Federal Bar Council Quarterly

Sept./Oct./Nov. 2021 www.federalbarcouncil.org Vol. XXIX, No. 1

In This Issue:

We invite you to connect with us on LinkedIn.

From the President

The Access to Counsel Project

By Jonathan M. Moses

The doors of the courthouse are open to anyone, but as we all know, having a lawyer by your side can make all the difference. It surprises many non-lawyers to learn that outside the criminal context, there is no right to a lawyer. Here is something that may surprise many lawyers: Numerous cases in our courts proceed without the guidance of counsel, even when judges determine that the cases have merit and seek to appoint counsel. The *pro se* docket in our federal courts has been a stubborn problem for years and its continued existence burdens the courts and undermines confidence in the legal system. The Federal Bar Council is seeking to do something about it.

For the past nine months, a group of 12 members of the Federal Bar Council have been working together as part of the Access to Counsel Project. The goal of the project is to facilitate greater interest among the private bar in taking on *pro se* cases that judges have identified as likely to benefit from the assistance of counsel. The idea for the project stems from discussions at the Council's 2020 Fall Retreat. The focus of the retreat was on diversity and access to justice. Participants, including members of the Council and members of the judiciary, discussed these issues in working group sessions. One key area identified where the private bar could make a difference was facilitating greater access to the courts for all members of our society.

Led by Council board member Marjorie Berman, whose practice focuses on employment discrimination cases, and Council Executive Director Anna Stowe DeNicola, the members of the Access to Counsel Project began by identifying the obstacles that are preventing more members of the bar from taking on *pro se* cases, even when judges seek the appointment of counsel. Other members of the group include: Amy Jane Agnew, Hon. Steven Gold (Ret.), Marc Greenwald, Vilia Hayes, Martin Karlinsky, Valdi Licul, David Shanies, Saul Shapiro, and Robyn Tarnofsky.

The group has worked closely with the Pro Se Offices in both the Southern and Eastern Districts of New York where many *pro se* cases are filed. Court staff members Maggie Malloy in the Southern District of New York and Catherine Wolff and Aliza Silber in the Eastern District of New York have been instrumental partners. These individuals and their colleagues work tirelessly to assist *pro se* litigants. Both districts have mechanisms for judges to identify cases that would benefit from the appointment of counsel and maintain lists of such cases.

Many times, however, no willing counsel can be identified. In the Southern District of New York, where the issue appears to be most pronounced, there are currently 31 cases (as of early October) on the *pro se* list that judges have identified as worth appointment of counsel for some aspect of the case. It is likely that many more such cases exist, but judges do not flag them given the lack of uptake of these cases among the private bar. The lack of counsel imposes greater burdens on judges who have to manage these cases on their own, and it almost certainly will leave many *pro se* litigants feeling like they have not had true access to the courts and justice.

The Barriers

As a result of numerous discussions, the group identified several barriers that may be reducing interest in these cases.

First, the cases often involve subjects that are unfamiliar to private bar members – employment discrimination cases involving public agencies, section 1983 cases involving public agencies, and the like.

Second, there is a perception that the *pro se* litigants are difficult to work with and that taking on these cases will be too burdensome.

Third, there is a lack of awareness of the availability of the opportunity to take on these cases.

Overcoming the Barriers

To overcome these barriers, the group has identified a four-pronged approach.

First, there will be efforts to publicize the opportunities to take on these cases and how doing so will be of great service not just to the litigants but to the courts. There are many great programs that currently exist that help *pro se* litigants, including the New York Legal Assistance Group ("NYLAG") clinic in the Southern District and the City Bar Justice Center Federal Pro Se Legal Assistance Project clinic in the Eastern District. But even with those clinics, a significant number of cases do not get placed.

Second, the Council is creating an Access to Counsel Pro Bono Advisory Panel of experienced practitioners in the types of cases that most often need counsel. Members of the Pro Bono Advisory Panel will be available to help guide counsel who take on these cases in dealing with their unfamiliar aspects.

Third, the Council will host on its website a practical manual covering many of the subject matters of these cases, including forms that can be adapted to particular cases.

Fourth, the Council, working with the Courts, will honor and recognize those who have taken on cases or otherwise helped in improving access to the courts.

Promoting the Rule of Law

Focusing on access to the counsel is not a new area for the Council. We were early and consistent supporters of the late Judge Katzmann's effort to increase *pro bono* representation of asylum seekers and others caught up in the immigration process. Numerous studies show that the availability of counsel made a huge difference in the outcomes of these cases. It is also consistent with our mission to promote the rule of law. Without counsel many litigants will never feel that they had true access to the courts, undermining respect for the courts and the legal process.

This project is also of particular importance to the judiciary. For many years, our judicial colleagues have urged attention to this issue, yet the issue remains. In talking with judges as part of this project, they reiterated how helpful it will be to the courts and to the litigants if more of these cases have appointed counsel. As one judge put it, if we were in a smaller community, there is no question that cases which judges have identified as worthy of appointed counsel would end up with appointed counsel.

The Second Circuit is not a small community, and our federal courts handle thousands of cases, but there is no reason that we should not aspire to live up to this ideal. We almost certainly will not reach a point where every case is placed. But if we help to lower barriers to their placement, and remember our shared commitment to the rule of law and the special place lawyers have in upholding that important ideal, we may surprise ourselves.

From the Editor

France and the Pandemic

By Bennette D. Kramer

I went to France in September. Although I have traveled in France numerous times and lived there for two years in the early 1980s, I was nervous about traveling while the pandemic was still an everyday threat. I need not have worried. Travel in France for the vaccinated is remarkably easy.

I had originally planned a trip to Paris in May 2020 with a trip to Crete run by a French travel company; that trip was postponed until May 2021. As that trip approached, the friend I was going to travel with and I decided we were not comfortable traveling at that time, so we converted it to a trip to Portugal in September 2021. Another friend was supposed to meet me in Paris for a second week. The French travel company cancelled the trip to Portugal and the friend I was supposed to meet in Paris cancelled, but I decided to go anyway. My Paris friend and I planned a trip to Bordeaux and

Poitiers, and I spent the rest of my time in Paris staying with her.

The "Passe Sanitaire"

In preparation for my trip to France, I read everything I could about requirements for travel. I applied for the French "Passe Sanitaire" demonstrating that I have been vaccinated, and then reapplied when the form was changed. The Passe Sanitaire never materialized, so I was concerned about proving my vaccination status. Again, I need not have worried. I was able to go absolutely everywhere by showing a photocopy of my Centers for Disease Control and Prevention ("CDC") vaccination card, even when the photocopy got all wrinkled and smeared with chocolate. I had heard that pharmacies were issuing Passe Sanitaires, but when we checked with one they said that they were no longer doing it because the government had taken over. Clearly, there was a hang up in the government's process, so everyone cheerfully accepted the CDC card. I used it to get into restaurants and museums and onto trains and airplanes. I was notified after my return that my Passe Sanitaire had been rejected because my stay in France had ended. I have heard from others who had later travel plans that they received their Passes Sanitaires, so I recommend that anyone planning to travel to France apply.

The French are very serious about the vaccination proof requirement and masks. Every restaurant checked proof of vaccination (or proof of a negative test within the prior 72 hours) and required masks prior to entry, even for eating outside. Those without proof were turned away. The same was true with museums. I know New York City has similar requirements and a COVID-19 Vaccination Excelsior Pass, but the French requirements and Passe Sanitaire are national, and the French were very mask compliant.

Bordeaux and Poitiers

My friend, a U.S. citizen who has lived in Paris for nearly 50 years, and I decided we would travel to Bordeaux and Poitiers because neither of us had ever visited either city. Bordeaux is a lovely city that thrived as a seaport from the Middle Ages to the Nineteenth Century. Wine and slaves moved through Bordeaux, along with products from the French colonies in the West Indies and Africa. It is still an important port with terminals now further downstream.

In the meantime, the riverbank has been turned into an impressive quay that is open to the public for walking, jogging, biking or just sitting. The Musée d'Aquitaine has a large permanent exhibit devoted to the slave trade in the Eighteenth Century and how it contributed to the wealth of Bordeaux. The exhibition contains several paintings showing slaves in the wealthy homes of Bordeaux. Most of the slaves were taken to French colonies in the West Indies.

We also visited Poitiers, which was important in the life of Eleanor of Aquitaine, who was born and who married Henry II of England in Poitiers (after her marriage to Louis VII of France was annulled). Poitiers has one of the oldest Christian buildings – the Baptistery of Saint Jean, which is traced back to the Fourth Century. It is a lovely town, high on a hill with warm sandstone buildings.

One day we rented a car and visited the Marais Poitevin. Starting in the Tenth Century, the Abbeys of Saint-Michel, Absie, Saint-Maixent, Maillezais, and Nieul worked together to dig canals to drain the Marais Poitevin and create arable land. The work continued through the ages to the Twentieth Century, particularly with restoration efforts by President Mitterrand, and with the creation of a national park (which since has been downgraded to a regional park). The efforts to restore and maintain the Marais Poitevin continue today in the face of drainage caused by pumping out water for the benefit of agriculture.

The canals still exist and are accessible via flat boats. We took a lovely ride in one of the boats piloted by a guide. The plots of land created by the canals are individually owned and are now used primarily for cattle. We saw some goats as well.

After our five-day trip to Bordeaux and Poitiers, we returned to Paris where I spent a week visiting museums and walking for miles. Highlights of my stay in Paris included a visit to the Musée Rodin with lunch in the garden and a viewing of the Arc de Triomphe wrapped according to a design by Christo and Jeanne-Claude. I visited small museums such as the Carnavalet (which reopened this summer after a two-year renovation), the Picasso, the Nissim de

The Arc de Triomphe wrapped according to a design by Christo and Jeanne-Claude.

Federal Bar Council Quarterly (ISSN 1075-8534) is published quarterly (Sept./Oct./Nov., Dec./Jan./Feb., Mar./Apr./May, Jun./Jul./Aug.) by the Federal Bar Council, 150 Broadway, Suite 505, New York, NY 10038-4300, (646) 736-6163, federalbar@federalbarcouncil.com, and is available free of charge at the Council's Web site, federalbarcouncil.org, by clicking on "Publications."

The repair work in progress on Notre Dame.

Comondo, and the Rodin. I did not visit the large museums such as Louvre or the Musée D'Orsey.

In Paris I stayed in the First Arrondissement, near the Forum des Halles. During my daily run, I either went to the Île de la Cité and Île St. Louis or the Louvre and the Tuilleries. While I was in Paris, the trial of the 20 terrorists accused in the 2015 attacks on the Bataclan concert hall, the national soccer stadium and several cafes was ongoing. As a result, half of the Île de la Cité was blocked by French police officers carrying very large guns. Thus, I had to reroute my run to the Left Bank quay where I could see the work in progress on Notre Dame.

There have been weekly demonstrations in Paris along the Rue de Rivoli against mandatory vaccinations for health care workers (most of them are now vaccinated so the demonstrations have gotten smaller and smaller). One Saturday, a strong smell came in the windows of my friend's apartment which looks out onto an interior courtyard. When our eyes started to sting, we realized that teargas shot by the police a block away had reached us. It dissipated quickly but it was pretty shocking that it has extended so far and was still so strong.

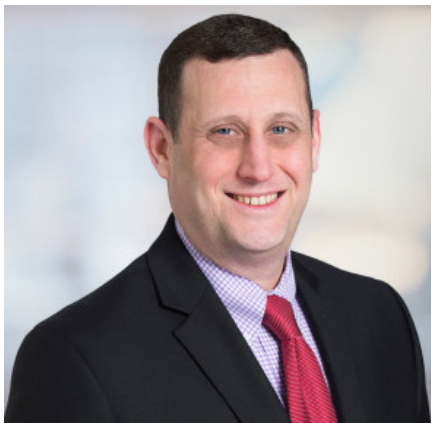
In order to reenter the United States, I had to have an Antigen COVID test no more than 72 hours before my departure. I was concerned about the test, but in Paris it was easy. Many pharmacies give the test. I walked into one, filled out the forms, paid €25 and was taken to the back of the pharmacy where the pharmacist performed the test. Twenty minutes later I had a very official looking certificate showing a negative result. That certificate

was examined numerous times during my departure, which was otherwise uneventful.

New Appointments

Judge Eunice Cheryl Lee Joins the Second Circuit

By Steven H. Holinstat



On May 12, 2021, President Joe Biden, on the recommendation of Senate Majority Leader and senior U.S. Senator from New York Chuck Schumer, nominated Eunice C. Lee to serve as a judge on the U.S. Court of Appeals for the Second Circuit. Judge Lee was confirmed by the Senate on August 7, 2021, and received her judicial commission on August 16, 2021. She fills the seat vacated by Judge Robert Katzmann, who took senior status on January 21, 2021, and tragically passed away on June 9, 2021, at the age of 68.

Judge Lee is the second African American woman ever to serve on the Second Circuit after Judge Amalya Lyle Kearse, who was appointed in 1979. Judge Lee will also be the only active judge on the Second Circuit with experience as a federal defender, and the longest-serving public defender to become a judge on any federal circuit court.

Judge Lee, the daughter of an Air Force veteran, was born on base in 1970 in Wiesbaden, Germany, graduated *summa cum laude* with a B.A. from The Ohio State University in 1993, and graduated from Yale Law School, receiving her J.D. in 1996. During law school, Judge Lee worked as a research assistant for Justice Flemming L. Norcott, Jr., of the Connecticut Supreme Court, and interned at the Civil Division of the Department of Justice.

After law school, Judge Lee clerked for Judge Susan J. Dlott on the U.S. District Court for the Southern District of Ohio from 1996 to 1997, following which she clerked for Judge Eric L. Clay on the U.S. Court of Appeals for the Sixth Circuit from 1997 to 1998. From 1998 to 2019, Judge Lee worked with the Office of the Appellate Defender in New York City, and was named a supervising attorney in 2001. From 2003 to 2019, she served as Director of Recruitment and Outreach at the Office of the Appellate Defender while supervising and training staff and *pro bono* attorneys. In 2014, Judge Lee helped to draft the New York State Office of Indigent Legal Services Appellate Standards and Best Practices.

From 2003 to 2019, Judge Lee served as an adjunct assistant professor of clinical law at New York University School of Law, where she co-designed and taught the Criminal Appellate Defender Clinic that allows students to represent clients appealing felony convictions. This clinic became one of the law school's most popular courses, and Randy Hertz, the director of New York University Law School's clinical and advocacy programs, who recruited Judge Lee in the spring of 2003 to co-develop the clinic, stated that he "was always impressed by the high quality of the instruction and her wonderful teaching to students about professionalism." Hertz stated that in Judge Lee, the Second Circuit would gain a "brilliant appellate lawyer," who was sharp, persuasive and patient with her cases, as "we really need people who are as smart as she and who have a real understanding of what actually happens in the court system, and who also have the degree of professionalism and the wonderful temperament that Eunice has."

From 2019 until the time of her appointment, Judge Lee served as an Assistant Federal Defender with the Appeals Bureau of the Federal Defenders of New York. Judge Lee stated that she chose to work for this office because "I have always known that I wanted to use my law degree to serve the public, and I recognized early in law school the need for attorneys willing to uphold the constitutional right to counsel by defending those who are accused or convicted of crimes but cannot afford an attorney." Over the course of her career, she has represented over 380 indigent clients in proceedings before state and federal appellate courts on direct appeal, in post-judgment motions, and in *habeas* proceedings. She has worked to ensure that indigent defendants are represented in court and that her

clients' constitutional and statutory rights have been protected throughout the entire criminal process.

Committed to Public Service

Judge Lee has also demonstrated a deep commitment to public service. Prior to graduating law school, she worked for People for the American Way and the NAACP Legal Defense and Educational Fund. She was a member of the Association of Legal Aid Attorneys, the union representing Legal Aid and Federal Defenders attorneys. She is also a member of Metropolitan Black Bar Association and served on the Committee on Professional Responsibility of the Association of the Bar of the City of New York. Beyond the legal work she has done for those she has defended, Judge Lee also assisted her incarcerated clients with regard to conditions surrounding their confinement, including access to mental health and other health programs through non-litigation advocacy and outreach to correctional facilities.

In announcing her nomination for the Second Circuit, the Biden administration touted Judge Lee's diversity and background as a public defender. In recommending Judge Lee, Senator Schumer stated that she "is an incredible public servant" "who has dedicated her career to making sure that 'equal justice under law' is faithfully applied, for the impoverished as well as the privileged." Senator Schumer also noted that Judge Lee has "been described by her colleagues as a brilliant advocate, a first-rate legal writer, a natural teacher and a mentor", and he recommended her to President Biden "not only because she was outstanding, but because we want to bring a great diversity of experience as well as other reasons for diversity, racial and religious, LGBTQ, et cetera. But we want experience diversity." "Ms. Lee spent her entire career in public service, dedicating herself to representing those criminal defendants who cannot afford counsel. If confirmed, she would be the only federal defender among the Second Circuit's active judges – the only one."

As a testament to the impact she has had on opposing counsel, a group of 70 former New York federal prosecutors in Manhattan and Brooklyn also supported Judge Lee's nomination, noting that she is a "brilliant, accomplished advocate, who is supremely well qualified to serve on the bench." They further stated that: "We enthusiastically support Ms. Lee not just because of her sterling credentials," but because "[w]e believe that after a career as a public defender serving indigent clients in criminal cases, Ms. Lee would bring a unique and under-represented perspective to the job of hearing and deciding federal appeals." Indeed, their letter noted that Judge Lee's experience would be crucial to a court historically dominated by former prosecutors and corporate attorneys. The letter went on to say that "the president has nominated an incredibly talented lawyer and dedicated public servant, whose career representing the most vulnerable among us will bring a critical, unique perspective to the bench. Her deep commitment to the preservation of civil rights for all make her the right candidate at the right time for this important seat."

Federal Bar Council News

Studying the Balance Between the First Amendment and National Security

By Judge Mary Kay Vyskocil and Magistrate Judge Sarah Cave

In furtherance of the legacy of former Chief Judge of the Second Circuit, Robert A. Katzmann, the *Justice For All* Program conducted

its annual Teachers' Institute on Civic Education from June 28 to July 1, 2021. The goal of the annual program is to provide approximately 25 teachers from New York City and neighboring areas within the Second Circuit with a deeper understanding of constitutional issues that they can pass on to their students.

Federal Bar Council President Emerita Judge Mary Kay Vyskocil and former chair of the Second Circuit Courts Committee Magistrate Judge Sarah Cave (who is a member of the Board of Editors of the *Federal Bar Council Quarterly*) worked with Debra Lesser and her colleagues at the Justice Resource Center, a non-profit that works in cooperation with the New York City Department of Education, to organize this year's Institute. This was the fifth summer Institute and, due to COVID-19 restrictions, it was hosted remotely via Zoom.

The Teacher's Institute has been funded by various public and private grants over the past five years. Starting in 2022, it will be funded by the Federal Bar Foundation's newly established Robert A. Katzmann Civics Education Grant, named in honor of the late Judge Katzmann to further his vision and the work of the Second Circuit's *Justice For All* Civics Education programming.

The Institute's Theme

The theme of this year's Institute was the fragile balance between the First Amendment and national security issues. The four-day educational program was based on the civic education materials entitled "The Constitution Works: Denver Dispatch." The Institute's instruction was framed around the hypothetical Denver Dispatch case, in which a daily newspaper in Denver, Colorado, published a front-page article about secret research underway at a nearby federal government laboratory. The secret research involved biological weapons, i.e., using diseases as weapons of war. Although the source of the reporters' information was unclear, it was undisputed that the reporters broke no law in obtaining it. Not only were Colorado residents upset to learn about the dangerous activities going on in their backyard, but federal government officials, on learning about the article, asked the Dispatch to refrain from printing any additional information, arguing that publishing more information about top secret government experiments would endanger the security of the United States.

When the Dispatch's editor refused, the Department of Justice filed suit in federal district court seeking an injunction against any further articles. The district judge, after hearing testimony from both the Dispatch's editor and government officials, granted the injunction, and the Dispatch appealed.

A divided panel of the U.S. Court of Appeals for the Tenth Circuit upheld the injunction, and the Dispatch petitioned for certiorari to the U.S. Supreme Court. It was in the posture of presenting the case to the Supreme Court that the teachers were to learn the issues and prepare, over the course of the Institute, to present their own mock arguments.

The First Day

The Institute included daily morning programs led by leading practitioners and afternoons spent working with mentors from the Justice Resource Center to analyze the issues and prepare for mock oral arguments. On the first day of the Institute, following welcome remarks and a tribute to Judge Katzmann by District Judge Victor Marrero, the teachers received an introduction to First Amendment jurisprudence from Floyd Abrams, perhaps the most respected First Amendment litigator and expert of the present day. Abrams' participation took particular significance, coming on the eve of the fiftieth anniversary of the Supreme Court's decision in the *Pentagon Papers* case, a landmark event that has been the subject of several other Federal Bar Council activities this year.

After Abrams' introduction to the language and purpose of the First Amendment, Kannon Shanmugam led the teachers in an in-depth review of Supreme Court cases arising during the twentieth century, including cases focusing on the "Red Scare" and the "clear-and-present-danger" standard. Shanmugam, a former law clerk to Justice Antonin Scalia who has argued many cases in the Supreme Court, chairs the Supreme Court and Appellate Practice Group at Paul Weiss.

The second day of the Teachers' Institute began with an overview of the Supreme Court litigation process

delivered by Sarah O. Schrup, the incoming Circuit Executive for the U.S. Court of Appeals for the Seventh Circuit. In the October 2019 term, Schrup argued for the petitioner in *Kahler v. Kansas*, which involved the constitutionality of a Kansas statute limiting the insanity defense to negating mens rea. Schrup led the teachers, start-to-finish, through the appellate process, from deciding whether to seek certiorari through preparation for oral argument and the painstaking wait for a decision.

National Security Issues

The afternoon of the second day involved more in-depth study of First Amendment precedent involving national security issues. Alexandra Shapiro, a former law clerk to Justice Ruth Bader Ginsburg and now an appellate advocate and white collar criminal litigator who has argued before the Supreme Court and who leads her own firm, Shapiro Arato LLP, led the teachers in a discussion of the cases that arose during the McCarthy era, cases involving modern hate speech, and the evolution of the clear-and-present-danger test.

The teachers rounded out a lively question-and-answer discussion of First Amendment cases involving prior restraint with Kathleen Sullivan, a former dean of Stanford Law School and now a name partner at Quinn Emanuel Urquhart & Sullivan who has argued numerous times in the Supreme Court.

On the third day of the Institute, the teachers received a briefing on national security law from David Kelley, a former interim U.S. Attorney for the Southern District of New York and co-chair of the nationwide investigation by the U.S. Department of Justice into the September 11, 2021, attacks who now is a partner at Dechert LLP.

A Debate

The teachers then were treated to a debate between experts over the tension between First Amendment and national security principles. Facing off in the debate were Edward O'Callaghan, former Acting Assistant U.S. Attorney General and the Principal Deputy Assistant Attorney General for the National Security Division who now is a partner at WilmerHale, and Sarah Isgur, who recently served in the Department of Justice as the Director of the Office of Public Affairs and Senior Counsel to the Deputy Attorney General during the Russia investigation. The debate was moderated by Jane Popper, career clerk to Judge Vyskocil.

The Institute culminated in the teachers' delivery of their own mock oral arguments using the Denver Dispatch fact pattern. Presiding over the mock arguments were District Judges Lewis A. Liman and John P. Cronan of the Southern District of New York and Diane Gujarati of the Eastern District of New York.

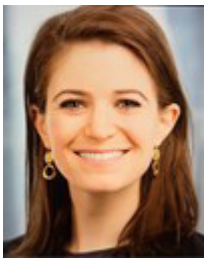
Returning to Class

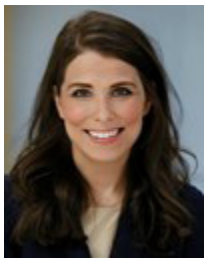
The Institute closed with parting remarks from Second Circuit Chief Judge Debra Ann Livingston, who congratulated the teachers on the successful completion of the program and wished them encouragement as they returned to their classrooms to instill in their students an interest in and love for civic education. The feedback from the teachers was uniformly positive. Teachers described the Institute as an "exceptional experience," in which "every single second was instrumental." One commented, "[e]very single speaker was a top person in their field with exceptional knowledge." Another teacher observed that "Floyd Abrams made history come alive!" Several commented on how much they enjoyed collaborating with the other teachers about how best to teach their students about the First Amendment and national security.

Federal Bar Council News

Inaugural Class of Women Scholars Is Chosen

By Rebecca Baskin and Lisa Umans





"Real change, enduring change, happens one step at a time." So said the late Associate Justice Ruth Bader Ginsburg, a true champion of equal rights, particularly for women in the workplace. Now,

one year after Justice Ginsburg's death, a group of women former prosecutors who served together in the U.S. Attorney's Office for the Southern District of New York have taken a key step in advancing the future success of four women first year law students.

As announced during the Federal Bar Council's Law Day Dinner virtual event in May 2021, alumnae from the Southern District founded the When There Are Nine Scholarship Project ("WTA9") to honor the lifelong work of Justice Ginsburg by furthering her commitment to expanding career opportunities for women in the law and promoting equity and diversity in the legal profession. The project was established as a way of honoring Justice Ginsburg in the weeks after her death, and is a program in partnership with the Federal Bar Foundation and the Federal Bar Council.

WTA9 recently announced the selection of four women law students as the inaugural class of When There Are Nine Scholars – recipients of annual scholarship money, mentoring, and professional programming arranged and led by Southern District alumnae who are founders and members of WTA9. The selection of the inaugural class manifests one of Justice Ginsburg's enduring goals, which was to support the next generation of diverse women lawyers. The scholars' backgrounds are described below.

Amanda Gómez Feliz, a Bronx resident who immigrated to the United States from the Dominican Republic in 2010, is a first-year law student at Yale Law School. Ms. Feliz, who taught herself English when she began high school in the United States, graduated *magna cum laude* from the University of Rochester and then worked as an Urban Fellow with the New York City Department of Education Division of Early Childhood and as an aide to children with disabilities. She hopes to work in the field of immigration law.

Priscilla Guo, born and raised in New York City, is beginning law school at Stanford University this fall. She has earned degrees from Harvard College, Oxford University, and Tsinghua University and hopes to use both her knowledge of emerging technologies and her law degree to help identify inequities in and advocate for vulnerable communities. In addition to her impressive academic record, she has served as a national teen advisor for the UN's Girl Up program, a New York City Youth board representative, and a mentor to young women writers from underserved communities.

Cristel Taveras is a lifelong New Yorker, daughter of immigrants, and a graduate of Fordham University. After college, she worked as a paralegal at the ACLU's Women's Rights Project and served as a Policy Advisor to the NYC Board of Correction. She is currently a Campaign Researcher at Color of Change, a nonprofit civil rights advocacy organization. Taveras has also served as a mentor to a first-generation high schooler and volunteered with a housing justice organization. Through all of this work, she has sought to help advance equity and justice through an intersectional lens. She has just begun her legal education at Fordham Law School where she plans to pursue her interest in labor and employment law.

Rose Wehrman was raised on an active farm in rural Nebraska and is the first in her family to pursue a graduate degree. After being selected as a Regents Scholar to attend the University of Nebraska-Lincoln, and graduating *magna cum laude*, Wehrman served as an AmeriCorps member of the Notre Dame Mission Volunteers. In that role, she developed elementary school activities and afterschool programming to help lessen COVID-related learning gaps. As a student, Wehrman served as a research assistant for the Nebraska State Department of Education and as a teaching assistant and student leader. She is starting at Columbia Law School, where she intends to work towards addressing systemic inequities that affect young children.

These four scholars were selected through an intensive application and interview process from a pool of nearly 400 impressive applicants that were evaluated by a team of Southern District alumnae volunteers. WTA9's goal is to add more scholars annually to establish an enduring cohort of well-supported, ambitious, diverse women attorneys and further advance opportunities for women in the legal profession.

Editor's Note: The authors are attorneys at the law firm of Crowell & Moring LLP and secretaries for the When There Are Nine Steering Committee.

Legal History

The Supreme Court Gets It Right (Twice): The Trials of the "Scottsboro Boys"

By C. Evan Stewart

On March 25, 1931, as a freight train crossed the Alabama state border, a fight broke out between a group of whites and blacks. The blacks won and forced all the whites (save one) off the train. The de-trained whites reported to local authorities that they had been assaulted by a gang of blacks; and at the next station a deputized posse corralled nine black males (their ages ranged from 12 to 20 years old). Also found on the train, dressed in men's overalls with caps on their heads (covering their hair), were two white girls (Victoria Price and Ruby Bates). Price and Bates were unemployed mill workers who said they had traveled on the train in search of work.

As the nine males were being restrained, one of the girls said that they had been raped by all of them. Later, at the jail (in Scottsboro), Price identified six out of the nine as her rapists. It did not take long for local whites to assemble at the jail demanding vigilante "justice"; and the local press quickly reported that the arrested males were guilty of "a heinous and unspeakable crime that savored of the jungle."

Twelve days after their arrest, the nine were put on trial. They had no lawyer(s) representing them, although a Tennessee real estate lawyer (Stephen Roddy) volunteered to advise them (and an elderly trial lawyer from Alabama said he was willing to advise Roddy). After Roddy met with the nine for a 25 minute consultation, the proceedings commenced.

There were actually four trials – the two oldest were tried first; and the youngest (the 12-year old) was tried last. Price and Bates testified at each trial, as did two local doctors, both of whom testified as having found semen within the women. Roddy not only did not cross-examine the doctors, he called each of his "clients" to testify – without any preparation! Some of the defendants, while denying their own guilt, gave contradictory accounts, pointing fingers at various others in the group.

After three days, all of the trials were completed. The jury verdicts for eight were guilty, with the death penalty. For the 12-year old, there was a hung jury because the prosecutor had *only* asked for life imprisonment – a majority of that jury held out for the death penalty.

The eight guilty verdicts were appealed to and affirmed by the Alabama Supreme Court (although the Alabama Chief Justice strongly dissented, believing that the eight had not received fair trials). The United States Supreme Court thereafter took the case and reversed the convictions of the "Scottsboro Boys": *Powell v. Alabama*, 287 U.S. 56 (1932).

The Supreme Court – Part I

Although the petitioners raised multiple Constitutional challenges to the trials, the Court considered only one: were they denied the right of counsel in contravention of the Sixth Amendment via the due process clause of the Fourteenth Amendment. Associate Justice George Sutherland, for the majority, first noted that the "ignorant and illiterate" defendants "were not asked whether they had, or were able to employ, counsel, or wished to have counsel appointed." Sutherland then went on to recite the lengthy colloquy between the trial judge and Roddy, in which:

(i) Roddy did not accept designation as trial counsel;

(ii) He acknowledged he had "not prepared this case for trial";

(iii) He further acknowledged that he was "not familiar with the procedure in Alabama"; and

(iv) He also offered his opinion that "the boys would be better off if I step entirely out of the case."

Nonetheless, with the local lawyer telling the trial judge that he was "willing to go ahead and help Mr. Roddy," that was enough; in Sutherland's words, "in this casual fashion the matter of counsel in a capital case was disposed of."

Sutherland next moved to the Constitutional issue. Recognizing that the Alabama Supreme Court had found the trial met the standards of the Alabama State Constitution, he wrote that that determination had no binding effect on the Court's purview of the federal Constitution. Clearly influenced by the factors in play (it was a capital case, the defendants were minors and illiterate, there was no time to prepare, the existing public hostility, etc.), the Court ruled that the Sixth Amendment's right of counsel applied to the states for the very first time in the country's history – via the Fourteenth Amendment.

Associate Justice Pierce Butler (joined by Associate Justice James McReynolds) dissented. Not only did Butler believe the record did not support the notion that the defendants had not gotten an eminently fair trial, he also objected to the extension of federal authority into a field hitherto occupied exclusively by the several States. Thus, it was his view that "[t]he record wholly fails to reveal that petitioners have been deprived of any right guaranteed by the Federal Constitution."

More Trials

Unfortunately for the Scottsboro Boys, all that meant was they would be retried in Alabama state court. Fortunately for the group, it was arranged (by the Communist Party) that going forward they would be represented by one of the leading criminal defense lawyers in the country: Samuel S. Leibowitz of New York City.

Once more, there would not be a group trial. Rather, the first trial to go forward was against the young man (Haywood Patterson) whose physical appearance seemed to meet the most deep-seated prejudices of Alabama whites. For the prosecution, Alabama Attorney General, Thomas Knight, stepped into the first chair (he had also argued *Powell* in the U.S. Supreme Court). Leibowitz initially moved to dismiss the indictment on the ground that blacks had been barred from both the grand jury and the pool of potential jurors. Spending a day with witnesses who proved that point without dispute would provide an issue for appeal, notwithstanding his motion's defeat.

In the trial itself, Liebowitz went on a frontal assault against Price. Armed with evidence, inter alia, that both women had had sex with other men the night before the alleged rapes, that Price (21 years old) was twice married and had been convicted of adultery and fornication, that Price's description of her injuries was not supported by the doctors, Leibowitz systematically destroyed Price's credibility. But that destruction was double-edged because, to the Southern ear, Leibowitz (an alien from New York City) had violated basic "Southern chivalry" by portraying her as "white trash." In the words of one local newspaper: "Mr. Liebowitz's brutal cross-examination makes one feel like reaching for his gun while his blood boils to the nth degree."

With respect to the first doctor's testimony, Leibowitz was more strategic. Not only was Price's story not supported by the physical evidence, there was barely any semen found (notwithstanding her claim of multiple rapes only hours before); moreover, the semen found was immobile or dead (thus, most likely to have been there for day(s) prior). Based upon those facts, the doctor agreed that Price's story about successive rapes on the night alleged was unlikely. As to the second doctor, Leibowitz did not get a chance to question him – he refused to be a prosecution witness, privately telling the judge: "these women were not raped." And although the judge urged him to testify, he refused because he believed it would destroy his local medical practice.

Then came the kicker: Ruby Bates, who had disappeared before trial and could not be called by the prosecution, suddenly appeared in court to testify for the defense. Bates recanted her entire story. She had agreed to lie because Price had convinced her that they would be arrested. Further, she corroborated other testimony about both women having had consensual sex the day before the alleged rapes.

Unfortunately, the prosecution's cross-examination of Bates played well to the jury (and the broader Southern audience). Bates admitted that her fancy new clothes, her trip to New York (where she had disappeared), her expenses, etc., had all been paid for by the Communist Party. Eek! This cavalcade of bad news then allowed the assistant prosecutor to urge the jury in summation to "[s]how them, show them that Alabama cannot be bought and sold with Jew money from New York."

After getting the case in the afternoon, the jury took just a few minutes to agree that Patterson was guilty. But it took then until the next morning to

agree on death in the electric chair, only because one juror held out for a while for life imprisonment.

This was Leibowitz's first loss in seventy-nine trials. Undeterred, he moved to set aside the verdict. The trial judge, after agonizing over the matter (and undoubtedly his future) for weeks, ultimately granted the motion after a meticulous review of the physical evidence and Price's credibility. (Not surprisingly, the trial judge lost his re-election bid.)

Attorney General Knight then decided to retry the same defendant (Patterson), together with another one of the Scottsboro Boys (Clarence Norris), but this time before a new, and more compliant, judge. Leibowitz made his same dismissal motion because of the jury pool. But that motion, along with anything else that might help the defendants, was denied. In fact, most of the evidence so damning to the prosecution in the prior trial was excluded. This new judge was so in the tank that he actually told jurors the form they should use to find the defendants guilty! And, of course that is what happened, with both defendants being given the death penalty.

The Supreme Court – Part II

After the Alabama state court appeals proved unfruitful, the United States Supreme Court again granted certiorari and again overturned the convictions: *Norris v. Alabama*, 294 U.S. 587 (1935). Writing for a nearly unanimous Court (Associate Justice McReynolds did not hear arguments and did not participate in the decision), Chief Justice Charles Evans Hughes ruled that the systematic and arbitrary exclusion of blacks from juries violated the equal protection guarantees of the Fourteenth Amendment. While the Court had established this principle in earlier cases, *Norris* was the first case where the Court not only rejected the factual determination found by the Alabama courts that there had been no such wholesale exclusion of blacks from the jury(ies), but also found – as a matter of record and testimonial evidence – that there had been well-qualified blacks in the Alabama jurisdiction who had never been called to serve on a jury.

Oral argument before the Court was also significant. After the aforementioned trials (and the record of exclusion Leibowitz had established), some Alabama official(s) had added the names of six black men to the jury rolls. When Leibowitz identified this as a fraud coopered up by the State, he was asked at oral argument: "Can you prove it?" Replying "Yes, your Honor," Leibowitz then handed up to the Court the doctored 1931 Alabama county jury roll, with the six names hastily scrawled into a small spot on the last page of the roll. Leibowitz paused his oral presentation while each of the Justices reviewed the document with a magnifying glass. Observers said it was a critical inflection point in the argument; moreover, it would appear that this was the first time the Supreme Court was presented with (and reviewed) evidence during oral argument.

The Unfortunate Aftermath

The State of Alabama was undeterred. Ultimately, it prosecuted three of the Scottsboro Boys for the alleged rapes and got convictions (but without the death penalty); another defendant was convicted for assaulting a police officer. But even the Alabama prosecutors had limits – they publicly dropped charges against the remaining defendants because the physical evidence was indisputable that they could not have committed the alleged rapes (of course, this came after years of incarceration).

Ultimately, all the imprisoned Scottsboro Boys were paroled (except Patterson, who escaped from prison). In 1976, Norris (the last living Scottsboro Boy) was pardoned by the State of Alabama; the pardon was signed by Governor George Wallace. On April 19, 2013, Alabama Governor Robert Bentley issued a posthumous pardon to all of the Scottsboro Boys ("This has been a long time coming. But it's never too late to do the right thing.").

Postscripts

- The right to counsel precedent created by the *Powell* decision would, of course, be expanded by later Supreme Court jurisprudence. *See, e.g., Gideon v. Wainwright*, 372 U.S. 355 (1963); *Escobado v. Illinois*, 378 U.S. 478 (1964); *Miranda v. Arizona*, 384 U.S. 436 (1966).
- The Scottsboro Boys served as an inspiration to Harper Lee for her book "To Kill a Mockingbird."
- Sheila Washington, who was the catalyst for the creation for the Scottsboro Boys Museum and

Culture Center, as well as a major force in winning the 2013 pardons, died on January 29, 2021.

- For those wanting to dig deeper into this tragic story, the best first-stop is a two-part article by Faust F. Rossi, Samuel S. Leibowitz Professor of Trial Techniques, Emeritus, at Cornell Law School: "The First Scottsboro Trials: A Legal Lynching," *Cornell Law Forum* (Winter 2002 & Spring 2003). Also recommended is Dan T. Carter's "Scottsboro: A Tragedy of the American South" (LSU Press 2007).

Lawyers Who Made A Difference

Judge Martha Mills

By Pete Eikenberry and Aneesa Mazumdar

In the summer of 1966, White & Case hired its first woman lawyer, Martha Wood.

Even before her first day as a law student, Judge Martha Mills, now retired, was a trailblazer. She graduated from Macalester College in three years, even though her parents thought girls should not attend college. Then, she (and three of her classmates) were the first female law students admitted to the University of Minnesota Law School. After law school, in the summer of 1966, she was hired by White & Case as its first woman lawyer.

At White & Case, Judge Mills was assigned to the Trusts & Estates Department as one of her required three month rotations through three out of the four departments at the firm. The partner heading the department found her first memo very well done, yet he asked her to spend more time on it. Feeling that the request was made merely to increase billable hours, she objected. The next day she was transferred to the Litigation Department. In Judge Mills' career, she appears always to have determined to "do the right thing."

While aware of the milestone of her presence at the firm, Judge Mills focused solely on doing very good work. As a litigation associate, she was assigned to several high-profile matters including the "Salad Oil Scandal" matters. While most people at White & Case were supportive, there was one partner, David Hartfield, whom she knew had opposed hiring women lawyers. For him, Judge Mills just stayed focused on her tasks. Over time, given her excellent work in complex assignments, she gained his trust, and Hartfield became her favorite mentor at the firm. For young lawyers, Judge Mills emphasizes the importance of staying in touch with everyone – from the partners to the receptionists – and fully integrating with her coworkers.

In 1969, three years into her career in the White & Case Litigation Department, Judge Mills volunteered for a one-month volunteer assignment in Mississippi to work with the Lawyers' Committee for Civil Rights Under Law. When the month was up, she had seen firsthand the pressing need for more lawyers to dismantle the structures of systemic racism; White & Case, however, turned down her request to stay another year. Without looking back, she returned to New York, wrapped up her matters at White & Case, and rejoined the Lawyers' Committee full-time. She was one of the first female trial lawyers in the Deep South. In Mississippi, Judge Mills worked as a trial lawyer on dozens of civil rights cases.

Judge Mills won the first million dollar verdict in the state since Reconstruction on behalf of a Black man murdered by the Ku Klux Klan. She was the first attorney in Mississippi to try a case before an integrated jury. In the criminal cases she defended, she routinely moved to quash jury venires on the ground that they excluded Blacks. The names on the jury lists came from voter registration lists. Most Blacks at the time were unable to register to vote, despite passage of the Voting Rights Act. While she often lost at the county level, she always obtained reversals in the Mississippi Supreme Court. Step by step, juries in Mississippi became integrated.

Although she was under constant threat of fire-bombing or death, Judge Mills stated that she never had been concerned for her safety. She simply felt that "this was the right thing to do." She commented upon the impact of her work, by saying, "I made a difference, but so did everyone else who went down there."

In 1971, after two years in Mississippi, Judge Mills moved to Cairo, Illinois, to be chief counsel of the Lawyers' Committee, where it was located. There, she continued trying civil rights cases and helped to develop a program for migrant workers. After three years in Cairo, she returned to her home city of Chicago and engaged

in private practice. In 1989, Judge Mills became the second woman from Illinois to be admitted to the American College of Trial Lawyers.

In 1995, Judge Mills was nominated by the Illinois Supreme Court to be a judge in the Circuit Court of Cook County. She first sat in the Child Protection Court and then became supervising judge of the Parentage Court (which was later consolidated into the Domestic Relations Division) until she retired in 2012. She enjoyed the transition from advocacy and found the work intellectually stimulating. In particular, Judge Mills liked working with young lawyers and on *pro bono* cases.

As a judge, she piloted a restorative justice program for juveniles as an alternative method of dispute resolution; hers was one of the first family court programs in the country. She brought the parties together to reach a common understanding that may not have been possible through traditional litigation. She offered the alternative of "restorative circles" to resolve issues between parents and children if they agreed to participate. She informed its participants that, "the circle belongs to the people in it."

In one case, a group of juveniles had destroyed fish houses belonging to members of a Minnesota lake community. One of the owners was initially reluctant to participate in the restorative justice process, wanting instead to press charges. But after hearing from the juveniles in the restoration circle, he approved resolution and agreed that they could work on repairing the fish houses. By the end of the process, he invited them to go fishing with him and his family. Judge Mills found that open communication and understanding was effective in resolving disputes.

In the myriad of positions Judge Mills has held over the decades, her commitment to public service and interest never wavered. She commented on the continued need for advocates to do the same now, stating there "are so many areas where people can help." She has clearly lived her passion for doing justice.

Editor's Note: Aneesa Mazumdar is a third year law student at Columbia Law School.

A Remembrance

The Birth and Early Days of the Katzmann Study Group for Immigrant Representation

By Pete Eikenberry

Thanks most importantly to the late Judge Robert Katzmann's leadership, the New York Immigration Representation Study Group has pioneered highly effective initiatives including the New York Immigrant Family Unit Program ("NYIFUP") and the Immigrant Justice Corps. These programs have substantially remediated seemingly irretractable legal problems for thousands of immigrants and their families. As a result, tens of thousands of low-income immigrants now receive effective and free legal representation permitting them to be successful in a substantial percentage of litigated cases against them.

New York City now provides $16 million annually so that every detained immigrant facing deportation may have a lawyer regardless of his or her ability to pay. New York State provides $4,250,000 per year and is the only state in the nation that provides detained immigrants with representation. The Katzmann example is spreading throughout the country; more than 40 jurisdictions across 18 states now fund representation of immigrants in detention programs. Judge Katzmann's role was all the more remarkable given his workload and the rarity of judges calling for quality legal representation of immigrants. In his advocating for quality legal representation of low-income immigrants, he said he followed Canon Four of the Code of Conduct for United States Judges, which, in a Fordham Law Journal article, he said, "encourages judges to the extent that their time permits and when their impartiality is not compromised, to contribute

to the law, the legal system, and the administration of justice." Judge Katzmann was politely adamant that all lawyers and judges observe their obligations to do justice in such manner as they are able, to advance the public good.

The Study Group was organized in 2008, and by February 2009, Judge Denny Chin could describe the Group as follows:

> The Katzmann Study Group
>
> I am so grateful that I've been involved. We have been meeting for almost a year and, thanks to the leadership of Judge Robert A. Katzmann and Peter Eikenberry, we've assembled a wonderful group, unlike any that I've seen before. Although we do not have a formal membership, our meetings are attended by as many as forty people, or even more. We have judges, including Immigration Judge Noel Brennan, who's been tremendously helpful with her knowledge of the inner workings of the immigration courts. We've had private practitioners, some skilled and knowledgeable in immigration law and some not. Both have contributed. We've had big firm lawyers and solo practitioners. We've had private attorneys with extensive experience in *pro bono* programs. We've had academics, clinicians, legal aid providers, and grievance committee members. . . .
>
> And all of us have come together for regular meetings, including some at 7:30 in the morning, to see if we could do something about the lack of good legal representation for immigrants. And I believe we are making progress. . . .
>
> We believe we are uniquely qualified to do so because we have brought so many disparate interests together, we are not trying to compete with anyone, and collectively our only agenda is to improve the administration of justice in the immigration arena.

This remembrance is my story about how the Study Group came to be. I have no immigration law background. I did, however, assist Judge Katzmann in assembling the Study Group due to an unlikely chain of circumstances. In 2002, the Federal Bar Council's Second Circuit Courts Committee was working to establish its Fall Retreat. Judge Katzmann was the first circuit judge recruited to serve as a faculty member. I shared a podium that year with Judge Katzmann on the subject of "moral philosophy and the practice of justice, focusing on whether lawyers practice justice or practice law, with justice as a by-product." There was no transcript of Judge Katzmann's talk but his comments resonated with me about the role of the lawyer in society. We talked after his presentation and arranged for lunch where we discussed the matter more fully. In April 2003, Judge Katzmann forwarded to me a book he had written, "The Law Firm and the Public Good."

In its foreword, the president of the Brookings Institute stated that:

> [T]oo little attention is devoted to the role of large law firms in addressing the legitimate, unmet needs of millions who cannot afford access to the legal system.

In the book, then-Professor Katzmann stated that:

> The lawyer's function is grounded in role morality, the idea that special obligations attach to certain roles – in this case, to render justice. . . . [A]s a consequence of specialized knowledge and skill, . . . lawyers claim autonomy to perform their jobs. . . . The state grants such autonomy in exchange for lawyers, as officers of the Court, discharging their duty to further equality before the law. After all, the very reason that the state conferred such a monopoly was so that justice be served. . . .

Judge Katzmann's words that it is the "role" of a "lawyer" to "render justice," compel us all to reflect upon our responsibilities as attorneys. If he could read this article, Judge Katzmann would chuckle at the inclusion of this quote which he knew was a favorite of mine.

During his entire career, Orison Marden (my boss in 1966) was as concerned as Judge Katzmann with the issue of legal representation of the indigent. As a young associate, Marden organized associates in major firms located in New York City to annually contribute to the Legal Aid Society. In the early 1960s, President John Kennedy

invited Marden and other ABA leaders to the White House to address the need for representation of civil rights litigants in Mississippi.

I handled the exhibits for Marden at the trial of *SEC v. Texas Gulf Sulfur* where my firm, White & Case, represented Texas Gulf. After the trial, he offered me the opportunity at firm expense to be a civil rights lawyer in Mississippi for the month of July, which I immediately accepted. Serving with Marian Wright Edelman and other committed civil rights lawyers in Mississippi changed my life forever, and I did not remain with White & Case long thereafter.

In 2006, my former White & Case colleague, Laura Hoguet, recommended me to succeed her as chair of the Marden Lecture Committee at the New York City Bar Association. The committee was established after Marden's death with the mandate to stage an annual lecture on Marden's lifelong issue: the representation of indigents. In view of Judge Katzmann's book and our conversations, he appeared to be a perfect choice for the 2007 Marden lecture. As chair of the committee, I invited him to speak and submitted his name to the Bar Association's executive director.

However, I was scolded for not having cleared the selection with Bar Association officials. I was told, "Judge Katzmann is a nice man, but he will not draw a crowd!" Nonetheless, the Bar Association was in no position to retract my invitation. A few weeks before his talk Judge Katzmann called to say that he was "working hard because" he did "not want to let [me] down." The evening of his lecture, the great hall of the Bar Association was packed. As Judge Katzmann spoke, the audience was transfixed. It hung on his every word due to the force of his argument and the sincerity of the delivery of his message about the need for immigrant representation.

In 2008, I invited Judge Katzmann to attend that year's Marden Lecture. Meanwhile, his 2007 Marden Lecture was published in the 2008 winter edition of the Georgetown Journal on Ethics. Additional articles about the need for immigrant representation, authored by five prominent lawyers, also were included. At the reception on the evening of the 2008 lecture, I said to Judge Katzmann, somewhat impertinently, "Judge, you did great follow through for your talk with getting it reprinted in the Journal on Ethics. Would you like me to help you put a little study group together?" He said, "Sure."

Judge Katzmann immediately brought in Bob Juceam, at the time a partner in Fried Frank, and I called and invited Judge Denny Chin, now-Judge Bill Kuntz, and immigration lawyer Michael Patrick. For a brief time, the six of us sat around trying to determine what to do. Thereafter, Judge Katzmann and Judge Chin suggested other people to invite, including Professors Stacy Caplow and Nancy Morawetz, private practitioner Claudia Slovinsky, and Cleary Gottlieb partner Lewis Liman. Later, Oren Root of the Vera Institute also became involved. (As a practicing lawyer I was in a better position to make such invitations than a sitting judge.) It was an easy task; no one turned down the invitation.

Initially, at the 7:45 a.m. Study Group meetings, Judge Katzmann went around the room to solicit everyone's views on the need and on how to proceed. At later meetings, he often invited guests such as the speaker of the City Council or a second year Justice Fellow with the Immigrant Justice Corps. Judge Katzmann always treasured his mentoring role. Judge Katzmann appointed subcommittees such as one on unscrupulous lawyers and other predators on immigrants seeking representation. Three sub-committees were formed in all, each taking a different part of the problem.

Upon invitation, in early 2009 Judge Katzmann gave the Levine Lecture at Fordham Law School joined by other speakers from the Study Group, including Judge Chin, Jojo Annobil, Claudia Slovinsky, Professor Peter Markowitz, Jennifer Colver, Judge Noel Brennan, Lewis Liman, Robert Juceam, and Careen Shannon. There was a panel discussion following the lectures that day, and the proceedings were reprinted in the November 2009 issue of the Fordham Law Review. New York Times reporter Nina Bernstein was present for the Fordham event and subsequently wrote supportive articles (she had already written a related article in April 2008). A law student at the time, Rosaly Kozbelt, was invaluable in helping put the event together. She was also helpful in doing some administrative work for the Study Group until she graduated from law school and became a clerk for a judge and could

not continue.When it appeared the Study Group was getting off the ground, I started thinking about the next steps. I intended to get the Study Group incorporated as a New York State not-for-profit corporation and to find someone to secure Internal Revenue Code Section 501(c)(3) certification so it could organize with bylaws and solicit funds. I spoke to Judge Katzmann about my intentions. He politely but firmly diverted me. The Study Group remained an informal body and it still is. New York City provided initial funding for the NYIFUP. Subsequently New York State provided funding for the NYIFUP and the Robin Hood Foundation for a completely new organization, a 501(c)(3), the first and I think only fellowship program for lawyers working on behalf of low-income immigrations, the Immigrant Justice Corps. The Study Group neither raised nor received any financial support and still does not. None of these extraordinarily effective programs would exist without the Study Group.

Judge Katzmann always took my calls, and he was very supportive when my wife died in 2014. However, I did not approach him at a Study Group meeting, at a judicial conference, or a bar gathering. It was apparent to me that Judge Katzmann used these types of occasions to speak with people who could help the cause, to encourage those who were doing its work, or to speak to those who could supply him with information. Judge Katzmann always focused on how to accomplish the next step, and he publicly encouraged and congratulated everyone upon their contributions.

One incident demonstrating his thoughtfulness stands out. After the Study Group got started, Judge Katzmann and I occasionally lunched at either the City Hall Restaurant or at the Odeon. On one occasion, I showed up at the Odeon when we had agreed upon City Hall. After a few minutes, Judge Katzmann called me, and it came to me that I was at the wrong place. However, Judge Katzmann insisted on coming to the Odeon and soon joined me there. We laughed about the incident and had a fine lunch. Judge Katzmann was unusual in comparison to almost every lawyer or judge with whom I have ever lunched. He did not have a buzzer in his head that went off after 60 minutes. If we were interested in talking about something, Judge Katzmann and I continued talking about it even if we went on for another 10, 15, or 20 minutes past a customary lunch hour. I felt some guilt since Judge Katzmann had so many things on his plate.

Judge Katzmann's family has always provided support for his commitment to helping others. For example, at the Judge's 2007 Marden Lecture, his wife, parents, and siblings were there for dinner and to attend the lecture. His wife Jennifer and/or his brother, Court of International Trade Judge Gary Katzmann, usually have been in evidence at almost every non-judicial event. Judge Katzmann has profoundly elevated the status of immigration lawyers. There have always been excellent immigration lawyers and excellent professors in the field of immigration, but the profession was plagued with fraudsters, lawyers who mimeographed briefs, and non-lawyers who pretended to be lawyers. In his Marden Lecture, Judge Katzmann brought attention to these examples, and the quality of lawyering in this area has much improved. One of Judge Katzmann's ideas that grew out of the Study Group led to the 2014 founding of the Immigrant Justice Corps ("IJC"). The IJC, a 501(c)(3) entity, is the only fellowship program of its kind that recruits and trains college and law school graduates with the goal of creating a new generation of immigration attorneys and advocates in the United States. Each year, the IJC recruits 25 law school graduates ("Justice Fellows") and 10 college graduates ("Community Fellows"). The Fellows work for two-year stints. Since 2014, the IJC has had approximately 85 Fellows (first, second, and third years) each year serving in 10 states and more than 30 cities. In seven years, 90 percent of 125 graduated Justice Fellows have secured permanent employment in the immigration field.

During the course of the Study Group, Judge Katzmann mentored an impressive group of lawyers into important leadership positions. Examples are Jojo Annobil, the Executive Director of Immigration Justice Corps; Professor Peter Markowitz, co-director of the Kathryn O. Greenberg Immigrant Justice Clinic at Cardozo Law School; and Assistant Professor Lindsay Nash, co-director of the Kathryn O. Greenberg Immigrant Justice Clinic. Professor Nash clerked

for Judge Katzmann and also served as informal administrator of the Study Group. She recently informed me that Judge Katzmann had a lot of plans for the Study Group going forward. With the leadership he left behind, I am sure that many of Judge Katzmann's dreams will still come to fruition. At the most recent Study Group meeting in October 2021, Judge Denny Chin said it now had to be called the Katzmann Study Group, a name that Judge Katzmann had rebuffed.

Viktor Frankl has stated that:

> [B]eing human always points, and is directed to something, or someone, other than oneself – be it meaning to fulfill or another human being to encounter – the more one forgets himself to a cause to serve or another person to love – the more human he is and the more he actualizes himself. . . .
>
> Life ultimately means taking the responsibility to find the right answers to its problems and fulfill the task that it sets for each individual.

Judge Robert Katzmann lived the life that Frankl described.