Federal Bar Council Quarterly

Mar./Apr./May 2022 www.federalbarcouncil.org Vol. XXIX, No. 3

In This Issue:

We invite you to connect with us on LinkedIn.

From the President

Bernie, Betsy and Steve

By Jonathan M. Moses

The week I wrote this column was marked by remembrances of three former presidents of the Federal Bar Council, all leaders in the Second Circuit legal community: Bernie Nussbaum, Betsy Plevan and Steve Edwards.

Bernie, president of the Council from 1990 to 1992, died on March 13 and his funeral took place a few days later. Betsy, president from 1996 to 1998, died last fall and her groundbreaking career was the subject of a standing-room only presentation at the City Bar in March. And, Steve, Council president from 1998 to 2000 and who tragically died from COVID two years ago at the very beginning of the pandemic, was remembered in a music-filled celebration at Symphony Space.

As is always the case when dear friends, colleagues and loved ones pass, the salty tears of sadness were cut with sweet memories that brought laughter and smiles. All three lived life to the fullest and all three touched so many people within the legal community (and without). Their deaths brought all those people together again.

Bernie Nussbaum

Bernie's death was freshest and for me particularly hard. He was both a partner and a mentor. Just a few days before his passing he was in the office and we chatted, among other things, about getting ready for an interview that was scheduled for early April as part of the Council's "Legends of the Bar" series. At his funeral at Park Avenue Synagogue, family, friends and colleagues remembered his dynamism, his energy and his generosity. He was, as several recounted, a true mensch. My partner Ted Mirvis recounted a story famous here of Bernie walking the halls during the heyday of the takeover battles where his litigation leadership helped cement the reputation of our firm. Bernie was heard to remark: "I'm so busy, I can't remember who I gave my work to." The comment was perfect Bernie – self-deprecating, while a reminder of his centrality. But it also reflected his recognition that he was only as good as the team of great lawyers he had mentored and who worked with him.

Betsy Plevan

The recent event at the City Bar honoring Betsy Plevan featured a panel discussion moderated by Magistrate Judge Kathleen Parker, who was joined by Judge Loretta Preska; Keisha Ann Gray, Betsy's partner at Proskauer and a member of the Council's board; Sheila Boston, the Council's former chair and now the City Bar president; leading employment lawyer Deborah Raskin; and Larry Johnson, former Assistant-Secretary General for Legal Affairs for the United Nations. The focus of the discussion was on Betsy's groundbreaking legal career. Betsy was a pioneer among women in reaching the heights of the profession; she was first woman president of the Federal Bar Council and second woman president of the City Bar. She also worked tirelessly to promote diversity in the profession for all, and she was someone whose talents and leadership reminded us how much our profession has gained by the many who have joined who were once excluded and how much it will gain as we continue to confront issues of diversity and inclusion.

Steve Edwards

Another packed crowd filled a theater at Symphony Space to celebrate Steve Edwards. Steve was remembered by family, friends and colleagues as a great lawyer committed to excellence in the profession. But the audience also learned about Steve's devotion to his family and friends, and in particular to charitable causes in which he believed. And there was music.

Steve, a member of the Iowa Rock 'n Roll Music Association Hall of Fame, never gave up his love of music and the audience was treated to wonderful performances in his honor, including by his daughter, as well as a video montage that recalled his famous rock opera first performed for the Federal Bar Council.

Key Ingredients

Bernie, Betsy and Steve each lived their own special lives, but they also shared so much in common that I think were key ingredients to their success and leadership. A belief in excellence and professionalism in the law. A commitment to collegiality in

the profession. A willingness to give of themselves above and beyond just the requirements of the immediate work before them. And, perhaps most importantly, a generosity of spirit and ability to connect with others that allowed them to be true leaders.

There was something else they all shared: they were integral parts of and helped build our vibrant community of lawyers – a community that is joined together in a common belief in the importance of a profession that at its core is about advocating for others and living by rules that ensure our civil society. That community lives on and our greatest remembrance of these three legends may be to sustain it and grow it for all of us practicing today and for those to come.

Council History – Part 1

The Modern Federal Bar Council Emerges

By Bennette D. Kramer

This history is timed to coincide with the 90th anniversary of the Federal Bar Council and is based primarily on interviews with past presidents and others and looks at the Council as an institution. It will appear in three or more parts. The first part is based primarily on tapes of interviews conducted in 1987 and found in the Council's archives, but it also includes interviews of some more recent presidents. The 1987 interviews were conducted by Edith Hurwitz, who was an archivist and who preserved many of the Council records from the period. The later interviews were conducted by George Yankwitt in 2009 and by Yankwitt and myself in 2018.

This first part tells the story of the transition of the Council from a sleepy organization to the serious bar association it is now. Subsequent parts of the history will look at Council institutions and goals as they have evolved over time.

Peter Brown Revitalizes the Organization

Peter Megargee Brown was president of the Council (then known as the Federal Bar Association of New York and New Jersey) from 1961 to 1962. By all accounts, he single-handedly transformed it from a sleepy bar association to an organization that everyone wanted to be a part of.

First, he, along with Ted Kupferman (president from 1955 to 1956), successfully encouraged the U. S. Attorneys and lawyers from their offices to join. Edward Lumbard, U.S. Attorney for the Southern District of New York from 1953 to 1955, and Leonard Moore, U.S. Attorney for the Eastern District of New York from 1953 to 1957, both supported the Council and urged assistants working under them to join.

Judges Lumbard and Moore continued this support after they became Second Circuit judges. According to Paul Windels, who was president of the Council from 1965 to 1966, the influx of lawyers from the U.S. Attorneys' offices revived the spirit of Emory Buckner and increased the camaraderie of the Council.

Following the examples of Judges Lumbard and Moore, David Trager, later a judge on the Eastern District bench, joined the Council when he was an assistant in the Eastern District U.S. Attorney's office. When he was U.S. Attorney from 1974 to 1978, he encouraged assistants to join. Judge Trager said that he was nominated in the mid-1980s as president because they wanted someone from the Eastern District to serve.

While president, Judge Trager created a bond between the Eastern District and the Council. He said that the Council wanted to reach out beyond New York City for members, but that there were geographical considerations. The effort to include areas outside the Southern District continued. David Schaefer (president from 2016 to 2018) was the first president of the Council from Connecticut. (In 1992, his wife, Judge Janet Hall of the District of Connecticut, had been the first person from Connecticut, and the first woman, to chair a Winter Meeting.) Now, Connecticut members of the Council have formed their own committee and many Connecticut lawyers have become active members. And when he was president (from 2008 to 2010), Robert J. Giuffra, Jr., created a Westchester Committee.

The Creation of the Law Day Dinner

Peter Brown's crowning achievement, however, was the creation of the Law Day Dinner in 1962. He invited the judges of the Second Circuit courts to attend for free and placed one judge per table, establishing, according to Whitney North Seymour, Jr. (president from 1982 to 1982), a non-stress environment where members of the profession could get together. The dinner held at the Park Lane Hotel was done with taste and elegance with an American Flag at everyone's place. The first Learned Hand Medal was awarded at the Law Day Dinner in 1962 to Professor James William Moore of Yale Law School, the author of Moore's Federal Practice. The Law Day Dinner was so successful that the concept has been copied by other bar associations, including the New York County Lawyers Association.

The first Thanksgiving Luncheon was held in 1943, but in 1962 Brown invited judges to attend that event, and the first Emory Buckner Medal was awarded to J. Edgar Hoover, head of the F.B.I. Both the Thanksgiving Luncheon and the Law Day Dinner became events that all federal practitioners wanted to attend. As Robert B. Fiske, Jr. (president from 1982 to 1984) said, Brown got the judges involved and the lawyers followed.

The Council Is Different from Other Bar Associations

The main focus of the Council has always been the federal courts of the Second Circuit and supporting the judges in the Second Circuit. In 1968, the Federal Bar Association of New York, New Jersey and Connecticut dropped New Jersey and changed its name to the Federal Bar Council, so that it could coincide with the geographical boundaries of the Second Circuit. At the same time, the Council added Vermont to the sphere of influence since it was part of the Second Circuit. Seymour said that he realized that the Council should make this change after he spoke at a Seventh Circuit Bar Association conference. The Council had been originally a New York chapter of a group called the Federal Bar Association. Its association with the Federal Bar Association ended in 1932 after the national group rejected the applications of 20 African-American Assistant U.S. Attorneys from New York.

In the 1960s, the Council investigated and made recommendations about judicial nominations. Since then, senators have formed committees that have taken over the role. There was immediate interest in the Council in anything going on in the federal courts.

The focus changed to assisting the federal courts in the Second Circuit and the Council became, as Seymour observed, a "main line support group for the courts in the nation's most important federal circuit." In Seymour's view the Council did more to perpetuate professionalism at the bar than any other bar association. Its strong points are promoting honor, privacy, decency, supporting the positive side of the court and paying attention to history.

Through the Learned Hand Award and the Emory Buckner Medal, the Council recognized professional service. It brought lawyers together as human beings who are courteous, honest and believe in professional courtesy, because the members see each other under these circumstances. According to Fiske, the Council fills a unique role with a wonderful variety in the membership including solo practitioners and lawyers from large firms. He said that the cordial and friendly atmosphere brought people back to meetings because they were so much fun. Thomas Evans (president from 1988 to 1990) described the Council as a professional organization that enjoyed itself and had some fun.

Steven Edwards (president from 1998 to 2000) thought the Council's key mission was to provide a vehicle where lawyers and judges could get together and talk to one another in a relaxed setting and get to know each other personally to build a sense of community, rapport and professionalism. Edwards said those goals were supported by the Winter Meeting, Law Day Dinner, Thanksgiving Luncheon, Second Circuit Courts Committee and the Redbook.

According to Yankwitt, Evans set a standard for the Council to be non-political. Mark Zauderer (president from 2006 to 2008) wanted to achieve a balance by allowing the expression of varied political views. This was carried out by focusing on merit in presenting awards with due deference to people along the political spectrum. Zauderer wanted to continue the tradition of providing a comfortable home to people of differing views.

Robert J. Anello (president from 2012 to 2014) also sees the Council's primary purpose to encourage interaction between practitioners. During his tenure, Anello tried to

reach out to more diverse groups of people. To reach young people, the Council now has the First Decade Committee, the Thurgood Marshal Award and the Fall Retreat. The Inn of Court was established to create a community and allow a space where young people could interact with judges and senior litigators. Anello also tried to expand the Council's reach to different areas of practice. He focused on commercial, class action and white collar practices.

P. Kevin Castel (president from 2000 to 2002), who became a judge on the Southern District bench in 2003, said that one of his biggest challenges as president came in the aftermath of the attacks on September 11, 2001. Among other things, the Council was unsure whether it could muster sufficient participation in upcoming programs. The board met and decided to push ahead. The Fall Retreat, Thanksgiving Luncheon and Winter Meeting were all very well attended.

Support for and Ties with Second Circuit Courts

Seymour said that when he became president in 1982, Chief Judge Irving Kaufman of the Second Circuit made derisive comments about the Council, calling it a "chowder and marching society" and did not want the Council involved with the courts. That all changed when Judge Walter Mansfield became active in the Council. He attended the Winter Meeting in 1981 and then became the chair of the Winter Meeting in 1982 at Seymour's request. Chief Judge Wilfred Feinberg of the Second Circuit attended the Winter Meeting in 1982. As will be discussed in connection with the Winter Meeting, Judge Mansfield's attendance at the conference and his willingness to step in and chair it made the conference wildly popular. He contributed so much to developing collegiality that the Council planted a memorial tree in his memory. According to Seymour, the tree is a red oak that came from the homestead of John Jay. It is planted in front of the Second Circuit Courthouse and a stone from the wall in Judge Mansfield's home in Stamford, Connecticut, is placed near it. Fiske said that Judges Mansfield and Lumbard were very important to the evolution of the Council to the organization it is today. Yankwitt credits Seymour, along with Judge Mansfield, with transforming the Winter Meeting.

Beginning in the early 1980s, the Council provided significant support to the Second Circuit courts. You will hear more about this support in the section on the Federal Bar Foundation. The Council's board meetings, which had been held at the offices of whoever was the current president, moved to the Southern District jury room at Seymour's request. According to Yankwitt, the Council had a history of advocating on behalf of federal judges who were attacked. Bettina ("Betsy") Plevan (president from 1996 to 1998) said that the Council placed increasing emphasis on its relationship with the judiciary. For example, the Council advocated on behalf of raising judicial salaries and acted as a sounding board for the court. A joint committee of the Council and the City Bar was formed to receive complaints about judges and set a procedure for dealing with them.

Schaefer was proud of the relationship between the Council and Chief Judge Robert A. Katzmann of the Second Circuit. Judge Katzmann worked with the Council on the Immigrant Justice Corps, the Justice for All Program and other civic educational programs, all of which are still ongoing, despite Judge Katzmann's untimely death. The Council's relationship with Judge Katzmann was critical, while at the same time a continuation of the close relationship the Council has had with the courts of the Second Circuit, providing support when asked.

Structural Changes

The Federal Bar Foundation was formed in 1969 and converted to a 501(c)(3) entity while Plevan was president. Nathan Pulvermacher was the first president of the Foundation, which was created to handle the profits from the Thanksgiving Luncheon and the Law Day Dinner, and, as will be discussed later, the Foundation has been very active in providing financial support to court projects and programs since its founding.

When Frederic Nathan was president from 1974 to 1975, the Council recognized the need for a more formalized budget process. In response, the Council set up an Audit Committee and established budgetary controls that still are in place today.

The Council put together a nominating committee in the 1970s, to search out and encourage people who were interested in the organization to serve as president. The committee recruited Leonard

Sand (later, Judge Sand) and Nathan, although Judge Sand did not serve as president of the Council because he went onto the bench before becoming president.

In the 1970s, the Council created the position of president-elect to provide a method of succession for circumstances such as the gap left when Judge Sand went onto the bench. Judge Sand was the first president-elect at the time he went on the bench and he declined to serve as president. George Leisure agreed to serve a second one-year term as president, and presidents continued to serve two-year terms thereafter.

Past presidents have reported varying satisfaction with the position of president-elect. Some have felt included in the management of the Council, others have felt excluded. Zauderer said the Council needs to improve the relationship between the president and president-elect by means of informal consultations to keep the presidents-elect informed. Schaefer was initially surprised that there was nothing for a president-elect to do but he was soon drawn into the executive director search and other staff issues. Recently, presidents-elect have taken on special projects such as the Long Range Planning Process, and the current president-elect, Sharon Nelles, is working with a consultant to determine ways to increase and retain membership.

During Plevan's term, the Council revised its governance structure, revising the bylaws to provide term limits for board members, among other changes. The Council's goal was to provide opportunities by opening board membership to new people. Plevan was the first woman to serve as president and served as a symbol of the Council's commitment to women. Before Plevan became president, Judge Hall had served as chair of the Winter Meeting in 1992, and Betsy and Ken Plevan chaired the 1994 Winter Meeting. Both Patricia Hynes and Ruth Bader Ginsburg have served as officers of the Council.

Conclusion

The current Council was born under Kupferman and Brown in the 1950s and 1960s and Seymour in the 1980s. Since then it has expanded in membership and gathered strength as an organization, never forgetting that its mission is to serve the courts of the Second Circuit.

Subsequent parts of this history will look in detail at the events and institutions of the Council, along with examining the support that the Council has provided the courts over the years.

***Author's Notes*:**

I would love to have comments, suggestions and remembrances of earlier times to add to subsequent sections. Please do not hesitate to get in touch with me at bkramer@schlamstone.com.

In June and October 2002, the *Federal Bar Council Quarterly* (then known as the *Federal Bar Council News*) published a two-part history of the Council based on a manuscript drafted in the 1980s and found in the Council files. I do not intend to duplicate that history. Instead, the current multi-part examination of the Council will look at the Council as an institution and will follow the development of its component parts to the current day.

Legal History

Pierpont Edwards: Connecticut's First U.S. Attorney

By James I. Glasser and Ariela Anhalt

Pierpont Edwards, the first U.S. Attorney for the District of Connecticut, launched a public office with a storied legacy. Not much has been written, however, about Edwards' own personal legacy. Biographers often relegate Edwards to brief background mentions in works focused on more prominent figures of his time. But Edwards himself lived an eventful life at the forefront of Connecticut politics and the bar – a life marked not only by lauded professional

achievements but also questionable and objectionable personal conduct.

The Early Years

Pierpont Edwards' life began with significant advantages, including far-reaching family connections. His father was a prominent theologian and president of Princeton University (Jonathan Edwards), and his extended family included notable political figures (Vice President Aaron Burr and U.S. Senator William Samuel Johnson), an iconic inventor (Eli Whitney), key leaders in the legal profession (Judges Tapping Reeve and Seth Wetmore), and a president of Yale University (Timothy Dwight). Edwards' family and social status would be instrumental to facilitating his professional success later in life.

Born in Massachusetts in 1750 as the youngest of 11 children, Pierpont Edwards was orphaned by the age of nine. Along with several siblings, Edwards entered the care of his oldest brother Timothy. Though just 21 at the time, Timothy had – through a series of misfortunes involving the deaths of various relatives – become the guardian of five siblings, two younger brothers-in-law, a niece and a nephew. Timothy and his wife later added another 15 biological children. It was a crowded, chaotic household, with children fighting for attention from a guardian who was just barely an adult himself.

One of the orphans in Timothy's care, his nephew, had a particularly contentious relationship with his caregiver and repeatedly ran away from home. The nephew was a boy named Aaron Burr, who would grow up to become not only the vice president of the United States but also, famously, the killer of founding father Alexander Hamilton, whom Burr would shoot to death in a duel. Edwards and Burr shared, among other things, both academic and political ambition. Though six years apart in age, the two were close confidants, as one scholar explained: "[Burr] seemed to unburden himself easily with [Edwards], whether the subject was speculative ventures, sexual intrigues, political ambitions, or personal sorrows. [They were] [m]ore like brothers than uncle and nephew. . . ."

Both Edwards and Burr attended Princeton (which was known at the time as the College of New Jersey). Edwards graduated in 1768 and then moved to Connecticut to study law with Judge Seth Wetmore, his uncle.

Edwards married the following year and shortly thereafter began a profitable law practice in New Haven. But the Revolutionary War interrupted his burgeoning legal career. He joined the army and fought in at least two battles. Back home, his house was looted during the British invasion of New Haven. Once the war ended, Edwards returned to law practice and quickly gained recognition as a leading member of the Connecticut bar.

Marriage and Children

Edwards married young, and may have done so because his wife, Frances Ogden, was already pregnant. (Frances and Timothy's wife were members of the same prominent New Jersey political family.) Edwards and Frances had at least 10 children together (one of whom, Henry Waggaman Edwards, grew up to be governor of Connecticut). But Edwards was, by most accounts, not a particularly devoted husband. He reputedly had numerous affairs and did so publicly, eliciting scandalized commentary from his contemporaries. Edwards' private life led a fellow prominent Connecticut statesman, Roger Sherman, to unsuccessfully seek Edwards' disbarment due to alleged sexual misbehavior.

Scholars have identified another aspect of Edwards' private life that was far more concerning than his general infidelity: Edwards' wife had a sister who, as a young girl, came to reside in Edwards' home. By the time she was 15 years old, she had given birth to the first of two children, both of whom Edwards allegedly fathered. The children's paternity was an open secret which Edwards made little effort to obfuscate.

Edwards' reported conduct towards a vulnerable young teenager in his care was not recognized in his time with the reproach it properly deserved (although, following his death, he was remembered with disparaging sobriquets like "The Great Connecticut Adulterer"). Despite certain opprobrium earned during his lifetime, Edwards' sexual misconduct did not serve as a bar to his professional achievements. To the contrary, he rose to the highest offices in Connecticut.

Politics and Public Service

Pierpont Edwards was aggressive in his political ambitions. He served several stints in Connecticut's General Assembly, even serving as

Speaker of the House in the late 1780s and early 1790s. In January of 1788, he was a member of the Connecticut Convention that ratified the U.S. Constitution.

In 1789, Edwards received an appointment as the first U.S. Attorney for the District of Connecticut, a part-time job at the time. While serving as U.S. Attorney, Edwards continued his private law practice in New Haven – a much more lucrative venture than his public service.

His service as U.S. Attorney notably involved the unsuccessful prosecutions of Samuel Ogden and William Smith. Ogden and Smith were charged with violating the Neutrality Act of 1794, which prohibited American citizens from waging war against any foreign country with whom the United States was at peace. Ogden and Smith stood accused of assisting Venezuelan military leader Francisco de Miranda in his fight against Spain. At two separate highly-publicized trials, both defendants were acquitted after claiming they had acted with authorization from the White House. Notwithstanding this high-profile failure, Edwards was usually "especially successful before juries."

As his public profile grew, Edwards' influence on his local New Haven community became so significant that it may even have affected the layout of the city itself. New Haven's original nine squares had a slight quirk. In the late 1700s, New Haven laid down Orange Street with an odd design that avoided a barn on Edwards' property. An irregular jog on the corner of Orange and Crown Streets persists to this day.

Edwards was actively involved in many of New Haven's affairs. He was a founder of the Connecticut Academy of Arts and Sciences. He collaborated with the president of Yale to erect a monument to John Dixwell (one of the "regicides" who, in the 1600s, condemned King Charles I of England to death before fleeing to Connecticut and living out his days under an assumed name). Edwards also was reportedly involved in an effort to reorganize the government of Yale to install his nephew Timothy Dwight as president.

Edwards worked alongside another nephew, Aaron Burr, in establishing the Republican party in Connecticut. In no small part due to Edwards' wealth and family connections, he quickly became one of the party's leading members. Federalist opposition to the Republican party was strong in Connecticut; after the election of President Thomas Jefferson and Burr in 1800, Edwards wrote to Jefferson: "The federalists here . . . do not consider themselves conquered; they are putting every faculty to the torture to effect the overthrow of your republican Administration. Our leading federalists are all royalists. . . . If they cannot effect a change in the Administration, they are resolved to divide the Union."

As his political career continued on an upward trajectory, Edwards faced criticism directed to his character and the liberal views he espoused. To be sure, Edwards was not liberal in certain critical respects: While one of his brothers advocated against slavery, Edwards' own household included two enslaved people. Edwards did, however, support freedom of religion, and his views offended a conservative older generation. (Edwards once lamented, "As well attempt to revolutionize the kingdom of heaven as the state of Connecticut.") Notwithstanding the backlash against his more controversial stances, his social standing afforded him a degree of political immunity and security.

The Roger Sherman Incident

Edwards' conduct in the public sphere challenged the social norms of his time. One illustrative example was Edwards' relationship with Roger Sherman.

Edwards appeared to forgive Sherman's 1775 attempt to disbar him and, by 1789, any fault lines appeared repaired and the two had resumed their presumed friendship. Around that same time, however, Edwards began to perceive Sherman as a rival for a desired seat in Connecticut's House of Representatives. Technically there were seats for both of them, but Edwards viewed himself in competition with Sherman because both men were from New Haven and the House of Representatives had a limited number of New Haven members. Edwards' renewed conflict with Sherman may have also had another dimension: Edwards had unsuccessfully competed with Sherman's son-in-law for a clerkship with a new district judge.

Edwards launched his campaign against Sherman in the press: Edwards began pointedly speaking out against congressional salaries, lamenting that congressmen were

overpaid and would "soon subvert the Constitution and write a new one that will perpetuate their riches." Then, on September 13, 1790, two articles appeared in the *Connecticut Courant*. The articles were both signed under pseudonyms and contained accusations that Sherman had advocated behind closed doors for high wages for congressmen. A week later, in another *Connecticut Courant* article, Edwards revealed himself as the author – though by that point his publisher had already confirmed Edwards' identity to Sherman. After shedding his anonymity, Edwards continued to criticize Sherman in the press.

Sherman was incensed by these attacks, responding to Edwards: "You [were] in the nomination for a representative to Congress, and you knew you could not be elected, [unless] one of the present members was left out . . . That you may better know and p[u]rsue your own interest; *love your neighbor as yourself*; and *avoid vain jangling*, is the desire of your sincere well wisher." Edwards remained undaunted, publicly responding with his readiness to "establish the truth of everything I have asserted respecting Mr. Sherman."

Although this spat may seem tame by modern standards, in 1790s Connecticut, Edwards' conduct was deeply startling: at that time, the most aggressive political maneuvering in Connecticut, including significant disparagement of opponents, tended to be more subtle and often behind closed doors in private conversations only. Edwards' bombastic public attacks marked a tonal shift.

Ironically, despite their then-unseemly public scuffle, both Edwards and Sherman were elected to seats in the House of Representatives. Edwards celebrated this achievement by resigning almost immediately. As one scholar noted, "he was elected in the morning and resigned in the afternoon." The reasons behind this resignation are not entirely clear, although some have speculated that, after the incident with Sherman, Edwards was feeling "tremendous pressure" that may have impacted his mental health.

Judicial Career

After his resignation, Edwards returned to private practice as well as his part-time job as U.S. Attorney.

Despite bending social norms and engaging in contemptible personal conduct, Edwards later became a U.S. District Judge for Connecticut. In 1804, he had distinguished himself and solidified his role in the Republican party by prominently defending justices of the peace whose commissions had been revoked for participating in the Republican convention and advocating a need for a new state constitution. (The defense itself was unsuccessful, as the justices of the peace were impeached and removed.) By 1806, President Jefferson appointed Edwards to the bench, where he would serve until his death in 1826. (Notably, one

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

of Edwards' first acts on the bench was to remove Sherman's son-in-law from his position as clerk. Edwards installed his own son in that position instead.)

Edwards also made waves early on in his judicial career by championing the prosecution of Federalist journalists for libel. In one spectacularly awkward family moment, Edwards refused to issue a warrant for one of his ardent Federalist nephews (Judge Tapping Reeve) who had been charged with libeling Jefferson. This was an odd mess, and largely of Edwards' own making, as he himself had initiated the case against his nephew.

Edwards famously served as the trial court judge in *Hudson & Goodwin*, a case in which prosecutors charged editors of the *Connecticut Courant* for libel under common law. The editors had accused Jefferson and Congress of secretly sending a $2 million bribe to France. Edwards supported these prosecutions, even going so far as to inform the grand jury that "such publications, if the authors of them may not be restrained . . . will more effectually undermine and sap the foundations of our Constitution and Government than any kind of treason that can be named." Edwards' charge persuaded the grand jury to indict despite reluctance. But the U.S. Supreme Court ultimately overturned the editors' convictions, holding that district courts lack common-law jurisdiction in criminal cases. *Hudson & Goodwin* established the principle that a defendant cannot be charged with a federal crime unless Congress has previously enacted a statute criminalizing the defendant's conduct.

During his tenure on the bench, Edwards played a central role in formulating the Connecticut Constitution of 1818. Edwards had become less partisan in his later years and, because he was more socially-established (and less radical) than certain of his Republican colleagues, Edwards proved acceptable to moderate members of Connecticut's Federalist party. In 1818, his ability to reach across party lines to both Republicans and Federalists permitted him to lead a coalition and to serve as chairman of the committee that drafted Connecticut's new constitution.

Although available records do not shed light on how much of the constitutional language he personally crafted, "[t]he final document achieved all that Pierpont Edwards could have wanted." In particular, the constitution implemented reforms long sought by the Republican party and supported certain principles of religious freedom that Edwards had personally championed.

Legacy

On April 5, 1826, Edwards died in New Haven at the age of 76. His obituary described him as "pre-eminently distinguished for his profound legal acquirements, the energy of his mind, the brilliance of his wit, and the splendor of his eloquence." He left behind lasting contributions to the State of Connecticut, including of course its constitution.

Though his obituary may have attributed his success to his intellect – and certainly that intellect was substantial – a review of Edwards' life suggests that other meaningful advantages contributed to both his political and personal successes. Edwards' early financial security and family connections enabled him to achieve professionally despite his hardly secret sexual misconduct, bare-knuckle politics, and contravention of the norms of his day. He was not, in his lifetime, held accountable for his most contemptible conduct, including his participation in slavery and his conduct towards his teenaged sister-in-law. Instead, Pierpont Edwards rose to the highest levels of Connecticut's government and bar: helming the effort to craft a new state constitution, participating in the state legislature, and serving as both a federal district judge and Connecticut's first U.S. Attorney.

Sources

Charles A. Heckman, *A Jeffersonian Lawyer and Judge in Federalist Connecticut: The Career of Pierpont Edwards*, 28 Conn. L. Rev. 669, 669-80, 686, 695-96, 718 (1996).

James McLachlan, *Princetonians, 1748-1768: A Biographical Dictionary* 637-41 (1976).

Nancy Isenberg, Fallen Founder: The Life of Aaron Burr 6, 8, 97, 235 (2007).

3 Dictionary of American Biography 43-44 (Allen Johnson and Dumas Malone, eds. 1930).

Arthur S. Lefkowitz, Colonel Hamilton and Colonel Burr: The Revolutionary War Lives of Alexander Hamilton and Aaron Burr 7 (2020).

John Sedgwick, War of Two: Alexander Hamilton, Aaron Burr, and the Duel That Stunned the Nation 21 (2016).

Judith St. George, The Duel: The Parallel Lives of Alexander Hamilton and Aaron Burr 9 (2016).

Garrett Bruening, *State Secrets and Environmental Law Litigation*,

11 Great Plains Nat. Resources J. 166, 188 n. 23 (2006).

An Association of Writers, History of the City of New Haven to the Present Time 243-44 (Edward E. Atwater, ed. 1887).

Lyon Gardiner Tyler, Tyler's Quarterly Historical and Genealogical Magazine 231 (1950).

Christopher Collier, Roger Sherman's Connecticut: Yankee Politics and the American Revolution 308-10, 312-13 (1971).

Karin Racine, Francisco de Miranda: A Transatlantic Life in the Age of Revolution 169 (2003).

David O. Stewart, American Emperor: Aaron Burr's Challenge to Jefferson's America 123, 348 (2012).

William Nester, The Jeffersonian Vision, 1801-1815: The Art of American Power During the Early Republic 69 (2013).

Maureen E. Brady, *The Failure of America's First City Plan*, 46 Urb. Law. 507, 551 (2014).

Colin M. Caplan, Legendary Locals of New Haven 24 (2013).

A Plain Dealer, *Article 2—No Title*, Connecticut Courant (Sept. 13, 1790).

Pierpont Edwards, *To the People of the State of Connecticut*, Connecticut Courant (Sept. 20, 1790).

Pierpont Edwards, *Letter to the Editor 1—No Title*, Connecticut Courant (Sept. 27, 1790).

Pierpont Edwards, *To the Honorable Roger Sherman*, Connecticut Courant (Oct. 11, 1790).

John W. Ifkovic, *Pierpont Edwards and the Constitutional Convention of 1818*, at 48, 51-52, 59 (University of Illinois Press, 1988).

Jacob D. Zeldes, *Connecticut's Most Memorable "Good for Nothing Rascal" in This "Land of Steady Habits,"* 80 Conn. B.J. 367, 403-04 (2006).

United States v. Hudson, 11 U.S. 32 (1812).

Columbian Register (Apr. 8, 1826).

The Judicial and Civil History of Connecticut 345 (Hon. Dwight Loomis and J. Gilbert Calhoun, eds. 1895).

In the Courts

Judge Cronan Takes the Classic Road to the Bench

By Brian M. Feldman

Judge John Peter Cronan is the youngest district judge on the U.S.District Court for the Southern District of New York but joined the court in time-honored fashion, after service as an Assistant U.S. Attorney in the district and leadership within the U.S. Department of Justice.

From AUSA to District Judge

It is a commonplace to say that the U.S. District Court for the Southern District of New York is steeped in tradition. Its predecessor, the U.S. District Court for New York, sat at the bottom of Broad Street in Manhattan in the Old Royal Exchange building. The U.S. Supreme Court held its inaugural session in that same building on February 2, 1790. But the District Court for New York beat the Supreme Court to the punch. The District Court convened 13 weeks earlier than the Supreme Court, back on November 3, 1789, hardly a month after President George Washington's September 24, 1789 signing of "An Act to Establish the Judicial Courts of the United States," or what we know as the Judiciary Act of 1789.

Early on – indeed, immediately – the work of the court was tied to the work of its neighboring federal legal officers, originally, the U.S. District Attorney for New York and, following the creation of the Southern District of New York in 1814, the Office of the U.S. Attorney for the Southern District of New York (the "Office"). While the court's historic first session of November 3, 1789 is the basis for the Southern District of New York's title of "Mother Court," no cases or controversies were actually heard that day. In fact, the court did not entertain an action until April 1790, when the customs case, *United States of America v. Three Boxes of Ironmongery, Etc.*, was filed.

Judge John Cronan

But on the court's first day, it did record Richard Harison's commission as U.S. District Attorney. And Harison was thereafter a frequent lawyer in the court, as well as in the overlapping circuit court, where Harison brought the nation's first federal prosecution, *United States v. James Hopkins and William Brown*, to a successful verdict.

Harison was also the first of many federal prosecutors from the district selected for appointment to the court by the president of the United States. Harison was President Washington's first nominee to succeed the court's inaugural jurist, U.S. District Judge James Duane. In a turn of events that remains familiar today, "Harison ultimately withdrew his name from consideration after the Senate kept postponing a vote on his confirmation" (Jeffrey B. Morris, Federal Justice in the Second Circuit (1987) at 14), earning the dubious honor of being the first unsuccessful district court nominee in the nation's history. It would be another century before U.S. Attorneys for the Southern District would win appointment to the district court, but it would become a trend, with Francis F. Caffey's term as U.S. Attorney in 1917-21 being followed by his judgeship on the Southern District from 1929 to 1947, John F. X. McGohey's elevation from U.S. Attorney to district judge in 1949, and John S. Martin's appointment to the Southern District in 1990, after serving as U.S. Attorney from 1980 to 1983.

The even more common route has been the one Judge Cronan follows – the elevation of former Assistant U.S. Attorneys for the Southern District of New York to positions as U.S. District Court Judges for the Southern District of New York, a route that more than 50 judges have now taken.

It is fair to say that, for almost 90 years, there has been a sort of cursus honorum for many judges taking the bench on the court: elite law school education; service as an Assistant U.S. Attorney in the Southern District of New York; assumption of a leadership position either in the Office or elsewhere in federal service; and then appointment as a U.S. District Judge for the Southern District of New York.

That trail was blazed when President Coolidge appointed to the court Thomas Day Thacher, a New Jersey native (like Judge Cronan) who graduated from Yale Law School (like Judge Cronan) before spending three years as an Assistant U.S. Attorney in the Southern District of New York and then serving a year with the American Red Cross Commission to Russia. (Judge Thacher left the bench to serve as the 21st U.S. Solicitor General, clearing a spot on the court for Judge Learned Hand.) His trail has been followed since by dozens of jurists.

That path has been bipartisan, with presidents of both parties choosing former Assistant U.S. Attorneys from the district for seats on the court. As an illustration of the many Assistant U.S. Attorneys for the Southern District of New York who, after other stints in government, were appointed judges on the court, President Truman appointed Judge Irving R. Kaufman, who served as special assistant to the attorney general after his work in the Office; President Eisenhower appointed Judge John M. Cashin, who served as well as counsel to the Federal Prohibition Administration; President Kennedy appointed Judge Harold R. Tyler, who had also served as Assistant Attorney General for Civil Rights; President Johnson appointed Judge Walter R. Mansfield, who had left the Office for the wartime U.S. Marine Corps; President Nixon appointed Judge Richard Owen, who had served in the Antitrust Division after the Office; President Ford appointed Gerard L. Goettel, who left the Office to serve on the Attorney General's Special Group on Organized Crime; and President Carter appointed Judge Leonard B. Sand, who also worked in the U.S. Solicitor General's Office. That trend multiplied with court appointees between the Reagan and Obama years. And, today, 15 of the court's judges are former Assistant U.S. Attorneys in the Southern District of New York.

The Last of a Legacy, for Now

Judge Cronan, who was sworn in as a U.S. District Judge for the Southern District of New York in August 2020, fits squarely within that tradition. His credentials are impeccable. He graduated Yale Law School in 2001. He clerked twice for judges on the U.S. Court of Appeals for the Second Circuit: first for Circuit Judge Barrington D. Parker, Jr., and then for Circuit Judge Robert A. Katzmann. And at the age of just 27, he began working as an Assistant U.S. Attorney in the Southern District of New York, serving in both the Civil Division and the Criminal Division, ultimately as chief of the Terrorism and International Narcotics Unit. He handled front-page prosecutions, including the Times Square Bomber case and Osama Bin Laden's close associate, Sulaiman Abu Gyath. Cronan tried 10 cases to verdict. He served a total of 14 years in the Office, winning the Attorney General's Award for Distinguished Service, the Executive Office of U.S. Attorneys' Director's Award, the Federal Law Enforcement Foundation's Prosecutor of the Year Award and the Criminal Division Assistant Attorney General's Exceptional Service Award.

From there, he traveled to Washington, D.C., to work as the Acting Assistant Attorney General of the U.S. Justice Department's Criminal Division, before serving as the Principal Deputy Attorney General of the Criminal Division for about two years.

There is much to be said for appointing former Assistant U.S. Attorneys, like Judge Cronan and dozens before him, to the court. They know the court better than almost any other lawyers, having had daily or weekly interactions with the court's judges and clerks for years on end. Moreover, because Assistant U.S. Attorneys in the Southern District of New York have traditionally argued their own appeals, they also know the traditions and expectations of the U.S. Court of Appeals for the Second Circuit – a helpful set of insights for any jurist whose opinions will be subject to the circuit court's review.

And, for the rare Assistant U.S. Attorney like Judge Cronan who has worked in both the Civil and Criminal Divisions of the Office, the sheer exposure to the subject matters before the court is incomparable – from the entire gamut of criminal work to plaintiff-side and defense-side civil litigation, touching on constitutional issues, administrative law, civil rights, employment litigation, prisoner rights, tax, bankruptcy, immigration and civil fraud, among others. Perhaps most importantly, Assistant U.S. Attorneys spend their time in the Office tasked not, like most litigators, simply with advancing their client's interests, but more closely (albeit not identically) with the aim of judges to do justice in every case.

Yet strong arguments in favor of diversifying judicial perspectives means that, at least during this presidential administration, the historic practice of appointing former Assistant U.S. Attorneys to the bench in the Southern District may find itself, not unfairly, on hiatus. Former District Judge John Gleeson, a former Assistant U.S. Attorney himself, recently praised and explained the significance of this diversification in his November 15 article, "Balancing the Scales of Justice in New York's Federal Trial Courts." And President Biden has touted, in each round of his judicial nominations, a "promise to ensure that the nation's courts reflect" "diversity" "both in terms of personal and professional backgrounds."

The president's first nominee to the U.S. District Court for the Southern District of New York was ACLU Voting Rights Project Director Dale Ho, who is an extremely qualified lawyer – with an elite education at Princeton and Yale Law School, BigLaw litigation training and clerkships on the New York Court of Appeals and with former District Judge Barbara Jones – but is not a former Assistant U.S. Attorney.

Likewise, the president's additional nominees – Jennifer L. Rochon, Jessica G. L. Clarke and the re-nominated Jennifer H. Rearden – boast impressive legal pedigrees and careers spanning private practice, in-house positions and government service, but none served as an Assistant U.S. Attorney.

The same is true of recent Second Circuit appointees, with U.S. Circuit Judge Eunice C. Lee, a Yale Law School graduate, coming from the Federal Defender's Office, U.S. Circuit Judge Myrna Perez, a Columbia Law School graduate, joining the Second Circuit from the Brennan Center for Justice, and U.S. Circuit Judge Beth Robinson, a University of Chicago Law School graduate, joining from the Vermont Supreme Court. None of these recent nominees or appointees is a former Assistant U.S. Attorney. As it stands then, Judge Cronan represents what may be the end of a long-running thread of judicial appointments in the district, at least for now.

As that thread goes, Judge Cronan shares what other former Assistant U.S. Attorneys before him have brought to the bench. He brings a wealth of experience, a command of criminal (and civil) law and procedure, bravery shown in prosecutions (such as taking on al Qaeda and criminal enterprises) and a focus on how cases affect real people, including victims, defendants and communities. His depth of courtroom experience in the Southern District, from trials to motions to appeals before the Second Circuit, translates into respect for the challenges that lawyers face and an expectation that lawyers live up to the high standards of the court.

His Own Man

Of course, Judge Cronan's service as an Assistant U.S. Attorney hardly defines him. Judge Cronan is a product of much more than that service alone. That fact should come as no surprise, as the former Assistant U.S. Attorneys on the Southern District bench today are a diverse and individualistic bunch. They include judges as distinct from one another as Judge Jed S. Rakoff and Judge Naomi R. Buchwald, Judge Kenneth M. Karas and Judge Cathy Seibel, and Judge Katherine Polk Failla and Judge Richard Sullivan (now elevated to the circuit). These are not a fungible lot.

Judge Cronan is a unique product of his upbringing and experiences. Born in Teaneck, New Jersey, in 1976, Judge Cronan was an only child and grew up in Paramus. He was raised by his mother, a Spanish teacher at Paramus Catholic High School, and his grandmother, a medical practice bookkeeper. From these maternal role models, Judge Cronan learned the importance of hard work, the value of family and the need to treat others with respect. And his mother and grandmother, both working women, instilled in Judge Cronan a vigilance to stand up for himself and ensure that others would not take advantage of him. As Judge Cronan would later tell the Senate Judiciary Committee, he attributed any good qualities or successes in his life to his mother and grandmother.

Judge Cronan received a top-notch Catholic education, albeit not at his mother's school. For high school, he attended Bergen Catholic, an all-boys school. There, Judge Cronan developed his interest in community service, organizing weekly student trips to a soup kitchen in Newark, and in mock trial, an endeavor that first exposed him to the life of the law. While Judge Cronan was on the mock trial team, Bergen Catholic won the national mock trial championship, although Judge Cronan

insists he had very little to do with that success.

Afterwards, he matriculated to Georgetown University. At Georgetown, Judge Cronan became a leader among his classmates, serving as Student Body President. He recalls a town-gown dispute in his senior year, when a group of local residents attempted to zone students out of certain neighborhoods. Judge Cronan helped spearhead an effort to register students to vote, a group called Campaign Georgetown, and successfully worked to get students elected to local office. And when certain local residents challenged those student voter registrations, a large D.C. law firm provided pro bono assistance. The experience offered Judge Cronan a critical glimpse into the importance of voting, the power of the law, and how being a lawyer could help solve real-world problems.

Georgetown is where Judge Cronan also met a life-long mentor, the late Judge Robert A. Katzmann. Back then, Professor Katzmann was the Walsh Professor of Government at Georgetown and, in Judge Cronan's eyes, a friendly young professor with whom Judge Cronan wished he could work. Judge Cronan one day slipped a note under Professor Katzmann's door, asking him if he would be willing to mentor Judge Cronan on a senior thesis focused on the U.S. Supreme Court. Professor Katzmann agreed, and the two began a mentorship that Judge Cronan credits as one of the major influences on his approach to the law.

When Yale Law School called Judge Cronan to accept his application on April 1, 1998, Judge Cronan thought his friends were playing a practical joke on him. But it was no April's Fool joke. Judge Cronan excelled at Yale. He continued with mock trial, both coaching undergraduates and participating on his own, receiving the award for best performance in the law school's competition. He served as editor-in-chief of the *Yale Law & Policy Review*. A prolific budding legal academic, Judge Cronan began publishing academic work at Yale on various topics, including Fourth Amendment and First Amendment constitutional questions, placing an impressive eight articles or notes during his law school years among various legal journals, with several more published in the years to follow. Judge Cronan loved his Yale Law experience, especially, he recalls, the chance to learn from brilliant professors, like Steven B. Duke and Kate Stith, herself a former Assistant U.S. Attorney in the Southern District of New York.

Judge Cronan planned to clerk on both a district and circuit court after graduation, and he clinched clerkships with then-District Judge Barrington D. Parker and his mentor, Circuit Judge Robert A. Katzmann, who, while Judge Cronan was in law school, had left Georgetown to accept his commission on the Second Circuit. But, by October 2011, soon after Judge Cronan started his clerkship with Judge Parker, President George W. Bush renominated Judge Parker to the Second Circuit and the Senate quickly confirmed him as a circuit judge. So, Judge Cronan ended up with back-to-back Second Circuit clerkships. Judge Cronan was awed by both judges, who he describes as brilliant jurists and tireless workers. He credits Judge Parker, with his extensive litigation experience, for his appreciation of the real-world implications of judicial decisions and his understanding of litigators. And he credits Judge Katzmann for his compassion and unwavering realization that cases are not law school hypotheticals but impact people's lives, as well as for role modeling a respectful approach to oral argument, with an immensely modest presence. As Judge Cronan explained, "Judge Katzmann never acted like the smartest person in the room, even though he pretty much always was."

Shaped by September 11

The September 11 attacks coincided with the start of Judge Cronan's clerkship with Judge Parker, and those events helped shaped Judge Cronan's future. On September 11, Judge Cronan was working in Judge Parker's chambers in White Plains and watched the second plane hit from District Judge William C. Conner's chambers across the hall. Judge Cronan drove back to New Jersey to be with his mother and grandmother. The death toll and destruction of the attacks were part and parcel of his first experiences with New York City. He signed his lease in downtown Manhattan on September 10th. It was in the wake of the devastation of September 11 that Judge Cronan decided upon a life of public service, with the hope that he could give back by bringing terrorists to justice – something he would, in fact, accomplish.

Judge Cronan got an immediate start on public service. Unlike many other U.S. Attorney's Offices, the Southern District of New York accepts some untested litigators into its ranks and throws them straightaway into the courtroom. And so, at 27, just two years out of law school and without a lick of litigation experience, Judge Cronan was sworn in as an Assistant U.S. Attorney in the Southern District of New York. He spent the first four years in the Office's Civil Division, from 2003 through 2007, handling dozens of cases across a wide swath of issues: defending employment discrimination actions and tort cases; investigating civil rights violations; defending administrative decisions; and advancing federal agencies' claims in bankruptcy proceedings. Then, in 2007, he transferred to the Criminal Division, where he would spend the next ten years as a federal prosecutor.

From the outset, Judge Cronan sought an opportunity to work on terrorism prosecutions. Most Assistant U.S. Attorney in the Southern District of New York's Criminal Division spend at least the first year in the General Crimes Unit, followed by at least a year in the Narcotics Unit. It is only in an Assistant U.S. Attorney's third year, generally, that he or she will, at the earliest, have an opportunity to work in another specialized section, such as the Terrorism Unit. But, as soon as Judge Cronan arrived at St. Andrews Plaza, he approached the then-Terrorism Unit Chief David Raskin to express interest in helping in any way he could. Raskin let him join a case, and would become a close mentor of Judge Cronan's in the Office. And as Judge Cronan worked through General Crimes and Narcotics, positions notorious for requiring around-the-clock hours for line attorneys, Judge Cronan took the time to develop relationships with law enforcement officers on the Joint Terrorism Task Force. By his third year in the Criminal Division, around December 2008, he was accepted into the Terrorism Unit, then called the Terrorism and International Narcotics Unit.

Judge Cronan ended up working on September 11 issues in more ways than he could have anticipated. In March 2009, just a few months into his Terrorism Unit assignment, he was assigned to the Guantánamo Review Task Force. There, he was responsible for reviewing evidence against detainees to assess the feasibility of prosecutions. Upon his return, he joined a team preparing to prosecute the mastermind of the September 11th attacks, Khalid Sheikh Mohammed ("KSM"). On December 14, 2009, a Southern District grand jury returned a 10-count, 80-page indictment charging KSM and other al Qaeda members for their roles in the September 11 attacks. Unfortunately for the prosecution team, on April 4, 2011, the Attorney General decided that the matter would be referred for prosecution through military commissions, terminating their efforts to prosecute the case. The Office, Judge Cronan recalls, had been fully prepared to try the case to conviction.

But that was far from Judge Cronan's final brush with al Qaeda. In 2014, Judge Cronan became the Deputy Chief of the Terrorism Unit, and, in 2016, he became a chief and co-chief. In that role, he supervised 16 prosecutors in more than 100 investigations and prosecutions involving support for al Qaeda and other terrorist groups, working closely with U.S. law enforcement and intelligence agencies. He investigated and prosecuted terrorists including the would-be Times Square bomber Faisal Shahzad, the extradited Mustafa Kamel Mustafa, and al Qaeda supporters Wesam El-Hanafi and Sabirhan Hasanoff, among others.

Perhaps most significantly, Cronan, along with two other line attorneys, prosecuted Sulaiman Abu Ghayth for his roles with al Qaeda in the months leading up to the September 11th attacks. Abu Ghayth sat with Bin Laden on the morning of September 12, 2001, celebrating the horrific events of the day before and calling for additional acts of terror. After a three-week trial, Judge Cronan pointed at Abu Ghayth in the courtroom and told jurors, "This man's purpose was to strengthen al Qaeda and solidify its future." The jury returned a verdict finding Abu Ghayth guilty of conspiracy to murder Americans, among other charges, leading to a sentence of life imprisonment in September 2014. Thirteen years after committing himself to bringing terrorists to justice, Judge Cronan had done just that with men who had plotted to kill Americans and who had sat with Bin Laden, despicably celebrating as the fires of September 11 still smoldered.

Leadership in Washington

Judge Cronan was then called down to Washington to serve at Main Justice, the term Assistant U.S. Attorneys use to refer to the U.S. Department of Justice lawyers seated in the District of Columbia. In August 2017, Judge Cronan took a

detail to Washington to serve as the Principal Deputy Attorney General for the Justice Department's Criminal Division. But there was no Senate-confirmed head of the Criminal Division in place. So Judge Cronan became the Acting Assistant Attorney General for the Criminal Division in November 2017, supervising 600 Criminal Division prosecutors, mostly in Washington, D.C.

In July 2018, Judge Cronan became the Division's Principal Deputy. During his time at Main Justice, Judge Cronan oversaw prosecutions across the nation of white collar and health care fraud, public corruption, violent crime, human rights violations, cybercrime, intellectual property theft, the illegal prescription of opioids, and international drug trafficking. Drawing on Judge Cronan's national security experience, Attorney General Jeff Session also named Judge Cronan to lead the Hezbollah Financing and Narcoterrorism Team to coordinate nationwide efforts to combat Hezbollah's domestic and international support networks. While working at Main Justice, Judge Cronan focused efforts on working collaboratively with the various U.S. Attorney's Offices, rather than at cross-purposes.

Elevation to the Bench

Judge Cronan was President Trump's final nominee to the Southern District of New York. On November 6, 2019, the president announced his intention to nominate Judge Cronan to the bench, which was formally submitted on December 2, 2019. On March 4, 2020, the Senate Judiciary Committee held a hearing on Judge Cronan's nomination. Chair Lindsey Graham introduced him as a career prosecutor, and Judge Cronan introduced his wife and mother, both sitting behind him, as well as his grandmother, who he assured the panel was watching from home. The hearing ended with the chair promising to "move forward as quickly as we can."

But the world changed days later. The first pandemic lockdowns began shortly after the hearing, and the Judiciary Committee understandably sat on its recommendations. Two months later, on May 14, 2020, the Judiciary Committee issued a report in favor of Judge Cronan's confirmation. Yet Judge Cronan remained in place at the Justice Department as he waited for a floor vote. On August 6, 2020, while out for a run along the National Mall, Judge Cronan noticed that his phone was vibrating incessantly. He stopped to discover that the Senate had announced that it would vote to close debate on his nomination. By a vote of 55 to 42, including Democratic Senators Doug Jones (D-AL), Joseph Manchin (D-WV), Krysten Sinema (D-AZ) and Jon Tester (D-MT), the Senate had confirmed his nomination.

Judge Cronan was sworn in as a district judge almost immediately. Since then, his judicial tenure has been characterized by more telephonic conferences than he would like. One of his early judicial acts involved publishing his "Emergency Individual Practices in Light of COVID-19" for litigants appearing before him, addressing issues ranging from how to set up telephone conferences (landlines are better than mobile phones; headsets are preferred over speakerphones; and please mute yourself when not speaking) to rules governing virtual civil depositions and criminal court appearances. Judge Cronan prioritizes sentencing and oral argument for in-person hearings, whenever feasible, and he looks forward to more in-person court proceedings, especially naturalizations.

The judge brings an open mind to cases and tries his best to avoid any knee-jerk reactions. As a former litigator, he sees the importance of allowing each party to make its case. He is keenly aware that, for many participants in the judicial process – litigants, witnesses and jurors – he is the face of the government. He takes that role seriously. The judge expects civility from lawyers in their dealings not only with the court, but also with each other. Following in the footsteps of the judges who mentored him, Judge Cronan also comes to oral arguments extremely well prepared. He expects lawyers to do the same. He understands the time and costs associated with oral argument and asks for it only when it could clarify or focus the court's understanding. Litigants, he urges, should remember that no judge has complete mastery of every nook and cranny of the law, so it is critical to teach judges what they need to know. The judge also warns lawyers that credibility is easily lost and that unfairly citing cases or evidence will only undermine an attorney's cause.

The "Honor of a Lifetime"

Judge Cronan says that donning the robe in the Southern District is the "honor of a lifetime." Judge Cronan took a well-worn path to get there, through intense, around-the-clock work at the U.S. Attorney's Office for

the Southern District of New York, where he endeavored to do the right thing, for the right reasons, in the right way, in every case. His public service as a prosecutor allowed him to bring some justice for victims of al Qaeda and to hold other terrorists accountable, all as he hoped he might do when his legal career started in the wake of the collapse of the Twin Towers. His hard work and superb skills earned him important convictions, innumerable awards, and leadership positions in both the U.S. Attorney's Office and in Main Justice.

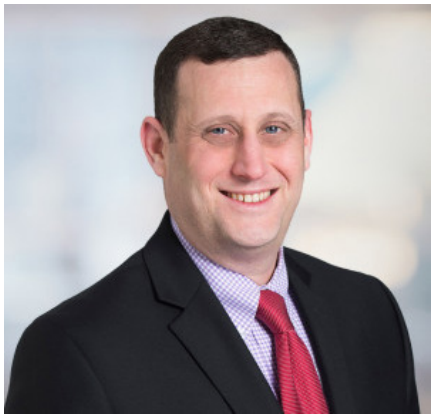
As tried-and-true as his path to the court may have been, he is his own man. He continues to pay back those who exposed him to the law through mock trial by volunteering his time. It is fitting that Judge Cronan's first trial on the bench was a May 2021 mock trial for the New York State High School Mock Trial Program. And, as he told the Senate Judiciary Committee, he remains a product of the two strong women who raised him: his mother and grandmother. In a tribute to Judge Cronan's and his grandmother's devotion to each other, his grandmother attended Judge Cronan's first proceeding as a district judge – telephonically, of course – by dialing in to listen to her grandson holding his first civil case conference. She passed away a couple of weeks later, at the age of 95.

The public is fortunate to have judges coming from increasingly diverse backgrounds. But Judge Cronan's path reminds us why so many presidents have elevated public servants from the Office of the U.S. Attorney for the Southern District of New York to the courthouse next door.

New Appointments

Judge Rachel Kovner

By Steven H. Holinstat



On May 21, 2019, President Donald Trump, with the support of the then-Senate Minority Leader and Senior Senator from New York, Charles Schumer, nominated Rachel P. Kovner to serve as a judge on the U.S. District Court for the Eastern District of New York. Refreshingly, in a time of ever deepening political divide in this country, Judge Kovner received broad bipartisan support, and was confirmed by the Senate on October 16, 2019 by an overwhelming 88-3 vote, receiving her judicial commission on October 17, 2019. She fills the seat vacated by Judge Carol Bagley Amon, who assumed senior status on November 30, 2016.

Native New Yorker

Judge Kovner, a New York City native, graduated magna cum laude from Harvard College, receiving her A.B. in 2001. While at Harvard and before entering law school, Judge Kovner pursued her passion for writing, working for the Harvard Crimson (and receiving the Dana Reed Prize for best writing in a Harvard undergraduate publication). She also interned at the Charlotte Observer and the St. Louis Post-Dispatch, and thereafter was hired as a reporter for the New York Sun. A prolific writer, Judge Kovner covered a myriad of news stories, including politics, crime and the courts, and human interest pieces.

In 2003, Judge Kovner entered Stanford Law School, receiving her J.D. in 2006. She received the Nathan Abbott Award for graduating first in her class. During law school, Judge Kovner served as the senior articles editor of the Stanford Law Review, received the Hilmer Oehlmann Award for excellence in legal writing, and was inducted into the Order of the Coif.

Clerking Experience

After law school, Judge Kovner served as a dedicated public servant. From 2006 to 2008, she clerked for two of the most influential conservative jurists ever to sit on the federal bench. From 2006 to 2007, she clerked for Judge J. Harvie Wilkinson III, of the U.S. Court of Appeals for the Fourth Circuit, and then she clerked for the late Justice Antonin Scalia, of the U.S. Supreme Court from 2007 to 2008. Judge Kovner notes that Judge Wilkinson and Justice Scalia were incredible writers. She hopes to emulate the care each of them took in preparing their decisions given how important they were to the litigants themselves, as well as to those who would later rely upon them. For example, Judge Kovner fondly recalls that before Justice

Scalia released any final opinion, he asked his clerks to bring him a cart with copies of all of the reporter volumes containing every case cited in his proposed opinion. They would then thoroughly review each case to check the accuracy of every quote and citation, making sure that nothing was taken out of context, and that his opinion was true to the letter and substance of any holding on which his opinion relied. Only then would he release his final decision.

A Scholar

After her judicial clerkships, in 2008, Judge Kovner became a Temple Bar Scholar for the American Inns of Court. From 2009 to 2013, Judge Kovner continued public service by becoming an Assistant U.S. Attorney in the Southern District of New York. She started her career in the general crimes unit, then moved to narcotics and finally became part of the terrorism and international narcotics trafficking unit. Notably, Judge Kovner assisted in the prosecution of Khaled Al Fawwaz and Adel Abdel Bary for their role in the al Qaeda conspiracy to bomb the U.S. Embassies in Kenya and Tanzania. She acted as trial counsel in 10 felony trials and handled seven appeals in the U.S. Court of Appeals for the Second Circuit. From 2013-2019, she served as an Assistant to the U.S. Solicitor General, frequently representing the federal government in arguments before the U.S. Supreme Court.

Judge Kovner has also volunteered with the DC Volunteer Lawyers Project, which assists victims of domestic violence to obtain orders of protections, and during law school, she volunteered with a program that provides pro bono assistance with immigration law matters. Upon her appointment to the federal bench, Judge Kovner intends to continue supporting the community by participating in the "Justice Institute," a five-day immersion program for middle school students on Long Island to interact with justice system professionals, observe hearings, and learn about *Miranda v. Arizona,* which they apply to fictional, but realistic, teen scenarios in which young people could find themselves. Judge Kovner is also a frequent judge in law school moot court programs.

Roman Martinez, the Deputy Office Managing Partner of Latham & Watkins LLP's Washington, D.C., office, who worked with Judge Kovner at the Solicitor General's Office, remarked that Judge Kovner "is a phenomenally talented lawyer who will make a terrific judge. She was a wonderful colleague of mine with a powerful intellect, superb common sense, and a deep sense of fairness. President Trump has hit a home run with this nomination."

Dispensing Justice

Judge Kovner's stated goal in every case is, in her words, to accurately understand the facts and provide a thorough and comprehensive application of the law to such facts. She wants every litigant, whether or not they prevail on their case, to come away with the belief that their arguments were heard and given due consideration, as it is the fundamental principle of the judicial system that, win or lose, the litigants and the nation as a whole believe that justice was duly considered and dispensed in a fair and dispassionate manner.

Finally, having started her judicial career only a few months prior to the global pandemic, she is looking forward to the time when the courts are fully reopened and everyone (judges, staff and lawyers, alike) is back in the courthouse so they can resume the collegial interactions that make the Eastern District of New York a special place to practice.

Focus On:

Judge Kari A. Dooley

By Joseph Marutollo

Judge Kari Anne Dooley is a U.S. District Court Judge for the District of Connecticut. Judge Dooley recently spoke with the

Federal Bar Council Quarterly about her career and her path to serving as a federal judge.

The Path

Judge Dooley graduated from Cornell University with a B.A. in psychology in 1985. She went to law school right after college and graduated from the University of Connecticut, School of Law, cum laude, in 1988.

Judge Dooley began her legal career at Whitman and Ransom (now Whitman Breed Abbott & Morgan), in Greenwich, Connecticut, where she worked from 1988 until 1992. At the firm, Judge Dooley worked mostly on civil litigation, along with some criminal defense work.

In 1992, Judge Dooley became an Assistant U.S. Attorney in the District of Connecticut (the "Office"). She decided to apply to become an AUSA because she had a "real interest" in criminal law and knew of the important and interesting work handled by the office. Judge Dooley was assigned to the Office's Criminal Division.

While at the U.S. Attorney's office, Judge Dooley held a number of supervisory positions, including counsel to the U.S. Attorney; Supervisory Assistant U.S. Attorney in the Bridgeport branch office; Child Exploitation Coordinator; Professional Responsibility Officer; and Senior Litigation Counsel. Judge Dooley appreciated that the Office gave her "opportunities to do a variety of things" and to take on different roles throughout her tenure. She said that it was a "true privilege" to, among other things, supervise the Bridgeport branch office.

Judge Kari Anne Dooley

Trials

Among her notable trials at the Office was the case styled *United States v. Giordano*, where she was one of several attorneys representing the government in prosecuting Philip Giordano, the former mayor of Waterbury, Connecticut. Giordano was charged with civil rights violations as well as sexual assault as a result of his repeated sexual abuse of two young girls under the auspices of the Mayor's Office. As Child Exploitation Coordinator, Judge Dooley interviewed and presented the testimony of the child victims at trial. Giordano was convicted and sentenced to 37 years in prison for his heinous crimes, a conviction that was later affirmed by the U.S. Court of Appeals for the Second Circuit.

Judge Dooley served in the Office until 2004, when Connecticut Governor M. Jodi Rell appointed her to serve as a judge of the Superior Court for the State of Connecticut, which is a trial court of general jurisdiction. A host of different types of matters, including civil, criminal, family, housing and juvenile cases are heard in the court. As the judge notes, she "did every type" of case during this period. Judge Dooley served as a state court judge until her appointment to the federal bench.

The Nomination

In December 2017, Judge Dooley was nominated to the U.S. District Court to a seat vacated by Judge Robert N. Chatigny. Judge Dooley was formally commissioned a U.S. District Judge on September 13, 2018. After her many years as an AUSA in Bridgeport, she returned to the Brien McMahon Federal Courthouse in Bridgeport as a sitting judge.

As a Federal Judge

Judge Dooley noted that there are many differences between serving as a state court judge and as a federal judge. While both the federal and state judges "follow the facts, apply the law, and adjudicate claims," the positions are "very different on the ground." For instance, a federal judge manages her own docket from beginning to end. A state judge, in contrast, does not have the individualized case management that a federal judge routinely encounters. In both courts, however, Judge Dooley noted that she routinely works with excellent lawyers and outstanding fellow judges.

Outside of the courtroom, Judge Dooley has been a member of the American Inns of Court, and she looks forward to increased engagement with

both bar groups and area law schools as such opportunities may arise.

Personal History

The Associate's Dilemma: Obeying Dumb Orders

By C. Evan Stewart

In prior issues of the *Federal Bar Council Quarterly*, I examined two serious dilemmas facing associates at large law firms. Now I will look at another real-life dilemma of an associate (me), this time feeling obligated to obey a really stupid order of his boss and the improbable consequences that flowed therefrom.

At the Beginning

Ralston "Shorty" Irvine had been then-Colonel William ("Wild Bill") Donovan's protege in the Antitrust Division under Calvin Coolidge, and he had later been present at the creation of Donovan Leisure Newton & Irvine in 1929. Ultimately, he came to head the firm and was principally responsible for some of the firm's most important clients, including Mobil Oil and Disney. With respect to Disney, Shorty Irvine's relationship with Walt Disney was such that Walt Disney delayed the opening of Disneyland by one day to accommodate Irvine's schedule.

Beyond handling Disney's antitrust work and the stealth buying of land in the Orlando area in advance of DisneyWorld, the firm also branched out into the tax field for its client. Under the brilliant leadership of John Baity, the head of the firm's tax department, Donovan Leisure had crafted a strategy whereby Disney reaped such a humongous tax benefit on its used film stock that it warranted a footnote explanation in the federal budget! This landmark achievement did not go unnoticed by the other film studios; soon Baity and Donovan Leisure had been asked by other studio clients to perform similar miracles. And those developments then led Donovan Leisure to be the first major New York City firm to open a branch in the City of Angels.

Initially, the L.A. office had a small permanent staff. To make do on various matters, a few New York City associates were shuttled in for stints; in 1979, I spent approximately five very enjoyable months in Los Angeles. As I was wrapping up my tour of duty, the head partner in L.A. asked me if I wanted to stay full-time; while I was flattered, I wanted to get back to New York and (I think) I politely declined.

Fast Forward to 1983

Four years later, I was now a sixth year associate and fairly seasoned by dint of, inter alia, work on a number of very significant antitrust matters. During a lull in one complex, multi-district litigation, I was pulled onto a new tax litigation initiated by Baity in Los Angeles on behalf of a major Hollywood studio. Interestingly, Baity's opposite number was Martin Ginsburg, Ruth Bader Ginsburg's spouse.

While Baity was the lead partner, another partner was responsible for the day-to-day operation of the case: Richard Sayler. Dick, who had been at the very top of his class at Michigan Law School, went on to clerk for Whizzer White. His niche in the Donovan Leisure partnership was to ponder great issues and come up with brilliant solutions; he could usually be found in his office smoking a pipe and looking profound. In light of the foregoing, most (if not all) of the practical litigation work fell to me. A second year associate (a former Supreme Court clerk) was added to the team to do "brilliant" tax research.

On to L.A.

As the case moved into high gear, the team left New York for Los Angeles. The highlight of my flight was sitting across the aisle from Jessica Lange, who had just won the Best Supporting Actress Oscar for "Tootsie" (while having also lost the Best Actress Oscar for "Francis"). Halfway through the flight I summoned up enough courage to walk over and clumsily offer my kudos for her affecting performance in "Francis" (she smiled and said "thank you," but seemed relieved that I quickly went back to my seat).

Ensconced in the Bonaventure Hotel in downtown L.A. near the office (it features prominently in the Clint Eastwood classic "In the Line of Fire"), the team was working 14 hour days in preparation for a critical court appearance. Late one afternoon, Dick came into my office and said the team had been working really hard; we should take the night off and go to a fancy restaurant: "Evan, you know all the hot spots in L.A., pick one!" And so I did, making a reservation for the three of us at the best restaurant in Venice Beach.

From downtown L.A. to Venice Beach is a bit of a hike, but we three piled into my rental car at seven p.m. and headed out. Forty five minutes later, we arrived; I checked the car with the valet, and we strolled in on time for our reservation. The pretentious maitre d' escorted us to our table, which was against the far wall, in a line of banquette arranged, cozy set-ups. Dick immediately ordered a martini (since I was responsible for getting us home, I did very little imbibing that night).

By the time Dick was on his second martini, it became clear that the banquette right behind me (just over my shoulder) held the most famous leading man in the movies at that time – first, because of the great success of "10" and, right on its heels, the mega success of "Arthur." Four feet away, Dudley Moore was having dinner with his girlfriend, the actress Susan Anton. They made a highly improbable looking couple: Moore was not a dashing, handsome matinee idol type (indeed, he was only 5'3" – on a good day), while Anton was a stunning, Nordic goddess, who towered over him at six feet tall (without heels). How did we know it was them? Because even in this very fancy, very expensive restaurant numerous patrons were constantly interrupting their dinner, shouting out "Hey, Arthur," and verbalizing various familiar lines from the "Arthur" movie.

A "Great" Idea

Now on his fourth (or fifth) martini, Dick slurred out words I have never forgotten: "Evan, I have a *great* idea!" He went on: "You know a lot about wine. Go order a fancy bottle and have it delivered to them with your business card. We'll probably land him as a client!" Oh boy, I thought to myself, what a really stupid idea. But to Dick, I said: "You bet, I'll be right back."

I immediately hightailed it over to the sommelier and asked for the wine list. He happily supplied it and I said this would not take long. Not knowing whether Moore and Anton were having fish or meat, I mentally crossed off red and white wines. Accordingly, I went to the champagne section of the list and quickly hit upon a vintage Dom Perignon. I told the sommelier that I was ordering the Dom Perignon and that it should be delivered promptly to the nice people seated right next to us who had been constantly interrupted and bothered by other patrons all during their dinner; and I also asked the sommelier to have my card accompany the champagne.

Returning to the table, a semi-conscious Dick anxiously awaited. I assured my boss/partner that all was taken care of: ordered was something that would surely impress the Hollywood big-shots! After five minutes, however, nothing had arrived; and after 10, still nothing. Dick was onto his umpteenth martini and seemingly not too focused on the issue, but I was starting to get concerned.

Have you ever had that feeling in the back of your head that someone is staring at you? Well, I started to get that feeling, and my eyes slowly turned to my left and out toward the middle of the restaurant. There was a table about 10-15 feet away, and I saw an ice chest. Going higher, I saw the top of a vintage Dom Perignon bottle in the chest. Going higher still, I saw two couples who had just been seated. In their hands were four champagne glasses, and they were toasting me for the wonderful gift a stranger had bestowed upon them!

Leaping to my feet I sped toward the sommelier. I told him of his obvious mistake and the need to *immediately* rectify it. Huffily, he informed me that that would not be possible. Not wanting to see my career derailed by such a screw-up, I turned on my "I'm a New York lawyer" personna and detailed the various legal weapons at my disposal to render him and his restaurant naked, homeless and without wheels. After a bit more back and forth along those lines, the sommelier ultimately relented and said he would bring another bottle of vintage champagne to Moore and Anton. With my blood pressure dropping back somewhat to normal, I returned to our banquette.

I had hardly caught my breath when the sommelier appeared. He had offered the champagne to our neighbors (the right ones), but they were just finishing their dinner and were not interested in champagne at that point. "Well," I replied, "could you see if they would like an after dinner drink? Whatever they'd like!" It turned out that that was just fine by them, especially since this Venice Beach restaurant had one of the most extensive cellars of old, exotic liquors in California. And so Moore and Anton selected two after dinner liquors that predated California's admission to the Union (and which cost a multiple of the Dom Perignon).

As they were enjoying these priceless drinks, Susan Anton knelt on her seat and leaned over my shoulder to thank me for the tasty treats. Looking into her stunning face I said: "You wouldn't believe what I've had to go through to get those to you!" "Really?" she said: "Why don't you come over and tell us?" So I stood up and slipped into the neighboring banquette next to Moore and Anton. As I gave them a blow-by-blow recap of the "great" idea run amok, they broke into sustained laughter – they thought it was all hilarious! After I concluded, and we seemed to be on friendly terms, I asked Moore for a small favor. "Sure," he replied. "Well, you can do whatever you want with it, but I have to be able to tell my boss I gave you my business card. Would you be offended?" "Not at all," he graciously said, "who knows, maybe I'll need you some day."

With that, I thanked them both, wished them a pleasant rest of the evening, and took my leave back to our banquette. "Dick," I told my sleepy boss, "mission accomplished." Dick smiled wanly, and then – as Moore and Anton left – we finished our dinner. Once we were done, I told my younger colleague that his job was to get Dick up and out of the restaurant and into my rental car; I would join them as soon as I had settled our debt(s) to the restaurant.

Are You European?

After I was sure that our tab did not include any Dom Perignon, I calculated a generous tip and prepared to steel myself for the lengthy drive back to the hotel. But as I made my way across the restaurant an extremely attractive young lady walked up to me and asked: "Excuse me, are you European?" Mr. Smooth, instead of replying "mais oui," awkwardly stuttered: "Um, er, ah, no, I'm from New York." Unfazed, the woman pointed to the bar area and said: "My two friends [also quite attractive] and I were wondering if you and your friends would like to join us for a drink?" Never at a loss for witty repartee, Mr. Smooth responded: "I don't know. Let me check with my friends."

With that, I quickly exited the restaurant where I found the rental car all set to leave, with Dick slumped in the shotgun seat and my younger colleague in the back. "Dick," I said in a fairly loud voice with my hand resting on his right shoulder, "there are three very attractive women in the bar who would like to have a drink with us. What should I tell them?" It was like a light switch had been tripped: Dick sat up straight and, with clear eyes and a steady voice, gave me our marching orders: "Let's go!"

So back inside we went, where we chatted up these lovely L.A. ladies for about two hours. It was never made clear to me, but I am pretty sure they had witnessed my interchange with Moore and Anton and assumed we were movie industry people who might be able to help them with their careers. In any event, after we had exhausted whatever topics we shared in common, we bade our new friends adieu and once more Dick was helped out to the rental car. My memory is that we got back to the Bonaventure circa 2:45 a.m. Truly, a night to remember!

Postscripts

- Two Donovan Leisure alumni have served as Disney's general counsel: Joe Shapiro and Sandy Litvack (and numerous other alumni have served Disney in a variety of other capacities).
- Outside of Irvine's office were a number of original "cels" from famous Disney animation movies. One day his secretary saw me admiring them. "Would you like one?" she asked. "Would I? Yes, ma'am!" Giving me my pick, I selected a cel from "Dumbo," with Walt Disney's autograph on the matting. Out of all the things I have acquired or collected over my lifetime, the "Dumbo" cel is the only thing my daughter wants.

My View

Improper Attacks at the Confirmation Hearings for Judge Ketanji Brown Jackson

By Larry Krantz

Our legal system is built on bedrock principles including the independence of the judiciary, the rule of law and the fair and just representation of all parties to legal proceedings. Given these pillars, I was deeply disturbed at certain lines of attack used by several senators in connection with the hearings on the nomination of Judge Ketanji Brown Jackson to the Supreme Court of the United States. Those lines of attack threaten these core values, which lawyers and senators should hold dear.

Specifically, Judge Jackson was criticized for having represented Guantánamo Bay detainees while serving as a lawyer for the Federal Defenders and for issuing certain sentences in child pornography cases while sitting as a federal district court judge. These criticisms are ill-founded, and indeed dangerous.

As to the Guantánamo Bay detainees, the U.S. Supreme Court has expressly held that those prisoners have a right to challenge their detention by writ of habeas corpus. *See Boumediene v. Bush*, 553 U.S. 723 (2008). Obviously, that right would be empty without lawyers willing to take on these challenging cases. And lawyers historically have been tasked with taking on the causes of those accused of heinous crimes. That the client is unpopular or even reviled is of no moment. Perhaps the most well-known example of this was John Adams' decision in 1770 to represent British soldiers charged with killing colonists in what became known as the Boston Massacre. Despite the unpopularity of the cause, Adams agreed to the representation and obtained an acquittal for all of his clients.

As to the child-pornography cases, when sentencing a defendant federal judges are required by law, as established by Congress, to consider not only the seriousness of the offense, but also the history and characteristics of the defendant, the societal need for the sentence imposed, as well as other mandated factors. 18 U.S.C. §3553(a). Judges are also authorized by law to sentence a defendant below the otherwise applicable sentencing guidelines, in appropriate cases. In fact, they are required by law to impose a sentence that is "sufficient, but not greater than necessary, to comply with the purposes of sentencing" (the so-called "Parsimony Clause"). *Id.*

To attack Judge Jackson for representing even a reviled defendant, during her tenure as a federal defender, fails to understand the historic role that lawyers play in representing all of those in need of legal help – no matter how unpopular. And to attack her conduct as a federal judge for considering at sentencing – even in a child pornography case – factors in addition to the seriousness of the offense, fails to appreciate the Parsimony Clause and the other relevant factors that must be considered in imposing sentence.

These misguided attacks against Judge Jackson are not only unfair and legally unfounded, but they threaten to chill both the independence of the federal judiciary and the independence of lawyers. Judges and lawyers may become reticent to fulfill their professional and statutory duties, for fear of being attacked at a later date – just as happened to Judge Jackson at her confirmation hearings. This would be a gravely unfortunate result.

Editor's Note: Larry Krantz is a co-founding partner of Krantz & Berman LLP.

Read Article, Donate Suit.

The Law Office of Amy Jane Agnew, P.C., has about a dozen men's suits in the firm's New York City office for prisoners to use for trial appearances, but could use more. The firm dry cleans the suits and has a dedicated closet in which to store them; a law student delivers them when and where they are needed.

The firm is asking for donations of gently-worn men's suits – larger sizes especially appreciated.

If you can provide suits (or shirts, shoes, etc.), please contact AJ Agnew at aj@ajagnew.com.

Focus On:

Joseph Marutollo, Civil Division Chief for the Eastern District of New York

By Pete Eikenberry and Madeline Holbrook

In January 2022, U.S. Attorney for the Eastern District of New York Breon Peace appointed Joseph Marutollo as Chief of the office's Civil Division (the "Office"). Marutollo was motivated to become a lawyer to serve the public. Thus, he joined the U.S. Attorney's Office to advocate on behalf of the United States. As the newly appointed Chief, he seeks to embody the "spirit of fair play and decency" that animates the public servant. His approach to prosecution was articulated by former Supreme Court Justice Robert Jackson: "Your positions are of such independence and importance that while you are being diligent, strict, and vigorous in law enforcement, you can also afford to be just."

Marutollo previously served as Acting Chief of the Civil Division, Principal Deputy Chief, Deputy Chief, and Chief of Immigration Litigation in the Office.

As Civil Chief, Marutollo oversees all federal civil litigation across the Eastern District, which is comprised of five counties and over eight million residents. This litigation is as vast in scope as the district itself, covering a broad range of affirmative and defensive practices and cases, a host of which are of national significance. Marutollo supervises over 40 AUSAs and over 40 staff members in the Eastern District.

Consistent with U.S. Attorney Peace's statement in his 2022 investiture speech that the Eastern District will use affirmative civil litigation tools to help the most vulnerable among us, including those who are neglected, marginalized, overlooked, and abused, Marutollo has endeavored to redouble the Office's focus on ensuring equal justice under the law.

To that end, Marutollo has worked with Office leadership to helped to create the Eastern District's Civil Rights Team, Environmental Justice Team, and Consumer Protection Team.

The Civil Rights Team is focused on protecting the rights of the most vulnerable Eastern District residents, particularly, those in disadvantaged communities; it focuses on policing, housing discrimination and school segregation.

Recently, the Office reached agreements with five New York State and local government agencies to end accessibility barriers for people with visual impairments on COVID-19 vaccination websites. New York State's Department of Health, New York City's Department of Health and other agencies now have modified websites so that they can be easily read and comprehended to enable completion of necessary health forms.

Additionally, last spring, the Office resolved a case against a Staten Island realty firm that allegedly failed to inform potential African-American renters of rental units available to potential white renters. The Justice Department said that a settlement fund now compensates victims of discriminatory practices and the realty firm is required to implement nondiscriminatory standards and procedures and make periodic reports to the Office.

The Environmental Justice Team focuses on protecting the underprivileged from environmental threats, including child lead exposure, unclean air and polluted water and wetlands. Recently, the Office settled an action against New York City addressing the city's failure to monitor and control harmful emissions from oil-fired boilers in its schools. The Environmental Justice Team said that these boilers were often located in disadvantaged communities and exposed residents to disproportionately high pollution levels with adverse health and environmental impacts. The city now must monitor and repair its boilers and reduce boiler emissions.

In early March 2022, Marutollo helped to create a new Consumer Protection Team in the Office's Civil Division. The team's focus will include consumer threats to older adults, children and other potentially vulnerable residents in the Eastern District and nationwide.

Marutollo is quick to express his gratitude for all of the exceptional work of the AUSAs in his office, including in the matters mentioned above.

Judge Richard Sullivan, for whom Marutollo interned, has been a role model for Marutollo as he also has been for many other law students. The judge read and edited his drafts as an intern and set an example of industriousness. Marutollo seeks to

Joseph Marutollo, Civil Division Chief for the Eastern District of New York

do the same with both law students and interns. Marutollo teaches at Pace Law School and has previously taught at Fordham Law School and Brooklyn Law School.

The Office maintains a large community presence by attending community forums and visiting schools. It also has a civil rights webpage on which to file complaints.

As Civil Chief, Marutollo plans to lead the Division grounded in the concept that the Department of Justice must serve the public; he will follow the rallying cry of Abraham Lincoln (whose painting adorns Marutollo's office): "Let us have faith that right makes might, and in that faith, let us, to the end, dare to do our duty as we understand it."