



In This Issue:

Council Turning 90 2

Council President Jonathan M. Moses introduces a letter Lisa Zornberg wrote to Damian Williams in honor of his confirmation as U.S. Attorney for the Southern District of New York, discussing the beginnings of the Council.

From the Editor..... 6

Bennette D. Kramer reports on the Emory Buckner Medal being awarded to Judge John Koeltl at the Council's Thanksgiving Luncheon.

On Judge Cogan's Wall..... 7

Steven H. Holinstat spoke with Judge Brian Cogan about the mural on a wall in Judge Cogan's chambers that is "A True Portrait of Restraint."

On My Wall 10

Margie Berman explains why she has the "Daily Prayer of Maimonides" on her office wall.

Reflections..... 12

In 2014, then-Chief Judge Robert A. Katzmann launched "Justice For All: Courts and the Community," a civic education initiative of the federal courts of the Second Circuit operating through the Second Circuit Civic Education Committee. In this article, Judge Joseph F. Bianco, Judge Victor Marrero and Alana Chill reflect on the initiative and its future.

A Remembrance 15

Anne C. Leahey and Dorothy O. Nese remember U.S. District Judge Sandra J. Feuerstein and Magistrate Judge A. Kathleen Tomlinson, both of whom recently passed away.

A Remembrance 18

This article by Magistrate Judge Sarah L. Cave recalls Betsy Plevan in just one of her roles: as chair of the Magistrate Judge Merit Selection Panel for the U.S. District Court for the Southern District of New York (Manhattan courthouse).

Personal History..... 20

C. Evan Stewart discusses a dilemma he faced as young lawyer about 45 years ago, involving Regulation U.

From the Courts..... 22

Travis J. Mock profiles Magistrate Judge James Cho, who recently joined the bench.

From the Courts..... 24

Bennette D. Kramer tells us about the unveiling in the White Plains courthouse of a portrait of Magistrate Judge Lisa Margaret Smith, who recently retired.

And More 25

In our other articles, Joseph Marutollo discusses a book written by a federal judge on John Fisher and Thomas More and Pete Eikenberry and Allegra Collins, a third year student at Columbia Law School, tell us about a law lecturer who is a tribal healing specialist for Native American Tribal Courts: Precious Benally.

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From the President

The Council Is Turning 90

By Jonathan M. Moses



This year marks the 90th anniversary of the Federal Bar Council. The Council's founding involves a remarkable story about discrimination in our profession and efforts to overcome it. It is a hopeful story, read today, but one that reminds us that there is more to do.

Below we are publishing a beautiful and well-researched letter by Lisa Zornberg, a member of the Council's Board of Trustees and a former Chief of the Criminal Division of the Southern District of New York, to Damian Williams upon the historic occasion of his confirmation as the U.S. Attorney of that office. Damian is the first Black person to be U.S. Attorney of the Southern District of New York. Lisa's letter recounts the history of the Council's founding in protest of race-based membership requirements of a national bar association, and the critical role of federal prosecutors in that protest.

This is the first of a series of articles and events we will have this year to celebrate the Council's anniversary. Thank you to Lisa and Damian for allowing us to share this letter with all of our members.

The Council's History

A True Story

By Lisa Zornberg



Dear Damian,

To mark the historic and wonderful occasion of your confirmation as United States Attorney for the Southern District of New York, I offer you a story. It is a true story – one that deserves to be rescued from the amnesia of time, and that feels right to share in this moment.

The year was 1931 – ninety years ago. Herbert Hoover was President and the nation was struggling through the Great Depression. Breadlines stretched for blocks and blocks in New York City, and the city faced significant law enforcement challenges. High among them were organized crime and racketeering, corruption, voting fraud (Tammany Hall-style), and investment “swindles” following the 1929 stock market crash. The U.S. Attorney for SDNY, appointed by Hoover in February 1931, was George Z. Medalie.

Fittingly, this story is about three things. First, two men: George

Medalie and one of his AUSAs, Hubert Delany. Second, a bold effort to remove racial bias from the federal bar. And third, a glorious birth. I've left that last bit mysterious to hold your interest. Let's start with Medalie and Delany.

George Medalie's parents were Jews who had fled Russia to escape the pogroms – the bloody, anti-Jewish riots and murders and looting of Jewish towns that swept Russia in the 1880s. The Medalies escaped to the Lower East Side, where George was born in 1883, no doubt in a cramped tenement apartment. He was only nine when his father died and so, in addition to going to school, George went to work loading watermelons on the docks to help support his mother and two sisters. A brilliant mind, George graduated from Columbia University in 1905 and from its law school two years later, after which he entered the private practice of law.

By all accounts George Medalie was a trial lawyer's trial lawyer. He also believed in the integrity of the law and its enforcement, and so he occasionally broke from private practice to accept unpaid, lengthy special prosecutor assignments. He investigated state election fraud, and tried and convicted Mrs. Florence Knapp, New York's Secretary of State, for padding payrolls and grand larceny. Medalie was a Republican. The New Yorker called his 1931 appointment as U.S. Attorney “an accident”: “A factional fight in the Republican organization had resulted in a deadlock. It was necessary to appoint a man who belonged to neither faction, and Medalie was selected to break



George Medalie, photo courtesy U.S. Attorney's Office for the Southern District of New York.

the deadlock.” The New Yorker hastened to add (commenting on Medalie’s performance two years into the job) that being “under no obligation to [either faction] or any other boss, he was free to prosecute Republicans and Democrats with equal gusto” – a freedom Medalie exercised.

When George Medalie took the helm at SDNY, one of the 35 or so AUSAs serving in the Office was Hubert Delaney. It was quite common in those days for AUSAs to

resign (either by request or choice) upon confirmation of a new U.S. Attorney, but Delaney stayed on.

Hubert Delaney was not a native New Yorker like Medalie; he was born in Raleigh, North Carolina, in 1901, and was raised there. But he became a quintessential and lifelong New Yorker. And he, too, was first-generation, in a different way: he was part of the first generation of Delaney men born outside of slavery. Hubert’s father, Henry Beard Delaney,

had been born into slavery in Georgia. Following emancipation, the elder Delaney pursued scholarship and teaching at a college in Raleigh founded by the Episcopal Church for freed African Americans, and became the first black person elected Bishop Suffragan of the Episcopal Church in the United States. Bishop Delaney and his wife (also a college instructor) imparted to their ten children, including Hubert, a deep commitment to

education and advancement. Hubert cut his path north to New York City. He graduated from City College in 1923 and from NYU Law School in 1926, working during his schooling as a teacher in Harlem elementary schools and as a railway porter at Penn Station. As best I can tell, Delany was sworn in as an AUSA around 1930, at the age of 29.

It is worth pausing to consider that, by one researcher's estimate, in 1930 there were only 117 black lawyers in all of New York State, and an estimated 1,247 black lawyers in the entire United States (out of a total of 160,605). I imagine that Delany must have been particularly dynamic – a supposition that seems rather confirmed by the fact that, after graduating law school, he ran for Congress (as a Republican) to represent a district in Harlem. His loss of that election was SDNY's gain.

This brings me to the second part of the story. In the early 1930s, the premiere national bar association for lawyers practicing in the federal system was the Federal Bar Association. With local chapters around the country, it was the professional organization for federal prosecutors, current and former. In 1931, the local FBA chapter for New York, Connecticut, and New Jersey extended membership to four black lawyers: AUSA Hubert Delany of SDNY; AUSA Oliver Randolph of the District of New Jersey; AUSA Francis X. Giles of EDNY; and Richard L. Baltimore, a former SDNY AUSA. This did not

sit well with the FBA leadership, whose written constitution limited association membership to "white" persons of good moral character. (The FBA was not alone in this; the American Bar Association, for instance, restricted membership to "white men" – a restriction not revoked until 1943.) From their national offices in Washington, D.C., the FBA issued an ultimatum to the local chapter: eliminate your four black members.

Medalie took a stand. He had been U.S. Attorney for about four months and he had not yet even joined the FBA. But he attended the local chapter's meeting on June 15, 1931, at 115 Broadway, apparently for the purpose of leading a protest against the national organization's racist membership requirements. The New York Times ran the story.

As reported by the Times, the local FBA chapter elected Medalie to its membership that night and he immediately proposed a resolution:

"If my assistant, Hubert T. Delany, cannot be a member of this association, I don't want to be a member. It seems to me that they (the national body) can have us if they dispense with their constitutional provision. Otherwise, we will have to go it alone."

The resolution was overwhelmingly adopted by the local chapter, and that message delivered back to the national FBA.

The Times story reported on Hubert Delany's reaction as

follows: "Mr. Delany said later that, while in times past he would have considered such an act on the part of the association courageous, he thought that now such a thing was a natural attitude." In other words, it ought to be natural, not a mark of courage, to resist bigotry. This, I hope, Delaney felt was the prevailing sense at the Office where he worked.

And now for the birth. The FBA seems not to have budged following Medalie's stand – "If my assistant, Hubert T. Delany, cannot be a member of this association, I don't want to be a member" – and so the leaders of the local chapter (among them Charles Tuttle, who was SDNY's U.S. Attorney just before Medalie and who had hired Delany) indeed decided to "go it alone." They withdrew from the national organization and formed a new, independent organization: The Federal Bar Council. A more illustrious beginning to an organization can hardly be imagined. (For the record, the new group was originally named the Federal Bar Association of New York, New Jersey and Connecticut; its charter was approved by the New York State Legislature in a private act that then- Governor Franklin D. Roosevelt signed on April 1, 1932. Much later, in the 1960s, the name was changed to the Federal Bar Council, and poor Jersey got tossed as part of a geographical realignment of the organization with the Second Circuit.) But the point is: What a birth! Founded on principles of equality, respect, and dignity.

The New York Times:

FEDERAL BAR SPLIT ON BANNING NEGROES

*Local Branch Defies National
Attorneys' Demand to Drop Four From Membership*

MEDALIE LEADS PROTEST

Delany and Medalie continued on with their accomplished lives. Delany stayed at SDNY for five years as an AUSA, after which he held various roles – as a family court judge, New York State Tax Commissioner, private practitioner and civil rights advocate, and advisor to Martin Luther King, Jr.

Delany was also appointed in 1963 by Governor Nelson Rockefeller to lead a commission that studied New York's low-rent housing problems. He passed away in 1990, in Manhattan, at the age of 89.

Medalie, meanwhile, resigned his U.S. Attorney post in 1933 following Roosevelt's election that year in a Democratic sweep. He continued to practice law, led major philanthropic efforts, and is credited with having launched and continuously advised the political career of Thomas Dewey (who had been Medalie's first assistant

at SDNY). In 1945, Governor Dewey appointed Medalie to the New York State Court of Appeals, which appointment he held at the time of his too-soon death a year later, at age 62.

I have been unable to find any published obituary or on-line homage to either Medalie or Delany that mentions Medalie's 1931 stand. I suppose that is not surprising given the full lives these men led. One could also rightly observe that protesting an association's racist eligibility requirements in the 1930's was, all told, a tiny blip in the long, ongoing fight against discrimination. Indeed, Delany spent much of his life as a director of the NAACP, tackling such barriers.

And yet I resist any notion that this story is small. It is magnificent, for the SDNY and Federal Bar Council both. A moment of outstanding leadership, of standing

up for what is right and good. And Damian, with you at the helm, I know the Office will continue to do the same.

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From the Editor

Judge Koeltl Receives Emory Buckner Medal at Council's Thanksgiving Luncheon

By Bennette D. Kramer



On November 21, 2021, the day before Thanksgiving, the Federal Bar Council once again held its annual Thanksgiving Luncheon in person. This time the luncheon was restricted to 500 people and was held at Cipriani 42nd Street, because both the Waldorf and the Hyatt Grand Central have closed. The luncheon was completely sold out with a waiting list. The chair of the luncheon, Lisa Zornberg, led everyone in toasts celebrating the fact that we were together in person again.

Council President Jonathan Moses presented the Emory Buckner Medal in recognition of outstanding public service to Judge John G. Koeltl of the U.S. District Court for the Southern District of New York. Before the presentation, Frank Wohl, chair of the Nominating Committee,

installed the new officers, trustees and directors of the Federal Bar Council and Federal Bar Foundation.

“A Judge’s Judge”

Presenting the Emory Buckner Medal to Judge Koeltl, Moses described him as a “judge’s judge” who consistently exhibits thoroughness, kindness and patience.

Judge Koeltl graduated from Regis High School, Georgetown University and Harvard Law School, where he served on the law review. Following law school, Judge Koeltl clerked for Judge Edward Weinfeld and then for Justice Potter Stewart.

He was an Assistant Special Prosecutor, Watergate Special Prosecution Force, Department of Justice, and was an associate and then partner at Debevoise & Plimpton for nearly 20 years.

In 1994, President Bill Clinton nominated Judge Koeltl to serve on the Southern District, and he is now the longest-serving currently active judge in the Southern District. Judge Koeltl is an avid skier and an opera fan. He serves as a trustee of the Metropolitan Opera Guild. He is guided by the advice from Judge Weinfeld to believe that every case is important and interesting; it is necessary to show respect for litigants; and no litigant deserves second-class treatment. A judge must show respect for justice day by day, case by case.

Judge Koeltl’s Remarks

Accepting the Emory Buckner Medal, Judge Koeltl said that he was honored to be among the distinguished group of people who had received the medal in the past. When

he asked himself why he had been selected, he realized it was because he was the longest sitting active judge in the Southern District who had not taken senior status. Thus, he concluded, he represents all the judges on the Southern District bench in receiving the award.

Judge Koeltl described Emory Buckner as a great public servant, an Assistant U.S. Attorney in the Southern District of New York who was known for his integrity.

Judge Koeltl said that his parents grew up during the Great Depression and could not go to college, but that they invested in the education of their children. Judge Koeltl was fortunate to be able to go to Regis High School, which was founded by a then-anonymous benefactor whose donation made education at Regis free. Regis graduates were obligated to give back when they could.

The late Judge Eugene Nickerson of the U.S. District Court for the Eastern District of New York told Judge Koeltl that a district court judge dealt with justice on a retail level, dealing with myriad people including lawyers, litigants and jurors. At his 85th birthday celebration, Judge Weinfeld said that as he put his key in the door at an early hour every day, he felt the joy of performing public service – providing justice for poor and rich alike. Judge Koeltl tells jurors that they have performed a public service by serving.

Judge Koeltl’s Requests

Judge Koeltl said that none of us do enough public service. He made two requests.

First, he asked every lawyer present to participate more, emphasizing

the special obligation lawyers have. Even though lawyers do a lot of public service, it is never enough. There is a great need for lawyers to represent pro se litigants in civil cases. It should be the responsibility of firms to take on civil pro se cases on a pro bono basis – it should be a priority for firms. The Southern District now has dozens of pro se cases for which it cannot find lawyers. Judge Koeltl asked lawyers to please volunteer, saying there should be lawyers waiting to take pro bono cases, not cases waiting for lawyers. He noted the Council's efforts to organize lawyers and reduce the civil pro se docket through its Access to Counsel Project.

Second, Judge Koeltl said that senior lawyers should be doing pro bono work, instead of being forced to retire. There are 15,000 children in shelters, and a large segment of the population at the poverty level who have a lack of understanding of educational opportunities, social services, etc. Senior lawyers are underused. Firms require that they retire but those firms should recognize that it is wrong to push lawyers into retirement at 65. It is not good for the lawyers, firms or the community. We need a change in the culture that does not force senior lawyers to retire. They should be encouraged instead to do pro bono work and their contributions should be recognized. This would provide benefits to firms, the senior lawyers and the community and leave a more fair and just community.

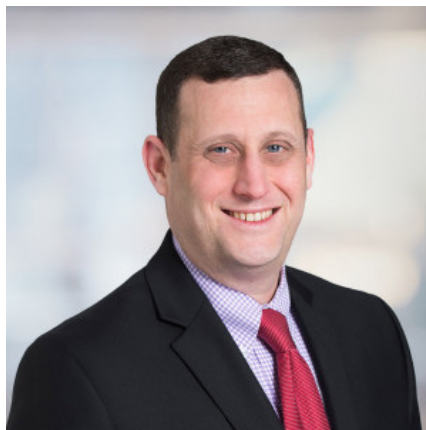
The timing of the Thanksgiving Luncheon was fortunate. If the Omicron variant had been raging through the community at that time, causing many breakthrough infections despite vaccination, it is doubtful that as many people would

have attended a gathering such as the Thanksgiving Luncheon. We appear to have been plunged back into uncertain times. Alas, the Council has canceled its Winter Bench and Bar Conference scheduled for the end of February in Puerto Rico due to the Omicron variant. It was certainly a gift that we could get together to celebrate Thanksgiving.

On Judge Cogan's Wall . . .

“A True Portrait of Restraint”

By Steven H. Holinstat



The chambers of many federal and state court judges are lined with shelves upon shelves of dusty law books, many of which have likely not been cracked open in years and which, in today's electronic age, have increasingly become mementos of a distant, and to some a nostalgic, past. Indeed, it is unlikely that many newly-admitted attorneys would even know how to efficiently ferret out relevant cases or research

legal doctrines solely by reference to these books.

The chambers of Judge Brian C. Cogan of the U.S. District Court for the Eastern District of New York, however, are not adorned with wall-to-wall bookshelves. Rather, attorneys entering his chambers are greeted by a life-size wallpaper mural (commissioned and paid for by Judge Cogan) of a classic piece of American history depicting a time pre-dating most of the law books lining the shelves of other judicial chambers, but which has far more relevance in this modern era. This mural is a replica of a famous oil painting by John Trumbull, titled “General George Washington Resigning His Commission.”

About the Mural

Notably, the Trumbull family played a significant role in America's revolutionary history. The artist, John Trumbull, served in the Continental Army under General Washington and became one of his aides. One of his two older brothers became the first commissary general of the Continental Army in the Revolutionary War, and the other became the second Speaker of the House of the United States. His father, Jonathan Trumbull, Sr., served as Connecticut's governor during the American Revolution, and was one of only two men to serve as governor of both a British colony and a U.S. state, and the only governor to take up the patriots' cause at the start of the Revolutionary War. (*See, e.g., Biography of John Trumbull, Painter of the American Revolution,*

at <https://www.thoughtco.com/john-trumbull-4694533>.)

The life-size mural in Judge Cogan's chambers depicts General George Washington, in full military garb, backed by his senior military aides-de-camp (Colonel David Humphreys and Colonel Benjamin Walker), resigning his commission as Commander-in-Chief of the Continental Army on December 23, 1783, before the Congress of the Federation, which at the time was meeting in the Maryland State House in Annapolis, Maryland.

The story of General Washington's voluntary resignation spread across the country and, indeed, the world, like wildfire. James McHenry, a judge and delegate at the Continental Congress, remarked that "the events of the revolution just accomplished – the new situation into which it had thrown the world – the great man who had borne so conspicuous a figure in it, in the act of relinquishing all of public employments to return to public life . . . all considered to render it a spectacle inexpressibly solemn and affecting." (See James McHenry to Margaret Caldwell, December 23, 1783, in *Letters of Delegates to Congress, 1774-1789*, Vol. 21, ed. Edmund C. Burnett (Washington, D.C.: Library of Congress 1976-2000) 223.) Incredibly, when King George III learned of General Washington's act, he is reported to have stated that "If [Washington] does that, he will be the greatest man in the world."

John Trumbull himself remarked that this is an event that "excites the astonishment and admiration of this part of the world. 'Tis a Conduct so novel, so inconceivable

to People, who, far from giving up powers they possess, are willing to convulse the Empire to acquire more." John Trumbull considered this to be General Washington's greatest act and one of the highest moral lessons ever given to the world. He described this painting of General Washington's resignation as "a dazzling temptation . . . to earthly ambition! Beloved by the military, venerated by the people, who was there to oppose the victorious chief, if he had chosen to retain that power, which he had so long held with universal approbation? The Caesars, the Cromwells, the Napoleons, yielded to the charm of earthly ambition, and betrayed their country; but Washington aspired to loftier, imperishable glory, – to that glory which virtue alone can give, and which no power, no effort, no time, can ever take away or diminish." (Trumbull, John (1835). "No. 27. –Resignation of Gen. Washington – December 23, 1783." *Catalogue of Paintings, by Colonel Trumbull; Including Eight Subjects of the American Revolution, with Near Two Hundred and Fifty Portraits of Persons Distinguished in That Important Period. Painted by Him from the Life. Gallery of Yale College*. pp. 27-30. Archived from the original on February 19, 2018.)

Historian Matthew Moten reverently describes Trumbull's painting: "Washington stands before a chair, one a little larger than all the rest and draped with a cloak – the throne will go unoccupied. Returning his commission, Washington becomes not Caesar but Cincinnatus, forsaking command, the military life, and a potential claim on executive,

perhaps dictatorial, power. Like Cincinnatus, Washington has sheathed his sword and will return to the plow at his Mount Vernon estate." (Moten, Matthew (2014). *Presidents and Their Generals: An American History of Command in War*. Harvard University Press.)

Judge Cogan's Choice

Judge Cogan explained that he chose to decorate his chambers with this masterpiece of American history because it says so much about General Washington and the remarkable acts upon which our nation was founded. In describing the painting, Judge Cogan mused that General Washington could have been king, given his universal accolades and the people's love and loyalty earned as the founding country's military leader during the Revolutionary War.

Alternatively, if he had wanted, General Washington could have taken the title of "Chief Executive" for life. He did neither, and in doing so, fostered the fragile seed that became known as our unique American democracy, in which no one is king, and no person is above law no matter his or her title or the willingness of the people to bestow supreme authority on such person.

One of the lessons Judge Cogan says he hopes that visitors to his chambers will take when viewing this mural is that the greatest gift to democracy is restraint in not exercising all of the power at a person's disposal. Just because one has the power or authority to act, it does not mean that he or she should act – much less seek to exert the fullest extent of their



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authority. Judge Cogan believes this ideal holds true, not just with military leaders, but with the executive and legislative branches of government. And he believes that this principle applies with equal force to the judiciary as well.

Judge Cogan notes that depicted in this mural is Elbridge Gerry, a member of the Second Continental Congress, one of the signers of the Declaration of Independence and later vice president to James Madison. He was influential in convincing several delegates to support the passage of the Declaration of Independence in the debates held during the summer of 1776. John Adams wrote of him, “If every Man here was a Gerry, the Liberties of America would be safe against the Gates of Earth and Hell.” (<https://www.govinfo.gov/content/pkg/CDOC-104sdoc26/pdf/CDOC-104sdoc26.pdf>.)

However, while acting as the governor of Massachusetts, Gerry approved a redistricting plan for the Massachusetts Senate that provided a distinct political advantage to his party. At the time, it was observed that one of the districts looked like a salamander, and soon the process was known as “gerrymandering.” (George Athan Billias, “Elbridge Gerry: Founding Father and Republican Statesman.”) Because of, among the other things, the signature act depicted in the mural in Judge Cogan’s chambers, General – and later President – Washington has and continues to be viewed as one of the most revered leaders this nation has ever known. In contrast, Gerry, despite his significant contributions to the American cause, is now forever connected to “gerrymandering.”

“To Serve the People”

In short, Judge Cogan states that this mural illustrates one of the most fundamental pillars of our unique democracy – that the individuals in our government are there to serve the people and not themselves or their respective political parties. Judge Cogan hopes that the many lawyers who grace his chambers look upon this mural and are inspired by Washington’s selfless devotion to this founding principle of American democracy.

On My Wall . . .

Daily Prayer of Maimonides

By Margie Berman



Like nearly everyone reading this article, my profession is that of attorney and only an attorney. Yet displayed on my wall for the

last 30 years is the “Daily Prayer of Maimonides.”

Before it graced my office, it lived in my father’s pediatric office throughout his career. Perhaps it was a gift to him when he graduated from medical school or opened his medical practice. When he passed away, I gratefully took the wall hanging, not only to remind me of my father, but also to remind me every day of the sacred professional standards that I learned from him.

Some Research

In connection with writing this piece, I did some research on the Daily Prayer. I came to learn that not only were my assumptions about this writing incorrect, but also that the writing on my wall may well be a conflation of two different writings. There is apparently an Oath of Maimonides and a Daily Prayer of Maimonides. I had always used the terms interchangeably in discussing the topic, not realizing they were two distinct writings. This particular writing on my wall appears to pick the best of both and title it with Daily Prayer. I mention this only because I know my audience. I have no doubt there are some well versed in the Prayer and the Oath, and others who will take a look at the writings after reading this article, and might point out that what hangs on my wall is some imposter of both.

The Author

Before reading about the Oath and the Prayer, I also always assumed they were the words of Moses Maimonides,

DAILY PRAYER OF MAIMONIDES

Almighty God, You have created the human body with infinite wisdom. In Your Eternal Providence You have chosen me to watch over the life and health of your creatures. I am now about to apply myself to the duties of my profession. Support me in these great labors that they may benefit mankind for without Your help not even the least thing will succeed.

Inspire me with love for my art and for Your creatures. Do not allow thirst for profit, ambition for renown and admiration to interfere with my profession. For these are the enemies of truth and can lead me astray in the great task of attending to the welfare of Your creatures. Preserve the strength of my body and soul that they may be ever ready to help rich and poor, good and bad, enemy as well as friend. In the sufferer let me see only the human being.

Enlighten my mind that it may recognize what presents itself and that it may comprehend what is absent or hidden. Let it not fail to see what is visible but do not permit it to arrogate to itself the power to see what cannot be seen for

delicate and indefinite are the bounds of the great art of caring for the lives and health of Your creatures. May no strange thoughts divert my attention at the bedside of the sick or disturb my mind in its silent labors.

Grant that my patients may have confidence in me and my art and follow my directions and my counsel. When those who are wiser than I wish to instruct me, let my soul gratefully follow their guidance for vast is the extent of our art. Imbue my soul with gentleness and calmness. Let me be contented in everything except in the great science of my profession. Never allow the thought to arise in me that I have attained to sufficient knowledge but vouchsafe to give me the strength and the ambition to extend my knowledge. The art is great, but the mind of man is ever expanding.

Almighty God You have chosen me in Your mercy to watch over the life and death of Your creatures. Support me in Your great tasks so that it will benefit mankind, for without Your help not even the least thing will succeed.

the renowned 12th Century Spanish and Jewish philosopher and physician. However, scholars believe that although attributed to Maimonides, the Prayer and Oath were likely written by Marcus Herz, a German physician and pupil of Immanuel Kant. The Oath and Prayer first appeared in print in about 1783. Others maintain Herz was only the translator of an ancient poem from Hebrew to German.

The Reasons

But let us get to it, shall we? Why should either the Oath or Prayer of a physician have any place on a lawyer's wall? After all, we are lawyers, not doctors.

Here is why.

It is a monumental tribute to the ideas of legal professionalism and honor. If in reading the Prayer you substitute "client" for the word "creature" it provides guidance for the highest ethical behavior: "Inspire me with love for my art and for [my clients]. Do not allow thirst for profit, ambition for renown and admiration to interfere with my career. For these are the enemies of truth and can lead me astray in the great task of tending to [my clients]." In a profession that is deeply challenging and often exhausting, it cautions to "preserve the strength of my body and soul that they may be ever ready to help rich and poor, good and bad, enemy as well as friend." And for those among us who represent unpopular clients that society may disdain and vilify, it cautions us to "let me see only the human being."

As to the drudging work of legal research and the development of novel legal theories, it reminds us

to "enlighten my mind that it may recognize what presents itself and that it may comprehend what is absent or hidden." But it also provides limits to that enlightenment, warning that in our zeal to represent our clients we pray to "not fail to see what is visible" but not permit our mind "to arrogate to itself the power to see what cannot be seen." In short, let our beautiful legal minds not convince us of what is not truth. It is only a disservice to our clients, our colleagues and the notion of justice.

The prayer moves on to the topic of client relationships, asking the universe to "grant that my [clients] may have confidence in me and my art and follow my directions and my counsel." We all know that the power of a strong client relationship based in trust is quite a blessing. It is an honor and privilege to guide our clients through difficult life experiences. It is quite the opposite emotion when that confidence and direction are disregarded.

As to mentoring, it recognizes that "when those who are wiser than I wish to instruct me, let my soul gratefully follow their guidance for vast is the extent of our art." It is a blessing of our profession that each new case and each new matter provides opportunities to grow and learn. But all of us can profit from understanding the limits of our knowledge and experience and drinking in what we can learn from those who know more. "Never allow the thought to arise in me that I have attained to sufficient knowledge but vouchsafe to give me the strength and ambition to extend my knowledge."

As to the prayer aspect of the writing, I leave it to the reader as

to the role of "Almighty God," but for those more agnostic, the invocation of God should not blur the import of the yearnings expressed. We are in a noble profession and the words of Maimonides (or Herz) are a brilliant expression of our power, striving and humbleness. And like any daily practice, we need to remind ourselves every day of our capacity and our limits to best serve ourselves, our clients and our system of justice.

"In Your Mercy"

I end with these final words of the Prayer: "Almighty God you have chosen me in your mercy to watch over the [lives] of [my clients]. Support me in your great tasks so that it will benefit [humankind] for without your help not even the least thing will succeed."

If the legal profession had a daily prayer of a lawyer, I would surely hang it in my office. Until it is written, the Daily Prayer of Maimonides is a perfect reminder of our frailties and powers and the power of intention.

Reflections

Justice For All: Courts and the Community

By Judge Joseph F. Bianco, Judge Victor Marrero and Alana Chill

"Justice For All: Courts and the Community" is the civic education initiative of the federal courts

of the Second Circuit, operating through the Second Circuit Civic Education Committee. In 2014, then-Chief Judge Robert A. Katzmann launched this circuit-wide project to increase public understanding of the role and operations of the federal courts and to bring courts closer to the community. Under Judge Katzmann's leadership, Justice For All became a nationally-recognized model for other courts and has been the focus of national attention both within the federal judiciary as well as in the mainstream media, such as *The New York Times*.

One of Judge Katzmann's (many) significant accomplishments in his civic education endeavors was the establishment of the Learning Center at the Thurgood Marshall United States Courthouse. The Learning Center is a state-of-the-art flexible learning space devoted to civic education. The Learning Center has become a national model for courthouse-based learning spaces and served as the venue for the first ever National Conference on Civic Education and the Federal Courts, convened by Judge Katzmann and co-chaired by Southern District of New York Judge Victor Marrero. Justice For All eagerly anticipates resuming in-person programming in the Learning Center once pandemic conditions permit.

In June 2021, Justice For All, the Second Circuit, and all who knew him suffered a tremendous loss with Judge Katzmann's untimely passing. Judge Katzmann's enthusiastic work in the area of civic education was unparalleled,

and his dedication to this work is a testament to who he was as a judge, a scholar, and a person – brilliant, passionate, kind, and unwavering in his commitment to justice and the public interest.

Where We Are

Following Judge Katzmann's passing, Second Circuit Chief Judge Debra Ann Livingston appointed Circuit Judge Joseph F. Bianco to succeed Judge Katzmann as co-chair of the Second Circuit Civic Education Committee. Judge Katzmann's legacy will endure, and Justice For All continues to pursue its mission "to seek to encourage, develop, and support programs in civic education for all members of the public, especially students, and to engage the community through outreach efforts." With the active participation of judges from across the Second Circuit, court staff, educators, and members of the bar and community organizations, Justice For All encompasses a variety of programs aimed at bringing the courts to the communities, and the communities to the courts. Some of the many programs offered include: student and community field trips to courthouses, court camps, student moot courts and mock trials, library lab research sessions, student essay and artwork contests, teacher professional development, historic case reenactments, adult education programs at public libraries, and the development of resources on law-related topics for students and teachers alike.

Since the onset of the COVID-19 pandemic, Justice For All has been committed to adapting and expanding its civic education efforts to the virtual environment. Since March 2020, Justice For All has reached thousands of students across the Second Circuit through programs such as virtual library labs, virtual courthouse field trips, virtual visits to classrooms, virtual moot courts and mock trials, and the creation of distance learning content. One notable project that has been adapted to the virtual environment is the Judiciary & the Arts program, a Justice For All project in partnership with the Justice Resource Center and the New York City Department of Education Office of Arts and Special Projects. This program seeks to encourage students to learn about the history and present-day role of the federal courts in the development of the law in the United States through the visual arts, and is now in its third year of virtual operation. Additionally, Justice For All hosted a four-day virtual Teachers' Institute in June 2021 (profiled in the Sept./Oct./Nov. 2021 edition of the *Federal Bar Council Quarterly*) and a four-session virtual professional development series for teachers in spring 2021.

Although Justice For All eagerly anticipates resuming in-person programming once it is safe to do so, the benefits that virtual programming can offer in support of the Justice For All mission became readily apparent during the pandemic. In particular, the virtual environment expanded

the pool from which guest speakers are recruited for civic education events, and has increased the ease with which judges and attorneys can participate in civic education programs. Additionally, virtual programs provide the opportunity for schools with geographic or logistical limitations to meet with federal judges without necessitating travel to a courthouse. Justice For All will continue to capitalize on the opportunities that virtual programming offers to maximize the impact of civic education programs, even once the primary focus returns to in-person events.

Expanding and Promoting

With Judge Katzmann's goals and vision at the forefront, Second Circuit Judge Bianco and District Judge Marrero, co-chairs of the Second Circuit Civic Education Committee, have developed several new initiatives with the aim of expanding the reach and breadth of Justice For All's programs. These new initiatives are focused on reaching more schools, teachers, and students in New York City and across the Second Circuit.

As part of the expanded outreach efforts, Judge Bianco and Judge Marrero have written a letter to teachers across the Second Circuit, outlining some of the programs that Justice For All offers, and inviting them to participate in virtual field trips with federal judges. With the assistance of Debra Lesser, the executive director of the Justice Resource Center, a non-profit organization affiliated with the New

York City Department of Education that develops and implements law-related education projects, the letter has been circulated to relevant teacher groups across New York. Justice For All is also exploring additional avenues to reach teachers in New York and across the Second Circuit to promote the resources and programs that are available. A particular focus of the Second Circuit Civic Education Committee is increasing the number of schools that participate in courthouse visits (virtual for now, with sights set on in-person in the new year). Justice For All is aiming to have points of contact at each courthouse around the Second Circuit to maximize the accessibility of courthouse visits for schools and teachers, and to ensure that as many students as possible are given the opportunity to learn about the federal judiciary from federal judges throughout the Second Circuit.

An additional effort to increase the visibility of Justice For All's resources and materials is through Justice For All's exciting entry into the social media realm. After considering the ways in which teachers and students access information, Justice For All was eager to join Twitter with the hope of using the platform to disseminate information about programs, events, and resources. Building up the Twitter following and social media presence is an ongoing effort, but Justice For All is confident that using social media as a mechanism to proactively reach teachers and students will serve to promote

Justice For All more efficiently and effectively.

In a similar vein, Justice For All is also on YouTube. The Justice For All YouTube channel hosts dozens of videos that Justice For All has produced, including scripted videos about the federal judiciary featuring judges, attorneys, and others, as well as recorded panel discussions and conversations about legal topics. You can follow Justice For All on Twitter @jfacourts and YouTube at <https://www.youtube.com/channel/UCzOyhdHc5rKhJxA0MufUJhw/featured>.

Partnering

The work of Justice For All would not be possible without the tireless efforts and dedication of the many attorneys who practice in the federal courts of the Second Circuit. Attorneys from around the Second Circuit, both in their individual capacities and through local, state, and federal bar associations, contribute tremendously to Justice For All's mission – offering their time, creativity, law firm resources, and more to support the Second Circuit's civic education efforts.

Looking ahead, Justice For All hopes to further its partnerships with other legal institutions – namely law firms and law schools. Although bringing students and the public into the courts has been and will remain the primary focus of the Justice For All civic education initiative, law firms and law schools offer tremendous potential to provide students with additional opportunities to explore careers in

the law, both within and beyond the federal judiciary.

Since Justice For All's inception, the Federal Bar Council has supported the initiative's efforts and is instrumental to its continued success. The Federal Bar Council has partnered with Justice For All to bring attorneys into classrooms for the hugely successful "Day in the Life of an Attorney" program and generously furthers the Justice For All mission through ongoing financial support in honor of Judge Katzmann. Justice For All looks forward to continuing to partner with the Federal Bar Council to expand the opportunities for students to interact with the federal judiciary and all who contribute to its service to the public – including the esteemed attorneys comprising this bar association.

Learn More

If you are interested in learning more about Justice For All: Courts and the Community or if you have ideas for how Justice For All might partner with attorneys, law firms, or others to maximize the number of schools, teachers, and students that it serves, please reach out to Anna Stowe DeNicola at anna.denicola@federalbarcouncil.com, who sits on the Second Circuit Civic Education Committee. Additionally, please encourage teachers to schedule virtual visits with the federal courts, including a meeting with a federal judge, by visiting the Justice For All website at <https://justiceforall.ca2.uscourts.gov>.

A Remembrance

District Judge Feuerstein and Magistrate Judge Tomlinson

By Anne C. Leahey and Dorothy O. Nese



"I think the key is for women not to set any limits." – Martina Navratilova.

U.S. District Judge Sandra J. Feuerstein and Magistrate Judge A. Kathleen Tomlinson were extraordinary

jurists and role models, who shared a humanistic good will, an egalitarian kindness and delightfully dry senses of humor. Before becoming preeminent judges in the Eastern District of New York, each began her professional life as an educator: Judge Feuerstein as an elementary school teacher in New York City; Judge Tomlinson as a professor and assistant dean at Long Island University. Their lives were case studies in how to transcend the limits that society placed on women in the latter half of the Twentieth Century.

On April 9, 2021, Judge Feuerstein was fatally struck in a hit-and-run crash while she was walking on the sidewalk in Boca Raton, Florida. She was 75 years old. Judge Tomlinson died on October 17, 2021, of cancer. It is particularly painful to use the past tense when writing about these two incomparable women, whose lives were cut short while they were still ablaze with intellect and wit.

Judge Feuerstein

Judge Feuerstein was born in New York City in 1946. She worked as a teacher in the New York City public school system from 1966 to 1971 before attending the Benjamin N. Cardozo School of Law, where she graduated with honors in 1979 as a member of the school's first graduating class.

After graduating from law school, Judge Feuerstein worked as a law clerk in the law department of the New York Supreme Court from 1980 to 1985, and then for Justice Leo McGinity of the New York Supreme Court Appellate Division, Second Department, from 1985 to

1987. Judge Feuerstein served as a judge on the Nassau County District Court from 1987 to 1994, where she founded the Landlord/Tenant Pro Bono Project, part of the Volunteer Lawyers' Project, to provide legal representation to indigent individuals threatened with eviction.

In 1994, Judge Feuerstein was sworn in as a justice of the New York Supreme Court by her mother, Judge Annette Elstein of the federal Immigration Court in New York. They are believed to have been the first mother and daughter in the United States who served simultaneously as judges.

Judge Feuerstein sat as a justice on the New York Supreme Court Tenth Judicial District from 1994 to 1999, and in 1999 became the first woman justice from the Tenth Judicial District to serve on the Appellate Division as an associate justice of the New York Supreme Court Appellate Division, Second Department, where she served until 2003, when she was appointed to the U.S. District Court for the Eastern District of New York.

Judge Feuerstein's public service went far beyond her role as a jurist. She was a past vice president of the Nassau-Suffolk Women's Bar Association from 1986 to 1988. When the organization split into separate chapters in 1988, Judge Feuerstein became the first president of the Nassau County Women's Bar Association, while remaining a strong supporter of the Suffolk County Women's Bar Association.

On the state level, Judge Feuerstein was an active member of the Women's Bar Association of the State of New York, rising to the

position of vice president, which she held until 1991.

Judge Feuerstein also served on the board of directors of the Nassau County Bar Association, South Nassau Communities Hospital, the Long Island Arts Council, the American Cancer Society, the Long Island Development Corp. and the Long Island Coalition on Breast Cancer.

As a sitting justice in the state trial courts, Judge Feuerstein played an active role in the annual "Take Your Children To Work Day," and invited Girl Scouts with special needs to observe the inner workings of the court system. She was a frequent lecturer in CLE programs, authored numerous articles that have appeared in legal publications, and co-authored "Handling A Criminal Case in New York: Practice Guide" (Lawyers' Coop. Pub. Co. 1994). Over the years, Judge Feuerstein was the recipient of a "Pathfinder" award by the Town of Hempstead, presented during Women's History Month to women of distinction; a humanitarian award from the Education and Assistance Corp. in recognition for her efforts to better society through her work in the state court system, and "Achiever's Awards" from the American Jewish Congress, Long Island Region, and the Long Island Center for Business and Professional Women.

A press release issued by the Eastern District of New York described how Judge Feuerstein's "eccentric style and warm personality lit up the courtroom." These words ring true for those of us who appeared before her. During a preliminary conference, she frequently would descend from the bench and sit across from the lawyers at counsels' table to engage

in a frank and tough conversation about the core issues in the case, which she had gleaned from the complaint and answer. Impeccably groomed and wearing a fashionable suit, she would grill us and maybe laugh at our expectations about the outcome. She was known to say on more than one occasion, "If you're bleeding when you leave my courtroom, go find the nurse's office."

Sometimes her sense of fairness would be on full display during these conferences. Once, when a defense attorney suggested that the cosmetologists he represented did not have specialized skills and therefore were not bound by covenants against competition, Judge Feuerstein became furious: "Every human being is special! How dare you suggest that stylists don't have specialized skills?"

Her former colleagues on the Nassau County Supreme Court and District Court benches remember her as a kind, supportive friend and model judge, who always listened intently to the litigants and attorneys appearing before her and who always strove "to do the right thing." They recalled her as a strong proponent of healthy eating who often roasted a whole beet in the tiny District Court microwave oven, sometimes with explosive results, and regularly took long walks during the court's lunch recess. Her mother lived to reach 100 years of age; everyone who knew Judge Feuerstein fully expected her to enjoy a similarly long life, so news of her death was particularly shocking.

Magistrate Judge Tomlinson

Magistrate Judge Tomlinson was born into a close-knit, Irish-American

family in Philadelphia on September 10, 1948, and was raised with her five siblings in southern New Jersey. She earned her undergraduate degree in English and sociology at Rutgers University, magna cum laude, then a master's degree at Long Island University ("LIU"), where she later held the position of adjunct professor in the English Department and served as assistant university dean for the Faculty of Arts and Sciences, with responsibilities spanning LIU's six campuses.

While continuing to fulfill the duties of her positions at LIU, Judge Tomlinson attended St. John's University School of Law in the night division, earning a J.D. in 1987.

After graduation, she immediately entered public service, joining the Appeals Bureau of the Nassau County Legal Aid Society. She later left Legal Aid to serve as law clerk to the late U.S. District Court Judge Arthur D. Spatt.

Following her clerkship, Judge Tomlinson entered private practice in 1991 at Farrell Fritz, P.C., in New York, where she specialized in complex litigation, labor and employment law, white collar defense, and civil rights litigation in the state and federal trial and appellate courts, and chaired the firm's Pro Bono Committee, becoming a partner in 1998.

In recognition of her pro bono work at Farrell Fritz, Judge Tomlinson received the "Outstretched Hands of Justice" Award from the Suffolk County Bar Foundation/Nassau Suffolk Law Services.

Between 1999 and 2005, she served as a director of the Nassau County Bar Association and the Long

Island Fund for Women and Girls. Judge Tomlinson also was a member of the Criminal Justice Act Panel for the Eastern District and served as counsel to the Eastern District's Board of Judges Grievance Committee. Prior to taking the bench in 2006, Judge Tomlinson was honored as one of the "Top 50 Women in Business" by Long Island Business News, and twice named among the "Top Ten Leaders in Employment Law" by Digital Press International.

Judge Tomlinson's appointment to the bench in 2006 provided her with a new platform from which to promote civic initiatives and education, for the legal community as well as for the public at large. She took particular enjoyment in organizing special Naturalization Ceremonies at Sagamore Hill in Oyster Bay for Constitution Day, speaking with students visiting the courthouse for the Bench in Your Backyard program, and judging moot court competitions, such as the virtual civics education programs designed to provide middle and high school students with a greater understanding of the federal justice system. Judge Tomlinson frequently lectured to the bar on a variety of topics, including labor and employment law, litigation and federal practice.

As an active member of the Eastern District of New York Chapter of the Federal Bar Association, she developed and chaired the chapter's Continuing Legal Education ("CLE") Committee, which offered practitioners programs throughout the year aimed at improving the practice of federal law, including an annual Civil and Criminal

Practice Update. She also created and produced regional conferences dealing with cutting-edge workplace concerns such as multicultural diversity, glass ceiling, and workplace violence issues.

Judge Tomlinson was a member of the Federal Magistrate Judges Association, the Federal Bar Council, the American Bar Association, and the New York State Bar Association, where she served for many years on the Commercial and Federal Litigation Section's Committee on Ethics and Professionalism. As a long-time member of the Nassau County and Suffolk County Bar Associations, she served on the Labor and Employment Law and Federal Courts Committees.

A press release issued by the Eastern District of New York described how Judge Tomlinson "will be remembered for her warmth and kindness throughout her career, her indefatigable work ethic and her devotion to the training and mentoring of junior attorneys."

Judge Tomlinson's demeanor was gentle but firm and demanding. An attorney who was less than 100 percent prepared for a court conference never allowed it to happen a second time. Without raising her voice, Judge Tomlinson let practitioners know that she expected nothing less than adherence to the highest professional standards, which she also applied to herself. A towering intellect, her decisions were erudite and scholarly. Employing in-depth research and analysis, she always delved beyond the surface disputes and penetrated to the core issues, in clear and concise language.

Given her serious demeanor on the bench, it could be surprising for attorneys to see another side of her. Her dry wit was on full display in a mock-arbitration hearing conducted during a Nassau County Bar Association CLE program on sexual harassment and sexual discrimination in 2000. Judge Tomlinson, at the time a partner at Farrell Fritz, played the role of defense counsel to the alleged harasser. She had the packed room in stitches with her first, deadpan words to her “client”: “Good evening, Mr. Harris. Don’t touch me.”

At a Federal Bar Council event several years ago, Judge Tomlinson mercilessly roasted Magistrate Judge Lindsay about her large designer shoe collection, while the audience roared with laughter.

Once, at a settlement conference, Judge Tomlinson broke a stalemate by asking in a very kind manner how the jury would perceive the plaintiff, causing defense counsel suddenly to see the benefits of settling.

The members of her extended family were very familiar with the “joie de vivre” aspect of their “Cass/Aunt Cassie,” who was fiercely competitive at golf and all manner of board games, enjoyed trips to the local casinos and looked forward to hosting the family at Thanksgiving dinner every year.

“With All Your Heart”

“Your work is to discover your work and then, with all your heart, give yourself to it.” – Buddha.

The lives of Judge Feuerstein and Magistrate Judge Tomlinson were a testimony to the universal truth of that principle. Their deaths have left

an irreparable hole in the fabric of the lives of their families and friends. We join with them in mourning the loss of these extraordinary women, and at the same time, we celebrate the passion and commitment that they brought to bear at each stage, and in every aspect, of their personal and professional lives.

A Remembrance

Betsy Plevan

By Magistrate Judge Sarah L. Cave



On October 29, 2021, the New York legal community lost a legend. Bettina Plevan, whom most knew as Betsy, passed away at a Manhattan hospital following an over 50-year legal career during which she served as the first woman to be president of the Federal Bar Council (from 1996 to 1998) and the second woman to

become president of the New York City Bar Association (in 2004). She vigorously represented her clients in high-stakes labor and employment litigation, and was named to innumerable lists of the best lawyers in America. Since her passing, many tributes have described as a lasting part of her legacy the glass ceilings Betsy shattered throughout her lifetime and the doors she opened for women lawyers.

A significant, but lesser known, aspect of Betsy’s legacy was her more than 12 years of service as the chair of the Magistrate Judge Merit Selection Panel for the U.S. District Court for the Southern District of New York (Manhattan courthouse). As chair, Betsy led a committee of professionals who interviewed applicants for the position of magistrate judge and recommended qualified candidates for consideration by the Board of Judges.

In this role, Betsy brought to bear her signature professionalism, patience, integrity, and judgment to help shape a generation of magistrate judges in the Southern District. Several of those who interacted with Betsy during the selection process over the years shared their remembrances of this aspect of her legacy.

“Gracious Host”

“I have fond memories of Betsy. . . . She was a gracious host at the Proskauer offices during the interview process. She presided over both my selection and my renewal and did an admirable job of managing a number of different constituencies throughout the process. . . . I was just grateful for such a consummate professional to be

at the helm of the process.” — James L. Cott, U.S. Magistrate Judge for the Southern District of New York

“Perfect Chair”

“Betsy was the perfect chair for [the Merit Selection Panel]. She was a lawyer’s lawyer and so garnered everyone’s respect. The committee members come from a diverse set of professional experiences, and everyone has their own particular concerns about what makes for a good magistrate judge. We all recognize that it’s important to set aside our own parochial concerns, but in practice, it’s hard to do! She made sure we did it. She led by example. She never steered the conversations to or from particular candidates based on her own predilections. She always made room for everyone’s views. She didn’t take up all the oxygen and genuinely seemed to take to heart the comments by all committee members. I know that I always felt heard and respected in the process, and I guarantee that everyone else felt the same. . . . Betsy had a certain wise gravitas that made you want to impress her. If you were on the same page as Betsy, you knew you were on the right track. She somehow contained a mix of qualities that very few people manage to combine: competence with warmth, efficiency with patience, professionalism with generosity. And above all, tremendous judgment. She never made anything about herself; for Betsy, it was always about the job at hand. She was a role model to me. And I know legions of others who feel the same.” — David Patton, Executive Director and Attorney-In-Chief,

Federal Defenders of New York, Merit Selection Panel Member

“Trailblazing Woman”

“Aside from being a superb litigator and trailblazing woman, Betsy Plevan was also a great friend of the Mother Court. She served for some 12 years as the chair of the Merit Selection Panel of the Southern District of New York. In that role she presided over the vetting of almost a hundred applications for each magistrate judge position in Foley Square. During Betsy’s tenure, the panel invariably forwarded to the court a slate of talented, qualified candidates of high integrity for magistrate judge. In addition, she shared her wisdom and expertise in employment law

with senior executives within the court in order to strengthen the court’s anti-discrimination policies. The Mother Court is grateful for Betsy’s long service. She will be sorely missed.” — Loretta A. Preska, Senior U.S. District Judge, Southern District of New York

“A Force”

“Betsy Plevan was a force — of the bar, of nature and, most of all, for good. I regret that I did not have a chance, due to her illness, to work closely with her in my capacity as chief judge, but I know that she devoted countless hours of her precious time and talent during her final summer to making sure that the Southern District had a group of



Betsy Plevan

talented individuals from whom we could choose fine magistrate judges who will serve the public well. I was fortunate to know Betsy for over 30 years in various capacities, first as a formidable opponent in a long running ERISA fiduciary case. Over the ensuing years, I came to know her work as a leader of stellar bar organizations, an inspiration and mentor to countless younger lawyers, a wise counsellor, and an ever faithful, indefatigable and multifaceted contributor to the work of the Southern District. The world was richer for her presence, and our loss is profound.” – Laura Taylor Swain, Chief Judge, U.S. District Court for the Southern District of New York

Personal History

The Associate’s Dilemma - Regulation U

By C. Evan Stewart



In the August 2021 issue of the *Federal Bar Council Quarterly*, I examined the dilemma purportedly faced by Joe Fortenberry in 1977 on what to do when he saw his

boss/partner lie about documents. In that same time period, another associate was faced with a different dilemma involving his boss/partner, but this time it was me.

Bright Eyed and Bushy Tailed

It was late October 1977, and I had been at Donovan Leisure Newton & Irvine about three weeks. Donovan Leisure, at that time, was the fourth largest firm in New York City, and I was proud to be one of the 27 first-year associates at one of the country’s leading litigation firms.

At the beginning of the month, the firm held a reception for the biggest group of incoming lawyers in its history at the University Club. In the club’s historic Council Room we were individually introduced to George Leisure, Sr. – the oldest living founding partner. Hard of hearing, Leisure had a junior partner standing next to him who fed him a morsel of information about each young lawyer. When it came to my turn, the junior partner, not-so sotto voce, *whispered*: “This is Evan Stewart; he played tennis for Cornell.” Leisure nodded, graciously shook my hand and said: “I understand you are a tennis player, Mr. Stewart. In my day, I used to play with Fred Perry [a three time Wimbledon champion] when he was in New York.” Suitably impressed with that factoid, I passed the baton to the next in line.

Work-wise, I was quickly given a variety of litigation assignments for various partners involving a number of firm clients. It was exciting and heady stuff. But one assignment proved to be something for which I was not prepared.

Regulation U

At 9:15 a.m. that late October day, I was sitting at my desk in the office I shared with another first-year when my phone rang. It was Roger Kapp. Kapp was a 41-year-old corporate partner, helping out on a litigation matter because it had an important securities component. He was a short, spark-plug built man with an impatient, Type-A personality; he used to punch the elevator button at 30 Rockefeller Plaza a dozen or more times on the theory that that would make the elevator appear more quickly.

“Evan,” he said, “can you come to my office right away?” “Yes, sir,” I replied. I walked down the corridor on the 38th floor to Kapp’s office and found him at his desk with his head down reading some legal tome. I knocked on the door, and he looked up at me with no recognition, so I said: “Mr. Kapp, you called and said you wanted to see me.” He gestured to me to sit in one of the chairs in front of his desk and began to speak: “I have been giving some thought to this case and have concluded that Regulation U is the key to winning it. Spend the day in the library and report back to me before 5:30 on why I am right.” “Yes, sir,” I replied, and left his office, just as Kapp was resuming the position in which I had found him.

I immediately went to the law library on the 39th floor and sought out the firm’s long-time librarian, Al Borner. “Mr. Borner,” I began, “I just left Mr. Kapp’s office.” “Uh oh,” he glumly replied. “Mr. Borner, he has asked me to do some research on Regulation U and I have no idea what

that is!” He gently responded: “Not to worry, that is a regulation created by the Federal Reserve and the set of those regulations is in that alcove” (pointing to one not far from where we were standing). I thanked Borner for being so helpful (and kind), but he just shrugged and said that was his job (“and please call me Al”).

And so I ploughed into learning about Regulation U, curious as to how it was going to win our case. Unfortunately, when I read the text of Regulation U, it appeared to have absolutely nothing to do with anything in the litigation. At that point, I was wondering how I had graduated from law school, let alone gotten a job at Donovan Leisure. With my father a Wall Street lawyer (and most of his friends the same), I had grown up with an ingrained belief that partners in leading New York City firms were, if not gods, certainly never wrong in their legal judgments.

So, I concluded, I was clearly missing something – perhaps if I read some cases interpreting Regulation U that would make clear what Kapp had in mind. Nope, that did not clear things up.

Perhaps leading law reviews on Regulation U would provide the answer? Nope, no help there either. Perhaps Kapp meant Regulation V, or Regulation T, or some other regulation close to Regulation U? Nope, nope and nope.

Reporting My Research

With 5:15 fast approaching, I realized I needed to go report to Kapp on my research. Once outside his office, I saw him in exactly the same

position from earlier in the day. So I once again knocked on his door, and (once again) he looked up at me with no recognition. “Mr. Kapp,” I began, “you asked me to report on Regulation U and its applicability to our case.” “Oh yes,” he replied, “tell me why I am right and how it will win the case.” “Well actually, Mr. Kapp, I have spent the entire day reading everything I could on Regulation U, as well as the Federal Reserve regulations that surround that regulation, and none of them have any application to this case.”

After I delivered my conclusion, Kapp gave me a look I have never forgotten – he looked at me as if I was the dumbest person he had *ever* encountered. Scowling, he said ominously, “Be in my office tomorrow at 9:15 and we will call someone who will tell me why I am right about Regulation U!”

Kapp then returned his head to the legal tome he was reading, signaling my dismissal.

An All-Nighter

Pure terror filled me as I shrank away from Kapp’s door: my budding legal career was going to end in approximately 16 hours. Maybe if I went back to the library and redoubled my efforts I would see the light and understand how Regulation U really could save the day?

So, as the sun set over Manhattan, I pored over the same ground from earlier in the day. Not only did an epiphany not occur, but as midnight approached my mind started to hurt as not finding the “right” answer was causing me to hallucinate.

Finally, at 2 a.m., I decided I needed to go back to my apartment, shave and shower, put on a new suit, and (hopefully) return to the law library refreshed (and refortified by coffee) to unlock the mystery(ies) of Regulation U.

Back at the library at 4 a.m., I gave it my last, best shot: What was I missing? Why was I so stupid? What jobs could I get at McDonald’s? Unfortunately, this did not do the trick, and like a condemned man on death row, I watched as the clock moved inexorably from 6 to 7 to 8 and then to 9. At 9:10, wondering how I was going to explain to my father that my legal career had lasted not even four weeks, I grimly headed down to face my executioner.

Facing My Executioner

At 9:14 I knocked on Kapp’s door. He was still positioned as he had been the prior day. Again, he looked up at me with no recognition. “Mr. Kapp,” I said with fear and trepidation, “you told me to report to you and you would call someone about Regulation U.” Channeling the same look he had given me the prior afternoon, Kapp pointed at me and then to the chair in front of his desk next to his speaker phone: “You, sit there!” As I sat in the chair my mind flashed to a scene in “Thunderball,” when the Spectre miscreant is electrocuted, his chair goes down under the floor, and then returns empty and sizzling. There would be no report to my father; rather, my charred remains would forever be entombed in the bowels of 30 Rockefeller Plaza!

With his Type-A style, Kapp quickly hit many buttons on the speaker phone. After a few rings, a disembodied voice came on the box: “Hello.” Now, I was just a minute or two from my execution. Kapp replied: “Bob, Roger Kapp here. Bob, this isn’t a social call. I’m calling, Bob, because you are the world’s expert on Regulation U. You know more about that regulation than any man alive. Let’s face it, you wrote the book on Regulation U!” In reply, Bob said: “Well Roger, you are gilding the lily a bit, but yes, I do know a lot about Regulation U.” Kapp jumped in: “And that’s why I’m calling, so let me tell you about our situation.” He then went on to give Bob a truly brilliant precis about the litigation, as you would expect from a Wall Street law firm partner. When he had finished, Kapp then asked, “And so, how does Regulation U win the case for us?”

Now, I had only seconds before the electricity would enter my body. My terror was only enhanced by the seemingly long delay Bob took before proving Kapp right and me the dumbest ex-first-year associate ever.

“Uh, Roger,” Bob intoned, “Regulation U has nothing whatsoever to do with your case.” A long silence then ensued. Finally, Kapp broke the silence: “Well, thanks a lot Bob. I owe you a lunch. Talk soon.” Then Kapp hung up and his head returned down to the same tome, in the same position he had been in since the day before.

So there I sat. Was this a good moment for me? I was not so stupid: I had been right; I had given Kapp the correct conclusion. But, here was my boss/partner humiliated and

proven wrong in front of (and by) some nobody first-year associate. Maybe I was not going to die immediately, but I did not think Kapp would be inviting me out to lunch anytime soon. After what seemed to be an eternity, with me sitting in the almost-death chair and Kapp with his head down reading his tome, I found enough of my voice to blurt out, “Is there anything else you would like me to do, Mr. Kapp?” “No!” And so I tip-toed out of his office.

Postscripts

- Kapp subsequently left Donovan Leisure to become the general counsel of one of the firm’s major pharmaceutical clients. His tenure in that position was cut short when it was discovered he had engaged in a longstanding practice of pretending to be a doctor, calling hospitals and ordering enemas for female patients. *See Frig v. Lenox Hill Hospital*, 167 Misc. 2d 42, 676 N.Y.S. 2d 971 (Sup. Ct. 1995). The New York Post ran several articles about him, dubbing him “Doctor Enema.” Apart from his legal troubles over that behavior, Kapp also was accused of improperly diverting trust funds over which he was the trustee. Shortly after this latter issue became public, Kapp committed suicide.
- I never told any Donovan Leisure partners of my near death experience with Kapp until years after I had left the firm. At lunch with Ken Hart, with whom I had worked very closely on many matters over many years, something led to my recounting the foregoing story to my mentor. With his jaw out

at half mast during most of my retelling, Ken just shook his head when I finished: “I guess I now know why Kapp never liked you.”

From the Courts

Magistrate Judge Cho Joins the Eastern District Bench

By Travis J. Mock



After graduating from the University of Michigan with high honors, Magistrate Judge James R. Cho obtained his law degree in 1999 from the University of Minnesota Law School. He then joined the Chicago office of Seyfarth Shaw to practice labor and employment litigation, relocating to the firm’s New York City office in 2005 to focus on large class actions.

In 2008, Magistrate Judge Cho became an Assistant U.S. Attorney in the Civil Division of the U.S. Attorney’s Office for the Eastern District of New

York, ultimately rising to become both Chief of Bankruptcy Litigation and Chief of Immigration Litigation. Magistrate Judge Cho also served as a training coordinator, organizing CLEs for Civil Division Assistants. He enjoyed the broad scope of his work at the U.S. Attorney's office, explaining that, "In the government, it's all hands on deck." He also appreciated the opportunity to handle affirmative and defensive cases as well as appeals before the Second Circuit. "The U.S. Attorney's office is very flat," he said. "I recommend that attorneys seeking significant in-court litigation experience consider the U.S. Attorney's Office because you get to follow your cases from trial through appeal."

Even before joining the bench, Magistrate Judge Cho was a leader in the legal community. He served as president of both the Asian American Bar Association of New York and the Korean American Lawyers Association of Greater New York. "That was meaningful work for me because I believed it was important to give back to the bar," Magistrate Judge Cho said. He also served as an adjunct professor at both New York University School of Law and Brooklyn Law School.

On Becoming a Judge

Magistrate Judge Cho was appointed a U.S. Magistrate Judge in the Eastern District of New York and joined the bench on April 5, 2021. Asked when he first became interested in becoming a judge, Magistrate Judge Cho replied, "Pretty much the first time I appeared in court and argued a motion. I thought, 'It must be nice being a judge.' I

think the judge ruled against me!" He continued, "It's one of those things that seems like it would never happen, but I knew early on that if I had the opportunity to become a judge, I would go for it."

Magistrate Judge Cho's career trajectory bears a striking resemblance to that of his friend Magistrate Judge Marcia M. Henry, also in the Eastern District. The two met while practicing labor and employment law at Seyfarth Shaw. They both then joined the Eastern District U.S. Attorney's Office, though they served in different divisions. Now, they both have risen to pathbreaking judgeships in the same court; Magistrate Judge Henry is the first Black woman to serve as a magistrate judge in the

Eastern District, and Magistrate Judge Cho is the first Korean American to serve on the Eastern District bench. "My career path has intersected on numerous occasions with Judge Henry's, and it has been reassuring having a close friend, confidant, and colleague every step of the way."

Magistrate Judge Cho's Court

Magistrate Judge Cho's work has not been hampered by the COVID-19 pandemic. While proceedings such as jury selection, settlement conferences, or hearings involving witnesses have generally remained in-person, Magistrate Judge Cho believes that most other proceedings can be efficiently and



Magistrate Judge Cho

effectively conducted remotely. “The pandemic has taught us a lot,” Magistrate Judge Cho remarked. For example, the efficiency and flexibility of remote proceedings has allowed judges to attend to the needs of their cases expeditiously. If an issue arises in a case, the court can schedule a remote hearing and resolve the issue promptly, instead of waiting for the next scheduled in-person conference or requiring parties to travel to the courthouse.

Magistrate Judge Cho also lauds the power of remote proceedings to increase access to justice for pro se litigants. Although in-person proceedings can help to impress upon pro se litigants the importance of their cases, Magistrate Judge Cho confirmed that he generally accommodates litigants’ preference to appear remotely.

A Teaching Court

On the bench, Magistrate Judge Cho has continued his work of training younger lawyers. Like Judge Weinstein before him, Magistrate Judge Cho believes in the Eastern District’s role as a “teaching court.” His local rules expressly encourage appearances and arguments by junior attorneys and law students, and Magistrate Judge Cho “permits multiple attorneys to argue for one party if this creates opportunities for junior attorneys to participate.”

On Civility in Legal Practice

Like his friend and colleague, Magistrate Judge Henry, Magistrate Judge Cho emphasizes the importance of civility and cooperation between

opposing counsel. “Being a litigator for so many years, I know how contentious litigation can be, including discovery matters, but I am trying to promote civility as well.” To promote dialogue between parties, Magistrate Judge Cho requires litigants to submit joint letters on discovery issues. “As a lawyer, I often dreaded joint submissions because it meant having to engage with opposing counsel on often difficult issues,” he acknowledged. “But sometimes, a joint submission can promote civility and get the litigants to at least start talking to each other again.”

From the Courts

Retired Magistrate Judge Lisa Margaret Smith’s Portrait Is Unveiled

By Bennette D. Kramer

U.S. Magistrate Judge Lisa Margaret Smith of the Southern District of New York retired from her position on September 30, 2020, after serving more than 25 1/2 years as a magistrate judge. On October 8, 2021, Magistrate Judge Smith’s portrait was unveiled at the Charles L. Brieant, Jr. Courthouse in White Plains.

Magistrate Judge Smith sat in that courthouse from March 20, 1995 until her retirement with colleagues Magistrate Judge Mark D. Fox and Magistrate Judge George A. Yanthis, both now retired, and current colleagues Magistrate Judge Paul E. Davison, currently chief U.S.

magistrate judge, and Magistrate Judge Judith C. McCarthy. During her entire service, Magistrate Judge Smith also was aided by the Southern District’s only part-time magistrate judge, Magistrate Judge Marty Goldberg, who sat in Newburgh and Middletown before most recently using the new bankruptcy court in Poughkeepsie. Magistrate Judge Smith served as chief magistrate judge from 2006 to 2008.

The unveiling event featured remarks from the Chief Judge Laura Taylor Swain of the Southern District, Senior District Judge Colleen McMahon, Chief Magistrate Judge Paul Davison, long-time friend Anthony J. Siano, and Karen J. Jason, Judge Smith’s longest-serving law clerk.

Each of the speakers mentioned Magistrate Judge Smith’s unifying presence in the courthouse, in particular her leadership of weekly brown bag lunches with the White Plains judges, attendance at which was cemented by Magistrate Judge Smith always bringing freshly baked cookies. Her baking, her singing, her friendly and helpful nature, and her overall dedication to the mission of the court was a theme noted by all.

The event was coordinated by Bonnie Waldron, administrative specialist for the district executive, assigned to the White Plains courthouse.

After the remarks, Magistrate Judge Smith’s portrait was unveiled by her two children, Kinsey and J.T. Bowensmith, as their parents looked on. The beautiful portrait features Magistrate Judge Smith in her judicial



Portrait of Magistrate Judge Smith

robe, wearing a white lace collar with purple flowers, which Judge Smith wore during her last year on the bench in honor and memory of the late Justice Ruth Bader Ginsburg.

The portrait was painted based on a photograph taken by Michael O'Donnell, son of a White Plains court reporter, Angela O'Donnell.

This portrait is the first painted portrait of a magistrate judge to

be hung in any Southern District of New York courthouse, and the first portrait of a woman judge to be hung in the White Plains courthouse. The portrait hangs in the Ceremonial Courtroom on the second floor of the Brieant Courthouse, in the company of portraits of the late District Judges Brieant, Lee Gagliardi, Gerard Goettel and William Conner.

Speaking With:

Judge Robert Conrad, Author of Book on John Fisher and Thomas More

By Joseph Marutollo

District Judge Robert J. Conrad, Jr., of the Western District of North Carolina recently published a book titled “John Fisher and Thomas More: Keeping Their Souls While Losing Their Heads,” TAN Books, 2021, that has won wide acclaim throughout the country. Judge Conrad’s book is about the lives and, as the title suggests, martyrdom of Bishop John Fisher and Sir Thomas More during the reign of King Henry VIII in England.

Judge Conrad, a former U.S. Attorney and federal litigator, recently spoke with the *Federal Bar Council Quarterly* about his captivating new book.

Judge Conrad’s Background

Judge Conrad, a Chicago native, graduated magna cum laude from Clemson University, where he was an academic All-American in basketball. He received his law degree from the University of Virginia Law School.

From 1983 to 1989, Judge Conrad worked as a trial lawyer in private practice in Virginia. From 1989 to 2004, Judge Conrad worked as an Assistant U.S. Attorney in the Criminal Division of the U.S. Attorney’s Office for the Western District of North Carolina.

In 1999, Attorney General Janet Reno appointed him to be chief of the Campaign Finance Task Force, which investigated irregularities in, among other things, the 1996 presidential campaign. In that position, Judge Conrad deposed both President Clinton and Vice President Gore in the same week (surely an answer to a future trivia question).

From 2001 through 2004, Judge Conrad served as the U.S. Attorney for the Western District of North Carolina. During that time, he also was vice chair of the Attorney General's Advisory Committee on Terrorism and chair of the Committee on Violent Crime.

In 2005, Judge Conrad was unanimously confirmed to the U.S. District Court for the Western District of North Carolina, where he continues to sit today. Judge Conrad taught at the University of Virginia's trial advocacy college and was an instructor at the Department of Justice's National Advocacy Center in Columbia, South Carolina.

He also is active in a variety of non-legal organizations, including his church as well as at youth sports leagues. Judge Conrad and his wife, Ann, are the parents of five children and grandparents to 10.

John Fisher and Thomas More

While there has been considerable scholarship devoted to the lives of Bishop John Fisher and Sir Thomas More, Judge Conrad's book stands out for two primary reasons.

First, the book presents Judge Conrad's insightful legal analysis of the evidence (or lack thereof)

presented against Fisher and More at their trials in 16th Century England.

Second, the book features an earnest discussion about how these two inspiring figures impacted Judge Conrad's own faith and career. In the book's introduction, Judge Conrad humbly states that "[t]his little book is ultimately a script for my children and grandchildren of the kind of man their father and grandfather longs to be."

For those unfamiliar with their story, Fisher and More opposed the marriage of King Henry VIII to Anne Boleyn and also refused to recognize Henry VIII as the supreme head of the Church of England. Both Fisher and More went to their death for refusing to capitulate to the wrath of King Henry VIII. Fisher – a priest, bishop and scholar – was martyred in the Tower of London on June 22, 1535. More – a father, husband, lawyer, statesman and scholar – was martyred in the same location on July 6, 1535.

Both Fisher and More were canonized as saints by the Catholic Church on May 19, 1935, with More also being recognized as the patron saint of lawyers. As Judge Conrad points out, they are "universally recognized as stalwart men of conscience."

More – the "man for all seasons" of the title of Robert Bolt's famous play and Oscar-winning movie – is the better known of the two men, especially among lawyers. (Judge Conrad notes, however, that Fisher – although not a lawyer – effectively served as Queen Catherine's counselor, which will be of interest to many legal readers). Art lovers in the Federal Bar Council may have seen

Hans Holbein the Younger's famous portrait of More that hangs in the Frick Museum in New York City.

"Law Would Protect Him"

Throughout his book, Judge Conrad discusses how More firmly believed that the "law would protect him": First, through his silence (as More initially did not verbally oppose the King's Acts of Supremacy), and, second, through his analysis of the treason laws passed by Parliament, as More did not act with the malice required by the law. More's commitment and savvy understanding of the law is best illustrated by the following exchange in Robert Bolt's play, where More speaks to his son-in-law, William Roper, about what to do with the nefarious Richard Rich, who would later betray More:

Roper: So, now you give the Devil the benefit of law!

More: Yes! What would you do? Cut a great road through the law to get after the Devil?

Roper: Yes, I'd cut down every law in England to do that!

More: Oh? And when the last law was down, and the Devil turned 'round on you, where would you hide, Roper, the laws all being flat? This country is planted thick with laws, from coast to coast, Man's laws, not God's! And if you cut them down, and you're just the man to do it, do you really think you could stand upright in the winds that would blow then? Yes, I'd give the Devil benefit of law, for my own safety's sake!

Judge Conrad explains that More's "use of his legal skills and legal acumen" helped to protect him for a period of time – until King Henry VIII unjustly had More convicted and then executed. As Judge Conrad notes, "[m]odern day notions of discovery that avoid trial by ambush were not part of the process"; indeed, More was indicted on June 28, 1535, tried two days later, and executed less than 10 days after the predictable guilty verdict.

Judge Conrad makes a point of reminding readers that, despite the horrific conditions in which he was placed in the Tower of London and his unfair sentence of death, More maintained his "merry" disposition. G.K. Chesterton referred to More as "the man who died laughing." While his famous final words are well-known – "I die the King's good servant, and God's first" – many are unaware that More maintained his good humor even while standing beside the executioner moments before his death. He jokingly apologized for his short neck and reportedly stated that it was a "[p]ity that [his long beard] should be cut" since his beard "has not committed treason." As Judge Conrad explains, More clearly had "a sense of detachment" from the earthly worries and concerns around him, as his faith remained central to his life. As a result, his life was filled with joy, even in the midst of his most challenging trials.

Judge Conrad's book is a riveting and enjoyable read, and one that will continue to be popular with lawyers (and non-lawyers) in the years ahead.

Making a Difference

Precious Benally

By Pete Eikenberry and Allegra Collins



Precious Benally always knew that she wanted to advocate for Native American communities. She attended Dartmouth College during a time when Native American students still were fighting for recognition there. Afterwards, she obtained her law degree from

Columbia Law School, where she now teaches Native American Law. She brings awareness of Native issues to students who will one day become this country's leaders.

Benally imparts the understanding that Native American communities are deeply affected by the decisions of other courts by judges without knowledge of Native American Law. Her teaching the history of this country and its tumultuous relationship with Indigenous people is the first step towards finding the best path forward.

Benally works daily with tribal communities to help them create tribal court systems that cater to the specific needs of their members. Although Benally graduated from Columbia Law School, she never intended to practice law and has not done so. Rather, she sought a legal education to bring to her community. She got this chance first at the Center for Court Innovation as a Tribal Justice Exchange Fellow.

At the Center, she provided training and technical assistance to drug treatment courts and tribal justice systems throughout Indian Country. Later, she did the same at the Tribal Law and Policy Institute.

Benally's work helps tribes exercise their sovereignty. When tribal court systems were created, they were modeled after the Western court model in order to be viewed as legitimate. If tribes veered from this model, they were criticized and their court systems were ridiculed. Now, tribes realize that the Western court model does not work for them. Most players in a tribal court know each other, live together, have gone to school together, and are friends and family. It is untenable for tribal

judges to act in court as if their rulings do not affect their community.

In conjunction with organizations such as the Center for Court Innovation and the Tribal Law Policy Institute, tribes are remodeling their court systems. They are keeping their values at the core and building from there.

Benally's work primarily focuses on drug treatment courts, which tribes call healing to wellness courts. These courts focus more on the person and not the crime for the purpose of helping participants on their path to healing and wellness. Healing to wellness courts do not label a person as an offender and seek to punish the person. Rather, they take the time to look at the underlying causes of the person's actions and work to remedy them. Tribes recognize that when a person commits a crime, that person is not the only individual affected by

criminal behavior. Instead of treating the crime in isolation, healing to wellness courts bring together everyone who may be affected by a person's crime.

The healing to wellness courts incorporate the culture and customs of each individual tribe. Cultural competency helps to increase the likelihood of success of each person who enters the system. If there is no treatment court, Benally partners with the tribe to create a tribal justice strategic plan. The plan brings together the tribe's stakeholders – which include tribal court staff, tribal leaders and community members – to determine the needs of the tribe and the resources that exist to create a healing to wellness court.

Ultimately, Benally aims for procedural fairness that encapsulates the goals and values of the tribe. Tribes are tight-knit communities that understand that the people

who walk through the courthouse doors are actual people who have important stories to tell. Tribal judges do not sit high up on benches but at a table with everyone involved. Tribal judges talk with participants the same way that a grandparent would talk to a grandchild.

Benally aims to turn court into a place where people may get support if they find themselves on the wrong path. Her work has reduced recidivism rates. Many who enter healing-to-wellness courts never return. With the tools she learned in law school, Benally has and will continue to fulfill her goal of advocating for holistic Native Americans remedies that prioritize healing and community wellness.

Editor's note: Allegra Collins is a third year Columbia Law student and a citizen of Muscogee (Creek) Nation.