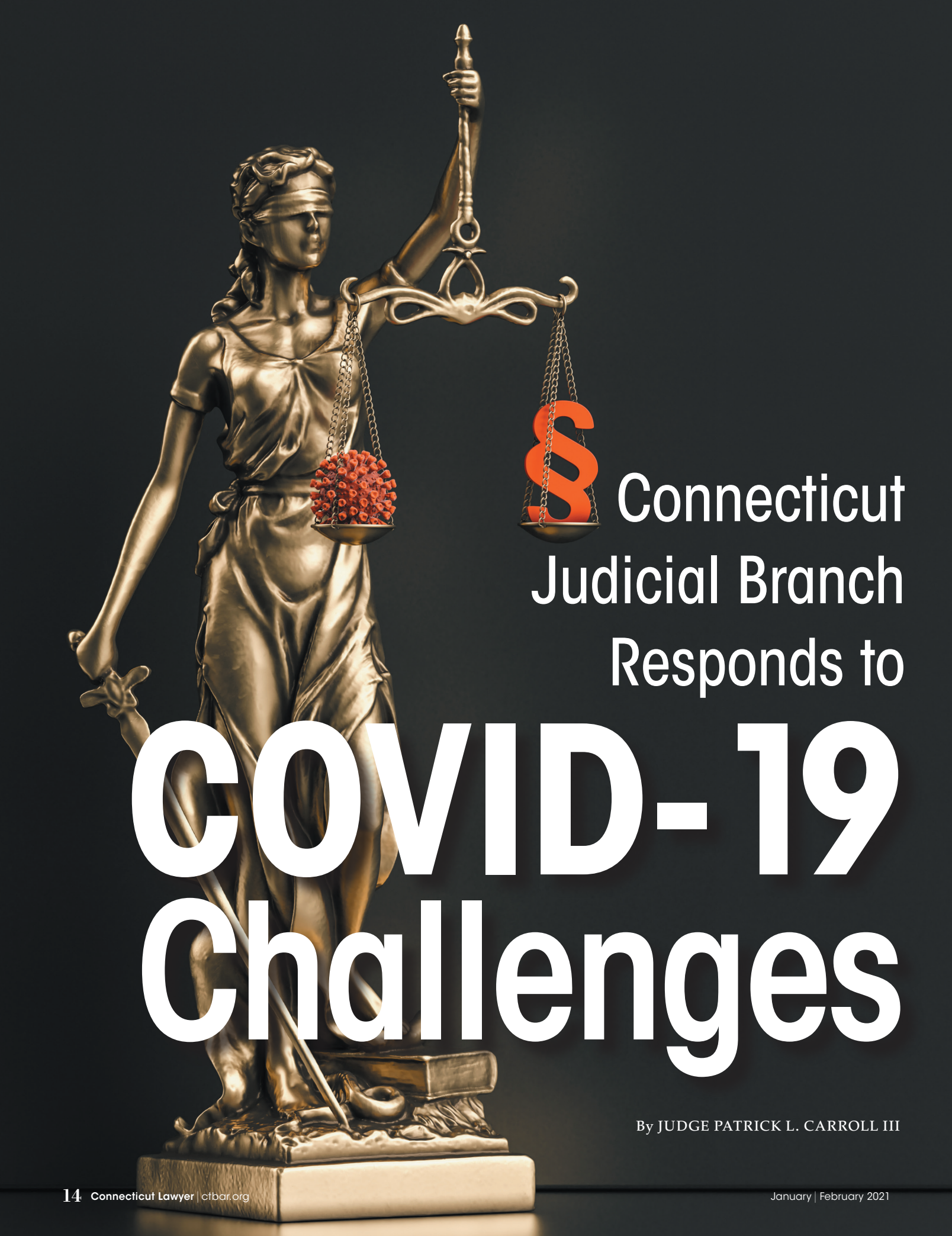
- I will exemplify through my behavior and teach through my words the importance of collegiality and ethical and civil behavior;
- I will emphasize the importance of providing clients with a high standard of representation through competency and the exercise of sound judgment;
- I will stress the role of our profession as a public service, to building and fostering the rule of law;
- I will welcome requests for guidance and advice.

Honor:

I recognize the honor of the legal profession and will always act in a manner consistent with the respect, courtesy, and weight that it deserves. As such,

- I will be guided by what is best for my client and the interests of justice, not what advances my own financial interests;
- I will be a vigorous and zealous advocate on behalf of my client, but I recognize that, as an officer of the Court, excessive zeal may be detrimental to the interests of a properly functioning system of justice;
- I will remember that, in addition to commitment to my client's cause, my responsibilities as a lawyer include a devotion to the public good;
- I will, as a member of a self-regulating profession, report violations of the Rules of Professional Conduct as required by those rules;
- I will protect the image of the legal profession in my daily activities and in the ways I communicate with the public;
- I will be mindful that the law is a learned profession and that among its desirable goals are devotion to public service, improvement of administration of justice, and the contribution of uncompensated time and civic influence on behalf of those persons who cannot afford adequate legal assistance; and
- I will support and advocate for fair and equal treatment under the law for all persons, regardless of race, color, ancestry, sex, pregnancy, religion, national origin, ethnicity, disability, status as a veteran, age, gender identity, gender expression or marital status, sexual orientation, or creed and will always conduct myself in such a way as to promote equality and justice for all.

Nothing in these Principles shall supersede, supplement, or in any way amend the Rules of Professional Conduct, alter existing standards of conduct against which a lawyer's conduct might be judged, or become a basis for the imposition of any civil, criminal or professional liability. ■



Connecticut Judicial Branch Responds to COVID-19 Challenges

By JUDGE PATRICK L. CARROLL III

IN THOSE FIRST DAYS OF THE GLOBAL PANDEMIC, THE CONNECTICUT JUDICIAL BRANCH FACED challenges it had never before faced. From day one, however, we moved forward with a clear vision: We would balance our constitutional responsibilities with the Branch's overarching goal of keeping the bar, members of the public, and our employees, family support magistrates, and judges safe and healthy. We worked closely with the bar in achieving these goals, and we are grateful for the remarkable cooperation, primarily through the CBA's 2020 COVID-19 Pandemic Task Force.

It is important to note that the Judicial Branch never closed. Initially, we limited court business to the most essential functions, which entailed suspending operations in many courthouses, to allow us to make physical alterations to our facilities to make them safer for in-person proceedings, while simultaneously expanding remote functionality. Fortunately, the Branch already had in place the foundation to handle some cases remotely. In fact, the Judicial Branch has for some time conducted a wide range of video-conferenced proceedings from Department of Correction facilities, including habeas, family, and some civil proceedings.

The Judicial Branch first focused on its existing technological infrastructure of Cisco equipment for arraignments of individuals held on bond, domestic violence arraignments, and temporary restraining order hearings. We found a way to process these cases, while also reducing the number of people gathering in a courtroom.

Meanwhile, our Information Technology Division began exploring other technologies to expand the types of cases being heard. We applied three standards in evaluating three main video platforms: WebEx, Microsoft Teams, and Zoom. First, did the platform meet the high standards of the Branch's IT security team? Second, did it meet the requirements of the criminal, civil, family, and juvenile divisions? Third, could we easily deploy the platform and provide support to Branch employees and judges? In the end, we selected Microsoft Teams and partnered with For the Record, also known as FTR, for recording the remote Teams proceedings. Adding to our level of confidence with FTR was the fact that the Branch has used FTR as its vendor for the digital recording of proceedings for more than 20 years.

We call the combination of Cisco, Teams, and FTR products "Remote Justice." Although technological limitations of the Cisco system have necessitated the ongoing scheduling of some in-court proceedings, particularly in our criminal courts, the Remote Justice platform has allowed attorneys and parties to participate in Supreme, Appellate, and Superior Court proceedings without having to go to a courthouse. The Judicial Branch continues to further reduce the number and frequency of in-court proceedings, although the significant costs attendant to the technological advancements necessary to achieve that goal have hampered our effort to do so more quickly. The Judicial Branch has also published two remote guides and created a Remote Justice webpage to assist attorneys and parties in preparing for such proceedings.

Needless to say, all of these technical advancements have inalterably transformed how we do business on the Supreme, Appellate, and Superior Court levels. As an example, the Supreme and Appellate courts heard oral arguments remotely in April and May. Beginning in September, both the Supreme and Appellate Courts have the ability to conduct oral arguments in the courtroom or remotely.

Regarding Superior Court matters, virtually all civil pretrials and oral arguments are occurring remotely, as are courtside trials and hearings. The only civil matters done in person during the pandemic are civil orders of protection. Additionally, we streamlined other processes to improve remote access, including the creation of an online dispute resolution pilot program for the remote resolution of small claims matters. Finally, we created a mechanism that allows attorneys and self-represented parties with e-filing access to submit their PDF document exhibits electronically through E-Services for both civil and family cases.

Image credit: rclassenlayouts/iStock/Getty Images Plus

As for family court, final agreements resulting in entry of judgment in divorces, legal separations, custody actions, visitation actions, and post-judgment motions can be submitted, approved and ordered electronically. Additionally, family court judges and family court relations counselors conduct remote status conferences and pretrials by either phone or Microsoft Teams. Trials, case dates, and hearings, including at the Regional Family Trial docket, are also conducted remotely using Microsoft Teams. Default divorces that are eligible by statute for a ruling on the papers may be submitted electronically. Finally, family support magistrate hearings are conducted remotely using Microsoft Teams.

The juvenile courts are also using Microsoft Teams for ontherecord virtual court hearings as well as offtherecord status conferences for child protection matters. Additionally, officials at the Department of Children and Families may e-file permanency plans and other filings on child protection cases, which expands our electronic capability.

As noted earlier, we continue working to streamline the processing of criminal cases and reduce the number of court appearances necessary to resolve a case. Like their colleagues in the other disciplines, criminal judges are conducting some pretrials remotely, and attorneys with several different cases now have the ability to consolidate them into one session. Additionally, we are in the process of moving arraignments from the Cisco platform to Microsoft Teams. Once completed, Microsoft Teams will afford private defense attorneys with the opportunity to participate in proceedings remotely.

Conducting jury trials during a pandemic has been and remains a challenge. The Jury Restoration Working Group was formed in the summer to coordinate Branch efforts to resume jury proceedings, and, as a result of that working group's recommendations, we have made physical alterations to courtrooms to ensure social distancing. We also secured personal protection equipment for jurors, judges, and staff, and by September, the working group had developed a framework to resume jury selection in early November. However, due to the spike in COVID-19 positivity rates, we concluded that it was inadvisable to bring jurors into courthouses for trials at that time. We expect to be able to employ these safety features in the not-too-distant future, when enough of the population has been vaccinated so that in-person activities may be safely resumed, subject to social distancing protocols.

The working group is now focusing on the possibility of holding virtual jury selection and trials. We understand that there will be significant challenges to holding jury trials remotely such as the need to bridge the "digital divide." As such, we are looking at providing tablet technology to jurors. Understandably, it will be easier to conduct civil virtual trials than criminal virtual trials because of the need to protect the constitutional rights of defendants and crime victims. We fully recognize this dynamic and are sensitive to the needs of all involved as we move forward.

Clearly, COVID-19 has challenged us all. Throughout this pandemic, we have had to pivot and change course as we balanced our constitutional obligations with our overarching goal of keeping everyone safe. With extremely limited resources, we created a remote, virtual platform to process court business. We understand that change is difficult, and we appreciate the patience of the bar as we move through this crisis. If there is a silver lining, it is that the Branch has had to modernize at a pace that would not have occurred without the pandemic. ■

Judge Patrick L. Carroll III is the chief court administrator.

Technology and Legal Ethics: Defining Competence in an Increasingly Online World

By BRENDON LEVESQUE and MICHAEL TAYLOR

INTRODUCTION

In the past, lawyers were deemed to be competent based on their experience and knowledge of a substantive area of the law. Today, competence means that lawyers are expected to take reasonable steps to understand how technology may affect their legal representation. As technology has evolved, so has the concept of competence.

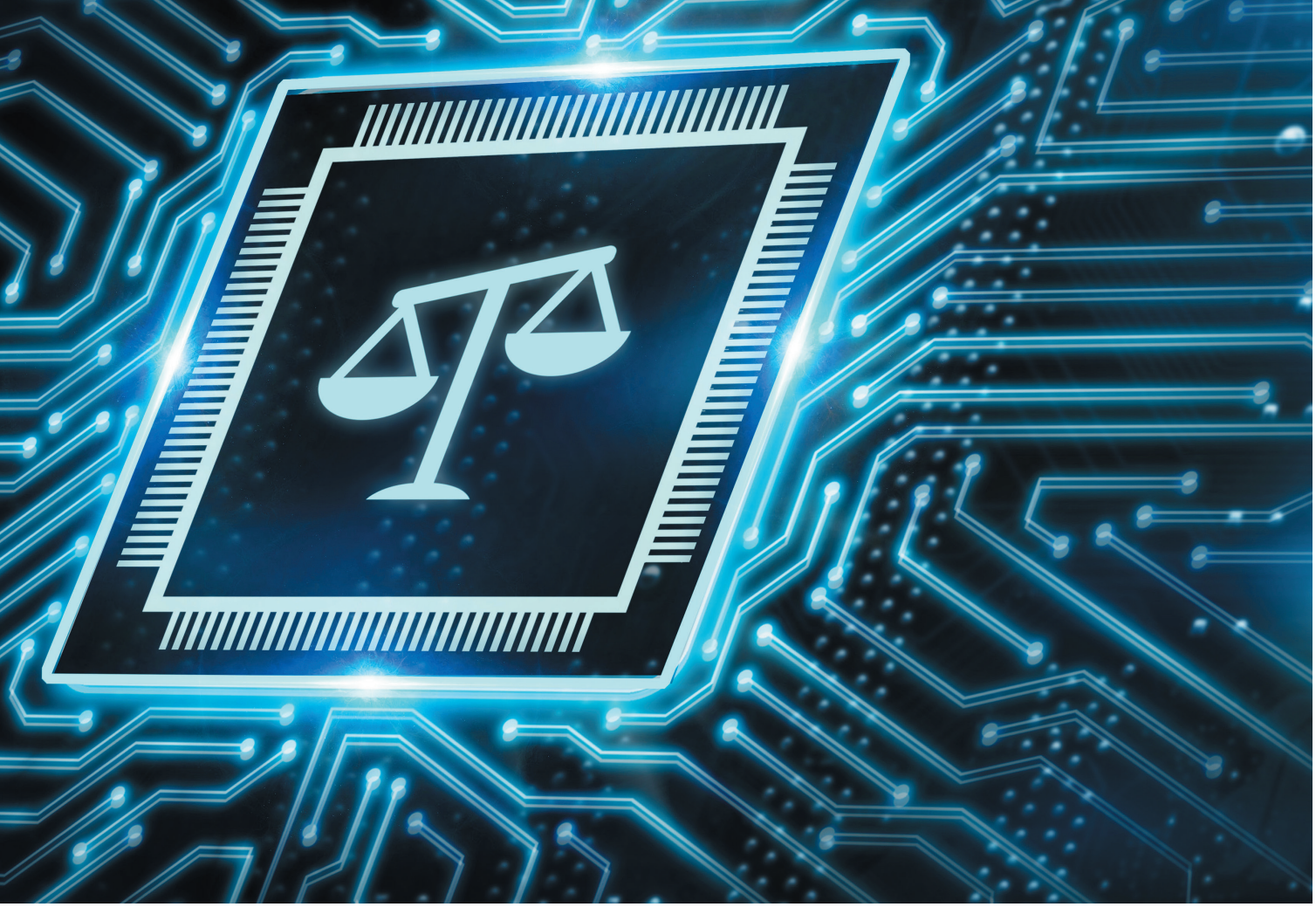
More and more, the Rules of Professional Conduct require lawyers to have a reasonable proficiency in a number of online and technology-based skills. Where lawyers only a generation ago might have considered these things arcane and outside the scope of a lawyer's skill set, the point of this article is to serve as a reminder—or a warning for those who need it—that these once arcane skills are now part of a lawyer's daily routine, and are becoming more so by the day. While the rules still do not directly reference technological aptitude to any great extent, the reality and the way we all interact with clients and with the online world brings technological awareness, if not aptitude, clearly within the scope of several rules. We here offer the most common ways that the Rules intersect with the online/technological world. We hope this is a useful refresher and compilation for those who know, and it's a great place to start for those who don't.

COMPETENCY

At the core of legal professional conduct is a lawyer's duty to provide competent representation to his or her clients. Under Rule 1.1 of the Rules of Professional Conduct, a lawyer has a duty to provide competent representation to clients. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to provide representation to the client. The comments to the Rule make clear that this obligation extends to technological competence as the role of technology grows within the legal field (though the authors believe the obligation would exist even if the comments were silent on the matter). In order to provide competent legal representation, therefore, a lawyer must stay apprised of changes in the law and legal practice, including the use of technology in practice.

We have identified six areas in which practitioners need to demonstrate and maintain technological competency. First, attorneys need to understand and maintain cyber security to ensure information relating to client representation is safeguarded. Second, attorneys should be proficient with electronic discovery, including the preservation, review, and production of electronic information. Third, technology can be used to deliver legal services more efficiently, through things like automated document assembly, electronic court scheduling, and file sharing technology. All of which are widely used. Fourth, attorneys should understand how technology is used by clients to offer services or man-

Image credit: Denis Putilov/123RF.com



ufacture products. Fifth, using technology can be an efficient and effective way to present information in the courtroom, and even necessary to present certain evidence. Sixth, attorneys can and often must conduct internet-based investigations through simple internet searches and other research tools available online.

Not only is staying appraised of new uses of technology an ethical obligation, but there are also benefits to being technologically competent. Technology can level the playing field by making information more accessible. Over time, increased use of technology can help save money which can allow you to pass savings along to low-income clients (if you're altruistic). Technology can also increase efficiency and help manage time.

Today, more than ever, effective use of technology is important to providing competent legal services. From the outset of the coronavirus pandemic, legal services have increasingly shifted to an online platform. To continue providing competent legal services, attorneys in Connecticut need to become proficient with working in an online world and to do so far more quickly than anyone anticipated. Attorneys should conduct a review of their skill set, today. The best thing to do is to determine how comfortable you are using case management software, document management software, online billing software, email, working with PDF documents, using Microsoft Office Suite, and social media. Critical questions to ask are: Do you understand how your data security works? Do you understand how e-discovery works? Do you understand how the tech lawyers in your practice are using works? Do you understand how the technology your clients are using works? Do you know how to use technology in the courtroom? If the answers leave you uncertain, there are a number of helpful online resources that are readily available.

ONLINE ARGUMENTS

A critical area of change to legal practice in Connecticut since the onset of the coronavirus pandemic has been the shift to online oral arguments and hearings. The decorum expected in court is still expected while you're broadcasting from your dining room table, but the elements required to achieve it have changed. Ensuring you have a quiet, distraction-free environment and an appropriate background are critical for participation in an online oral argument or video conference. Even though you are not physically in the courtroom, it is still important to wear proper courtroom attire. Appropriate demeanor, such as sitting upright in your chair, also is still important online.

Another important step is maintaining high-speed internet service, which means 4G or LTE cellular with a sufficient data plan or cable internet service. Ensuring that your computer is the only device using the internet (no family members streaming movies or gaming online), and closing all other unnecessary internet applications (email, additional open windows in your browser, etc.) will help maintain the best connection possible throughout

the argument. A computer or tablet with web cam is necessary for most conferences or arguments. Consider your camera placement *x* an oral argument. The camera should be at eye level or slightly above eye level. Looking directly into the camera will create the illusion of eye contact during an argument. Placing a lamp next to the side of your computer and not having a window behind you will create the best light for others to see you on screen.

Before the argument, you should determine on which platform the argument is being held, install the necessary application, and grant any permissions necessary through your computer software (permission for the application to use your computer's microphone, camera, etc.). Platforms for arguments or conferences may include Google Chrome (which can be downloaded online), Microsoft Teams, or Cisco Meeting app (which can be downloaded for free through the Apple app store).

To prepare, it is important to test everything at least 48 hours before the oral argument or conference call. For the test, use the same equipment and location as you plan to use for the oral argument. Moots can also be conducted via video conference, WebEx, Zoom, or Microsoft Teams. During the test, make any necessary adjustments and test them as well. Testing out the platform will also give you the opportunity to learn how to use the software effectively during the oral argument, such as knowing how to mute and unmute your microphone and what volume to speak at. You can also practice sharing your screen to show a document during an argument if you wish. As trial courts become more comfortable with digital exhibits, this skill becomes increasingly important.

Do not use the meeting chat feature unless you need to advise the court of some technical difficulty (e.g., the court cannot hear you), because everyone will see the comments and they may be recorded. Use Teams, Slack, or text messaging to "chat" with co-counsel (provided co-counsel has been approved).

As a reminder: participants in court hearings are prohibited from recording the proceedings. A transcript of the hearing or argument can be ordered after the argument. Any recording will subject you to sanctions.

ONLINE FILES

As of November 16, 2020, Connecticut has required the mandatory submission of exhibits in electronic format. E-services procedures and technical standards are available online at the Connecticut Judicial Branch website (jud.ct.gov/external/super/e-services/e-standards.pdf). The Judicial Branch website also has a guide to remote hearings to help preparations for oral arguments (jud.ct.gov/homePDFs/connecticutguideremotehearings.pdf). Staying up-to-date on changes in the legal field, such as open courts, is critical and can be found online (jud.ct.gov/COVID19.htm).

CONFIDENTIALITY

A critical consideration when using technology is confidentiality. Under Rule 1.6: (a) A lawyer shall not reveal information relating to representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by subsection (b), (c), or (d). Further, under subsection (e), a lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

The confidentiality required by this Rule goes far beyond the scope and communications protected by the attorney-client privilege. Under Rule 1.6, a lawyer may not make disclosures unless the client gives informed consent, or the disclosure is impliedly authorized to carry out representation. The only exceptions to this are: to prevent death, serious bodily harm or fraud, to secure legal advice regarding compliance with the rules, to defend the lawyer in controversy with client, to respond to allegations in any proceeding, to comply with a court order, and to do conflict checks.

Law firms should consider implementing online safeguards for client information, because they are often targeted for hacking. Law firms house a lot of valuable information and frequently have sub-standard security. Not only does the Rule require reasonable steps by the lawyer to protect client confidences, but the cyber security regulation of law firms is rapidly increasing and clients increasingly are making data security a key criterion for their vendor relationships. Cyber security can easily be increased by encrypting, using caution with cloud devices, vetting vendors, properly training staff, having a password policy, and having cyber liability insurance. Cloud services promote mobility, flexibility, organization, and efficiency. However, the Rules require that lawyers make reasonable efforts to meet their obligations to preserve the confidentiality of client information and to confirm that any third-party service provider is likewise obligated.

Password protection is key for maintaining confidentiality. When using iOS devices, best practices are to use a 6-digit passcode (better than 4), enable Touch ID, enable Face ID, and turn on remote data erase. In general, do not use easily guessed passwords, such as "password" or "user." When creating a password do not use confidential details, such as birthdays, Social Security numbers, phone numbers, names of family members, or adjacent keyboard combinations, such as "qwerty" and "asdzxc" and "123456." Do not use your email account password at an online retailer. Whenever possible, turn on two-factor authentication (2FA) on your mobile device, which adds an additional authentication step to your basic login procedure. Apple, Google, Microsoft, Slack, Twitter, LinkedIn, and Amazon are among some of the platforms where 2FA is available.

Other good online practices include not downloading files from a commercial web email or entertainment sharing sites. Do not open emails from unknown users or other suspicious emails. Do

not assume security is enabled on public WIFI access points. Do not click on pop-up messages or unknown links. If any information in threatened, lawyers are obligated to take reasonable steps to protect the information.

SOCIAL MEDIA

A last consideration for attorneys in an increasingly online world is the role of social media in a case and how to ethically use social media in the legal profession. Communication through social media is governed by the Rules of Professional Conduct. Your communications over social media are subject to the Rules in the same manner as all other communications. Furthermore, a general understanding of how to review public information can be beneficial in collecting evidence for a case. The duty of competence may, in some cases, include the duty to investigate and collect evidence directly or through an agent from social media. However, attorneys should be cautious when collecting evidence from the internet.

When beginning to compose an online discovery plan, ensure that social media is included at an early stage. Make sure that you include social media in your document preservation letters. Additionally, consider including social media in discovery requests and subpoenas.

Collecting evidence from social media may not currently be a standard of care in all jurisdictions, but this will likely change in the near future. The duty to conduct internet searches has been the subject of several cases since the introduction of Google. For example, in *Munster v. Groce*, 829 N.E.2d 52 (Ind. Ct. App. 2005), the appellate court scolded an attorney for failing to locate a litigant after the court conducted its own Google search and quickly found information on how to track down the missing litigant.

Social media can also play an important evidentiary role in a case, though the results may either help or hurt your case. In personal injury cases, social media posts may reveal the extent of injury or emotional distress after an accident. In family law or bankruptcy courts, they can serve as proof of assets or employment. They can be revelatory of workplace environment/culture, provide substantive facts, and help identify witnesses on employment law cases. Social media posts also can be used to show motive, provide substantive facts, and identify witnesses in criminal cases.

The rules of admissibility concerning social media evidence follow the same rules of admissibility for traditional documents. Specifically, like traditional documents, social media evidence must be authenticated pursuant to § 9-1 of the Connecticut Code of Evidence. Authentication requires a showing that the author of the statement is who the proponent of the evidence claims it was. As with any evidence, authentication can be established through direct testimony or by circumstantial evidence of "distinctive characteristics" in the content that identify the author. Note that proving only that the content came from a particular social media account is not enough proof of authorship.

Attorneys can collect information from social media by viewing any public areas of social media accounts or groups on social media. In general, lawyers may view any public content, but *should not* attempt to access private information. Similarly, when it comes to jurors, attorneys can view social media pages, but should not connect with jurors in any way. New York State Bar Association Opinion 843 (2010) provided that "a lawyer who represents a client in a pending litigation, and who has access to the Facebook or MySpace network used by another party in litigation, may access and review the public social network pages of that party to search for potential impeachment material. As long as the lawyer does not 'friend' the other party or direct a third person to do so, accessing the social network pages of the party will not violate [professional rules of conduct]."

Collecting information from social media has ethical limitations. Whether collecting information is appropriate depends on the context, such as the platform being used and whether it is available to the public. A lawyer may not hire an investigator or friend to obtain evidence from a private social media account. "Friending" a represented party on social media has serious ethical pitfalls. Rule 4.2 prohibits communication with a party that the lawyer knows is represented about the subject of the litigation. This would include friending. Rule 4.3 prohibits attorneys from stating or implying that they are disinterested. Further, where the lawyer knows or reasonably should know that a party misunderstands the lawyers' role, the lawyer is required to make "reasonable efforts" to correct the misunderstanding. Under Rule 5.3, attorneys cannot instruct a nonlawyer assistant to violate the rules by friending a represented party. On the other hand, some states distinguish between friending someone and passively viewing their public page. In some states, "friending" a party is acceptable as long as the lawyer uses their real name and no deception.

When it comes to clients using social media, attorneys should not instruct their clients to delete or alter their social media page. Failing to instruct your client to preserve properly their social media accounts could lead to a sanction. Another possibility is an adverse inference instruction. In this scenario, the court would allow the jury to infer that social media evidence the plaintiff destroyed would have been harmful to his case. Attorneys can advise their clients to increase their privacy settings on all of their social media accounts. While your client's private social media data could be discoverable, most opinions granting full access to a party's social media account required an initial showing of relevant information on the public portions. One big caveat, there can be no violation of the rules or substantive law pertaining to the preservation and/or spoliation of evidence. ■

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COVID-19 Technology and Privacy:

Contact Tracing Technology and its Implications for U.S. Privacy Law

Part 1: Contact Tracing: The Apple | Google API

By DAYLE A. DURAN

What is contact tracing?

Contact tracing is a manual method that state and local public health agencies (PHAs) use to track suspected or confirmed infections and notify individuals who may have had exposure to an infected person.[1] PHAs are tasked with optimizing public health and safety and contact tracing is an important tool to achieve that end. While there are privacy concerns surrounding the general concept of contact tracing, legislatures and PHAs tend prioritize the public good of infectious disease management over the attendant privacy risks.

Contact tracing is not new. Epidemiologists have used contact tracing to battle the spread of infectious disease for at least a hundred years. During World War I, the U.S. Military screened American troops to track and halt the spread of syphilis and gonorrhea.[2] In the latter half of the 20th century, the World Health Organization led a global effort to eradicate smallpox and tuberculosis, relying heavily on contact tracing and vaccination.[3] More recently, the World Health Organization helped countries suppress the 2014-2015 Ebola outbreak through systematic contact tracing.[4]

PHAs conduct contact tracing by drawing on the infected person's memory of places they went and people they saw while they were infectious but undiagnosed. Manual contact tracing relies on the accuracy of an infected person's memory and the ability of PHAs to deploy a large enough workforce to quickly interview infected people and notify exposed contacts. To be effective for COVID-19 mitigation purposes, manual contact tracing relies on the infected person's *accurate* recollection of the prior two weeks and knowledge about all of those with whom they had close contact.

What did Apple and Google build to help with contact tracing?

As COVID-19 spread in the U.S. and across the world in the spring of 2020, contact tracing technology dominated headlines as nations scrambled to find effective ways to manage the pandemic.[5] In response, Apple and Google developed a new technology to address the inefficiency and inaccuracy of manual contact tracing.[6] Their application programming interface (API) is essentially a courier that software developers can use as a foundation for contact tracing apps.

Mechanically, APIs function like the server at a restaurant. The server takes, executes, and delivers the customer's food order. An app is the restaurant itself: the knives, forks, tables, walls, menu, décor, dining style—*the experience*. Suffice it to say, a restaurant needs the server to take, relay, and deliver the dine-in order to the restaurant customer. Much the same, apps leverage APIs to deliver an experience to the end-user.

Because APIs require an app to conduct contact tracing, many PHAs are commissioning compatible apps and technical specifications. For example, MIT developed a technical standard/specification called PACT: Private Automated

Image credit: PeterPencil/ Ani_Ka/ DigitalVision Vectors

Contact Tracing to aid in U.S.-based contact tracing efforts.[7] At the close of 2020, twenty U.S. states and the District of Columbia had either deployed an app leveraging the API or committed to developing one.[8] Meanwhile, most of the European Union along with the United Kingdom, Brazil, Ecuador, Canada, Japan, Kazakhstan, New Zealand, Russia, Saudi Arabia, and a number of other countries have also released Apple/Google API-compatible contact tracing apps.[9]

Can this technology boost the efficacy of contact tracing without getting creepy?

Apple and Google's API functions using Bluetooth beacons. Bluetooth beacons are a string of random numbers, or "chirps," broadcasted and received by a Bluetooth-enabled device. The strength and duration of the chirp tells the receiving device the proximity and duration of exposure to the chirp's source. Chirps do not carry any personally identifiable information (PII) and they operate without any connection to the internet. Most importantly, the user must affirmatively turn on the chirp functionality and voluntarily download an API-compatible contact tracing app. Simply downloading a software update like iOS 13.5 will not automatically activate contact tracing.[10] Only after the app is downloaded and the chirp is enabled will the device broadcast chirps and capture the ones it encounters. As a result, the device owner must consent to sending and receiving the chirps. Privacy professionals call this "opt-in" consent.

The API adds a layer of complexity to the resulting data sets by changing the emitting device's chirp every ten to 20 minutes.[11] This variance makes it difficult to identify and track the chirper because no name, location data, or other PII is associated with the chirp. Next, the system stores the list of chirps the device has sent and received on each individual device. The device does not share that list *at all* unless its owner opts-in to sharing their COVID-19 diagnosis with the relevant PHA via the app.

Once the list is shared with the PHA, the agency will make those anonymous lists accessible through the app. Users can then direct the system to periodically cross reference the updated PHA list. This allows the system to determine whether the user came into contact with an infected person. If the system detects a matching chirp it will prompt the user to take additional steps, like consulting with the PHA, self-quarantining, or seeking medical attention.

Randomized chirps, siloed data, and decentralized databases add an important layer of complexity that makes de-anonymization more difficult, especially because the resulting datasets are only accessible to the PHA behind each app—*not Apple and not Google*.

Is this technology anonymous?

For all practical purposes, yes—or at least it is more anonymous than traditional contact tracing. The CARES Act requires COVID-19 testing sites to report all diagnostic and screening results to a PHA anyway.[12] It is standard practice for PHAs to use this information to track and mitigate the spread of COVID-19 and other diseases that significantly impact community health. Whether officials undertake that process manually or with the use of technology, PHAs will receive data on designated communicable diseases and contact tracing will continue. Technology-assisted contact tracing creates an opportunity for PHAs to efficiently recommend follow-up testing, medical care, and quarantine in a manner that is anonymous enough not to require any personally identifying information.

If used as intended, the technology described above increases the accuracy and efficiency of contact tracing without sacrificing an impactful amount of privacy. The API demonstrates the real-life application of several core privacy principles like privacy by design, data minimization, and privacy by default.[13] As a result, connecting the Bluetooth beacons back to the originating device and then to a specific individual would require a chain of convoluted events. Because of the API's design, the resulting data sets will likely be of limited utility even if they are used in ways that deviate from the original intent of collection.

However, no aggregated data set can be irreversibly private since hackers, private businesses, nosey people, and ne'er-do-wells will always exploit cracks to access valuable data. But even governments operating in the name of the public good are cause for concern. As noted in a recent IAPP article,[14] in 2017 private data aggregators like 23andMe and AncestryDNA made a database of genetic information available to California law enforcement. While the data sharing resulted in the capture of a serial killer, it also drew ire for what may well have been a massive warrantless search in violation of the Fourth Amendment.

Because all contact tracing methods, whether manual or technology-assisted, are imperfect and raise privacy concerns we need more than strong privacy design to protect against nefarious data use and functionality creep. American lawmakers must pass legislation addressing the use of COVID-19 contact tracing data to ensure the information cannot be exploited for uses outside of the intended purpose.

Part 2: A Proposed Bills Provide Insight on Potential Solutions in Protecting Privacy in Contract Tracing and Beyond

By DENA M. CASTRICONE

In this country, we have only a patchwork of sectoral and state-specific privacy laws. None of those laws provide a nationwide solution or a foundation from which guidance or regulations could emerge to protect data collected in connection with a public health emergency (PHE). The lack of a federal privacy law has left Congress scrambling to propose needed legislation.

Over a three-week period in the Spring of 2020, U.S. Senators proposed three different privacy bills related to the PHE and emerging technologies designed to track the spread of disease. On May 7, 2020, a group of Republican senators introduced the *COVID-19 Consumer Data Protection Act*.[15] One week later, led by Connecticut's Senator Richard Blumenthal, 12 Democrats and one Independent introduced the *Public Health Emergency Privacy Act*.[16] Then, on June 1, a bipartisan group of senators introduced the *Exposure Notification Privacy Act*[17] (ENPA). Unlike the partisan bills, which both sought to regulate the collection and processing of COVID-19-related health information more broadly, the ENPA focused solely on contact tracing technologies called "automated exposure notification services" designed to trace any infectious disease. The ENPA would permit only entities working with a public health authority (PHA) to collect data for purposes of offering an automated notification service.

Before discussing the proposed legislation any further, it is important to note that none of the three proposed bills made it out of committee. There were a couple of important factors at play: (1) we were (and currently are) in the middle of a pandemic and the legislators were likely more focused on access to care, stimulus, and emergency aid than privacy; and (2) we were just months away from a contentious presidential election. While none of the three proposed privacy bills received material attention from Congress, they highlight some of the challenges in passing any consequential federal privacy legislation. As a result, these three bills provide useful insight on what to expect in imminent federal privacy legislation proposals as well as how future legislation might protect data during PHEs.

Generally, the ENPA sought to dramatically limit the collection, use, and transfer of any data in automated exposure notification systems, specifically prohibit commercial use, and require confirmation of a diagnosis from a PHA or licensed healthcare provider. Further, it would not preempt state law or provide for a private right of action (two areas where Democrats and Republicans rarely agree) and it requires breach notification. These key provisions, along with others discussed below, made the ENPA the best proposal.

Commonalities Among the Proposed Bills

All three bills contained the following requirements:

- Affirmative express consent from the individual prior to collecting, using, or transferring data, and such consent cannot be inferred from inaction;
- Limitation on the collection, use, and transfer of data to the least amount necessary to carry out the permitted purpose;
- Reasonable security practices (the ENPA provided the most robust requirements, including a risk assessment and defined reasonable security practices as those accepted by information security experts);
- Deletion of data when it is no longer being used (the ENPA requires deletion at least every 30 days, on a rolling basis, or as directed by a public health authority);
- A privacy policy providing transparency on collection, use, and transfer (the ENPA offered the most detail on required policy contents); and
- Enforcement by the Federal Trade Commission under the unfair and deceptive acts provision of the Federal Trade Commission Act, while granting authority to state attorneys general to enforce locally.

The ENPA's Key Differences

Scope

Both partisan bills sought to apply broadly to information collected and used that relates to the COVID-19 PHE. The ENPA, on the other hand, was written to apply solely to automated exposure notification services (AENS) (like those built with the Apple/Google API) and would require that AENS can only be provided in collaboration with a PHA. The ENPA would apply to AENS for any infectious disease, not just COVID-19, which would be useful if there is another pandemic in the future.

Generally, technology-specific legislation designed to address a particular issue, such as contact tracing apps, has diminishing utility because such legislation is often outdated as soon as it is passed, which may not have been an issue with the ENPA. Its focus on AENS and meaningful rules within the bill itself makes it functional without the need to create regulations, which is a time-consuming and cumbersome process (the other bills required rulemaking).

Authorized Diagnosis

The ENPA sought to prohibit AENS operators from collecting diagnosis information unless a PHA or a licensed health care provider confirms the diagnosis. This promotes public trust by mitigating the risk of honest or malicious false positive reports. Further, only an individual with such an authorized diagnosis could permit the AENS to process that information. Neither partisan bill addressed diagnosis information.

Health Insurance Portability and Accountability Act (HIPAA) Exemption

Both partisan bills specifically would exempt HIPAA covered entities and business associates from compliance. Conversely, the ENPA does not mention HIPAA at all. Due to its limited applicability to AENS, the ENPA does not seek to regulate health information in the same way as the partisan bills. Under the ENPA, if a health care provider, that is also a covered entity under HIPAA, wants to operate an AENS, that provider must comply with the new rules, regardless of HIPAA. This is beneficial because the same rules will apply to all AENS operators.

Nondiscrimination

The ENPA seeks to make it unlawful for anyone to discriminate against an individual based on data in an AENS or based on an

individual's decision not to use such a service. The Democratic bill shares a similar provision, but more broadly prohibits housing, employment, and other discrimination as well as governmental interference with voting rights based on collected data. Given the narrow purpose for which the AENS operators can collect, use, or transfer covered data, the broader provisions in the Democratic proposal may not be warranted.

Tech Industry Influence on the ENPA

Some believe that Google and Apple have had too much influence on the ENPA as several of Google/Apple's policies for their contact tracing API overlap with ENPA provisions (e.g., voluntary individual use and required collaboration with a PHA). While industry influence on legislation has the potential to be problematic, it is not unduly concerning here. This is an unprecedented collaborative effort between competitors of all kinds. Because nothing happens expeditiously in Congress and because we needed a speedy legislative solution, it made sense to follow the lead of two tech giants that have set aside competition and financial gain to tackle the PHE.

Recommendations for an Improved ENPA

Should members of Congress decide to re-introduce the ENPA, there are a couple of additional privacy protection measures that would improve the proposed bill. First, the ENPA needs a sunset provision that accounts for enactment of federal privacy legislation that covers the data at issue. Second, under the ENPA, aggregate data is not regulated. It may be worth requiring an affirmative act to prove that aggregate data is not reasonably linkable to a person, such as requiring a documented expert determination.[18] Finally, law enforcement use of raw or aggregate data should be clearly limited or prohibited. As noted in Part I above, law enforcement has seized on the availability of genetic data held by companies like 23and Me and AncestryDNA in a way that consumers never imagined.

Conclusion

The ENPA's proposed language would have adequately addressed the privacy risks related to unintended use and function creep. Most importantly, it would have avoided creating a new set of health privacy rules that would serve only to further complicate the already complex and confusing privacy ecosystem in this country. If Congress decides to enact the ENPA or a similar bill, hopefully, it will inspire a collaborative effort to create comprehensive federal data privacy legislation, so that there is applicable law in place in the event of a future crisis. ■

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■ This article originally appeared on the DMC Law LLC Blog (dmclawllc.com/blog), and updates have been made for this publication.

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What Did Lincoln Read?

By JUDGE HENRY S. COHN

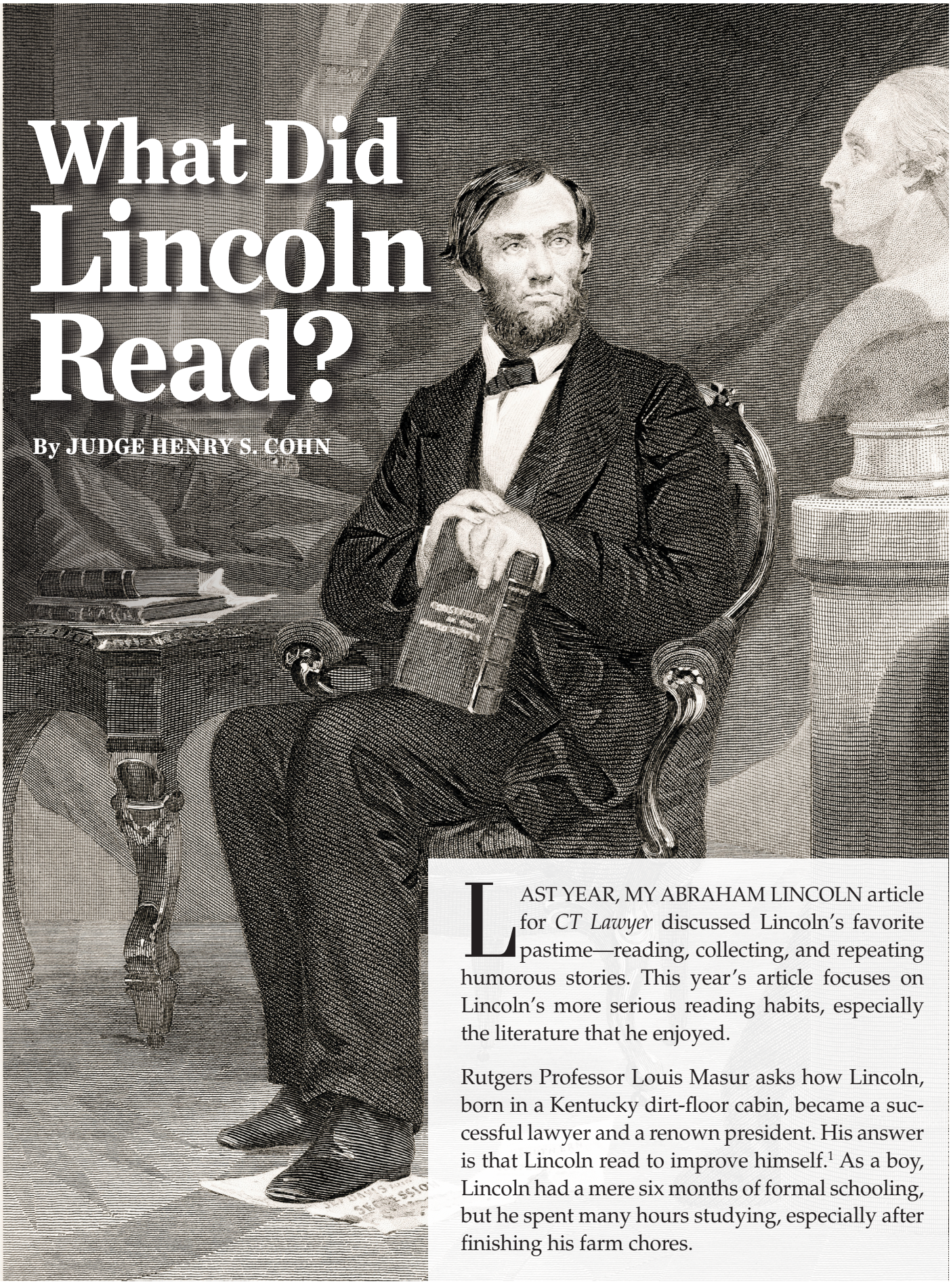

Image credit: mashuk/DigitalVisions

LAST YEAR, MY ABRAHAM LINCOLN article for *CT Lawyer* discussed Lincoln's favorite pastime—reading, collecting, and repeating humorous stories. This year's article focuses on Lincoln's more serious reading habits, especially the literature that he enjoyed.

Rutgers Professor Louis Masur asks how Lincoln, born in a Kentucky dirt-floor cabin, became a successful lawyer and a renown president. His answer is that Lincoln read to improve himself.[1] As a boy, Lincoln had a mere six months of formal schooling, but he spent many hours studying, especially after finishing his farm chores.

What Did Lincoln Read?

Lincoln's mother died when he was nine. One year later, his father remarried, and his stepmother, Sarah, brought some books with her to Indiana. Several of the book of Lincoln's youth have been identified.[2]

1. He constantly read the family Bible. Lincoln became quite familiar with its text and quoted from it frequently as an adult. A famous example is Lincoln's quoting of Psalm 19:9 in his second inaugural address.[3]
2. He learned elementary spelling and rhetoric from Thomas Dilworth's *New Guide to the English Tongue*, Noah Webster's *American Speller*, and William Scott's *Lessons in Elocution*, one of the books that Sarah Lincoln brought with her to her new home.[4]
3. Lincoln enjoyed the mysteries of the *Arabian Nights*, the lessons of *Aesop's Fables*, and the thrills of *Robinson Crusoe*.
4. Lincoln considered John Bunyan's *Pilgrim's Progress* a treasure, and, according to Professor David James Harkness, this religious allegory influenced his second inaugural address.[5]
5. Lincoln read biographies of American heroes, including Parson Weems' *The Life of Washington*.

When Lincoln left his father's farm at age 21, he settled in New Salem, IL. As a shopkeeper with few customers, he had time to read. He purchased a copy of Blackstone's *Commentaries on the Laws of England* and pored over it. He also read other legal books, including Joseph Story's *Commentaries on Equity Jurisprudence* and James Kent's *Commentaries on American Law*.

As a lawyer in Springfield, IL, he also had time to read as he traveled through the 8th Judicial Circuit. Much of his reading was nonfiction. One book he carried was a summary of Euclid's *Elements*. Carl Sandberg relates that Lincoln read Euclid as he dropped off to sleep, intending to sharpen his reasoning skills.

Both as a lawyer and while president, Lincoln read political books and tracts. These included Edward Gibbon's *Decline and Fall of the Roman Empire*. Lincoln admired Henry Clay; he read multiple volumes of his speeches. Lincoln purchased a copy of his friend Theodore Parker's speeches in 1858. A subsequent pamphlet by Parker led to the famous phrase in the Gettysburg Address: "government of the people, by the people, for the people."

Lincoln used Daniel Webster's "Reply to Hayne" in writing his famous "House Divided" speech at the Republican State Convention of 1858. Lincoln relied on Jonathan Elliott's *Journal and Debate of the Federal Constitution* to prepare his Cooper Union address, considered to be the speech that led to his nomination for president in 1860.[6] Lincoln also paid close attention to Henry Ward Beecher's editorials during the war years, exploding sometimes over Beecher's criticism of his administration.[7]

When facing troubles, Lincoln would quote from "Don Juan" by Lord Byron: ***"If I laugh at any mortal thing/'Tis that I may not weep."***

From New Salem through his presidency, Lincoln made time for fiction, but not to any great degree. He told one biographer that he never read a complete novel in his life.

Of course, as I indicated in last year's article, Lincoln relied on books like Joe Miller's *Jests* for his "little stories." Among his more serious reading were Shakespeare's plays. Lincoln carried a collection of the plays in his pocket while he was riding the circuit.

Which plays were his favorites? He thought "nothing equaled" *Macbeth*, and he enjoyed *Hamlet*. He owned a well-worn book of the plays that included *Henry IV*. Records show that he once attended the play *Merry Wives of Windsor*. He used a quotation from *Othello* in an 1847 trial in Tazwell County, IL.

Homer's works were also a Lincoln favorite. He checked out a book of Homer's writings from the Library of Congress in 1864, but he had also read *The Iliad* and *The Odyssey* in other versions for many years. In 1860, according to Julius A. Royce, Lincoln told Royce's father-in-law that he should read Homer: "He has a grip and he knows how to tell a story."[8]

Lincoln liked Edgar Allan Poe's short stories, especially his detective stories. William Dean Howells, in an 1860 campaign biography, noted that Lincoln appreciated Poe's "absolute and logical method."[9] In 1846, Lincoln himself wrote a short story, published in a local newspaper, based on his successful defense in 1841 of a man accused of murder. Lincoln's sole witness at the trial had been a physician who testified that the so-called victim had suffered some years before a traumatic brain injury and was being treated for a renewal of the condition at the physician's home. He was very much alive, and had not met with foul play from the defendant.

Professor Robert Bray rejects as lacking adequate foundation the claim that Lincoln read books by James Fenimore Cooper or Sir Walter Scott. Lincoln's law partner William Herndon wrote that Lincoln had begun Scott's *Ivanhoe*, but did not finish it. It is unlikely that Lincoln read Harriet Beecher Stowe's *Uncle Tom's Cabin*, but he did skim her 1853 reference work, *The Key to Uncle Tom's Cabin*.

Lincoln loved poetry and enjoyed memorizing poems. His favorite poet was Robert Burns. Lincoln spoke to Robert Burns

societies in Springfield in 1859 and in Washington in 1865.[10] Other than Burns, he frequently recited William Knox's "Mortality," with its melancholy opening line: "Oh! Why should the spirit of mortal be proud?" When facing troubles, Lincoln would quote from "Don Juan" by Lord Byron: "If I laugh at any mortal thing/ 'Tis that I may not weep." He was touched by Oliver Wendell Holmes' "The Last Leaf," with its famous line: "The mossy marbles rest/ On the lips that he has prest/ In their bloom."

What did Lincoln read by Charles Dickens, the most popular author of the 19th century? Lincoln and Dickens lived approximately the same years, Lincoln from 1809 to 1865 and Dickens from 1812 to 1870. Lincoln once said, according to Professor Harkness, that he admired Dickens' ability to capture "actual life."

Lincoln's first inaugural address included the phrase "the better angels of our nature." This phrase is found in both *Hard Times* and *David Copperfield*.[11] Lincoln also appreciated the wit of Mr. Micawber from *David Copperfield*. A Dickens novel that Lincoln may well have read more thoroughly was his first, *The Pickwick Papers*, one of the most popular books of the Victorian era.[12] In 1864, Lincoln checked it out from the Library of Congress.

There were several reasons for Lincoln to have enjoyed *The Pickwick Papers*. First is the humorous Sam Weller, who was Mr. Pickwick's valet, and whom a Lincoln acquaintance said amused Lincoln. Sam Weller was the "Sancho Panza" of the book, always ready with a story or proverb.

The Pickwick Papers also reflects Dickens' reminiscences of his years as a court stenographer in the "Doctor's Commons," a court that dealt with family and probate matters. Lincoln would have loved Dickens' portraits of bumbling judges and magistrates. One highlight of the book is the trial of Mr. Pickwick for breach of promise.[13] Famously, the plaintiff's barrister, Sergeant Buzfuz, finds proof against Mr. Pickwick in a note that he left for the plaintiff asking her to purchase "chops and tomata sauce."

Perhaps Lincoln also read *The Pickwick Papers* because of Mr. Pickwick himself. Lincoln was a Whig at heart, believing in the value of peacemaking, including resolving legal disputes out-of-court.[14] The jovial and amiable Mr. Pickwick, always looking for conciliation, was Lincoln's ideal person.[15] ■

Judge Henry S. Cohn *is a judge trial referee of the Connecticut Superior Court.*

NOTES

1. *See* internet talk by Mazur, Imagine Solutions Conference, March 28, 2019. *See also* D.J. Harkness, "Lincoln, the Reader," reprinted in Congressional Record, March 3, 1969 at page 5078. Harkness quotes Lincoln:

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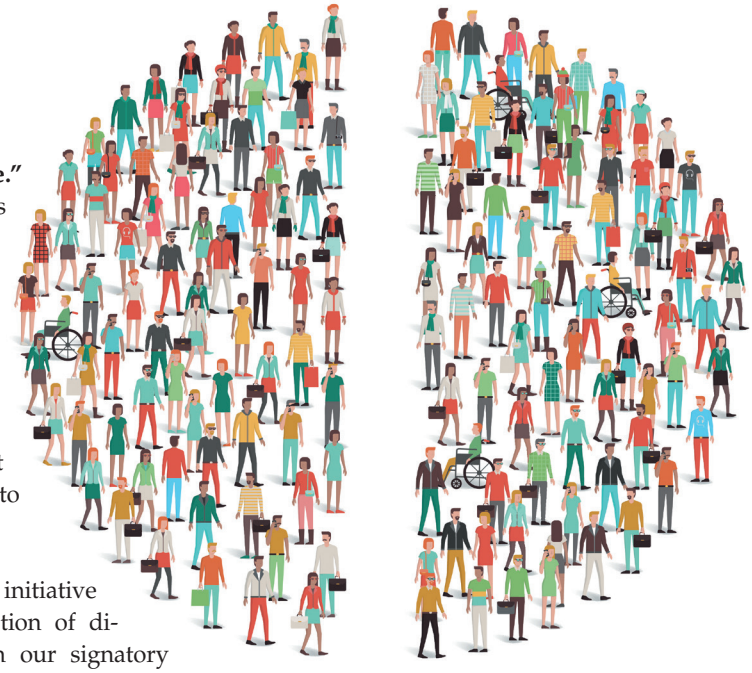
Measuring the Intangible: The Necessity of Assessing Diversity, Equity, and Inclusion

By CECIL J. THOMAS AND KAREN DEMEOLA



There is an old adage that "what gets measured, gets done." That is certainly true for diversity, equity, and inclusion efforts (DE&I), which must be strategic, consistent, and accountable, to achieve meaningful progress. Organizational statements, policies, and external affirmations may create a sort of *de jure* commitment to DE&I, while metrics and assessments allow us to evaluate our *de facto* implementation of these principles. Measuring and assessing these commitments, on the organizational and the individual levels, is crucial. The results of those assessments should then motivate a sustained commitment and strategic response, but may also pose a temptation to be reactive, to engage in tokenism, or to implement a primarily performative series of measures.

In our last article, we presented our working definitions of the terms "diversity," "equity," and "inclusion." **Diversity** we defined as a matter of numbers: the representation, within your organization, of those diverse identities that have been historically excluded from our profession, and marginalized within our society. **Inclusion** refers broadly to organizational culture and the nature of that representation: an evaluation of where those diverse individuals are represented within your organization, what roles they hold, and whether they are valued and respected equally. **Equity** speaks to the fundamental fairness of organizational policies and procedures, as stated, implemented, and applied. Now that you have committed to meeting those ideals, how do you take stock of the state of your DE&I? How do you assess your progress? This is where metrics and assessments as well as focusing on numbers, representation, culture, and individual experience become so important.

In 2016, the CBA launched the Connecticut Legal Community's Diversity and Inclusion Pledge and Plan.[1] One of the hallmarks of this initiative is the annual collection of diversity metrics from our signatory organizations, reported out annually at the CBA's Diversity and Inclusion Summit. This annual assessment is primarily a "headcount" evaluation, a snapshot of the aggregate representation of diverse attorneys within different sectors of the Connecticut legal community. Drawing from this information, the CBA is able to report on certain demographic trends. For example, the leadership and equity partnerships of our larger Connecticut private law firms are still overwhelmingly white, and predominantly male. There has been progress in the representation of female attorneys and overall numbers of female partners in Connecticut have exceeded the National Association for Law Placement (NALP) national trends in recent years.[2] Women are still predominantly represented within the income partner ranks, however, and are significantly less represented at the equity partner level. The partnership and leadership ranks of these organizations still lack meaningful racial, ethnic, LGBTQ+, and disability representation. There is potential for the future, though, as the associate classes have been gender-balanced for a number of years, and have also included greater levels of racial and ethnic diversity. We have been able to take similar snapshots of our Connecticut legal aid organizations, as well as government and corporate legal aid organizations, to track demographic trends in representation and leadership. Connecticut's legal community has a long way to go before it can be said to be truly diverse, equitable, and inclusive, but we applaud the signatory organizations for their commitment to accountability and transparency in their DE&I efforts.

Law firm diversity metric studies, such as those done by the CBA, NALP, the Minority Corporate Counsel Association,[3] or the New York City Bar Association,[4] are just part of an overall effort to shed further light on our profession's DE&I challenges. Similar reports illuminate DE&I trends in law school admissions and enrollment,[5]

Image credit: elenabs/iStock / Getty Images Plus

the federal judiciary,[6] state supreme courts,[7] and numerous other sectors of the profession. Studies such as these, focused primarily on metrics, are crucial, but also have limitations. A law firm or legal organization could have significant numeric diversity, and yet not be inclusive or equitable. For example, imagine a legal organization that describes its DE&I commitment as follows: "We embrace DE&I. Thirty percent of our team members are racially and ethnically diverse." If most of those racially and ethnically diverse individuals hold administrative and support roles, while the organization's power structures are predominantly white, some may say that the organization should examine the role bias plays in hiring diverse attorneys, and in the processes for determining professional growth and advancement. Conversely, that same organization could have a relatively small number of diverse individuals represented within its various hierarchies, but maintain a serious commitment to an inclusive culture and equitable policies, practices, and procedures. In that case, the organization can be said to be inclusive and equitable, and will likely achieve meaningful numeric diversity in a number of years as those commitments take effect.

Measuring inclusion and equity is just as important as demographic head counts, but is much more involved, and may raise difficult issues. At the 2020 Annual CBA Diversity and Inclusion Summit, our workshop presenters, Paolo Gaudiano and Lisa Magill from Aleria,[8] compared inclusion to health. Our assessments of our own health are likely part objective and part subjective, driven by known facts, temporal influences, and overall feelings of wellbeing (or the lack thereof). When we present and teach on these topics, we describe DE&I as a combined sense of belonging, a state wherein all individuals that make up the organization feel valued and respected; able to contribute to the organization, and draw the proportionate benefits of those contributions. Most importantly, we speak of organizations that allow an individual to bring his or her full and authentic self to the organization. Assessing organizational DE&I requires a more complicated assessment, using experiential surveys and confidential interviews in an effort to understand how all individuals experience your organization, and see themselves within its fabric. Such assessments require vulnerability, a recognition of the existence and impact of power dynamics, the creation of a safe environment for individuals to share their positive and negative experiences, and a commitment to respond productively, no matter how uncomfortable the outcome.

Experiential studies of our profession reveal that our DE&I challenges go far beyond mere lack of numerical representation. These studies, which are too plentiful to fully summarize here, reveal that diverse attorneys face significant discrimination, harassment, and sexual harassment in the practice of law;[9] socioeconomic bias in law firm hiring;[10] racial bias in legal writing review;[11] frequent microaggressions and application of negative assumptions and stereotypes;[12] and higher attrition and greater obstacles to advancement.[13] The CBA recently surveyed Connecticut attorneys to understand their experiences with discrimination, harassment, and sexual harassment. The results of that survey were deeply troubling, with a significant number of Connecticut attorneys reporting that they had experienced discrimination, harassment, and sexual harassment in professional contexts.

If you have followed us so far, you have taken time to understand the importance of DE&I, and to wrestle with the definitions of those concepts. Now it is time to conduct a full evaluation of the state of your DE&I, first by collecting your organization's diversity metrics, but then moving towards a deeper assessment and understanding of culture and climate. Take similar stock of your individual relationships and networks. Who is in your trusted circle? Who are your go-to team members? Who are your closest personal and social connections? How diverse are the people included within those groups? These processes will necessarily involve difficult conversations and reckonings. You may discover some hard truths, and experience periods of discomfort and stress. Work through it, respect the feedback you receive, accept it as true and valid, and commit to necessary change. Ultimately, you, and your organization, will come out the stronger for it. ■

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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.*

The Devastating Impact of Evictions on Connecticut Families[1]

By CECIL J. THOMAS

Remember, for a moment, your childhood home. If you are a parent, envision the home in which you raised, or are raising, your children. What words would you use to describe that place and the associated memories? What do we strive for in the creation of appropriate spaces and environments in which to raise children?

For many, our childhood homes evoke positive memories: of more carefree times, of safety, stability, and security. This is not a universal truth for all, and particularly untrue for Connecticut's low-income families. For low-income children—in Connecticut and across the country—safety, security, and stability in a childhood home is an elusive promise, in particular because of evictions. For low-income children and their families, evictions present a full panoply of harmful effects, devastating in impact and enduring for years.

The Fragile Families study, conducted by Princeton University and Columbia University, illuminates the many challenges and disadvantages facing low-income American families.[2] The related research on the prevalence of evictions among American children is shocking. The study estimates, when accounting for both formal and informal evictions, that close to 15 percent of children born between 1998 and 2000 in US cities were evicted from their homes by age 15.[3] These numbers become even more staggering when examining the effect on low-income families, as more than 1 in 4 children in families living below the federal poverty line experienced an eviction by age 15.[4] Children born to Black and Hispanic mothers are significantly more likely to experience eviction than children born to white mothers or mothers of other racial and ethnic backgrounds.[5]

As I write this, the COVID-19 pandemic rages on, causing significant illness, death, economic hardship, and countless other harms. While Connecticut[6] and Centers for Disease Control[7] eviction moratoriums stopped many evictions in 2020, an avalanche of evictions is expected sometime in 2021, when those protections expire. Between May and October of 2020, an estimated 8 million Americans have newly "slipped into" poverty, with Black, Hispanic, and families with children disproportionately affected.[8] Childhood poverty in Connecticut was on the rise even before the pandemic, increasing from 13 percent in 2010 to 14 percent in 2018.[9] Estimates of the impending eviction crisis are staggering. Stout Risius Ross, a global advisory firm, estimates that between 128,000 and 169,000 Connecticut renter households are at risk of eviction.[10] The October 28 to November 9, 2020 US Census Bureau Housing Pulse Survey found that 67.3 percent of surveyed adults, in renter-occupied housing units in Connecticut, reported that they were "Very likely" or "Somewhat likely" to leave their homes due to eviction within two months.[11] Connecticut households with children reported these risk-of-eviction levels at significantly higher levels than households without children.[12]

Numbers of this scale are overwhelming, and may belie the devastating harms[13] that each of these evictions will present to the affected family. The eviction crisis is one that disproportionately impacts people of color, particularly women with children. Evictions cause homelessness and housing insecurity. The speed of the eviction process forces families into shelters, or housing of last resort, or into overcrowded situations that further the spread COVID-19.[14] The record of the eviction operates as a permanent obstacle to securing future housing, as many landlords, even publicly-subsidized landlords, often refuse to rent to tenants with an eviction record. Evictions severely increase debts and financial harms, in the form of late fees, court filing fees, marshal service and attorneys fees, missed work, and lost or damaged personal property. Children's educational progress is affected, particu-

> "And as I was green and carefree, famous among the barns
> About the happy yard and singing as the farm was home,
> In the sun that is young once only, Time let me play and be
> Golden in the mercy of his means…"
>
> —Dylan Thomas, "Fern Hill" (1945)

Image credit: teekid / E+ / Getty Images

larly at a time when distance-learning at home has become a "new normal." The resulting housing instability forces children to move into different school systems, with different teachers and classmates, and causes social instability in lost connections to supportive people, places, institutions, and organizations. The harms to physical and mental health, for both mothers and their children, has been found to last years after the eviction has been completed. Simply put, evictions are traumatic and devastating, and we are facing an impending avalanche of evictions in the months ahead.

I understand that the scope of the problem is enormous and daunting. I am reminded, though, of that old story of the child on the beach, throwing starfish back into the ocean to prevent them from drying up under the approaching noonday sun. When challenged on the futility of these efforts, the child picks up yet another starfish, throws it back into the ocean, and replies, "I made a difference for that one." There are approximately 21,000 lawyers admitted to practice in Connecticut.[15] What would happen if each of us undertook representation of just one low-income household facing eviction in the year ahead?

Numerous studies, which will be addressed in a future column, have demonstrated the beneficial impact of providing representation to tenants facing eviction. The resulting benefits to the represented family are broadly impactful, and result in significant realized savings in societal and government costs. There are many ways that you can help. Consider signing up to provide eviction defense representation through CBA Pro Bono Connect,[16] which will allow you to receive access to training and to be connected to Connecticut's legal aid providers for case referrals.[17] You may also consider supporting one of Connecticut's legal aid programs, that are the primary providers of direct representation to tenants facing eviction. These programs all face significant funding cuts in the year ahead, due to the economic impact of COVID-19. Finally, please lend your support to legislative efforts to provide access to justice to tenants facing eviction. Legislation to provide counsel to tenants facing eviction were introduced in Connecticut in 2016 and 2019, and we are long overdue for progress in this area.

Any and all of these efforts will be impactful. You will help level an uneven playing field, stand in the breach of an impending eviction crisis, and ensure access to justice for those who have no other meaningful hope of retaining a lawyer. Most importantly, your representation might provide some measure of safety, security, and stability for a child in that most evocative of places: her childhood home. ■

NOTES

1. This is the second column in a series on Connecticut's eviction crisis. For the first in the series, please see "Connecticut's Eviction Crisis and the Right to Counsel Movement," *Connecticut Lawyer Magazine*, Vol. 30, No. 6 (July/August 2020).
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6. State of Connecticut, Governor Ned Lamont, Executive Order No. 9H (October 20, 2020) https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-9H.pdf (last retrieved on November 20, 2020).
7. Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID-19, 85 *Federal Register* 55292 (September 4, 2020) https://www.federalregister.gov/documents/2020/09/04/2020-19654/temporary-halt-in-residential-evictions-to-prevent-the-further-spread-of-covid-19 (last retrieved on November 20, 2020).
8. "8 million Americans slipped into poverty amid coronavirus pandemic, new study says," *NBC News*, October 16, 2020 https://www.nbcnews.com/news/us-news/8-million-americans-slipped-poverty-amid-coronavirus-pandemic-new-study-n1243762 (last retrieved on November 20, 2020).
9. Annie E. Casey Foundation, 2020 KIDS COUNT Data Profile (Connecticut, June 22, 2020) https://www.aecf.org/m/databook/2020KC_profile_CT.pdf (last retrieved on November 20, 2020)
10. Estimation of Households Experiencing Rental Shortfall and Potentially Facing Eviction (Stout Risius Ross, 9/30/20-10/12/20) https://app.powerbi.com/view?r=eyJrIjoiNzRhYjg2NzAtMGE1MC00NmNjLTllOTMtYjM2NjFmOTA4ZjMyIiwidCI6Ijc5MGJmNjk2LTE3NDYtNGE4OS1hZjI0LTc4ZGE5Y2RhZGE2MSIsImMiOjN9
11. U.S. Census Bureau Household Pulse Survey, Week 18, Housing Table 3b (October 28 - November 9, 2020) https://www.census.gov/data/tables/2020/demo/hhp/hhp18.html#tables (last retrieved on November 20, 2020)
12. *Id.*
13. *See generally*, Matthew Desmond, "Evicted: Poverty and Profit in the American City" (2016). *See also*, Desmond & Kimbro, "Evictions Fallout: Housing, Hardship, and Health, *Social Forces*," Volume 94, No. 1, September 2015, pp 295-324; Desmond et al., "Forced Relocation and Residential Instability Among Urban Renters," *Social Service Review*, 89 (2) (2015) pp. 227-262.
14. *See* note 7 above. *See also*, Sheen, et al., "The Effect of Eviction Moratoriums on the Transmission of SARS-CoV-2, medRvix," October 27, 2020 (https://www.medrxiv.org/content/10.1101/2020.10.27.2022089 7v1.full) (last retrieved on November 20, 2020); Benfer, et al., "Pandemic Housing Policy: Examining the Relationship Among Eviction, Housing Instability, Health Inequity, and COVID-19 Transmission," November 2020 (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3736457)
15. https://www.americanbar.org/content/dam/aba/administrative/market_research/national-lawyer-population-by-state-2020.pdf
16. American Bar Association National Lawyer Population Survey (2020) https://www.ctbar.org/members/volunteer-today/CBA-pro-bono-connect/for-attorneys (last retrieved on November 20, 2020)
17. To learn more about how to navigate Pro Bono Connect, please see *Connecticut Lawyer Magazine*, September/October 2020 "Time to Go Pro Bono" column https://www.ctbar.org/docs/default-source/publications/connecticut-lawyer/ctl-vol-31/1-sept-oct-2020/ctl-sept-oct-20—column—time-to-go-pro-bono.pdf?sfvrsn=e06b274a_4

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Defining the Field Makes for Easy Work

By CHARLES D. RAY and MATTHEW A. WEINER

We're taking a look at two cases in this column. Both arise from dissolution actions and involve circumstances that we don't see every day. The Supreme Court decided both cases unanimously, albeit not without a few twists and turns that are worth discussing.

The first case, *Hall v. Hall*, 335 Conn. 377 (2020), involves a challenge to a post-judgment finding of contempt, as well as the trial court's refusal to open the judgment and vacate the contempt ruling. The parties were married in 1996 and Mr. Hall commenced the dissolution action in 2014. During the proceedings, the parties entered into a pendente lite stipulation that provided for the deposit of $533,588 into a joint bank account that required "the signature of both parties prior to any withdrawals.…" The trial court approved the stipulation and entered an order to that effect. The parties then opened a joint account and deposited the money to it. As it turns out, the account provided online access to both parties and did not require both signatures prior to any withdrawals.

About a year later, Ms. Hall filed a motion for contempt, alleging that Mr. Hall had violated the court's order by withdrawing, without her permission, the remaining balance ($70,219.99) from the joint account. The trial court granted the motion following an evidentiary hearing. Mr. Hall followed with a motion for reconsideration, which the trial court denied without opinion. Mr. Hall filed a timely appeal from both the judgment of contempt and from the court's denial of his motion for reconsideration.

In the meantime, the parties had filed another joint stipulation, in which they informed the trial court that they had agreed to file a joint motion to open and vacate the findings of contempt because they believed "such findings could interfere with the parties' future employment.…" The parties filed the motion to open and vacate, but the trial court denied it, once again without opinion. Mr. Hall amended his appeal to challenge this ruling and then asked the trial court to articulate the basis on which it had denied both his motion for reconsideration and the joint motion to open and vacate the contempt judgment. In its articulation of the contempt judgment, the trial court made clear that it had based its ruling on three events: 1) failure to comply with the order that any withdrawals from the joint account would require the signatures of both parties; 2) Mr. Hall's unilateral withdrawal of the remaining balance in the account; and 3) Mr. Hall's prior unilateral withdrawal of $237,643.11 from the account.

The Appellate Court affirmed the judgment and the Supreme Court granted certification. Justice Kahn wrote the opinion for a full and unanimous Court. In the end, this became a case of the missing evidence.

Some additional facts would be helpful. First, it was undisputed that both parties knew that the account they had set up did not comport with either their stipulation or the court's order. Indeed, Mr. Hall testified that banks no longer require dual signatures on accounts. Second, Mr. Hall testified that he had moved money from the joint account out of fear that Ms. Hall had suffered a relapse of her substance abuse issues and would squander the money in the joint account. On appeal, he relied, for the most part, on a theory that his actions were not contemptuous because they had been undertaken with the advice of counsel.

Before addressing the merits of that claim, however, the Court first looked at the "threshold" issue of whether it had been raised in the trial court. In this regard, the Court noted that at the time the trial court issued its memorandum of decision, it "was unaware of any intent by [Mr. Hall] to raise the claim that his violations of the order were not wilful because he reasonably relied on the advice of counsel." That seemed to have changed by the time Mr. Hall, now representing himself, filed his motion for reconsideration. In con-

Image credit:FabrikaCr/iStock/Getty Image Plus

junction with that motion, he put before the trial court some emails between him and his former counsel and argued that his former counsel had failed to raise the issue of his reliance on counsel's advice. The trial court concluded that the performance of Mr. Hall's former counsel was not a proper basis on which to grant reconsideration and held that Mr. Hall's actions were "intended to circumvent" Ms. Hall's access to the account. The trial court also considered it significant that Mr. Hall was an attorney, licensed in both New York and Massachusetts. On this record, the Supreme Court concluded that Mr. Hall had "adequately" raised the advice of counsel argument in the trial court, notwithstanding that Mr. Hall's motion for reconsideration "was the first time that he had argued that his actions were not wilful because he undertook them in reasonable reliance on the advice of counsel to withdraw funds from the joint account."

Let's stop here for just a moment and ask how long do you suppose it will be before some enterprising lawyer relies on *Hall* for the proposition that claims raised for the first time in a motion for reconsideration are properly preserved for appellate review because they were "adequately" raised in the trial court? Our guess: not very long. We also have another guess: we're going to see a number of invocations of the default rule of "arguments raised for the first time in a motion to reargue are not entitled to appellate review" before we ever see the *Hall* "rule" carry the day again. So why did it carry the day here? We can only speculate that it was because Ms. Hall did not file a brief in the appeal and there was, therefore, no one pounding the preservation drum in the Supreme Court. But if there was no appellee making a preservation/improper record claim, why go down this "adequately raised" rabbit hole to begin with?

An explanation may also reside in the fact that Mr. Hall was challenging both the ruling of contempt and the denial of his motion for reconsideration. And in this section of its opinion, the Court begins by mentioning the former and ends by resolving the latter. It's as if the Court viewed the arguments as two unrelated and separate issues, without considering that the reconsideration denial could (and maybe should) have been denied on the alternate ground that new arguments and theories are not proper fodder for a motion for reconsideration. Given the outcome on the merits, it might have been more prudent to leave this particular rabbit hole unexplored, so that future confusion could have been avoided.

Once it got to the merits, the Court's resolution was straightforward and simple. The trial court had found three violations of its order—two unilateral withdrawals and the improper initial opening of the account. The trial court had before it evidence that Mr. Hall did not consult with counsel about setting up the account and that while there was evidence that Mr. Hall had consulted with counsel after the account was opened, it was also "reasonable to conclude that the exchanges do not establish that he acted on the advice of counsel." If anything, the exchanges between Mr. Hall and his counsel appear to support the view that counsel advocated moving the money to an account that comported with the trial court's order for joint control.

A similar fate befell the motion to open. Once again, the Court affirmed on the basis of missing evidence; namely, any evidence that supported counsel's argument that the contempt finding would have a "deleterious" effect on Mr. Hall's career as an attorney with licenses in the securities field. The trial court concluded that there was no evidence to support this claim and the Supreme Court reached the same conclusion, holding also that the trial court was not obligated to grant the motion to open merely because the parties agreed in that result. So if Hall serves any long-term purpose, it would be to reinforce for counsel the fact that arguments that have no evidentiary support have little chance of prevailing on appeal.

■ 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.

Our second case, *Foisie v. Foisie*, ___ Conn. ___ (2020), answers the question of whether the executor or administrator of a party's estate can be substituted for the deceased party in a dissolution action, when the pending proceeding seeks to open the dissolution judgment on the basis of fraud. In the end, the Supreme Court, Justice D'Auria, writing for a unanimous court, answered "yes." The trip to get there was just a bit convoluted.

The parties' marriage was dissolved in 2011. About four years later, Ms. Foisie filed a motion to open the judgment, claiming that Mr. Foisie had failed to disclose several million dollars that he had on deposit in Swiss bank accounts. The parties stipulated that the judgment could be opened for the limited purpose of conducting discovery, but it appears that Mr. Foisie was less than forthcoming with discovery responses and, in fact, died prior to complying with the trial court's discovery orders.

Ms. Foisie moved to substitute the co-executors of Mr. Foisie's estate as parties in the ongoing dissolution action, which remained open for the purpose of discovery. The trial court denied the motion, concluding that: 1) if the motion to open was granted, the parties' marriage would be reinstated; 2) if the marriage was reinstated, it would have been automatically dis-

Continued on page 40 →

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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.

Animal Rights

A municipal animal control department's assumption of custody of two horses while the owner was incapacitated creates a bailment, making the municipality liable for the unauthorized disposal of the animals. Therefore the euthanization of one horse and the transfer by adoption of the other horse without the owner's consent entitles the owner to compensation equal to the value of the horses, even though no compensation was paid to the department for voluntarily assuming custody of the animals. *Ardito v. Woodbridge Animal Control*, 70 CLR 1 (Blue, Jon C., J.T.R.).

Civil Procedure

Rockoff v. Annulli, 70 CLR 39 (Taylor, Mark H., J.), holds that derogatory statements about the qualifications of a licensed professional constitute a "matter of public concern" within the meaning of the Anti-SLAPP Suit Statute, Conn. Gen. Stat. § 52-196a(a)(1) (defining "matter of public concern" as "an issue related to … the government, zoning and *other regulatory matters*"). Therefore in an action for defamation brought by a licensed professional based on such comments the defendant may move for dismissal under the Statute on the grounds that the action interferes with the defendant's constitutional right of free speech.

A plaintiff's mistaken attachment of the wrong complaint to the process returned to court following service on the defendant of process that included the correct complaint is a voidable mistake which can be cured by amending the return with the correct complaint, at least where it is still possible to comply with the remaining requirements for the return of process. *Taylor v. Wal-Mart, Inc.*, 70 CLR 3 (Gordon, Matthew D., J.).

Doe v. VB Holdings, LLC, 70 CLR 45 (Gordon, Matthew D., J.), holds that an application to prosecute an action through the use of a pseudonym or to seal a file must be supported by live testimony, documentary evidence and/or sworn affidavits; the mere recitation that the nature of the case warrants such treatment is insufficient.

Contracts

People's United Bank, N.A. v. Armata, 70 CLR 59 (Schuman, Carl J., J.), holds that a waiver in a guaranty agreement of any reliance on special defenses in future enforcement actions extends to special defenses based on conduct arising after the execution of the original guaranty, unless the guaranty agreement expressly provides otherwise.

A dispute between an employer and employee over a noncompete agreement does not arise in "trade or commerce" and therefore does not give rise to a CUTPA claim," even if the dispute is based on an alleged interference by the employer with the plaintiff's ability to work for another employer. *Stavridis v. National Spine & Pain Centers, LLC*, 70 CLR 23 (D'Andrea, Robert A., J.).

Corporations and Other Business Organizations

A nonattorney member of a limited liability company lacks standing to commence an action on behalf of the LLC, and the error may not be cured by a subsequent appearance by counsel. *Global Painting & Sealcoating, LLC v. Williams*, 70 CLR 24 (Kowalski, Ronald E., J.).

Landlord and Tenant

8 Broadleaf Circle, LLC v. Pittman, 70 CLR 63 (Shah, Rupal, J.), holds that the delivery to a local public housing authority of a copy of a notice of termination of a federally subsidized tenancy (a Kapa notice) is a mandatory requirement that cannot be cured after the tenant has filed a motion to dismiss a summary process action.

A reservation in a stipulated judgment resolving a summary process action against a federally-subsidized tenant, of the right to an immediate execution in the event of a further breach, is enforceable only with respect to breaches specifically identified in the stipulation. *New Britain Housing Authority v. Perez*, 70 CLR 61 (Shah, Rupal, J.). The opinion denies a landlord's request for execution under a stipulated agreement because the stipulation referred only to the obligation to pay rent without incorporating references to the tenant's other statutory obligations.

Law of Lawyering

Rosenay v. Taback, 70 CLR 69 (Pierson, W., Glen, J.), holds that it is a violation of the Rules of Professional Conduct for an attorney to seek permission to access a nonclient's private information on a social media website, as by submitting a request to be "friended," unless the attorney first discloses (i) the requestor's role as an attorney, (ii) the requestor's interest in the matter for which information is being sought, and (iii) the purpose of the request. The opinion concludes that a failure to make such a disclosure would violate (A) Rule 4.1(1) ("a lawyer shall not knowingly … [m]ake a

false statement of material fact or law to a third person"), (B) Rule 4.3 ("In dealing on behalf of a client with a person who is not represented by counsel … a lawyer shall not state or imply that the lawyer is disinterested"), and (C) Rule 8.4(3) (a lawyer shall not "[e]ngage in conduct involving dishonesty, fraud, deceit, or misrepresentation"). The opinion is also useful for its holding that an attorney's ethical obligation to "provide competent representation to a client," *includes* an obligation to use social media as a discovery tool, when appropriate.

Real Property

Lucas Point Association v. 17950 Lake Estates Drive Realty, LLC, 70 CLR 47 (Povodator, Kenneth B., J.T.R.), holds that a non-owner occupant of a residence with a close relationship to the owner has standing to prosecute actions for interference with *possessory* rights in the property, provided the violation has a direct impact on the occupant.

Torts

Picone v. Tenenbaum, 70 CLR 10 (Brazzel-Massaro, Barbara, J.), holds that a medical malpractice plaintiff's failure to attach the curriculum vitae of the author of an opinion of negligence that was incorporated by reference into the opinion may be cured by amendment, even after the limitations period for the claim has lapsed, provided the letter and curriculum vitae were in existence when the complaint was served.

The Apportionment of Damages Statute provides the sole remedy for apportionment claims between the existing parties to a personal injury action. *Harding v. Mrini*, 70 CLR 31 (Pierson, W. Glen, J.). The opinion holds that no existing party to an action may assert a counterclaim or cross claim for apportionment from another party.

A municipality sued on a Defective Highway Act claim may not implead a third party for indemnification in tort after the limitations period for a direct action by the plaintiff against the defendant has lapsed, because the "sole proximate cause" limitation of the Highway Act will defeat any recovery from the municipality if the property owner is found liable to any degree at all, leaving the plaintiff without a defendant for which the limitations period has not yet lapsed in violation of the requirement of the Impleader Statute that the impleading of a nonessential defendant should not "work an injustice upon the plaintiff. *Murphy v. Ridgefield*, 70 CLR 65 (D'Andrea, Robert A., J.).

Workers' Compensation Law

Desmond v. Yale-New Haven Hospital, Inc., 70 CLR 13 (Bellis, Barbara N., J.), holds that the provision of the Workers' Compensation Act authorizing recovery for an employer's retaliation for an employee's exercise of rights under the Act, Conn. Gen. Stat. § 31-290a, does not apply to claims based on an employer's alleged bad faith conduct in *the processing* of the compensation claim.

Zoning

Cirillo v. Fairfield ZBA, 70 CLR 57 (Stevens, Barry K., J.), holds that on an appeal to court from a zoning board of appeals decision to affirm a zoning enforcement officer's decision to grant a building permit, the permit applicant is not entitled to supplement the administrative record pursuant to Conn. Gen. Stat. § 8-8(k) (authorizing additional evidence to supplement an administrative record if "necessary for the equitable disposition" of a court appeal) with evidence challenging the zoning board's jurisdiction in the appeal, both because (a) the appeal to Court is from the ZBA's decision on the merits of the agency decision, not the *agency's* jurisdiction in the underlying agency appeal, and (b) no additional evidence is "necessary for the equitable disposition" of the court appeal. ■

It's Not Personal, It's Business: How Your Well-Being Could Impact Your Practice

By CINDY M. CIESLAK

Cindy M. Cieslak *is the chair of the CBA Young Lawyers Section for the 2020-2021 bar year. She is a partner at Rose Kallor LLP in Hartford, where she focuses her practice on labor & employment litigation as well as independent workplace investigations. She graduated summa cum laude from Penn State University in 2009 and received her JD from UConn School of Law in 2012.*

Throughout the pandemic, I am becoming increasingly more attuned to the emotional and relational risks of practicing law, and indeed, the Connecticut Bar Association has made significant efforts to provide its members with resources for its members to improve their well-being.

Given the demands of the field of law, it is not surprising that:

- Lawyers are three to four times more likely to suffer from depression than non-lawyers
- 31% to 36% of attorneys qualify as "problem drinkers"
- 28% of attorneys struggle with some level of depression
- 23% of attorneys struggle with stress
- 19% of attorneys struggle with anxiety[1]

As a result, attorneys suffer from impaired attention and difficulty in concentrating, procrastination, memory loss, difficulty solving problems, difficulty forming relationships, compromised work product, missed appointments, and poor management of finances.[2]

Attorneys are likely to experience these symptoms in response to burnout. Burnout is not simply being too busy. In fact, at times, being busy can stimulate confidence, job satisfaction, and performance. In other words, mild to moderate stress can enable an attorney to reach peak performance. However, when attorneys are overloaded and faced with conflicting demands without any time to recover from those demands, lawyers may burnout and disengage. These responses to burnout, specifically inability to problem solve, difficulty with forming relationships, compromised work product, missed appointments, and poor management of finances, could impact an attorney's professional obligations under Rule 1.1 of the Connecticut Rules of Professional Conduct regarding competent representation, Rule 8.4 regarding misconduct and violations of the Connecticut Rules of Professional Conduct, and, perhaps most importantly, Rule 1.15 regarding safekeeping of property, including IOLTA accounts. Indeed, one of the most common causes of grievance complaints concern a lawyer's diligence and communication lapses. Further, the harshest discipline is given to lawyers whose grievances against them involve the misuse of funds, as well as deceit and candor problems.

We may be initially inclined to look to employers to review and address demands that attorneys face in the workplace. In fact, the American Bar Association has a task force on lawyer well-being and the Connecticut Bar Association has a dedicated committee, both of which offer materials and tools that legal employers can utilize to assist with the well-being of their employees.

Yet, it is also incumbent upon attorneys to strive for the highest level of professionalism. In furtherance of that goal, in October 2020, the CBA's House of Delegates adopted a revised version of the *Lawyers' Principles for Professionalism*, which include: 1) civility, 2) honesty, 3) competency, 4) responsibility, 5) mentoring, and 6) honor. Observing these principles is one of the first steps to maintaining the integrity in our profession. You can view the complete document at ctbar.org/LawyersPrinciples.

Additionally, it is also critically important that we address our own lawyer well-being and develop our own methods to recognize signs of fatigue and burnout that may impair our ability to abide by the Connecticut Rules of Professional Conduct, observe the Lawyers' Principles for Professionalism, and uphold the rule of law. The manner in which one attorney improves upon their well-being will

be unique to that individual based upon their own circumstances and what "buckets" need to be filled personally: time for emotional and mental clarity; time for hobbies and relaxation; time with children, spouses, significant others, and family; professional development; continuing education; nutrition; physical health and exercise; spending time with friends; volunteering and community or public service; pro bono work; mentorship; spiritual foundation; meditation; and sleep, among others. Thus, there is not a "one size fits all" solution other than raising awareness for lawyer well-being and recognizing that we can practice law most effectively and efficiently when we are engaged and have a sense of positive self-worth and satisfaction in our contributions to the field of law. If each individual attorney improves upon their own well-being, we will foster our profession as a whole.

As we continue to navigate these uncertain times, be sure to check in on yourself.

Image credit: CTRd/E+/GettyImages

While it might not seem immediately important, making some time for you, outside of the traditional practice of law will help make you a better lawyer. My hope is that you take advantage of the programs that the Connecticut Bar Association and Young Lawyers Section offers. ■

NOTES

1. National Task Force on Lawyer Well-Being, *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change* (Aug. 14, 2017), available at https://lawyerwellbeing.net/the-report.
2. *Id.*

President's Message

Continued from page 5

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/founding-docs/constitution-transcript
8. William H. Rehnquist, 2004 Year-End Report on the Federal Judiciary, January 1, 2005, available at www.supremecourtus.gov/publicinfo/ year-end/2004year-endreport.pdf.
9. www.supremecourt.gov/publicinfo/year-end/2007year-endreport.pdf
10. www.ctbar.org/about/diversity-equity-inclusion/pathways-to-legal-careers

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.*

DE&I

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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

10. 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)
11. Dr. Arin N. Reeves, *Written in Black and White: Exploring Confirmation Bias in Racialized Perceptions of Writing Skills* (2014) nextions.com/wp-content/uploads/2017/05/written-in-black-and-white-yellow-paper-series.pdf
12. *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
13. *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) A Portrait of Asian Americans in the Law (apaportraitproject.org)

Lincoln

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

2. *See* Michael Burlingame, *Abraham Lincoln: A Life*, Volume 1, p. 36 (2008).
3. "The judgments of the Lord are true and righteous altogether."
4. *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).
5. Harkness, supra note 1.
6. Harold Holzer, *Lincoln at Cooper Union: The Speech that Made Abraham Lincoln President* (2006).
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."
11. *See* Burlingame, Vol. 2, p. 47, who assumes that Lincoln relied on Dickens for the phrase.
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.
14. See Mark E. Steiner, *An Honest Calling* (2006).
15. Mr. Pickwick became the central figure in the Broadway play *Pickwick*, with its hit song, "If I Ruled the World."

Supreme Deliberations

Continued from page 35

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 reinstitution 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. ■

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