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I'm Tom Pettinicchi. I fight for families.

When nursing homes betray our loved ones...

For years, I was a family lawyer. I saw firsthand how families suffer when one member is hurt. I saw how injury, betrayal, and neglect ripple through a family, shaking its foundation.

That experience shaped me.

It made me a better trial lawyer. A better advocate.

Now, I use that experience to take on nursing homes that betray our most vulnerable—our parents, our grandparents, the family members who raised us, who held us together, who were once the strongest among us. When they are neglected, abused, or mistreated, it's not just an attack on them—it's an attack on the entire family.

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Nursing homes and insurance companies know how to evade responsibility. They count on families being too overwhelmed, too heartbroken, too unsure of what to do next. That's where I come in.

I build cases that force them to pay attention. I prepare for trial like it's war — because for my clients, it is. I don't back down. I don't let them make excuses. And I make sure they never forget who they're up against.

If your family has suffered, I'm ready to fight.

If your client or a loved one has suffered because of a nursing home's failures, I'm here. I will fight for you, your clients, your family, and the justice you deserve. **Because that's what family does.**

D'Amico Pettinicchi.

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FEATURES

COLUMNS

DEPARTMENTS

Honoring New Admittees and Strengthening Our Professional Community

By EMILY A. GIANQUINTO

Emily A. Gianquinto is the CBA's 102nd president. Attorney Gianquinto is special counsel at McCarter & English LLP, where she counsels employers on day-to-day employment matters and represents them before federal and state courts, administrative agencies, and mediation and arbitration panels. Her experience includes litigating all manner of business disputes.

In mid-November, I had the honor of speaking to new admittees to our bar in both morning and afternoon sessions in our Supreme Court building. These admission ceremonies are coordinated by the Judicial Branch and open to any new admittee who wants to be sworn-in in-person. Families are invited, and typically attend with enthusiasm. The ceremony is presided over by our chief justice and is treated as a session of the Court, complete with court reporter, court marshal, and all the formalities of an oral argument. Attendees heard remarks from Justice Bright and each came up to the podium to introduce themselves and get a photo with Chief Justice Mullins. In short, it's a lovely and I believe fairly unique event honoring the newest members of our bar.

I focused my remarks at the ceremony on the importance of professionalism, particularly civility. The theme felt appropriate considering that the CBA's principles of professionalism, long included in the materials for any CLE we sponsor, will be published as a preamble to our Rules of Professional Conduct in January. I reminded new admittees that our adversarial process need not, and indeed should not, be hostile. That is especially true in a bar as small as ours, and in these times, when it can seem that outrage is rewarded over understanding. I asked them to remember that as the newest members of our profession, their actions do not only reflect on them as individuals, but on our profession as a whole.

These moments are not just milestones for the new admittees, but also opportunities for all of us in the legal community to reaffirm our commitment to civility and professionalism. Each year, we gather to honor the achievements of these new lawyers and share in the excitement of their entry into the bar. However, this is also an opportunity for members of the bar, both new and old, to acknowledge the profound responsibility that comes with the privilege of joining this profession. I encouraged the newest members of our bar to give back to the profession by taking on pro bono matters and by mentoring law students as well as younger students who may be considering going to law school in the future.

Traditionally, the CBA coordinates a reception to follow each ceremony, which takes place across the street at the Capitol building. Other bar associations in our state, including local, county, and affinity bars, are invited to join the CBA in tabling at the reception to welcome new admittees and invite them to join our organizations. The receptions are usually well attended, and this year was no exception. The CBA added to that experience this year with a separate evening reception the following week, at which members of our Young Lawyers Section and of our governing bodies mingled with new admittees at Gouveia Vineyards.

I had the pleasure of meeting and talking with new admittees at both events and I was universally impressed by their achievements and their goals. At least four people I spoke with are applying for positions as public defenders, following through on a commitment to justice and service that led them to law school. Several new admittees are currently working as temporary assistant clerks in courts across the state, gaining practical experience in shaping their early careers and looking forward to planned work in areas such as nonprofit law and public policy. I spoke with a young woman who had just joined her father's practice, to his obvious delight and pride. Several new lawyers had joined firms, including one at a large personal injury firm and another at a mid-sized general practice firm. I was impressed by one new admittee who is now working full-time at a law firm where she

Image credit: Brian | Adobe Stock

clerked part-time throughout law school and is already mentoring several other new associates who joined the firm without first clerking there.

in mind when interacting with new or younger lawyers, whether in your offices, in a courtroom or conference room, or at a bar or alumni association event. Make

> ***"The interactions I have with new lawyers, young lawyers, and law students in my role as president of this organization never fail to remind me of the joys of being a lawyer, of being a member of this association, and of serving in this leadership role. These experiences demonstrate again and again that the law is not only about rules and regulations but also about the relationships we build within our community."***

The interactions I have with new lawyers, young lawyers, and law students in my role as president of this organization never fail to remind me of the joys of being a lawyer, of being a member of this association, and of serving in this leadership role. These experiences demonstrate again and again that the law is not only about rules and regulations but also about the relationships we build within our community.

I urge all of our members to keep that

the extra time to connect with the newer members of our bar. Invite them to an event with you. Share a meal or a coffee with them. Compliment them on a brief or an argument—even if you're on the opposite side of the aisle. Those brief interactions may not mean much to you, but they mean a lot to the newest members of our profession.

Case in point: At the ceremonies, Justice Bright spoke about one of his formative experiences as a younger lawyer, when an opposing attorney took him out to dinner and gave him tips on his performance earlier that day that the attorney knew he would use against him the following day. He appreciated it so much he still talks about it today. As mentors to these new lawyers, we have an opportunity—I would say an obligation—to take those opportunities to promote a culture of professionalism, civility, and respect in our profession.

And as the holiday season is upon us, I ask that in your interactions with new lawyers, you also remind them that they are not only lawyers. Our profession can at times be lonely and difficult, and it's important for all of us to remember to do things that make us happy. That means, of course, spending time with our families and friends, but also spending time on hobbies big and small. Go for a run, read a trashy romance novel, try a new restaurant, foster a dog, knit a sweater, build a bookcase, volunteer for a park cleanup, play a pickup basketball game. Garden, learn a TikTok dance, train for a triathlon, bake a cake, build a Lego village, lead a church group, listen to your favorite music or podcast, paint a canvas or a wall, go fishing. These things bind us all to communities outside of the law, make us all human, and help us connect to each other as individuals.

CBA Members Participate in American Cancer Society's Making Strides Against Breast Cancer Event

On October 5, over 20 members from the Connecticut Bar Association rallied behind the fight against breast cancer by participating in the American Cancer Society's Making Strides Against Breast Cancer: Making Strides of Connecticut walk in Hartford's Bushnell Park. In the weeks leading up to the event, CBA members also contributed over $1,400 in donations to help the American Cancer Society fund breast cancer research, provide patient support, and advance its advocacy efforts.

The CBA members that partook in the walk gathered at Bushnell Park at 10:00 a.m. where they were joined by hundreds of other participants from across the state. Following the walk, the members gathered at Hartford's Urban Lodge Brewing to enjoy a post-event celebration.

CBA members and staff gathered together in Hartford's Bushnell Park for the start of the walk.

CBA Hosts 10th Annual Diversity, Equity, and Inclusion Summit

Representatives of the organizations in Connecticut who have signed on to the Connecticut legal community's Diversity and Inclusion Pledge & Plan were presented with certificates of recognition at the end of this year's summit.

The Connecticut Bar Association hosted its 2025 Diversity, Equity, and Inclusion (DEI) Summit on October 24 at CT State Community College's Gateway campus in New Haven, marking the 10th annual summit held since 2016. Over 150 attendees, including signatory organizations of the Connecticut legal community's Diversity and Inclusion Pledge, gathered for the summit to hear from the event's prestigious speakers, who provided presentations focused on reflection, planning, and strategic conversations about the state of DEI in Connecticut. Since its inception, the DEI Summit has served as a central forum for legal professionals to evaluate progress, share best practices, and strengthen cross-sector collaboration in advancing

diversity, equity, and inclusion throughout Connecticut's legal system.

The Summit began with welcome remarks provided by CBA President Emily A. Gianquinto. "Whether you are joining us for the first time or you have been part of our journey since 2016, thank you very much for being here," stated President Gianquinto as she addressed the audience. "Your presence speaks volumes about your commitment to building a more inclusive and equitable legal profession in our state." She continued by noting that the summit provides a vital space in an increasingly challenging time where attendees can "… come together to reflect, learn, and act."

As in previous years, the first substantive program of the summit featured Judge Cecil J. Thomas presenting the annual Signatory Data Collection Overview. He provided the summit's attendees with aggregated demographic trends and diversity metrics organized by employer type and legal sector. Among his findings, Judge Thomas pointed out that overall diversity decreases when comparing demographics in associate level positions with those of more senior stakeholders at firms, highlighting the need for increased DEI focused retention strategies. He also noted that Connecticut currently falls behind the national average for diversity in the legal profession.

Workplace culture strategist Michelle Silverthorn led the summit's interactive workshop, From Barriers to Breakthroughs: Designing Equity, during which attendees examined systemic barriers and root causes related to inherent biases and developed plans for practical solutions to create positive changes. She asked attendees to participate in several exercises that revealed and addressed their unconscious inclinations and biases related to race and gender. "At the core of diversity are people, people who are very different," stated Silverthorn. "We have different identities, religions, cultures, sexual orientations, and backgrounds and we speak different languages, and we come from different generations, and every single one of us counts. Every one of us."

Diversity, Equity, and Inclusion Summit Committee Members: (From L to R) CBA DEI Summit Committee Chair Hon. Cecil J. Thomas, Michelle Duprey, CBA President Emily A. Gianquinto, CBA Director of Access to Justice & Equity Song Kim, CBA DEI Committee Co-Chair Mallori D. Thompson, Jasjeet Sahani, Olta Shkembi, Jody L. Walker Smith, Alix Simonetti, CBA Executive Director Lina Lee, Troy M. Brown, Hon. Karen L. Demeola, and CBA Community Engagement Lead Kiarra Lavache

Judge Cecil J. Thomas

Michelle Silverthorn

Dr. Khalilah L. Brown-Dean

Professor Kenji Yoshino

The summit's third program, Lessons from the Past, Prospects for the Future: Roots, Routes, and Realities, was presented by Wesleyan University's Dr. Khalilah L. Brown-Dean. Using a historical lens, she traced the roots of DEI efforts in the United States to show how they shape the legal and social realities of today. She particularly focused on the idea that DEI efforts are not new but have instead been a key aspect of the development of the United States since its founding. "Diversity Equity and Inclusion in its fullest sense should be a central issue for the legal profession," stated Dr. Brown-Dean. "And the reason for that is because I believe the health of our democracy depends on the public's faith that the law belongs to all of us. Not just some of us."

Returning from last year's summit, New York University's Professor Kenji Yoshino once again discussed the various political and legal ramifications of maintaining, expanding, or restricting DEI initiatives. He emphasized that, while the current administration has attempted to tamp down DEI efforts made by private companies and firms, the legality of such programs remains virtually the same as it was a year ago. Professor Yoshino also pointed out that when organizations withdraw their DEI programming, they can incur serious risks ranging from discrimination lawsuits to public backlash.

The final presentation of the summit was provided by Harvard University's Dr. Robert W. Livingston, who focused on the central concepts detailed in his newest book, *Play the Game. Change the Game. Leave the Game.: Pathways to Black Empowerment, Prosperity, and Joy.* Dr. Livingston argued that America experiences white supremacy as an addiction, with white American society exhibiting periods of cultural "sobriety" and "relapse" in terms of popular sentiment towards racial and equity issues. He advised that Black Americans have several effective methods to approach this situation: "playing the game" (working within mainstream white systems), "changing the game" (challenging the status quo in an effort to upend white supremacy), and "leaving the game" (carving out new spaces not dominated by a culture of white supremacy). Expanding on these concepts, Dr. Livingston stated, "You can play the game, leave the game, you can leave the game and change the game. So an example might be James Baldwin moving to France so that he was in a less oppressive environment, so that he could write some of his most revolutionary works. And you can play the game to change the game."

Following the summit's presentations, President Gianquinto distributed certificates of recognition to the organizations in Connecticut who have signed on to the Connecticut legal community's diversity and inclusion pledge. CBA DEI Committee Co-Chair Mallori Thompson then provided the summit's closing remarks. "Our purpose is clear, and we have the means to make it happen," stated Attorney Thompson. "So the challenge is to remain energized and focused on ensuring our efforts translate into meaningful change and into full participation for everyone until the next generation can walk into the workplace without ever knowing that they were once 'inferior.'"

The Summit reflects the significant efforts of the CBA Diversity, Equity, and Inclusion Committee, and in particular its Summit Subcommittee, over the course of the past year. The CBA extends its gratitude to the Diversity, Equity, & Inclusion Summit Committee members for organizing an engaging summit and to all our sponsors for making this year's event possible.

Dr. Robert W. Livingston

CBA Volunteers Participate in Community Service Day

As part of its 150th Anniversary Celebrations, the Connecticut Bar Association (CBA) hosted Community Service Day on September 20 with volunteers from the association participating at service sites in Bridgeport, Wallingford, and Hartford. In Bridgeport volunteer attorneys met with members of the public at the city's North Branch and New Field Libraries and provided free legal advice in the areas of family law, landlord/tenant issues, wills, personal injury, and immigration. In Wallingford, a group of volunteers worked with Connecticut Foodshare to assist in sorting and packing donated food, stocking shelves, and preparing food items for distribution to families across Connecticut. In Hartford CBA volunteers joined the nonprofit organization KNOX for a cleanup of Hartford's Rocky Ridge Park. Volunteers planted and mulched perennial flowers in the park and performed general park clean up. After finishing their work for the day, the volunteers at each of the sites attended celebrations at local restaurants, where they enjoyed appetizers provided by the CBA.

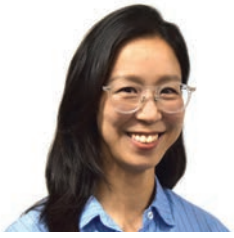
CBA Volunteers at Connecticut Foodshare in Wallingford.


CBA Volunteers at Newfield Library in Bridgeport.


CBA Volunteers at North Branch Library in Bridgeport.


CBA Volunteers at Rocky Ridge Park in Hartford.

CBA Welcomes New Director of Access to Justice and Equity



The Connecticut Bar Association is pleased to announce the addition of Attorney Song Kim as its Director of Access to Justice and Equity. In this role, Attorney Kim is responsible for developing and coordinating the CBA's initiatives to improve access to the legal system for indigent and underserved individuals, leading related legislative and public policy advocacy, and advancing the CBA's efforts in Diversity, Equity, and Inclusion.

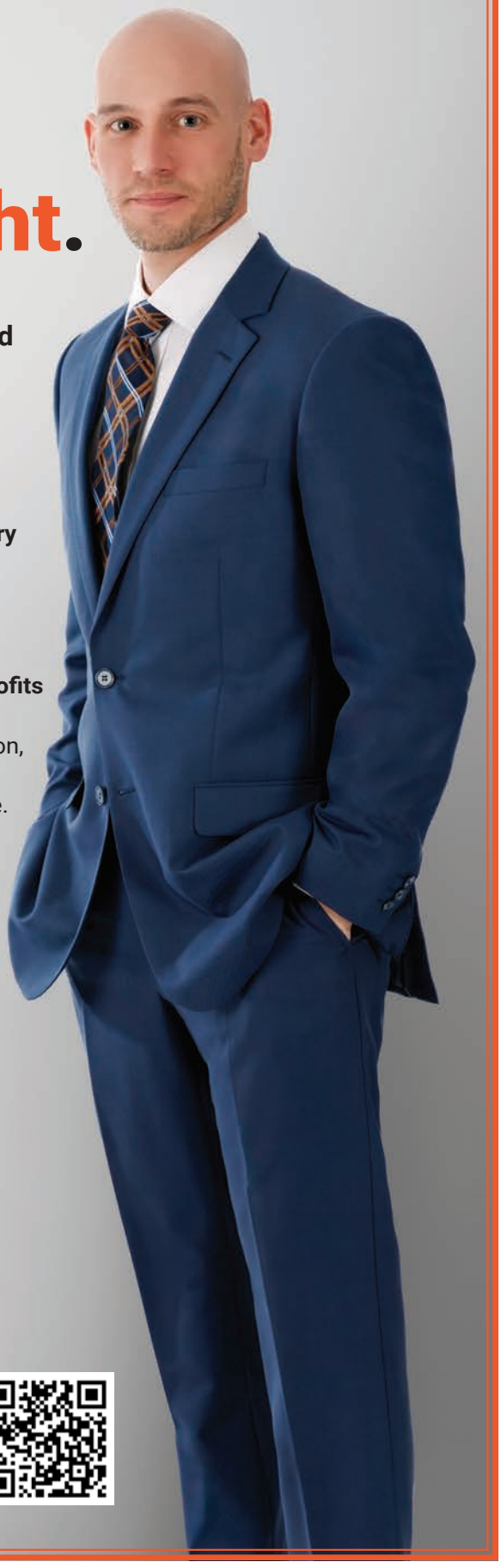
As a litigator, Attorney Kim has represented immigrant workers in federal forced labor and trafficking cases, individuals seeking humanitarian forms of immigration relief, and other clients facing barriers to justice. She has coordinated pro bono programs in partnership with large corporate law firms in New York City, and has been deeply engaged in community education and policy advocacy at the intersection of workers' rights, immigrants' rights, and criminal justice reform.

Attorney Kim has served as a Board Fellow at Integrated Refugee and Immigrant Services (IRIS) in New Haven and Board Member of the Immigrant History Initiative. She served as the Issues Committee Co-Chair of the Asian American Bar Association of New York (AABANY), where she helped develop and advance issue positions to promote equity and visibility within the legal profession and broader community.

Attorney Kim earned a BA from the University of Southern California, a JD from New York University School of Law, and an MBA from the Yale School of Management.

"Access to justice is not just about legal representation—it's about ensuring that every person, regardless of background or circumstance, can fully participate in our legal system. I'm honored to join the CBA to work with members to build bridges between our profession and the communities we serve, and to support the advancement of diversity, equity, and inclusion within our vibrant legal community," said Attorney Kim.

When Nursing Homes Fail, I Fight.



I'm Jeremy D'Amico. I'm a trial lawyer. A fighter. And when nursing homes abuse, neglect, or injure their residents, I don't let it slide.

I've spent my career preparing for these battles.

I trained at the elite, invitation-only Gerry Spence Trial Lawyers College. I've taken on big cases — at 30, **I stood in front of a jury and helped win one of the largest personal injury verdicts in Connecticut history.**

No one outworks me. No one is more prepared.

Nursing homes promise care and dignity, but too many put profits over people. When facilities are understaffed, undertrained, or simply indifferent, the elderly suffer. Bedsores, falls, malnutrition, medication errors, abuse — these aren't just accidents. They're preventable, inexcusable failures. And I hold them accountable.

I don't push paper. I take cases to trial.

I build airtight cases, find the evidence nursing homes try to hide, and make sure juries see the full truth. I fight the good fight for families who trusted a facility to care for their loved one, only to be met with silence and excuses when something goes wrong.

If your client or a loved one has suffered in a nursing home, don't wait. ***Call me.*** This isn't just a case — it's someone's life. And I'll fight like hell to make it right.

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Young Lawyers Section Hosts 2025 Pro Bono Fair and Golf Event

On the evening of October 14, over 80 members of the Connecticut Bar Association Young Lawyers Section (YLS) gathered at the Hartford Golf Club for the section's 2025 Pro Bono Fair and Golf Event. Despite the cancellation of this year's pre-fair round of golf due to inclement weather, section members were still able to attend a reception featuring 16 booths representing various pro bono organizations.

During the reception, each of the pro bono organizations provided brief introductions to their services and were on hand to provide information about volunteer opportunities to the YLS members at the event:

- CBA Pro Bono Programs (Free Legal Advice Clinics, CT Free Legal Answers, Lawyers in Libraries, CBA Pro Bono Connect)
- Center for Family Justice, Inc.
- Center for Indigenous Peoples Rights
- Connecticut Council for Non-Adversarial Divorce
- Connecticut Institute for Refugees and Immigrants
- Connecticut Legal Services
- Connecticut Veterans Legal Center
- Hartford Public Library, The American Place
- Legal Food Hub, a project of Conservation Law
- New Havel Legal Assistance Association
- Pro Bono Partnership
- State of Connecticut Judicial Branch Civil and Family Volunteer Attorney Programs
- Statewide Legal Services of Connecticut, Inc.
- The Children's Law Center of Connecticut
- The Connecticut Probate Courts, Office of the Probate Court Administrator
- Victim Rights Center of CT, a program of the CT Alliance to End Sexual Violence

The reception began with a welcome from past YLS Chair and past CBA Assistant Secretary-Treasurer Sarah O'Brien, who introduced the event's keynote speaker, Connecticut Superior Court Judge Elizabeth Stewart. In her remarks, Judge Stewart spoke about her role in the Connecticut Judicial Branch's Access to Justice Commission as the chair of the pro bono subcommittee. She noted that the subcommittee focuses on two main issues, stating, "One is to meet the demand in Connecticut for pro bono legal services, and the other is to increase the supply of those services being provided by our attorneys." She thanked those present for dedicating their time to pro bono work and encouraged them to make connections with the organizations at the event.

(L to R) YLS Treasurer Jermaine A. Brookshire, Jr.; Alison J. Toumekian; YLS Chair-elect Sara Bonaiuto; YLS Chair Paige M. Vaillancourt; Hon. Elizabeth Stewart; Sara O'Brien; and CBA President Emily A. Gianquinto.

Representatives from each of the organizations with booths at the event provided brief explanations of the services and opportunities they provide.

CBA Members Volunteer at Stand Down 2025

This year, CBA Members continued to provide pro bono legal services to veterans at the Connecticut Department of Veterans Affairs' annual Stand Down event, which the CBA has assisted with since 1998. On September 19, Veterans and Military Affairs Section Chair Jason Fragoso and law student Leo Bolock represented the CBA and provided in-person assistance to attendees at the Stand Down event in Rocky Hill.

Stand Down was established after the Vietnam War and provides veterans with "one-stop" access to a range of programs and services offered by state and federal agencies, Veterans organizations, and community-based non-profits.

(L to R) Law Student Leo Bolock and Veterans and Military Affairs Section Chair Jason Fragoso at the Rocky Hill Stand Down Event

Ethical Risks of an Uninformed Use of Artificial Intelligence

By KAREN L. DOWD

I write this article with a caveat: I still have a landline, so reliance on me for the technical side of Artificial Intelligence ("AI") would be foolhardy. That said, the Rules of Professional Conduct are universal, and definitely can come into play when a lawyer uses AI. Yes, artificial intelligence offers many time-saving benefits for lawyers, but any use must be undertaken with careful consideration of the Rules of Professional Conduct. By now everyone has heard of cases in which a lawyer files a brief which includes false citations or quotations, fabricated by AI. Not only does such a filing result in an irate court and possible sanctions, it raises ethical considerations. But there are less obvious concerns to consider when engaging AI to assist in legal work.[1]

The most obvious Rule is 1.1, which mandates that "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."[2] The Official Commentary specifically notes that lawyers must stay up to date with changes in the law "including the benefits and risks associated with relevant technology."[3] Rule 1.1 does not obligate a lawyer to use AI, but it does mandate that any lawyer using AI take the time to understand how the program works and what use your data will be put to by the program.

Certainly, the lawyer must know the risks attendant to relying on AI. The most well-known risk if that sometimes AI may "hallucinate," that is, produce "ostensibly plausible responses that have no basis in fact or reality."[4] One of the first reported cases in which reliance on AI went awry is *Mata v. Avianca, Inc.*[5] In *Mata*, plaintiff's lawyers' filing included citations and quotations to cases that simply did not exist. The author had used ChatGPT, which fabricated the cases. The lawyer did not review the product before filing.[6] Regardless of who drafts materials for the lawyer to file, it is always the signing lawyer's obligation to ensure that the contents are accurate and true. The failure to check the accuracy of the work created by AI prior to filing is a potential violation of Rule 1.1.

The *Mata* lawyers compounded their problems as they did not immediately retract the filing and apologize to the court when confronted.[7] They ultimately had to concede that six of the cited cases were fabricated by ChatGPT.[8] The failure to admit the error and be forthright with the court is a potential violation of Rule 3.3, Candor to the Tribunal. The *Mata* court imposed Rule 11 sanctions, ordering the lawyers to notify their client of its ruling, to write to each judge falsely identified as an author of the six fabricated cases, and to pay a penalty of $5,000. The moral of the *Mata* case, and those that followed, is to always check the product created by AI (or anyone else if you are signing it).[9] "At the very least, the duties imposed by Rule 11 require that attorneys read, and thereby confirm the existence and validity of, the legal authorities on which they rely."[10]

And don't just check to make sure that the cases, and any quotations, exist. Also check to make sure the filing accurately presents the cases cited. There may be terrific quotes in a case which actually just set forth the arguments requested, but they may not reflect the decision reached. AI may find a quote that matches exactly what you were looking for, but may fail to recognize that the quote does not represent the court's holding. Reliance on those quotes is not just embarrassing, but also may violate Rules 1.1, 3.1[11], 3.3, or 8.4.[12]

Review of the cases also potentially leads to other arguments which could be made in furtherance of the client's position. Anyone using Westlaw and Lexis knows that how the research is framed may dramatically change the results given. Also, each state has its own lingo, and one state's "word of art" may never appear in another's states law. Failure to use independent critical thinking on strategy may be a basis for a violation of Rule 1.1.

The *Mata* case demonstrates the more obvious risk of using AI. But there are other potential issues a lawyer should consider. Depending upon the program used, the use of AI potentially risks the disclosure of a client's confidential information. See Rule 1.6, Confidentiality of Information.[13] As noted in the Official Commentary, "[t]he confidentiality Rule . . . applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source." Rule 1.6 confidentiality is broader than the attorney-client privilege, which is the evidentiary rule used to enforce the lawyer's obligations. Moreover, it is worth remembering that a lawyer's confidentiality obligation applies to disclosure of client information outside one's law firm, but also to those within the law firm who are precluded from access because of conflicts.

The key is understanding how the particular AI program uses data to create its product. AI programs often use information provided by users to train the programs in other contexts, and for other clients. Thus,

the programs "learn" from the data input by all of the program users. For instance, ChatGPT's terms of use note that "[w]e may use Content to provide, maintain, develop, and improve our Services, comply with applicable law, enforce our terms and policies, and keep our Services safe."[14] Thus, if the client's protected information is revealed in the use of the AI program, that information may now become part of the program, and may be revealed in subsequent product by the program. Most publicly accessible AI programs provide Opt-out provisions that limit use of the information.[15] Before using any AI program, be sure to check the terms of use.

If a lawyer is in a firm that has exclusive use of an AI program, meaning that the data inputted by the firm is used exclusively by that program, that lawyer still has to be cognizant of potential issues of improper disclosure. Depending upon the size of the firm, there may be personnel within the firm that are subject to ethical screens for conflict purposes, or the client may have imposed restrictions on the use of the information. Inputting data into an exclusive AI program risks disclosure of that data within the firm. As noted above, I have no technological expertise[16] so I do not know the solution for that issue, though I am sure IT experts can handle it. But the burden is on the lawyer to protect client confidences, and it is the lawyer who will be subject to sanctions if there is an issue.

The risk of accidental disclosure of confidential material raises a question of when a lawyer must tell a client that AI will be used while handling the case. Rule 1.4 provides that "(a) A lawyer shall: . . . (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished."[17] While lawyers are relatively free to determine the means by which they achieve the client's objectives, there may be reasons specific to the particular client that counsel in favor of disclosing the intended use of AI. In proactively disclosing the anticipated use of AI, you can control the narrative and make clear its intended use. For instance, a lawyer can note the cost-saving in relying on AI for basic document review, while making clear to the client that the critical strategy decisions will be made by the lawyer, and not AI. The client may have preferences in favor of, or opposed to, the use of AI, and it is best to discover this at the beginning of the representation.[18]

Addressing the issue of AI at the beginning of the representation is also best if the lawyer intends to bill for the use of the AI program. Rule 1.5(b) provides that "[t]he scope of the representation, the basis or rate of the fee and expenses for which the client will be responsible, shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate."[19] Expenses are subject to the same reasonableness standard as the fees. Generally, "overhead" costs, such as renting office space and maintaining computers, may not be charged to the client, but are "subsumed within" the lawyer's fee.[20] As an example, using AI within existing software to check grammar in a document would be part of the office's overhead. But the use of a separate AI program for document review or research may be charged as an expense, provided it has been disclosed to the client. Keep in mind that only the actual expense for the client's use, with no surcharge, should be charged.

On the reasonableness of fees, if AI allows a lawyer to finish a project in an hour, which normally would have taken 10 hours, the lawyer may only bill for the actual time spent, the hour. Similarly, if the lawyer starts an AI project, then turns to something else while it runs, the lawyer can only charge for the actual time spent on the project. I remember when Westlaw and Lexis first came onto the scene (yes, I am that old), and some lawyers grumbling because they wanted to bill the client for

Image credit: Deemerwha studio | Adobe Stock

how long it would have taken if they did the research in the books, as they were "losing" money. That would be a violation of Rule 1.5. There may be alternate ways to bill for certain AI-related projects, such as flat fees for particular work or value-based billing, but no matter what the arrangement, the fee must be reasonable and the client must be fully informed. AI is a useful tool that allows you to do other work in the time saved, or work less and smell the roses more, but does not change the ethical rules on billing.

A return to the *Mata* case reveals how an AI-induced error can lead to additional ethical concerns. As noted, the *Mata* lawyers did not immediately assess their error, withdraw the compromised filing, and apologize to the court, earning the wrath of the court and sanctions. See also *People v. Lerin H. (In re Baby Boy)*,[21] in which the lawyer maintained that false cases were in fact correct, resulting in sanctions, including the disgorgement of fees to the client. Compare to *Benjamin v. Costco Wholesale Corp.*,[22] in which the lawyer admitted that she skimmed the product which included fictitious cases and arguments that undermined her argument. The Court found that such action was "grossly negligent,"[23] but noted that the lawyer had repeatedly expressed her remorse and had taken classes on her own initiative on AI in concluding that a $1,000 fine was a sufficient penalty. The reliance on a "fake" case is problematic, but the failure to recognize and address it once it has been pointed out may be a violation of Rules 3.1 and 3.3, and certainly will enrage the court.

Another consideration for choosing the right AI program, and in assessing its output, is the risk of biased responses. An AI program learns from the data, inputs and algorithms to which it is exposed. As such it is subject to many of the personal or stereotypical biases of the data providers.[24] Careful review of any AI product should also consider the possible influence of such factors.

One final note: always check the local rules or standing orders of the court on the disclosure of use of AI. For instance, Judge Vernon D. Oliver of the District of Connecticut has a "Policy on AI Research" putting all parties on notice "that the Court has a no-tolerance policy for any briefing (AI-assisted or not) that hallucinates legal propositions or otherwise severely misstates the law."[25] A number of courts around the country require disclosure to the court that a filing was created using AI.[26] Failure to comply with the disclosure requirement would likely be a violation of the local ethics rules, as well as the court's order, even if there was no issue with the AI-generated product.

All new technology comes with growing pains, both in how the technology works and in how we use it. But a lawyer's ethical obligations are universal and applicable to the new technology. Care must be given to learning the new technology, to reviewing what it does with the client's information, and to reviewing the output.

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NOTES

[1] This article addresses some of the potential issues with the Rules of Professional Conduct which may arise with the use of AI in the legal world. Anyone with concerns about their use of AI should review Formal Opinion 512 "Generative Artificial Intelligence Tools," by the American Bar Association Standing Committee on Ethics and Professional Responsibility, July 29, 2024, which offers an in-depth analysis.

[2] Conn. Rules of Professional Conduct 1.1.

[3] Official Commentary to Conn. Rule of Professional Conduct 1.1.

[4] Formal Opinion 512, p. 3. For instance, see Open AI Terms of Use Effective December 11, 2024. ("Given the probabilistic nature of machine learning, use of our Services may, in some situations, result in Output that does not accurately reflect real people, places, or facts.") See *Myers v. State*, 2025 Conn. Super. LEXIS 2112, *7 n. 4 (Conn. Super. Ct. 2025);

[5] 678 F. Supp. 3d 443 (S.D.N.Y. 2023).

[6] *Id.* at 451.

[7] 678 F. Supp. 3d at 451-56.

[8] *Id.*

[9] *Hall v. Academy Charter School*, Docket No. 2:24-cv-08630-JMW, 2025 LX 315547 (E.D.N.Y. Aug. 7, 2025) provides both an example and an overview of cases around the country involving AI-generated hallucinations.

[10] *Park v. Kim*, 91 F.4th 610, 615 (2d. Cir. 2024) (referring counsel to the Court's Grievance Panel for citation to false case).

[11] "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law." Conn. Rules of Professional Conduct 3.1.

[12] "It is professional misconduct for a lawyer to: . . . (3) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation." Conn. Rules of Professional Conduct 8.4.

[13] "(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)." Conn. Rules of Professional Conduct 1.6. Rule 1.9 similarly provides that "A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter. . . (2) reveal information relating to the representation except as these Rules would permit or require with respect to a client." Conn. Rules of Professional Conduct 1.9. See also Rule 1.18 as to using information from a prospective client.

[14] Open AI Terms of Use Effective December 11, 2024.

[15] For instance, Open AI provides that "If you do not want us to use your Content to train our models, you can opt out by following the instructions in this article. Please note that in some cases this may limit the ability of our Services to better address your specific use case." Open AI Terms of Use Effective December 11, 2024.

[16] I am not overstating this point.

[17] Conn. Rules of Professional Conduct 1.4. See also Rule 1.2, which states that "a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued." Conn. Rules of Prof'l Conduct 1.2.

[18] As an example, a lawyer intends to rely heavily on AI for document review and factored that into the proposed flat fee, but did not disclose the intended use to the client. If the client objects to the use of AI after the representation has commenced, that could be costly to the lawyer, who now has to perform that review personally.

[19] Conn. Rules of Professional Conduct 1.5.

[20] ABA Formal Ethics Opinion 93-379.

[21] 2025 Ill. App. LEXIS. 1008 (App. Ct. Of Ill. 4th Dis., 2025).

[22] 779 F. Supp. 3d 341 (U.S.D.C. E.D.N.Y. 2025).

[23] *Id.* at 349.

[24] See, for example, "What is AI bias?" https://www.ibm.com/think/topics/ai-bias; "When AI gets It Wrong: Addressing AI Hallucinations and Bias." https://mitsloanedtech.mit.edu/ai/basics/addressing-ai-hallucinations-and-bias/

[25] https://www.ctd.uscourts.gov/content/vernon-d-oliver

[26] https://www.ropesgray.com/en/sites/artificial-intelligence-court-order-tracker

Connecticut Bar Association

Connecticut Bar Association Marks 150 Years of Legal Excellence

Hundreds of attendees gathered on October 16 at Anthony's Ocean View in New Haven to celebrate 150 years of the Connecticut Bar Association (CBA) at its Anniversary Gala. This black-tie celebration marked a historic milestone for the CBA and brought together members from throughout the state to honor the CBA's rich history and enduring commitment to supporting the legal profession since its founding in 1875. All proceeds from the event are being used to support the CBA's access-to-justice programs, which provide vital assistance to many of Connecticut's residents.

Guests enjoyed dinner, dancing to live music performed by Eight to the Bar, a photo booth, and a silent auction that featured an array of unique items and exciting experiences. The gala also featured the exhibition, *150 Years of the Connecticut Bar Association*, which outlined major moments from the CBA's history and included photos of all its past presidents. Another nod to the CBA's history took the form of the event's signature cocktail, *The Seymour*, a maple walnut Old Fashioned named in honor of the CBA's first president, Origen Seymour.

During dinner, CBA President Emily A. Gianquinto, Connecticut Attorney General William Tong, and American Bar Association (ABA) House of Delegates Chair Jonathan Cole provided remarks to the gala's attendees. Attorney Cole also presented President Gianquinto with a resolution signed by the ABA Board of Governors honoring the CBA for a century-and-a-half of service to the legal profession.

In her address to attendees, President Gianquinto noted the important role the association plays in supporting access-to-justice. "Tonight is not just about celebrating our association's history—we're also shaping and preparing for our future, which means that all proceeds from tonight are going towards our access-to-justice initiatives," stated President Gianquinto. "We all know access-to-justice is an issue critical to not just our legal community but to our larger Connecticut community, and we intend to expand our impact in that area." Following her remarks, President Gianquinto introduced the premiere of the video *Passing of the Gavel: 150 Years of Excellence*, which featured reflections from past CBA presidents on their experiences leading the association, the challenges they faced, and the accomplishments they achieved.


Connecticut Attorney General William Tong

The Connecticut Bar Association thanks all those who helped make the gala a resounding success as well as those who have dedicated themselves to supporting the CBA over the years.


ABA House of Delegates Chair Jonathan Cole and CBA President Emily A. Gianquinto

Image credit: panom | Getty Images


150th Anniversary Gala


150
Anniversary Gala


ABA
AMERICAN BAR ASSOCIATION RESOLUTION
in Honor of the Connecticut Bar Association

Visit ctbar.org/CBA150 to view more photos from the 150th Anniversary Gala or the video, *Passing of the Gavel: 150 Years of Excellence.*

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Between a Rock and a Hard Place: Defending Against Legally Meritless Claims in FINRA Arbitration

By JEFFREY PLOTKIN and ELI YAMPEL

I. FINRA Arbitration's Dual Challenges for Respondents' Counsel

In both federal and state courts, defendants can move to dismiss a complaint that fails to state a viable legal claim at the outset of litigation.[1] Such dispositive motions, which courts routinely grant, increase judicial economy and shield defendants from the pressure to settle frivolous claims to avoid high litigation costs.

Respondents in arbitration proceedings before the Financial Industry Regulatory Authority ("FINRA") Office of Dispute Resolution—the main forum for broker-dealer/customer and intra-industry claims—do not have a similar escape hatch. FINRA rules effectively prohibit arbitrators from dismissing claims for legal insufficiency until after the conclusion of the claimant's presentation of its case-in-chief at a full evidentiary hearing.[2] This procedural restriction arguably undermines the purported virtues of arbitration: speed, efficiency, and cost-effectiveness.[3]

FINRA's approach, designed to protect claimants' right to be heard, carries substantial consequences for respondents. Any claim, no matter how legally tenuous, can force respondents to incur significant litigation expenses over an extended period—even if dismissal as a matter of law would be all but guaranteed in court. As a result, settlements in FINRA arbitration are often motivated by pragmatic business pressures rather than the legal merit of claims.

Compounding this dilemma, FINRA arbitrators generally are not bound by the law and are empowered to dispense justice as they see fit. Further, respondents who receive an adverse FINRA arbitration award based on a legally meritless claim cannot successfully move a court to vacate the award on the ground of mere legal error. Instead, respondents must satisfy stringent statutory or judicially-created grounds to vacate the award that are all extremely difficult to satisfy.[4]

Respondents in FINRA arbitrations therefore face a "rock and a hard place" dilemma: they must bear the burdens, costs, and distractions of defending against legally meritless claims all the way through the evidentiary hearings, and then may be faced with adverse awards lacking a legal basis that courts are unlikely to set aside. This article provides guidance to counsel on how best to navigate these twin dilemmas.

A. The "Rock": Restrictions on Prehearing Dismissal

FINRA's rules enshrine the principle that claimants have the right to a full evidentiary hearing on their claims. FINRA Rules 12504 (for customer cases) and 13504 (for intra-industry cases) make clear that motions to dismiss on any grounds prior to the conclusion of the claimant's case-in-chief are strongly discouraged.[5]

Beyond generally discouraging the prehearing dismissal of claims, FINRA's rules preclude arbitrators from granting motions to dismiss unless they successfully establish one of three narrow grounds for dismissal: (i) the claimant released the claim in writing; (ii) the respondent was not associated with the relevant account, security, or conduct; or (iii) the claimant previously brought a claim regarding the same dispute against the same respondent and that claim was fully and finally adjudicated on the merits.[6] None of these exceptions include a failure to state a claim. Arbitrators typically defer any ruling on a motion to dismiss for failure to state a claim until after the claimant's case-in-chief at hearing.[7]

FINRA's rules also contain procedural quirks that reflect its reluctance to dispose of cases prior to a hearing. Unlike in court, a respondent must file its answer prior to moving to dismiss.[8] The motion to dismiss must be filed as a standalone document.[9] Each member of the arbitration panel must decide the motion together,[10] and the panel may not grant the motion prior to a prehearing conference, unless the conference is waived by the parties.[11] In order to grant the motion, even in part, the panel must issue a unanimous written decision containing its reasoning—a higher burden on the panel than the requirements of a post-hearing award, for which no explanation is required.[12] And the rules shift fees for losing parties: if the panel denies a motion to dismiss, it must assess the costs of the hearings on the motion against the moving party, and if the panel deems a motion to dismiss frivolous, it must award the opposing party its costs and attorneys' fees.[13]

For respondents, this means that even a plainly meritless claim almost always triggers an extensive adversarial process, including wide-ranging discovery and hearing preparation. The combination of business disruptions and mounting costs often compels respondents to settle meritless claims because there is no efficient way to quickly resolve such claims as a matter of law.

B. The "Hard Place": High Standard for Vacatur

Unlike the decisions of trial courts, arbitration awards are not subject to standard appellate review. The only recourse is a motion to "vacate" the award, either under the Federal Arbitration Act[14] (the "FAA") or state arbitration statute.[15] Because courts give extreme deference to the arbitration process, they will not vacate an arbitration award based on mere errors of law or fact.[16] The FAA and most state statutes allow vacatur only if the award was procured by corruption, fraud, or undue means; there was evident partiality or corruption; the arbitrators committed serious misconduct; or the arbitrators exceeded their powers.[17]

However, courts interpret the FAA as implicitly providing an additional, non-statutory ground for vacatur—where arbitrators act in "manifest disregard of the law."[18] Under this judge-made doctrine, a court may vacate an arbitration award only if it finds that the arbitrators (i) were aware of a well-defined and clearly applicable legal principle; (ii) appreciated its controlling nature; and (iii) nevertheless willfully refused to apply it.[19] State courts, too, may apply the FAA—including the manifest disregard standard—in deciding motions to vacate FINRA arbitration awards, because the matters contemplated in contracts containing FINRA arbitration clauses (securities transactions or employment in the securities industry) involve interstate commerce.[20]

The manifest disregard of the law doctrine remains a narrow but vital avenue for challenging FINRA arbitration awards that flout explicit legal standards. FINRA's Arbitrator's Guide emphasizes that "[a]rbitrators are not strictly bound by legal precedent or statutory law. However, it is important that arbitrators not manifestly disregard the law. By doing so, your award may be vacated. In other words, if the parties have provided the panel with the law, the law is clear, and it applies to the facts of the case, the arbitrators should not disregard it."[21] Nevertheless, it is exceedingly difficult to show manifest disregard of the law, especially because FINRA awards are usually perfunctory—merely stating the types of claims asserted, which party prevailed, and the amount of any damages awarded—without any explanation or reasoning for the panel's decision.[22]

II. Strategic Considerations for Respondents' Counsel

Defending against legally meritless claims in FINRA arbitration requires counsel to, among other things, create a clear and compelling record for a potential motion to vacate. On a motion to vacate for manifest disregard of the law, courts will presume that the arbitrators did not know the law and will impute to arbitrators only knowledge of governing law identified by the parties during arbitration.[23] Thus, respondents' counsel must treat every phase of the arbitration as an opportunity to educate the panel on the controlling, applicable law and the risk of vacatur for manifest disregard of it.

A. At the Pleading Stage

Counsel must carefully assess whether the law truly renders the claim meritless, and ensure the law is current, controlling, and from the correct state jurisdiction or federal circuit. Determining the correct governing law is essential but sometimes overlooked, despite the potentially ruinous consequences for citing and arguing the wrong law to the arbitrators.

While arbitrators generally honor a contractual choice-of-law clause, such clauses are commonly limited in scope, providing only that the contract will be governed or construed pursuant to the laws of a particular state. Such narrow provisions apply to the contract's interpretation and breach, but may not control non-contractual claims, including those sounding in tort or statute.[24] In the absence of an applicable choice-of-law provision, the panel should look to the choice-of-law principles of the arbitration's forum.[25] Generally, when there is no substantive conflict across jurisdictions, the law of the forum state will be applied.[26] By contrast, a genuine conflict of law requires the panel to analyze which jurisdiction has the "greater interest" in the matter, guided by the forum's own interest analysis or comparable framework.[27]

For federal claims, yet another layer of analysis may arise. In the absence of binding Supreme Court precedent, arbitrators should look to the law of the circuit where the arbitration is sited. Counsel's ability to clarify circuit splits or unsettled questions of law can therefore prove decisive. Counsel bears the burden of educating the panel on any potential choice-of-law issue, offering a well-reasoned rationale for the choice of law to be applied, and demonstrating clearly that the selected legal rule is both explicit and controlling.

Beyond the choice-of-law considerations, effective pleadings frequently present the respondent's position in terms of fundamental fairness. Courts defer to arbitrators' resolution of disputes even when the resolution is fashioned out of the arbitrators' own sense of fairness as opposed to a strict application of the law.[28] In that regard, it is typically effective to emphasize to the panel that businesses and individuals who act in conformity with the law should not incur liability simply because arbitrators may feel free to impose rough justice. The panel will likely be receptive to the argument that clear and universal legal norms must guide their decision-making because (i) businesses and individuals need to be able to operate under established legal norms that declare permissible conduct in order to properly function in the economy and society; and (ii) alternative dispute resolution offers a different path to justice, not a substitute for the rule of law.

Respondents' counsel must also be in tune with the procedural nuances of FINRA arbitration. If a respondent decides strategically to file a motion to dismiss for failure to state a viable legal claim (notwithstanding the FINRA rules that prohibit the pan-

el from granting such motions), the respondent must first file an answer stating all legal defenses with supporting authority, and only then may the motion follow in a separate document.[29] Though not required by rule, good practice is to attach copies of all controlling authority that precludes a claim, as this will bolster the argument that the panel was fully apprised of that authority. A carefully constructed motion to dismiss will educate the panel on the law and their obligation to apply it, and will preserve vital legal issues for subsequent review, whether by the panel after the conclusion of the claimant's case-in-chief at the evidentiary hearing or by a court reviewing a motion to vacate an adverse award.

If the panel actually grants a prehearing motion to dismiss for failure to state a legal claim, the courts will not necessarily vacate the award on the ground that the panel exceeded its powers under FINRA Rule 12504. For instance, in *Yarmak v. Penson Fin. Servs. Inc.*,[30] petitioner moved the New York Supreme Court to vacate a FINRA arbitration award that granted respondent's pre-hearing motion to dismiss the claim. Petitioner argued that the panel's dismissal of her claims prior to the completion of her case-in-chief violated FINRA Rule 12504's admonition that prehearing dismissal of claims is "discouraged." The court denied the motion to vacate and confirmed the award. On appeal, the Appellate Division affirmed the ruling, holding that the arbitrators had plenary authority to interpret Rule 12504 as they saw fit (based on FINRA Rule 12409)[31] and that any error in the panel's interpretation constituted "a mere error of law that does not provide a basis for vacatur."[32]

Image credit: Irina_Strelnikova | Getty Images

B. At the Prehearing Stage

The prehearing stage in FINRA arbitration provides respondents' counsel essential opportunities to reinforce legal arguments and methodically build the record. Taking full advantage of prehearing conferences and the prehearing briefing process allows counsel to focus the panel's attention on pivotal legal defects in the claims. Targeted interventions—such as insisting that the Panel's scheduling order provide for prehearing briefing addressing the viability of the legal claims—help frame the dispute with clarity and precision.

Respondents' counsel may also consider filing motions *in limine* aimed at excluding evidence proffered in support of legally unsupported theories. However, such motions are not without significant procedural considerations, because under FINRA's regime, such a motion may be treated as a prehearing motion to dismiss. Arbitrators are expressly cautioned in the Arbitrator's Guide to be vigilant for the misuse of *in limine* motions as mere delay tactics.[33]

Respondents' counsel should also consider whether to try and persuade claimants' counsel to file a joint request to the panel for an "explained decision," a fact-based award that states the general reasons for the arbitrators' decision (although it may not necessarily contain detailed legal analysis or precise calculations).[34] Requests for explained decisions must be supported by all parties and filed no later than the prehearing exchange of documents and witness lists.[35] While explained decisions are limited in scope, they can provide insight for potential post-award review and help clarify the panel's application—or disregard—of governing law.

C. At the Hearing and Beyond

The hearing phase provides a critical forum to reinforce and clarify legal arguments for the arbitrators. Counsel should use opening statements to highlight key legal standards, supporting each point with clear citations to the controlling law. During witness examinations, returning to these standards as issues arise underscores their centrality. Most importantly, at the close of the claimant's case-in-chief, respondents' counsel should make a verbal motion to dismiss the claims on legal grounds, incorporating by reference prior briefing on the issue, reciting the well-defined and explicit legal principles at issue, arguing that the panel's hands are effectively tied by the precedent, and noting for the record that the panel has been given a full opportunity to apply the correct standard. Thorough record-building is essential both for the panel's own deliberation and to preserve issues for appellate review under the manifest disregard doctrine in the event the award needs to be challenged.

Though rare, arbitration awards can be overturned when counsel meticulously crafts a record. *Barclays Cap. Inc. v. Shen*[36] illustrates how calculated legal advocacy can set the stage for successful vacatur. There, Barclays sought to vacate an award issued by a National Association of Securities Dealers ("NASD") (the predecessor to FINRA) arbitration panel on the grounds of manifest disregard of the law under the FAA.[37] Barclays argued that, despite the fact that New York law affords brokerage firms absolute immunity from monetary damages for defaming terminated employees in Form U5 filings, the arbitration panel awarded punitive damages to claimant Shen on her Form U5 defamation claim. The New York Supreme Court observed that the applicable law had been "vigorously argued before the panel in both oral and written motions," and concluded that the arbitrators, fully aware of this authority, deliberately chose to ignore it.[38] This constituted manifest disregard of law.[39]

While most motions to vacate FINRA awards rely on federal law—particularly the doctrine of manifest disregard of the law—state law may offer additional, albeit narrow, grounds to challenge an award. Connecticut's statutory bases for vacatur generally mirror the FAA's.[40] In addition to the typical statutory grounds for vacatur, Connecticut caselaw provides two more: (i) the award erroneously rules on the constitutionality of a statute; or (ii) the award violates clear public policy.[41] Although success on these alternative bases is rare, counsel should be aware of their existence and carefully prepare the record to preserve arguments in the event any state law ground for vacatur becomes relevant. This comprehensive, detail-oriented approach not only fulfills counsel's duty to the client but also serves to promote integrity and predictability within the arbitral process.

III. Conclusion

Effective advocacy in FINRA arbitration requires diligent and repeated education of the panel throughout every phase of the proceeding concerning the governing legal standards and their applicability. Because motions to vacate for manifest disregard of the law are rarely granted, the record supporting such an application must be methodically developed from the outset of the arbitration. Key legal arguments should be presented both in writing and orally, and the rationale for applying the law of the correct jurisdiction must be clearly articulated and supported with appropriate authority. In the end, professional and focused advocacy—addressing the substantive law while adhering to the appropriate procedural processes—remains the most reliable defense against legally meritless claims.

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NOTES

[1] *See* Fed. R. Civ. P. 12(b)(6); Conn. Practice Book § 10-39(a).

[2] *See infra* Section I.A. Similarly, FINRA rules do not allow for the equivalent of a summary judgment motion after the close of discovery. *See* Fed. R. Civ. P. 56(a); Conn. Practice Book § 17-44.

[3] *Comprehensive Orthopaedics & Musculoskeletal Care, LLC v. Axtmayer*, 293 Conn. 748, 761 (2009) (contrasting arbitration with judicial proceedings and noting "the very purpose of arbitration" to be "efficient, economical and expeditious resolution").

[4] *See infra* Section I.B.

[5] FINRA Rules 12504(a)(1), 13504(a)(1) ("Motions to dismiss a claim prior to the conclusion of a party's case in chief are discouraged in arbitration."). FINRA's official guide for arbitrators underscores this principle, noting that "motions to dismiss filed prior to the conclusion of a party's case-in-chief are discouraged and granted only under limited circumstances." FINRA Dispute Resolution Services Arbitrator's Guide, March 2025 Edition ("Arbitrator's Guide") at 49.

[6] FINRA Rules 12504(a)(6)(A)–(C), 13504(a)(6)(A)–(C).

[7] FINRA Rules 12504(b), 13504(b).

[8] *Compare* Fed. R. Civ. P. 12(b) *and* Conn. Practice Book §§ 10-6, 10-7 *with* FINRA Rules 12504(a)(2), 13504(a)(2).

[9] FINRA Rules 12504(a)(2), 13504(a)(2).

[10] FINRA Rules 12504(a)(4), 13504(a)(4).

[11] FINRA Rules 12504(a)(5), 13504(a)(5).

[12] *Compare* FINRA Rules 12504(a)(7), 13504(a)(7) (an order granting a prehearing motion to dismiss "***must*** be accompanied by a written explanation.") (emphasis added) *with* FINRA Rules 12904(f), 13904(f) (a post-hearing "award ***may*** contain a rationale underlying the award.") (emphasis added), 12904(g), 13904(g) (an explained decision is only required when all parties request one).

[13] FINRA Rules 12504(a)(9), (10); 13504(a)(9), (10).

[14] 9 U.S.C. § 1 et *seq.*

[15] *See, e.g.*, Conn. Gen. Stat. § 52-407aa *et seq.*

[16] "A federal court cannot vacate an arbitral award merely because it is convinced that the arbitrat[or] ... made the wrong call on the law." *Shenzhen Lanteng Cyber Tech. Co. v. Amazon.com Servs., LLC*, 2024 WL 4356307, at *2 (2d Cir. Oct. 1, 2024) (citation omitted and alteration in original); *see also Ahmed v. Oak Mgmt. Corp.*, 348 Conn. 152, 187–88 (2023), *cert. denied*, 144 S. Ct. 2520 (2024) (noting a court reviewing an arbitration award must "put aside its judicial sensibilities" due to the deferential standard of review).

[17] 9 U.S.C. § 10(a); *accord* Conn. Gen. Stat. § 52-407ww(a) (generally governs agreements to arbitrate dated on or after October 1, 2018); Conn. Gen. Stat. § 52-418(a) (generally governs agreements to arbitrate dated before October 1, 2018). See Conn. Gen. Stat. §§ 52-407cc, 52-407eee.

[18] "[A] court may set aside an arbitration award if it was rendered in manifest disregard of the law." *Key Inv. Servs. LLC v. Oliver*, 2025 WL 1523350, at *2 (2d Cir. May 29, 2025); *see also Wilko v. Swan*, 346 U.S. 427, 436–37 (1953), *overruled on other grounds by Rodriguez de Quijas v. Shearson/Am. Exp., Inc.*, 490 U.S. 477 (1989).

[19] *Key Inv. Servs. LLC*, 2025 WL 1523350, at *2 ("An arbitration award 'manifestly disregards the law,' however, 'only in those exceedingly rare instances where' '(1) the arbitrators knew of a governing legal principle yet refused to apply it or ignored it altogether, and (2) the law ignored by the arbitrators was well-defined, explicit, and clearly applicable to the case.'") (quoting *Smarter Tools Inc. v. Chongqing SENCI Imp. & Exp. Trade Co.*, 57 F.4th 372, 383 (2d Cir. 2023)).

[20] *Hottle v. BDO Seidman LLP*, 268 Conn. 694, 702 (2004) ("The arbitration act; 9 U.S.C. §§ 1 through 16; governs written arbitration agreements that pertain to contracts involving interstate commerce."); *Ungerland v. Morgan Stanley & Co.*, 52 Conn. Supp. 164, 170–71 (Super. Ct. 2010) ("[I]f the original contract involved interstate commerce, then the substantive law of the Federal Arbitration Act applies, no matter that this case is in state court"), *aff'd*, 132 Conn. App. 772 (2012); *Pendergast v. Wells Fargo Clearing Servs., LLC*, 2024 WL 136912, at *2 (D. Conn. Jan. 12, 2024) ("Contracts that involve interstate commerce are governed by the FAA, not the analogous Connecticut statute").

[21] Arbitrator's Guide at 64.

[22] FINRA Rules 12904(f), 13904(f) (a post-hearing "award ***may*** contain a rationale underlying the award.") (emphasis added); 12904(g), 13904(g) (noting an explained decision is only required when all parties jointly request one).

[23] *Success Sys., Inc. v. Maddy Petroleum Equip., Inc.*, 316 F. Supp. 2d 93, 100 (D. Conn. 2004) ("[C]ourts should assume that the arbitrator is 'a blank slate unless educated in the law by the parties.'") (quoting *Goldman v. Architectural Iron Co.*, 306 F.3d 1214, 1216 (2d Cir. 2002).

[24] Connecticut courts examine the wording of the choice-of-law provision to determine whether it governs extra-contractual claims or is limited to the construction of the contract. *Norwich Com. Grp., Inc. v. Quintalino*, 2024 WL 811851, at *3 n.3 (D. Conn. Feb. 26, 2024) ("A narrow choice of law provision . . . may not apply to related tort claims.") (alteration in original); *Grey Mountain Partners, LLC v. Insurity, Inc.*, 2017 WL 5641378, at *5 (Conn. Super. Ct. Oct. 18, 2017) (discussing the varying scope of choice-of-law provisions depending on their breadth).

[25] *Bos. Prop. Exch. Transfer Co. v. Pierce*, 2013 WL 6916696, at *6 (Conn. Super. Ct. Dec. 2, 2013) (""In determining the governing law, a forum applies its own conflict-of-law rules. . . .") (quoting *Gibson v. Fullin*, 172 Conn. 407, 411–12 (1977)).

[26] *See, e.g., Ultimate Nutrition, Inc. v. Leprino Foods Co.*, 747 F. Supp. 3d 371, 379 (D. Conn. 2024).

[27] Connecticut applies a "'most significant relationship' test found in §§ 6 and 145 of the Restatement (Second) of Conflict of Laws." *Bos. Prop. Exch. Transfer Co.*, 2013 WL 6916696, at *11.

[28] *See generally* Ahmed, 348 Conn. at 192 ("[A]rbitrators are generally afforded greater flexibility in fashioning remedies than are courts.") (quoting *Benihana, Inc. v. Benihana of Tokyo, LLC*, 784 F.3d 887, 902 (2d Cir. 2015)); *Norwich Roman Cath. Diocesan Corp. v. S. New England Contracting Co.*, 164 Conn. 472, 475 (1973) (noting that the arbitrators were empowered to "grant any remedy or relief which they deem just and equitable."); *id.* at 478 (observing that a referee reviewing the award "was not required to review the evidence on which the award was based or to ensure that the judgment of the arbitrators was either factually or legally correct.").

[29] FINRA Rules 12504(a)(2), 13504(a)(2).

[30] 146 A.D.3d 642 (1st Dep't 2017).

[31] "The panel has the authority to interpret and determine the applicability of all provisions under the Code. Such interpretations are final and binding upon the parties." FINRA Rule 12409; *see also* FINRA Rule 13413.

[32] *Yarmak*, 146 A.D.3d 642.

[33] "Parties may try to include other issues for ruling when filing motions in limine, including requests to dismiss one or more of the alleged claims. Arbitrators should treat any requests for dismissal of claims as motions to dismiss and respond to them in accordance with FINRA's motion to dismiss rules. As with all motion practice, arbitrators should be alert to the possible misuse of motions as tactics to delay the hearing." Arbitrator's Guide at 51.

[34] FINRA Rules 12904(g), 13904(g).

[35] *Id.* In cases involving legally dubious claims, claimants' counsel likely will determine that an explained decision is not in the best interests of their clients and decline to join the request.

[36] 20 Misc. 3d 319 (Sup. Ct., New York County 2008).

[37] *Id.* at 320.

[38] *Id.* at 326.

[39] *Id.*

[40] Conn. Gen. Stat. § 52-407ww(a); Conn. Gen. Stat. § 52-418(a). § 52-407ww(a) also includes additional defenses based on the lack of an agreement to arbitrate or a lack of notice, but neither is likely to apply to a FINRA arbitration.

[41] *Garrity v. McCaskey*, 223 Conn. 1, 6 (1992).

Book Review
How to Succeed as a Trial Lawyer

By FREDERIC S. URY

This article reviews How to Succeed as a Trial Lawyer, Third Edition, *by Stewart Edelstein.*

There is a scene in the movie *To Kill a Mockingbird* where the jury has delivered a verdict of guilty. The trial was an emotional and draining event for the defendant's trial lawyer, Atticus Finch. We see a clearly dejected Atticus Finch packing his briefcase. What happens next is told through the eyes of his daughter, Jean Louise (better known as Scout).

> Someone was punching me, but I was reluctant to take my eyes from the people below us and from the image of Atticus's lonely walk down the aisle. Said Reverend Sykes…"Miss Jean Louise stand up. Your father's passin."

Atticus Finch had the respect of many members of the community because they knew that the only thing that stood between themselves, and the lynch mob was their lawyer.

Atticus Finch was a country lawyer, but he was also a trial lawyer. He earned respect over many years. The same can be said for becoming a successful trial lawyer. Learning the trial craft is more like a marathon than a sprint.

The legal profession has changed significantly since Atticus Finch's time. Technology has been the driver for most of the change. The impact of artificial intelligence on the future of how we practice law is still unknown.

But one thing is for sure – no matter how the profession changes, we will still need trial lawyers.

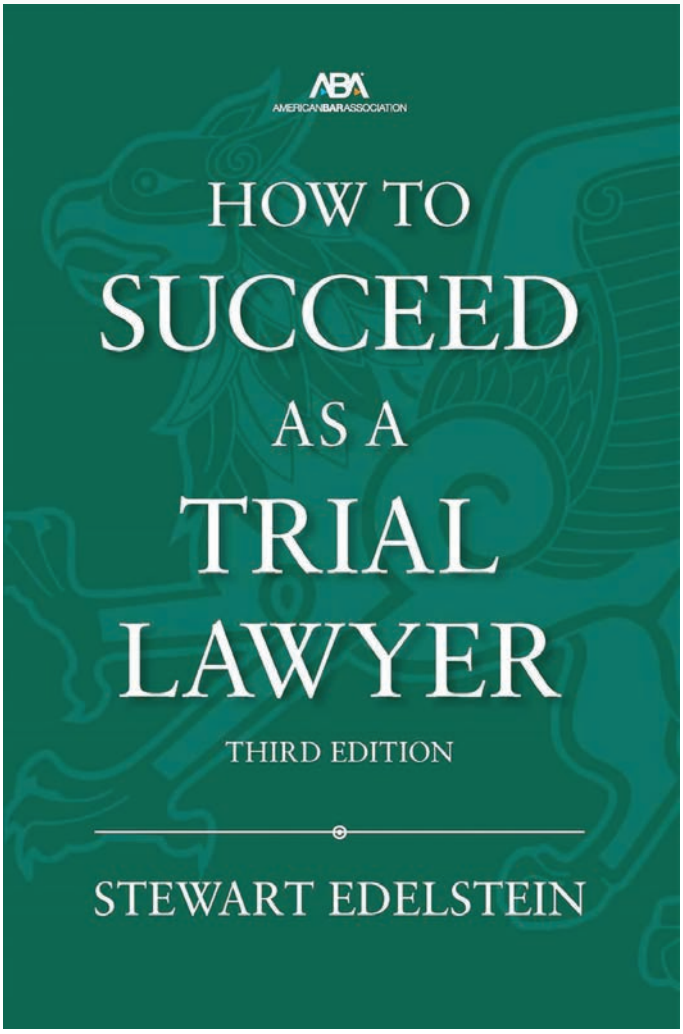
Becoming a trial lawyer is no easy task. Especially if you want to be good at it.

Richard F. Ziegler succinctly summarized what being a trial lawyer is all about in the Prologue to Attorney Stuart Edelstein's 2017 edition of *How to Succeed as a Trial Lawyer.*

> Litigation is a challenging vocation. It demands not only intellectual ability but also attention to detail, perseverance, creative problem solving, persuasiveness, focus, integrity, and the ability to press the clients' position with enthusiasm, while maintaining sufficient detachment to provide the objective independent advice the client requires.

Attorney Stewart Edelstein has written a comprehensive book about *How to Succeed as a Trial Lawyer*. Not just how to be a trial lawyer, or how to try a case but how to *succeed* as a trial lawyer. The book, which is in its third edition (the first being in 2013 and the second in 2017), is an insightful guide into the essential skills and strategies required to excel in this role.

Attorney Edelstein talks about the importance of preparation and the knowledge of the law. He has written not only a practical approach to the subject but has blended theory with real-world examples, which gives even the most experienced attorney new insights into many of the aspects of being a trial lawyer. Becoming a successful trial lawyer means a lifetime of learning and honing your skills. This book not only will benefit the early career attorney but will be equally as helpful to the experienced trial lawyer



looking to refine his or her skills, or maybe just looking for a little inspiration.

Attorney Edelstein starts his book with clients. A lawyer friend of mine once said when asked about how he liked practicing law that it would be better if he did not have to deal with the clients. The comment may be funny and for some may be true, but clients are our life blood and for many trial lawyers, we need a continuous flow of new clients to have a successful law practice.

The important point that Attorney Edelstein makes in this chapter is how important it is to keep in mind the "reliance each of our clients places in our expertise, professionalism and (most of all) advice."

Attorney Edelstein points out how important the first conversation is with a new client. New clients are usually emotional and upset when they meet with you and often think that their world is falling apart. For some of our criminal clients, our first meeting is in jail or in lockup in the courthouse.

Over the years, I have found that it is critical to deal with client expectations and costs up front; this is really what they want to know. Attorney Edelstein lays out in a very succinct way how you handle these questions at the beginning of the engagement.

Each chapter has a Practice Checklist at the end which summarizes the content in the chapter. They are invaluable as reminders of the content and suggestions contained in each chapter.

In Chapter 2, Attorney Edelstein discusses how trying cases takes a team of professionals to prepare and try the matter before a judge or jury. Most lawyers are pulled in many different directions, with multiple court appearances and meetings during the week.

Attorney Edelstein covers how to handle and deal with the legal assistants and paralegals who are invaluable to developing a successful law practice. He points out that every successful trial lawyer must build a team of other lawyers in his or her firm along with lay and expert witnesses to try a case. The underlying theme in this chapter is that you will have to deal with many different types of people in your trial practice. How you deal with them and what they think of you is going to be critical to your success.

Your reputation among the bar and bench is critical for your success. Several judges have told me that they've encountered lawyers whose honesty they seriously questioned. You may have the best case but if the person deciding the case questions your character or truthfulness, you are in trouble.

Attorney Edelstein's list of things to do before the court in Chapter 2 may seem like things we should already know, but they are critical to being a successful trial lawyer. Being on time, being prepared, and most of all, being civil and professional really are the building blocks for becoming a well-respected attorney. Truthfulness and respect before the court is the foundation for developing that reputation.

Chapter 3 is all about writing. As Attorney Edelstein says at the beginning of the chapter "as a trial lawyer you will devote many hours to writing." The first section has a heading of "Think before you write." What we write and how we say it is so important. Attorney Edelstein's guidelines of how to choose words artfully are vital. Use strong verbs; avoid the passive; substitute a word for a phrase; eliminate unnecessary adjectives, adverbs, and jargon; and most of all, do not equivocate.

In our current world of emails and texts, Attorney Edelstein discusses how to write them and stay out of trouble. He also deals with writing complaints, answers, motions, jury instruction, settlement agreements, and appellate briefs. In short, this chapter covers the majority of what any good trial lawyer has to write or review.

Chapter 4 on discovery is comprehensive and detailed as it should be. As the author points out, many cases are won or lost in the discovery phase of litigation. Interrogatories, requests for admission, electronic discovery, and depositions are all dealt with in detail in this chapter.

Artificial intelligence is the world of the unknown, that is why Attorney Edelstein's Chapter 5 "How to Take Advantage of Artificial Intelligence Responsibly and Ethically," is so important. AI is the new frontier for all industries. Even if lawyers don't want to use it, our clients are going to insist that we incorporate it into the administration of their cases to "save money." We can be sure that our clients are checking our analysis and decisions with ChatGPT. The practice checklist in this chapter is a succinct list of considerations one must take into consideration in the brave new world of AI.

Chapter 6 discusses in detail alternative dispute resolution. How we resolve cases using alternative dispute resolution (ADR) has become a critical part of any trial practice. Most cases are settled, and ADR has become a large part of that process. Each trial lawyer has their own style, but there are so many important considerations raised in this chapter that even the most experienced practitioner will benefit from reading this chapter before any important mediation or arbitration.

Chapter 7 is all about court appearances. Going to court is what it is all about for any trial lawyer. The complexity of even what seems to be small matters is what

keeps most trial lawyers up at night. Often one of the reasons for reading this chapter is that for many lawyers new to trial law you don't even know what you don't know. This chapter is an excellent outline of the many aspects of any trial. You may not need every part of this chapter for a particular hearing, but having this chapter available for a future hearing when you need to examine an expert witness, or some other aspect of a trial covered by this chapter is invaluable even to the experienced practitioner.

What makes this chapter so relevant to anyone of any amount of experience are the anecdotes that the author presents. For example, the author asks, what do you do when you get a bad answer from your own witness? The answer -- don't panic. "Ask yourself if you have asked the question in a way that confused the witness. If so, rephrase the question." What great advice. Don't panic. Think. Regroup. All the hallmarks of a great trial lawyer.

The chapter of the book that I think is the most important is Chapter 8, "Succeeding in your Practice and in your Life." As I said at the beginning of this book review, your reputation is everything. How you practice law ethically and civilly with your colleagues and in the court will lay the foundation for the building of that reputation.

Practicing law is a marathon. Learning how to try cases and all the aspects of getting a case ready for a trial is a large part of that marathon.

All trial lawyers must learn how to deal with stress and the demands of a long trial. Exercise and a life outside out of law are so important. The author not only talks about a life outside of the law, but he walks the talk by being a skilled musician, squash player and teacher.

The law is a tough business. Two lawyers in court means that one of them is going to lose. Losing a trial is a tough day for any trial lawyer, but it happens. How you deal with the loss is an especially important part of the practice.

Even when the jury came back with the guilty verdict in *To Kill a Mockingbird*, Atticus Finch still received the respect of the folks watching him leave. They stood out of respect because they knew that he had tried his best. His reputation and how he carried himself was what was respected and honored. Not the loss or win.

In our present-day practice, whether we win or lose, we will have to go back to the office and deal with all our other clients who have needs and questions about their very important cases. Practicing trial law is a grind and can be emotionally and physically draining. That is why dealing with stress is so important. Drug use, alcohol dependence and mental health are large problems within the legal profession. Attorney Edelstein's discussion about taking care of yourself is timely and critical for any practicing attorney no matter how long you have been a member of the bar.

So why should anyone read *How to Succeed as a Trial Lawyer??* The answer is really pretty simple. Because who do people call when they are arrested, when they get sued, when they are injured, when their house is being foreclosed, when their spouse walks out the door, or they get fired from a job? They call a trial lawyer.

If you want to be on the other end of that phone call, then Attorney Edelstein's book is a must read for anyone serious about a career in trial law. He has combined practical advice and easy to read practical points about all aspects of developing a trial practice in one easy to read book.

There will never be a computer or website that can replace a trial lawyer who has given his or her all during a trial. Who, at the end of the trial, win or lose, will pack away his or her papers and books, and only by the strength or his or her presentation and demeanor in that court room, and the respect that they have earned in the community, will they hear the words, "Miss Jean Louise stand up. Your father's passin."

Attorney Edelstein's book will make you a better lawyer. That should be reason enough to read this book.

Frederic S. Ury *is a partner at Pullman & Comley, LLC He is an experienced trial lawyer in criminal and civil matters.*

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Lessons Learned from the Culture Wars

How Language Shapes Justice, Division, and Dialogue

By JUSTICE RICHARD A. ROBINSON (RET.)

For over six decades I have watched the culture wars unfold, not as a distant observer, but as someone deeply invested in the way language shapes our society. What strikes me most is how words, once born of hope, solidarity, and justice, have been weaponized. Language, which should unite and clarify, has instead become a battlefield. Terms that began with positive intent are politicized, distorted, and recast as threats. This transformation is not accidental; it is strategic. And it is dangerous.

Words are consequential; They frame debates, shape perceptions, and influence policy. When a word like *equity* is rebranded as "special treatment," or the word, *woke,* a word rooted in Black culture meaning awareness of injustice is mocked as hypersensitivity, the shift is deliberate. It is meant to delegitimize movements, silence advocates, and sow division.

The underlying reason is power. Control over language shapes the broader narrative. When terms are redefined in this manner, appeals for fairness are reframed as favoritism, expressions of empathy are characterized as weakness, and demands for justice are portrayed as radicalism. This linguistic manipulation is a way of reshaping public consciousness without ever passing a law. The strategic alteration of language not only distorts public understanding but also makes it increasingly difficult for people with differing viewpoints to engage in meaningful dialogue.

Without a mutual understanding of key words and terms, meaningful dialogue becomes nearly impossible. One way to obtain that mutual understanding is to agree to use a shared language before starting to discuss difficult issues. An agreed upon definition of important words and terms provides a foundation for participants to express their perspectives, listen to each other, and to seek common ground. However, even with agreed upon definitions, conversations can quickly become strained. Differing viewpoints, personal experiences, and emotional investments often make it difficult for people to continue the discussion without frustration or misunderstanding.

When words carry different meanings for each participant, the conversation can stall or devolve into conflict. For example, words like "equity" or "woke" may evoke pride and hope for some, while triggering skepticism or resentment in others. This divergence is not just about semantics; it reflects deeper divides in values and lived experiences. Establishing a shared language is not a one-time act, but an ongoing process that requires patience, humility, and a willingness to revisit definitions as the conversation evolves.

Ultimately, the challenge is not only to reclaim the original meanings of words, but also to create spaces where people can acknowledge their differences and still move forward together. This is the hard work of dialogue: holding space for discomfort, seeking clarity, and striving for understanding even when agreement seems out of reach.

The redefinition of language is not just semantic; it has real consequences. When empathy is dismissed, compassion fades. When equity is distorted, fairness is undermined. When movements like Black Lives Matter are mischaracterized, accountability is lost. The danger lies in how these shifts normalize cynicism and delegitimize the struggle for justice.

Words matter because they shape law, policy, and culture. If we allow them to be twisted, we risk losing the very tools we need to build a fairer society.

These are some of the key lessons that I have learned:

- **Reclaiming origins is essential.** Teaching and learning the true meaning of words and terms is an act of justice.
- **Empathy is strength.** Despite attempts to dismiss it, empathy remains foundational to advocacy.
- **Vigilance is required.** We must guard against manipulations that distort fairness into favoritism.
- **Solidarity matters.** Many of these terms come from Black culture and social justice movements; honoring their roots is part of honoring truth.

I have also learned that progress is not only about statutes or policies, but also about meaning. Words like *affirmative action, equity,* and *woke* emerged from struggles for justice. Their negative rebranding is a strategic effort to undermine fairness and inclusion. The lesson is clear: we must reclaim language, insist on truth, and uphold the dignity of words. Only then can we foster a society that values justice not as a threat, but as a promise.

Key Terms and Their Rebranding

Affirmative Action

- ***Original meaning:*** Expanding opportunity for historically excluded groups. The policy was designed to actively address the effects of long-standing discrimination by promoting equal opportunity in areas such as hiring, college admissions, and awarding government contracts.
- ***Rebranded meaning:*** "Reverse discrimination"

Diversity, Equity & Inclusion (DEI)

- ***Diversity*** is the presence and acceptance of differences that may include race, gender, religion, sexual orientation, ethnicity, nationality, culture, citizenship, marital status, life and career paths, socioeconomic status, educational background, workplace position, language or dialect, (dis)ability, age, religious commitment, or political perspective.
- ***Equity*** is different from equality. Equality provides the same resources, opportunities, and treatment for all people without accommodating their backgrounds or resources. Equity, on the other hand, provides everyone with the unique resources and opportunities they need to reach an equal outcome. However, equality means providing equal access to everyone regardless of the differences in need, equity means recognizing that not everyone starts from the same place, and thus adjustments are made to address this imbalance. Equity is also something that is ongoing because new differences emerge, whereas equality remains the same because each individual is provided the same resources or access (NACE, 2023).
- ***Inclusion*** is the outcome of a welcoming environment that incorporates diverse perspectives and equitable practices to ensure all people participate in decision-making. Diversity is not the same as inclusion: Diversity is the presence and acceptance of differences whereas inclusion is the active, intentional, and ongoing engagement with diversity to achieve a culture in which different people can come together to work, feel comfortable and confident to be themselves, and feel valued.[1]
- ***Rebranded meaning:*** "Bureaucratic overreach" / "political correctness"

Woke

- ***Original meaning:*** The use of "woke" in relation to awareness has its roots in the 20th century, with scholars pointing to its use in Black culture as early as 1938, when folk singer Huddie Ledbetter explained that his song "Scottsboro Boys" was about the need to stay "woke" in Alabama. "I advise everybody to be a little careful when they go down through there," the performer widely known as "Leadbelly" cautioned. "Just stay woke. Keep your eyes open."[2]
- ***Rebranded meaning:*** "Hypersensitivity" / "extremism"

Black Lives Matter

- ***Original meaning:*** The original meaning of the phrase "Black Lives Matter" was a call to recognize and affirm the value of Black lives in the face of systemic racism and violence, particularly police brutality. It originated in 2013 as a hashtag (#BlackLivesMatter) after the acquittal of George Zimmerman in the shooting death of Trayvon Martin, an unarmed Black teenager. The phrase was intended to highlight the disproportionate impact of police violence on Black people and to demand that society value the lives and humanity of Black people as much as it values those of others.[3]
- *Rebranded meaning:* "Anti-police" / "divisive"

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Rules are Rules!

By CHARLES D. RAY

The "duty" one person owes to another is often a slippery proposition in the eyes of the law. Given the ramifications and breadth of policy issues associated with cases in which a duty is contested, it is no wonder that judges struggle to agree on an outcome. Such was the case in *Deer v. National General Insurance Co.*, 353 Conn. 262 (2025), where the question revolved around the duty an insurance agent owes (or does not owe) to his or her client.

From 2001 through 2017, the defendant agency and agent were the Deers' insurance brokers. Allstate insured the Deers' home and renewed their homeowner's policy 15 times during that timeframe. The Deers used a different broker from March 2017 through June 2019, but then restarted their relationship with the defendants, who procured a homeowners policy underwritten by Century-National and covering the period from June 27, 2019, until June 27, 2020.

During the term of the coverage, Century-National sent an email to the defendants, attaching an inspection report that noted a part of the exterior siding was missing on the Deers' house. The email went on to state that repairs were a condition of continued coverage and required proof of repair. Without a response, Century-National sent another email informing the defendants that "[d]ue to not receiving a response, the policy has been set to nonrenew." Century-National requested proof of repairs by no later than the policy expiration date. Century-National followed up in April 2020, with a nonrenewal notice that was sent by certified mail. But after three unsuccessful attempts to deliver the notice, the post office returned it to Century-National.

The policy expired on June 27, 2020 and you can guess what happened next. The

Image credit: athima tongloom | Getty Images

Deers' house burned to the ground weeks later and Century-National denied their claim because the home was not insured at the time of the fire. Litigation ensued. The Deers' claims included a common law negligence count against the defendant agency and agent, alleging that they had negligently failed to inform them that Century-National intended not to renew their policy. The defendants moved to strike the claim, which the trial court did. The Deers filed a substitute complaint and both sides filed motions for summary judgment. The trial court granted the defendants' motion and the Appellate Court affirmed that decision.

The Supreme Court affirmed, albeit in a 4-2 decision, with Justice D'Auria writing the majority opinion for himself, Chief Justice Mullins, and Justices Alexander and Dannehy. Justice McDonald wrote a dissenting opinion, which was joined by Justice Ecker. The majority was guided by the long-standing common law rule that "an insurance broker owes no legal duty to the insured after the broker has successfully procured the requested policy." Based on this rule, absent an agreement by the broker to arrange for the renewal or replacement of a policy, the broker has no duty to continue coverage for the insured. The primary rationale for this rule, according to the majority, is that it is the insurer's (not the broker's) "statutory and contractual obligation to notify an insured that the insurer intends not to renew the policy it had issued."

An exception to this general rule arises when an agent agrees, or gives some sign of assurance, that they will assist in the renewal of an insurance policy. And while a broker is not required to undertake this task, once they do, they "must exercise the level of skill, care and diligence appropriate under the circumstances . . . ." This includes a duty to notify the insured if the insurer declines to continue insurance coverage. In order to determine whether a broker has undertaken a duty to assist with renewal, a court must consider all of the circumstances and the extent to which they point to a broker having agreed to secure a policy.

With these "rules" as a backdrop, the Deers found themselves in a pickle. They were adamant that the defendants failed to pass along the notices, reports, and warnings that Century-National had sent to them regarding the need to fix the missing siding. But by denying any contact with Century-National, the Deers limited their ability to argue that the defendants had agreed to take on the task of procuring continuing insurance, which is the rule ultimately relied on by the majority. In the view of the majority, the defendants owed no duty to the Deers to inform them of the information they had received from Century-National, because they "did not agree to maintain or renew the plaintiffs' insurance coverage." And the professed silence of the defendants only hurt, rather than helped the Deers, because the silence they professed caused the majority to conclude that there was no evidence that the defendants continued to act on behalf of the Deers or sought to extend their coverage. According to the majority, the defendants' attempt to notify the Deers fell well short of an agreement to ensure continued insurance coverage. Similarly, the majority was unmoved by the length of time that the defendants had worked with the Deers providing homeowner's insurance.

The majority's final dagger relied on the fact that the legislature has required insurers to send notice of nonrenewal to insureds but has not required proof of actual receipt or actual notice. Sending the notice, as Century-National did, is enough to satisfy the insurer's statutory obligation. In the absence of any similar requirement regarding agents and brokers, the majority was content to decline the creation of a new legal duty as alleged by the Deers.

For Justices McDonald and Ecker, the majority dropped the ball in two respects. First, by refusing to allow the Deers a trial on whether an exception to the general rule existed and, second, by not revisiting the entire premise of the common law rule terminating an agent's duty once a policy is procured. On the first question, the dissent was of the view that an agent has an ongoing duty to notify their insured if the insurer declines to continue to insure the risk or threatens to do so, as Century-National did in this case. Unlike the majority, the dissent placed great emphasis on the fact that the Deers were adamant that the defendants never notified them of Century-National's report or threat to not renew their policy. Thus, the dissent concluded that the Deers were entitled to a trial because they "had no reason, at any time, to believe that their homeowners policy was at risk of either cancellation or nonrenewal." Put another way, the dissent focused on duty regarding continuation of an existing policy, while the majority looked to the question of whether the defendants had exhibited any indication of assisting with the renewal of the policy. With this change in focus, the dissent concluded that a duty was present.

In addition to disagreeing with the majority's view within the confines of existing law, the dissent was also of the opinion that the rule relied on by the majority was sorely in need of an update, given that insurance agents are not "passive conduits between insurers and insureds" and are, instead, "crucial actors within the insurance system," depended on by insureds for professional services. The dissent also relied on the evolution of agency law in general which, according to the dissent, "involves a circumstantial, fact-driven analysis in determining when an agency relationship terminates and the scope of that relationship."

In the end, the majority's application of the age-old general rule does seem a bit out of place. On the other hand, the prospect of a raft of insured versus agent lawsuits might well have carried the day for one or all of the majority votes. Duty is, after all, a slippery beast at best.

Charles D. Ray is a partner at McCarter & English LLP, in Hartford. He clerked for Justice David M. Shea during the Supreme Court's 1989–1990 term and appears before the Court on a regular basis. Any views expressed herein are the personal views of the author.

What is the YLS, and What Can It Do for You?

By PAIGE M. VAILLANCOURT

Paige M. Vaillancourt *is a partner at Rescia Vaillancourt, P.C. with offices in Connecticut and Massachusetts and an adjunct professor at Western New England University School of Law. Her practice involves a variety of bankruptcy matters, including debtor and creditor representation, workouts, and trustee litigation, as well as small business representation.*

Hey, you! Yes, you! I have some inside information about the Connecticut Bar Association's best kept open secret that I would like to share. **No, don't leave.** It *does* apply to you. You're a member of this bar, right? Then let me tell you about the structure and purpose of the Young Lawyers Section, a bit about what we do, and, most importantly, what we can do for you.

The YLS is made up of all members of the CBA in good standing who are not over the age of 37 or have been members of the Connecticut bar for less than six full bar years (making the term "young" a misnomer). As such, we have over 2,000 members in the Section! Our mission is to support and represent the new and young attorneys (and law students) of our bar and facilitate participation in the CBA and the American Bar Association—ensuring members have the knowledge and opportunities they need to succeed and a voice at the table when it comes to policies and law that affects them.

The YLS is governed by an Executive Committee, much like your "big bar" section has an executive committee. But ours is structured like a miniature CBA. We have officers, including a chair (that's me), a chair-elect, a treasurer, and a secretary. We oversee the administration of the YLS Executive Committee and YLS at large. We have senior advisors—Executive Committee members who have "aged" out of the YLS, but wish to stay on in an advisory role. We have ABA Young Lawyers Division liaisons, which include an ABA district representative and an ABA YLD delegate. They act as our bridge to the national bar and have been instrumental in advocating for rule changes and cementing the state's presence. Next, we have directors, which roles are similar to the CBA's various committees. They oversee CLE programming; law school outreach; legislative affairs; and pro bono, membership, mentorship, diversity, and well-being initiatives. Then we have our committee chairs (confusing, no?). They sit as ex-officio Executive Committee members of the "big bar" section to which they are appointed, thereby participating in section activities and initiatives, and are responsible for planning one CLE per bar year. Committee chair positions are created based on applications, meaning that if there isn't currently a committee chair for a "big bar" section, we can create that position if someone applies for it. Finally, we have our law school liaisons. These law students act as a bridge between the YLS and area law schools, making sure that students engage with the bar early and always have a friendly face in the room.

So, what do we actually do? A lot, really. Often when someone suggests a new program or event, my response is that the YLS is already doing it, or at least something similar. We organize a pro bono fair and golf event in October, which this year brought representatives from 17 pro bono and non-profit organizations and about 100 registrants together to improve access to justice. Our keynote was Judge Elizabeth J. Stewart, who spoke about state judiciary pro bono initiatives and the meaningful and positive impact that pro bono service has on the outcome of clients' cases. We organize a diversity dinner in February, which features a timely panel of area leaders and last year gained recognition from the ABA. We present the Ladder Award at the Pathways to Leadership Dinner in March and host the Women in the Law Golf Event in May, both in conjunction with the Women in the Law Section. We organize and co-host an average of 25 CLE seminars in a bar year, including those that are part of the Bridge the Gap series, which is focused on the nuts

and bolts of legal practice for those entering the field (or needing a refresher). Our holiday party in December benefits local charities, such as the Feeding Families Foundation, and our Horn of Plenty drive in November benefits Foodshare. This year, we replaced the Horn of Plenty and teamed up with the CTCPA's New and Young Professionals for a Day of Giving, benefitting Foodshare and Connecticut Children's Medical Center. We organize a number of social events, like axe throwing, family-friendly Yard Goats outings and apple picking, comedy nights, nature center walks, and spin classes. But some of our social events have a business purpose, like our recent etiquette dinner at Pullman & Comley, which was a very fun way to learn interview, networking, and business dining graces. We also serve on a variety of CBA committees and task forces and participate in a number of pipeline and community outreach programs. The YLS does a lot of work for the CBA, often in the background and often overlooked. But if you do look, we're there.

So, what can we do for you? Great question.

If you are a law student, use us to start making those valuable connections that can jumpstart your career. Come meet us. Bring a friend. Reach out to me and I will make sure that whichever event you choose to attend, you will have someone there to introduce you and make you feel welcome. Be on the lookout for the events we're organizing specifically for you. We'll be there to congratulate you when you get sworn in. I hope you'll get involved in this wonderful organization when you are.

If you are a new (and that includes new to Connecticut) lawyer, then I cannot impress upon you how beneficial this organization can be for your career if you get involved. You are already a member of the YLS at large. Coming to our events and serving on the Executive Committee immediately gives you access to members across a gamut of practice areas that are in similar personal and professional positions as you. The majority of my book of business started with YLS referrals and my Executive Committee roster is the first place I look when I need to refer something out. I have had so many wonderful opportunities to serve in a variety of roles because of my time with the YLS. We can find something that fits your interests and expands your extracurriculars outside of your day-to-day. If you want to be a leader and distinguish yourself, join the Executive Committee. Ask me how. But if you don't want to commit to a role, then come share a drink with us and we can talk about being a new parent, your upcoming wedding, how to get that raise, or how to start solo—we are your peers, and we are here to support you.

If you are a member of the "big bar," then we can do for you what you do for us. We can be a source of new blood to revitalize your section, committee, or program. But you have to let us in and give us room to grow. One of the best things I did while I was the YLS Commercial Law & Bankruptcy Section Committee Chair was organize a CLE mixer event. I was responsible for planning a CLE, but also wanted to facilitate in-person intergenerational networking post-pandemic. We made the event a CL&B Section Executive Committee meeting, which meant that the officers of that section did not need to plan anything for that month—the YLS did it for them. We offered a high-level panel topic to interest everyone and had a cocktail hour and dinner to give people time to mingle. We invited law students, lawyers at every practice level, and members of the judiciary. It was so well-received that it's become an annual event. The CL&B Section even co-hosted with the Business Law Section on occasion, breaking down silos and creating an even greater opportunity for networking. You do not need to plan a grand event, though. Tap a YLS member to offer a fresh perspective on your panel. Reach out when you need someone to serve on your committee or subcommittee. Call us when you want to involve law students. If you are a section chair and don't know who your YLS committee chair is, then please reach out to me. If you don't have a YLS committee chair and would like one, then we can make one. You just need to identify someone and send them my way. The lines of communication between the YLS and the "big bar" cannot remain broken. Help me repair that bridge from both ends and let's see our bar flourish.

"Our mission is to support and represent the new and young attorneys (and law students) of our bar and facilitate participation in the CBA and the American Bar Association—ensuring members have the knowledge and opportunities they need to succeed and a voice at the table when it comes to policies and law that affects them."

If you still have questions after this article, if you would like to find out more, please do not hesitate to reach out to me at paige@ctmalaw.com.

Thank you to the Business Law and Commercial Law & Bankruptcy Sections for their sponsorship of a YLS table at the 150th Anniversary Gala and for their continued support of our section. And thank you to the firms and businesses that consistently sponsor our programs.

Critical Race Theory (CRT)

- ***Original meaning:*** Critical race theory (CRT) is an approach to studying U.S. policies and institutions that is most often taught in law schools. Its foundations date back to the 1970s, when law professors including Harvard Law School's Derrick Bell began exploring how race and racism have shaped American law and society.
- The theory rests on the premise that racial bias - intentional or not - is baked into U.S. laws and institutions. Black Americans, for example, are incarcerated at much higher rates than any other racial group, and the theory invites scrutiny of the criminal justice system's role in that.[4]
- ***Rebranded meaning:*** "Radical indoctrination" in schools

Equity

- ***Original meaning:*** fairness or justice in the way people are treated, often, specifically: freedom from disparities in the way people of different races, genders, etc. are treated.[5]
- ***Rebranded meaning:*** "Special treatment"

Empathy

- ***Original meaning:*** the action of understanding, being aware of, being sensitive to, and vicariously experiencing the feelings, thoughts, and experience of another.[6]
- ***Rebranded meaning:*** "Weakness" / "naivety"

Social Justice

- ***Original meaning:*** Social justice, in contemporary politics, social science, and political philosophy, the fair treatment and equitable status of all individuals and social groups within a state or society. The term also is used to refer to social, political, and economic institutions, laws, or policies that collectively afford such fairness and equity and is commonly applied to movements that seek fairness, equity, inclusion, self-determination, or other goals for currently or historically oppressed, exploited, or marginalized populations.[7]
- ***Rebranded meaning:*** "Radical activism"

Social Justice Warrior

- ***Original meaning:*** A person who advocates for fairness
- ***Rebranded meaning:*** "Performative" / "pandering"

Privilege

- ***Original meaning:*** Recognition of unearned advantages
- ***Rebranded meaning:*** "Guilt-tripping"

Allyship

- ***Original meaning:*** Active support for marginalized communities
- ***Rebranded meaning:*** "Virtue signaling"

Cancel Culture

- ***Original meaning:*** the practice or tendency of engaging in mass canceling as a way of expressing disapproval and exerting social pressure.[8]
- ***Rebranded meaning:*** "Mob censorship"

Identity Politics

- ***Original meaning:*** Advocacy based on lived experience
- ***Rebranded meaning:*** "Divisive tribalism"

Political Correctness

- ***Original meaning:*** Respectful language use
- ***Rebranded meaning:*** "Suppression of free speech"

Justice Richard A. Robinson, retired Chief Justice of the Connecticut Supreme Court, has over two decades of judicial experience, including appointments to the Appellate and Supreme Courts, and is currently a partner at Day Pitney LLP.

NOTES

[1] https://psychology.as.virginia.edu/what-are-diversity-equity-and-inclusion-dei

[2] The Woke Movement and Backlash, Ken Paulson, published on May 23, 2024, last updated on June 23, 2025
https://firstamendment.mtsu.edu/article/the-woke-movement-and-backlash/

[3] https://www.britannica.com/topic/Black-Lives-Matter

[4] Explainer: What 'critical race theory' means and why it's igniting debate. Gabriella Borter, September 22, 2021, Updated September 22, 2021, https://www.reuters.com/legal/government/what-critical-race-theory-means-why-its-igniting-debate-2021-09-21

[5] https://www.merriam-webster.com/dictionary/equity

[6] https://www.merriam-webster.com/dictionary/

[7] https://www.merriam-webster.com/dictionary/social-justice

[8] https://www.merriam-webster.com/dictionary/cancel%20culture

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