



In This Third 30th Anniversary Issue:

From the President..... 2

Federal Bar Council President Sharon L. Nelles contemplates where the Council is and where it is going.

From the Editor..... 3

Bennette D. Kramer reports on the Council's Winter Meeting, which included Marc Wolinsky receiving the Whitney North Seymour Award.

The Council's History 9

Here is the fourth and final part of a multi-part article by Bennette D. Kramer on the Council's history, celebrating the Council's 90th anniversary. This part looks at the development and present state of Council committees and explores the beginnings and subsequent history of the Inn of Court. Finally, it briefly looks at how the staff has evolved over the years.

In the Courts..... 20

Sam Bieler tells what happened at the recent judges reception honoring U.S. marshals.

Access to Counsel Project..... 21

If you are interested in representing pro se litigants, then you will want to read this article by Larry Krantz, titled, "Recruiting and Training Lawyers to Represent Pro Se Litigants."

We invite you to connect with us on [LinkedIn](#).



Naturalization ceremony in the Jack B. Weinstein Memorial Courtroom at the Theodore Roosevelt Courthouse in the Eastern District of New York.

From the President

Spring Musings

By Sharon L. Nelles



I write on a crisp mid-March afternoon, waiting for spring to arrive. The passage of time has its benefits; having been raised in the northeast, I am always excited to leave behind the cold winters for warmer days. It seems like a good day to contemplate where we are and where we are going.

Good News

At the Federal Bar Council, this is the season of good news and good spirits. We have successfully transitioned back to in-person events. In February, some of us got a taste of the good weather to come when we spent an extended weekend together in Puerto Rico for the Council's first live Winter Bench and Bar Conference since the pandemic. In addition to the exceptional programming, we reveled in the abundant camaraderie, found friends, and great conversations.

On March 16, we had an overflow crowd for our annual Judges Reception. The enthusiasm for the event came as no surprise given our honorees: the Second Circuit's marshals and the U.S. Marshals Service. The importance of judicial security cannot be overstated. The efforts of the marshals are fundamental to the workings of our courts and to protecting the rule of law and our system of justice, and thus the integrity of our constitution. It was a privilege for all of us to celebrate them for the service they provide to our judges, judicial personnel, and courthouses – in all the ways we know and the many ways we probably could never imagine.

Being together again has expected and unexpected rewards. Every time we have a live event, I receive calls and emails from participants with renewed excitement for the work of the Council. I so much appreciate the enthusiasm and ideas. If you have not made it to an event recently and are ready to be inspired, perhaps you might consider Law Day on May 4, when we will present the Learned Hand Medal to U.S. Supreme Court Justice Sonia Sotomayor, to be followed by a fireside chat with Judge Dennis Jacobs.

Our Plan

Beyond events, in my new seat, I have a bird's eye view of the work being done day-to-day to support our community. That work is driven by our strategic plan. It is with pleasure that I report that the Council has made enormous strides in implementing

the plan and its overarching mission. Under the leadership of immediate past-presidents Judge Mary Kay Vyskosil and Jonathan Moses, three strategic goals were identified and then presented to the membership in 2020: (1) grow and diversify our membership base; (2) deepen our connection with our members; and (3) expand our engagement with the legal community and the bench. We pledged to focus on five areas, specifically, increasing membership, improving communication, reaching new generations of lawyers, ensuring strong finances and governance, and maintaining a strong connection to the judiciary. We have been successful on every front. (I commend to you Judge Vyskosil's column in the March 2020 issue of the *Federal Bar Council Quarterly* for a full discussion of the strategic plan.) On every front, we are stronger today than we could have hoped for three years ago. The organization is thriving, with renewed interest in membership and programming.

Pushing forward in our efforts to implement the plan is a priority, and in considering how to do so, it seems clear that every goal and every area of focus will benefit from prioritizing diversity, equity and inclusion. A diverse membership is critical for obtaining different perspectives, ideas, and values. To that end, we have begun the process of establishing a task force that will work with our Diversity Committee and others with interest. Among other items, the task force will be examining the demographics of the organization, and benchmarking

against our peers and the profession more generally. We will be setting goals, and then undertaking harder and more rewarding work of achieving those goals. Please watch this space, as there will be much to report and discuss.

Anna

Finally, I share with mixed emotions that our wonderful executive director, Anna Stowe DeNicola, left her role at the Council in early April to pursue another professional opportunity.

During her six-year tenure, Anna was instrumental in every facet of the organization. She led us through the strategic planning process, modernized the Council's digital presence, revitalized membership and engagement, deepened our relationship with the courts, launched our Access to Counsel Initiative, and has been a partner in transforming the Foundation's role in the circuit's legal community. In addition, Anna creatively led the board, staff, and membership through the pandemic, keeping us connected during one of the organization's most collectively challenging moments. In short, Anna has been the backbone of the Council since joining us, and has had a hand in our every success since then.

Anna is staying in the New York City legal community and will remain a member of the Federal Bar Council family and serve as an advisor during this transition. Thank you, Anna, for your dedicated leadership and service. We all wish you well!

From the Editor

Federal Bar Council Holds Winter Meeting; Wolinsky Receives Whitney North Seymour Award

By Bennette D. Kramer



The Federal Bar Council held its annual Winter Bench and Bar Conference after a three-year pandemic hiatus at the Hyatt Regency Grand Reserve in Rio Grande, Puerto Rico, from February 16 through February 20, 2023. Second Circuit Judge Denny Chin headed the Planning Committee and David and Rachel Shanies co-chaired the meeting. Marc Wolinsky received the Whitney North Seymour Award for public service by a private practitioner.

On the first night, First Circuit Judge Gustavo Gelpi (the former chief judge in the District of Puerto Rico) and District of Puerto Rico Chief Judge Raul Arias-Marxuach joined Judge Chin, Eastern District Chief Judge Margo K. Brodie, and other Council members for dinner.

Participants in the Winter Meeting shared a sense of relief at being together again. The group was smaller than usual, and the conference was shorter than before, but there was a camaraderie formed by gratitude for the opportunity to see old friends and welcome new participants. The continuing legal education panels and programs were uniformly excellent, covering a variety of current topics.

Ethics Issues in Mediation

Southern District Judge Sidney H. Stein moderated a panel on Ethics Issues in Mediation with panel members Professors Barbara S. Gillers and Stephen Gillers of New York University Law School, and Ricardo F. Casellas Sánchez of San Juan's Casellas Alcover & Burgos P.S.C. Both Barbara and Stephen Gillers teach and lecture on ethical issues. Casellas often serves as a mediator.

Does a lawyer participating in mediation have to disclose unfavorable evidence during mediation?

Casella said that this was a matter of strategy, not ethics. Discovery under Federal Rule 26 should take place before mediation, but there is no ethical obligation to disclose. However, there is an obligation to be truthful.

Stephen Gillers said that a lawyer cannot exploit false material, and Barbara Gillers added that a lawyer would have to withdraw after a chief executive officer client told the mediator that the plaintiff's claims were "unfounded and frivolous" and both the lawyer and client knew that the statement was false,

unless the client agreed to correct the statement. Casella agreed on the need to withdraw if the client stuck to the false testimony. Stephen Gillers noted that in a tribunal a lawyer has the obligation to correct a false record, but in a mediation there is no obligation to correct a false statement unless the lawyer's silence is assisting fraud.

What if a settlement is based on a statement that a lawyer knows is false? Barbara and Stephen Gillers agreed that a lawyer could be liable to the opposing party for constructive fraud or fraudulent concealment for having induced a fraudulent agreement.

If the mediator became aware of the falsity, can the mediator agree not to disclose it to the other side? Casellas said that a mediator cannot accept such an agreement, because it would affect the mediator's ability to settle the case objectively. In circumstances where a mediator is aware of facts that, if known, would change the opposing side's approach to mediation, the mediator would have to adjust the proposed settlement number in an effort to discharge his or her ethical duty not to base the settlement on a falsity.

Can a lawyer negotiate based on the client's interest in a reasonable settlement included in a bracket proposed by the mediator rather than on the client's stated lower settlement figure? As a mediator, Casellas saw bracket negotiation as a useful tool. Stephen Gillers said that the lawyer should get advance authority or go back to the client with the range. Judge Stein suggested that the lawyer may have implied authority to negotiate consistent with the client's main goal. Barbara Gillers pointed out

that lawyers have discretion regarding trial strategy, but the decision to settle stays with the client. Stephen Gillers said the lawyer should have the right to use professional judgment to negotiate, i.e., how the lawyer presents to the mediator.

What is a mediator's obligation when the mediation service was used within an industry, and the mediators want to keep the industry people happy? Casellas pointed out that the mediator has at minimum a duty of disclosure of any financial arrangement; otherwise, the mediator will face litigation.

Stephen Gillers asked why parties need a mediator at all, answering that a settlement reached after a process is more likely to lead to happy clients who will have finality and satisfaction.

Digital Assets and Blockchains

Chief Judge Brodie moderated a program on Digital Assets & Blockchains: Legal Issues and Developments. Panel members were Bob Allen, Kirkland & Ellis; Scott A. Hartman, chief of the Securities and Commodities Fraud Task Force at the U.S. Attorney's Office for the Southern District of New York; James M. McDonald, Sullivan & Cromwell; and Commodity Futures Trading Commission (CFTC) Commissioner Christy Goldsmith Romero.

Romero explained that digital assets arose after the financial crisis but no one trusted them. During the pandemic, people developed trust in digital financial services, and crypto took off. The pandemic also made it easier to send documents back and forth on Zoom. But this year, people have pulled back as

barriers have developed and there have been serious violations of trust.

McDonald said that a digital representation of an asset covered a broad range of items, from tickets and receipts to digital art that could be traded on a secondary market, crypto currencies, and tokenized assets. Each digital asset raises different regulatory questions. The central question in determining who gets to regulate a digital asset is whether the item is a security falling under the jurisdiction of the Securities and Exchange Commission (SEC) or a non-security commodity governed by the CFTC. The states have credential regulatory power and the Department of Justice (DOJ) covers criminal matters. Some individuals see digital assets as the future and others regard them as speculative. Allen said that while crypto is here to stay, it is hard to say whether we should be confident or concerned for the future.

Hartman observed that people are still interested in investing in digital assets, but a lot of the popular interest has gone away. Before the pandemic, anti-establishment investors, including hedge funds, wanted to be free of regulation. The underlying concept of the digital asset market was to cut out the middleman and allow individual investors to capture more of the profits. However, intermediaries in the traditional financial system provide safeguards. Without them there is real risk. In traditional markets intermediaries are governed by regulation, including the "know your customer" rule imposed on brokers who have fiduciary duties. The crypto market does not require the same regulatory steps, so significant protections are lost.

Romero noted that while investment in digital assets looked the same as investment in the traditional financial system, the fact that they were completely different created risks, particularly for unsophisticated investors. The digital asset investment system is unregulated, and unprotected, leaving the possibility of halted redemptions and cyber crime. Customer funds are not required to be separated from assets of the entity and serious conflicts of interest arise because the same entity is broker, exchange, and market maker.

McDonald underscored the need for a regulatory system. The SEC claims the vast majority of tokens are securities, which are investments of money in an enterprise with the expectation of profit. The CFTC governs transactions of digital assets that are not derivatives or securities. The securities laws provide all the protections that come with a security, including any tokens purchased as an investment in crypto

currency, except Bitcoin. Investors' attitudes that they are capable of making their own decisions and do not need the paternalism of the SEC and CFTC controls creates a regulatory challenge.

Romero noted that the definition of commodity was extremely broad and that a digital asset may be both a commodity and a security. The question is where and how to put in protections. The CFTC and the SEC are working together along with the DOJ and the U.S. Attorney for the Southern District of New York (Southern District) in the absence of action from Congress. Bitcoins are not regulated but the CFTC has anti-fraud authority and pursues enforcement along with the Southern District and the DOJ.

A DOJ issue is whether a digital asset is a commodity or a security. The Southern District has prosecuted under the wire fraud statute to avoid the security/commodity dilemma, because it does not want to have trials about categorizing.

Romero emphasized that Congress should step in and close the regulatory gap, because people are getting hurt. Bitcoin is 60% of the digital asset market and is not covered by any regulation except antifraud statutes. McDonald said one of the major reasons for legislation was to determine whether a digital asset was a commodity or security.

States have attempted to fill the regulatory gap but lack the consistency that a federal statute would provide. New York regulates directly by requiring licenses and imposing capital requirements. Some crypto companies avoid New York, but others see a benefit in regulations. Some states have imposed capital requirements on companies that transmit money, while others have imposed a securities regulation framework following the SEC.

Bankruptcy cases in the crypto industry arise from lack of due diligence, weak governance controls and record keeping, and inadequate

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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 website, federalbarcouncil.org, by clicking on "Publications." Copyright 2023 by Federal Bar Council. All rights reserved. This publication is designed to provide accurate and authoritative information but neither the publisher nor the editors are engaged in rendering advice in this publication. If such expert assistance is required, the services of a competent professional should be sought. The articles and columns reflect only the present considerations and views of the authors and do not necessarily reflect those of the firms or organizations with which they are affiliated, any of the former or present clients of the authors or their firms or organizations, or the editors or publisher.

disclosure, along with auditors who do not understand the business. Another factor is that start-up businesses are put together by young people who lack experience and have no respect for corporate governance. Romero said the celebrity endorsements provided a further complication because they attract people who do not want to “miss out.”

Climate Change: Litigation, Regulation, and Activism

District of Connecticut Judge Sarala V. Nagala chaired a panel on Climate Change: Litigation, Regulation and Activism with panel members Kelly L. Gibson, Morgan, Lewis & Bockius; Shawn Patrick Regan, Hunton Andrews Kurth; Ruth Santiago, community and environmental lawyer; and Melissa K. Sims, Milberg.

At the SEC, Gibson was the leader of the Enforcement Division’s nationwide Climate and ESG Task Force. In furtherance of the its mission of investor protection, the SEC wants to ensure that investors are getting accurate information on climate issues. The Task Force furthers the SEC’s aggressive and proactive stance on ESG (Environmental, Social and Corporate Governance) issues by focusing on exposing greenwashing (the exaggeration of ESG efforts) and policing potential ESG misconduct.

The Task Force has proposed rules on asset management for public companies, including ESG disclosures. Most public companies disclose ESG information outside public filings, but under the proposed rules they will be required to disclose this information in their annual reports.

Under the rules there would be ESG oversight and imposition of a fiduciary duty for disclosures. The most controversial disclosures are direct and indirect emissions. The SEC has been doing ESG examination and enforcement for years.

Regan, who has been at the forefront of litigation representing power, coal, and oil interests, said that the SEC lacks authority to enact the proposed rules. The Clean Air Act gives a specific grant of authority to the EPA to regulate emissions.

Santiago, who has advocated for climate, energy, and environmental justice in Puerto Rico for several decades, lives in a town that is the site of power plants and that has been subject to three ten-year flood events. In Puerto Rico, electric power generation is based in the south while the most demand for power is in the north. In November 2017, Hurricane Maria devastated the electric grid, resulting in a 100% power outage in Puerto Rico, with 3,000 to 4,000 deaths related to the lack of power. The crisis was compounded by economic decisions, including laws to attract investment creating tax exemptions that bankrupted Puerto Rico and did not create the anticipated jobs.

Puerto Rico is ground zero for hurricanes. The warming of the water surface temperature increases the intensity of the storms. In September 2022, Hurricane Fiona hit Puerto Rico, but Maria’s lessons had not been learned. The Federal Emergency Management Agency (FEMA) allocated \$16 billion for the Puerto Rican electric system, providing a means for the transformation to renewable energy. But the transition puts a burden on the poor because

they cannot make the changes without federal funds. Earthjustice and others are trying to work with FEMA, the U.S. Department of Housing and Urban Development and Congress to advocate for a transformation to an integrated resource plan with renewable energy. The proposal is a way to do justice, but there is still a lot of pressure to rebuild based on fossil fuels, especially from the gas companies in the United States who want to bring liquefied natural gas from the United States to the Caribbean.

Regan said there was a lot of climate-related activity in the United States. In 2021, the Indian Point nuclear reactor, which provided one third of the energy for downstate New York, was shut down because of safety concerns, resulting in an increase of fossil fuel as a source of energy from 77% to 90%. There is optimism because the Con Ed Ravenswood power plant in Long Island City has switched from coal to natural gas. In five years or so, renewable energy – wind and solar power – will come into the power grid through that plant, which will be enabled to store power.

Columbia University reports 1,000 or more climate-change lawsuits against oil, gas, and coal companies. Some suits have been dismissed under the political question doctrine. In *American Electric Power v. Connecticut*, the Supreme Court found an exception to the political question doctrine based on the Clean Air Act.

Sims is part of a team of lawyers that in 2017 initiated a class action under the Racketeer Influenced and Corrupt Organizations Act (RICO) in the U.S. District Court for the District of Puerto Rico on behalf of the

municipalities of Puerto Rico against power companies, alleging that they withheld information about the effect of climate change. They tried to stay out of federal court because of the federal question doctrine. The case was removed and then remanded. Under the state RICO statute there are no jury trials, but the state court is not set up for these lawsuits.

Domestic Terrorism

Eastern District Judge Nicholas G. Garaufis chaired a panel on Domestic Terrorism that included panelists Seth D. DuCharme, former Acting U.S. Attorney for the Eastern District of New York, now at Bracewell; John Donohue, Cardinal Point Strategies; Jameel Jaffer, executive director, Knight First Amendment Institute at Columbia University; and Deirdre von Dornum, attorney-in-charge of the Federal Defenders for the Eastern District of New York.

Donohue explained that there is no specific federal statute addressing domestic terrorism – there are only the definitions found in 18 U.S.C. § 2331(5) and 6 U.S.C. § 101(18). Both definitions require acts that endanger human life and hold persons in terror. In any domestic terrorism prosecution, motivation or intent is key, so some acts are clearly terrorism, i.e., racially or antisemitically motivated acts, while the motivation for others will never be known, like the shooting in Las Vegas.

DuCharme worked in the counter terrorism division in the Eastern District of New York from 2009 to 2016 and then was detailed to the DOJ, returning to the Eastern District as Acting U.S. Attorney from July 2020 to March 2021. He explained

that since September 11, 2001, the DOJ has been determined to investigate terrorism and has aggressively tried to prevent terrorist acts from happening with mixed results, using attempted conspiracy as the means to prosecute. Investigators of domestic terrorism must be respectful of First and Second Amendment issues and subjects who are wary of the government. Threatening speech is not enough to support a prosecution.

It is key, therefore, to focus on the rule of law and to investigate crime, not beliefs or people. Investigators must look for the potential flash point. The government has a dilemma because if it waits too long to prosecute and fails, the public is in danger, but if it acts too early there is no case and the government runs the risk of constitutional violations. DuCharme said there should be a fair definition of terrorism.

While he was in the Eastern District, DuCharme started working with a clinical psychologist. His goal, and the goal of any investigation, was to focus on protecting the public by preventing terrorist acts. Investigators should not be diverted by rhetoric. Van Dornum said that can be accomplished by helping people to move in a more peaceful direction.

DuCharme said that there is a place for law enforcement in ensuring public safety and a place for those more peaceful methods through separating real terrorism from other cases. A more efficient way to protect the public is to talk the subject out of committing a crime, but once a subject has committed a crime law enforcement must step in. Developing off ramps is difficult and people supporting it are few and far between.

Jaffer said that an “all tools approach” makes him nervous, especially preemption. During the period following 9/11, the government built an infrastructure including mass surveillance. If those same tools are turned on domestic groups, there will be Second Amendment, religious, and political constitutional violations.

Donohue noted that in using surveillance in connection with potential domestic terrorism in New York City they used the best practices developed by the federal government. But there is concern when speech alone leads to the opening of an investigation.

Von Dornum said that whether speech is domestic terrorism depends on “intent” or whether the speech is a direct threat. She described a situation in which a veteran with post-traumatic stress disorder, affiliated with a far right group, used threatening language but did not act. He was charged with transporting firearms, conspiracy to transport aliens (a Canadian), and obstruction of justice. However, the judge applied the terrorism enhancement in sentencing and sentenced him to nine years.

Jaffer examined the role of social media in terrorism situations. There are helpful lessons from the post-9/11 period. Although there is a foreign intelligence exception for surveillance, in 1972 the Supreme Court said that there is no parallel exception for domestic terrorism. Under the Foreign Intelligence Surveillance Act (FISA), the National Security Agency (NSA) was collecting all international communications, which involved hundreds of millions of communications. Thus, the FBI was able to do back-door searches of Americans under the Fourth

Amendment foreign surveillance exception which means that the exception has swallowed the rule. What should government power over social media be? The State Department requires visa applicants to submit social media accounts to facilitate surveillance. If the platforms are made responsible for social media content they will have to radically change their attitude toward speech promoting terrorism. It is easier to go back to review social media than to predict what it will do going forward.

Supreme Court Review

Second Circuit Judge Denny Chin moderated the Supreme Court Review with panel members Neal K. Katyal, Hogan Lovells, and Morgan L. Ratner, Sullivan and Cromwell.

Katyal gave an overview. The Court has taken 60 cases for this term but had only decided one case by February 19. Katyal believes that the leak of *Dobbs* led to a change of protocol. Last term the Court decided 63 cases, affirming 18%.

Chief Justice John Roberts' goal was to bring the Court together. Four years ago, 66% of the cases were decided unanimously; last year it was 29%.

Student Loan Cases – Biden v. Nebraska and DOE v. Brown

The two major issues in the Student Loan Cases are standing and the authority of the Secretary of Education to forgive loans.

Katyal saw standing as tricky. There are seven states in one case and an individual in another. Missouri has a higher education loan program and a loan assistance authority. Sometimes money goes back into the Missouri treasury. The individual plaintiff did

not get loan assistance. Katyal saw standing for both as tenuous.

On the merits, the question is whether the statute authorizes the Secretary of Education to authorize loan forgiveness. The Secretary does have the authority to waive or modify the loan program in connection with war or other national emergencies. The plaintiffs argue that this is not the right kind of emergency. Katyal believes that the challengers are weak on standing and strong on the merits.

Affirmative Action – SFFA v. Harvard and SFFA v. UNC

Katyal explained that preferences to individuals in college admissions are allowed based on diversity. In 2003 in *Grutter v. Michigan*, the Court held that diversity must be the goal. In the cases before the Court, UNC is a state actor and Harvard is a private institution governed by Title 6, which provides federal funds. The court below in the *Harvard* case found diversity was a compelling interest after a 15-day bench trial in a case alleging discrimination against Asian-Americans. In the *UNC* case, the court also found diversity compelling in the admissions process after an eight-day trial.

The argument was tough for defenders of affirmative action. The universities are going to lose the two cases and affirmative action will end as we know it, Katyal believes.

Ratner predicts the Court will duck the question and choose neutral alternatives. Title 6 affects educational entities but has similar language to Title 7, which affects employers. If the Court says no to affirmative action will there be carryover to Title 7?

Judge Chin noted that early affirmative action cases had not been tried and both of these cases were. Will that make a difference?

Free Speech and Anti-Discrimination Laws – 303 Creative LLC v. Elenis

Ratner explained that the case was about a wedding website designer that was similar to the cake shop case, but differed from the religion cases, relying on free speech and raising the issue of whether you can refuse to do business because you do not like certain people. The petitioner planned to create custom wedding websites for heterosexual couples but not for same-sex couples.

Elections and the “Independent State Legislature Theory – Moore v. Harper

Katyal said that this gerrymandering case was “a big deal.” It raises the question of the role of state courts and state constitutions in all federal elections. In North Carolina, the Republican legislature drew the map. The North Carolina Supreme Court said that the map violated the constitution. The petitioner argued that the North Carolina court had no role in federal elections because the constitution states: “the Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof.” The policy argument is that federal and state elections would be governed by different rules. The state courts are deeply involved in administering state elections. A gulf would be created and there would be no check on the legislature.

The petitioner argued that this was an example of a runaway state court and that federal courts could review the legislature. But the question is how much review the federal court has.

Ratner sees the Court adopting some version of Chief Justice Rehnquist's concurrence in *Bush v. Gore*, which advocated great deference to the state legislature acting pursuant to its constitutional authority in federal elections.

In any event, the case might go away because the Republican National Committee brought the case to the Supreme Court, and it is now trying to get rid of it by having the North Carolina Supreme Court (now majority Republican) withdraw its opinion.

Scope of Immunity and Liability for Social Media – Gonzalez v. Google LLC and Twitter, Inc. v. Taamenh

Ratner explained that Section 230 of the Communications Decency Act provides immunity to social media companies on content. In the *Google* case, UTUBE, a Google subsidiary, used an algorithm to suggest related videos based on ISIS propaganda. The plaintiffs argued that the algorithm transformed the social media platform from an impartial interactive computer service to a content developer that had no immunity. The plaintiffs in the *Google* case were relatives of victims of the ISIS attacks in Paris in November 2015 and Istanbul in January 2017. The *Twitter* case raises the question of aiding and abetting liability under the Justice Against Sponsors of Terrorism Act.

Katyal said that these cases raise line-drawing and policy issues that would reshape the internet.

The Court could simply say this is a matter that Congress should decide. Ratner believes the Court will probably say it does not want to meddle with the internet too much.

Council History – Part 4

The Council's Committees and Staff

By Bennette D. Kramer

In this fourth and final installment of the Federal Bar Council history, I will look at the development and present state of Council committees and explore the beginnings and subsequent history of the Inn of Court. Finally, I will briefly look at how the staff has evolved over the years.

I will again use interviews with past presidents and others. I also have asked for and received reports from the current committee chairs and current staff members that are included in the committee descriptions. My thanks to each of the committee chairs.

Committees

Background

There are three different types of committees:

- Institutional committees such as the Nominating Committee, Program Committee, Second Circuit Courts Committee, Audit Committee and the Judiciary Committee (which has been disbanded). The purpose of these committees is to serve the institution, to move it forward and

maintain its energy. These important standing committees are core to the function of the Council.

- Committees that bring together practitioners in substantive areas of the law, such as the Federal Criminal Practice, Sentencing and Alternatives to Sentencing, Bankruptcy Litigation, Securities Litigation, Intellectual Property, Employment Litigation and Civil Rights Committees. The Second Circuit Courts Committee also brings together people interested in substantive areas of the law, but its more important function has always been as a liaison between the Council and the Second Circuit courts.
- Regional and individual oriented committees, including the Westchester, Connecticut and Central Islip Courthouse Committees, intended to provide meeting points for geographic areas, and the First Decade and Diversity Committees, intended to provide meeting points for members with common interests.

Jonathan Moses, President Emeritus, said that the bottom line is that committees have to be active. The goal of a committee is to provide ways to get together and learn together. The committees provide community and connectivity, so if there is a reasonable justification for any particular committee, why not?

Over the years there has been a constant expansion and contraction of the number of committees, depending on the philosophy of the president and executive committee. At times there have been serious disagreements about adding committees. According to George

Yankwitt (president 1992-1994), there was resistance to adding the Program Committee by members who wanted to maintain the focus on the lunches and dinners – the Chowder and Marching Society.

Paul Windels (president 1965-1966) said that the business of forming committees was always a question of where you wanted to go. An organization can get overly involved in forming committees. Windels wanted to focus on certain things to strengthen the bond holding the Council together, including working with the federal courts and U.S. Attorneys' Offices and assisting with the development of federal court procedures. The Council made rules recommendations. A special committee regarding local rules and the Federal Rules of Civil Procedure was formed, did its work and was disbanded, because the New York City Bar was playing that role.

George Leisure (president 1976-1978) said that in January 1977 the question of committees arose. They did not want too many committees, so they developed the workshop theory. There was a copyright workshop, chaired by Theo Jackson, which undertook studies and issued a report, but was not a formal committee. There was also a tax workshop.

While Leisure was president, the Council volunteered to restore the collection of memorabilia owned by the Second Circuit. Leisure said that a committee chaired by Whitney North Seymour, Jr., with John Kenney, Arnold Bauman and Peter Leisure as members, undertook the task. The Council also provided a

piano for the judges' Christmas party and provided services to jurors.

Seymour (president 1982-1982) said that he began to put together committees strengthening the ties between the Council and the courts. Judge James Oakes was the chair of the Second Circuit Historical Society, which was patterned on the Supreme Court Historical Society. With support from the judges, Seymour created the Federal Bar Council Second Circuit Historical Committee, which joined with Judge Oakes' committee. See Travis Mock's article on the History of the History Committee in the September, October, November 2022 issue of the *Federal Bar Council Quarterly*. The Historical Committee put together a series of exhibits at the courthouse financed by the Federal Bar Council Foundation. The first exhibit was on the first Chief Justice, John Jay. Seymour obtained artifacts from Harvard and John Jay's family and pulled together the exhibit. The John Jay Exhibit and other exhibits are described in Mock's article. Robert Fiske (president 1982-1984) saw the Historical Committee as an important committee that increased the connection between the Council and the Second Circuit courts. Betina Plevan (president 1996-1998) also believed the work of the Historical Committee was important to the Council. The exhibits were eventually discontinued because of the difficulty of dealing with the logistics.

Seymour also described the creation of the Second Circuit Bicentennial Committee, which unveiled a plaque on the Alexander

Hamilton house on October 27, 1987. The Council paid \$3,000 to make it possible. The Council's president at the time, David Trager, put together a fund to reprint the first Federalist paper. According to Nathan Pulvermacher, first president of the Foundation, the Bicentennial Committee put on Judge Richard Owen's opera Abigail Adams and made it profitable. A Second Circuit committee had artistic control and the Foundation fiscal control.

According to Windels, early on a Committee on the Federal Judiciary reviewed judicial candidates, but discontinued the practice when the New York City Bar started doing so. Judge Trager said that the Council had previously decided to refrain from reviewing or weighing in on judicial nominations after opposing the nomination of Second Circuit Judge Thomas Meskill, who subsequently became a good friend of the Council, receiving the Learned Hand Medal in 1994 and serving as chair of the Winter Meeting Program Committee.

As president, Vilia Hayes (president 2014-2016) wanted to encourage committees to cooperate. She started committee chair meetings that continue to this day. Her goal was to increase interaction among the committees.

Program Committee

The Program Committee was formed in 1992 by George Yankwitt (president 1992-1994). Gerald Walpin and Alvin Hellerstein were the first co-chairs. Judge Kevin Castel succeeded them as the next chair. As Judge Castel described

it, the first program was in the jury room at the 500 Pearl Street courthouse and approximately 500 people attended, even though CLE was not yet mandatory. Following the first program, the Council had panels every other month and attendance was free for members. Judge Castel described a program entitled “Congressional Investigations: Watergate and Beyond,” featuring an all-star panel including Sam Dash, Leonard Garment, Elizabeth Holtzman, Richard Ben Veniste, Bernard Nussbaum and Judge Richard Leon. Judges Kevin Castel and Thomas Griesa and Bettina Plevan went to the Harvard Club with the panelists afterward. Subsequent programs were held in the ceremonial courtroom to eliminate the cost of renting risers for the jury assembly room.

While Joan Wexler was president (2004-2006) there was an increase in the number of CLE programs, including law clerk education with teleconferences to courthouses within the Second Circuit. The Council worked with the judges to determine the topics for these programs. Habeas corpus, immigration law, and employment law were particularly important and recurring topics. Federal judicial law clerks automatically were given Council membership by 2001, if not earlier. During Wexler’s presidency, the Council held its first CLE programs in the Eastern District of New York.

Mark Zauderer was the Program Committee chair from early 2000 until he became president-elect in 2004. When he was chair, the Council leadership expanded the reach of the programming, including

to law clerks. In order to avoid unduly influencing law clerks, the CLE programs became neutral, as well as informative, on topics such as class actions and employment discrimination. The Program Committee successfully presented different views. Zauderer saw the expansion of the programs as an enhancement of the value of the Council to the community.

Frank Wohl (president 2010-2012) wanted to make free CLE an important feature of Council membership.

David Siegal, the current chair, who will step down in June, said that the major change in the Program Committee work came with the COVID-19 pandemic starting in March 2020 as they moved to virtual programs. The virtual programming has led to the development of what is now a significant and varied on-line library of CLE programs.

Recent chairs of the Program Committee, preceding Siegal, were David Pitofsky and Seth Farber. In June, Celeste Koeleveld and Julian Brod will become co-chairs of the committee.

Second Circuit Courts Committee

The Second Circuit Courts Committee is one of the oldest committees of the Federal Bar Council. Formed in 1974 with Judge Leonard Sand as the first chair and George Yankwitt as secretary, it focuses on procedural and substantive legal issues that affect litigation in the courts of the Second Circuit. When George Leisure was president (1976-1978), the committee

was the most important Council committee, with the goal of assisting federal judges. They did a study of a pilot program for what became the speedy trial act to see whether judges could manage their criminal cases under the proposed time frame.

Leisure also described a committee discussion on how to deal with lawyers who had been disbarred in state court and continued to practice in federal courts. Chief Judge Feinberg established the Second Circuit Admission and Grievance Committee to take care of the problem. Dean Norman Redlich of New York University School of Law was the chair and Leisure was on the committee. Now the Second Circuit is notified when someone is disbarred in state court and the court takes action so that there is the same outcome in both, i.e., if a lawyer is suspended by the state, he or she will be suspended in the Second Circuit. A provision allows the suspended lawyer an opportunity to challenge the suspension and for a hearing.

Robert Fiske (president 1982-1984) said that the role of the Second Circuit Courts Committee was to study problems. It started coming to life in the late 1970s, undertaking seven or eight different projects. It looked at procedure in federal courts. Judge Castel noted when the Second Circuit asked the Council to submit amicus briefs in two cases, the committee was key in fulfilling that request.

The committee’s signature event is the Fall Bench & Bar Retreat, which was first held in 2000 to offer members a shorter, less-expensive

alternative to the annual Winter Bench & Bar Conference. In 2005, the First Decade Committee became a co-sponsor of the event, and the retreat has become an opportunity for newer and longer-term members of the Council along with the judges to plan the programs, learn, and socialize together.

The committee still, as part of its role of assisting the Second Circuit courts, regularly comments on proposed changes to the Federal Rules of Civil Procedure, Federal Rules of Appellate Procedure, local rules and the ECF system.

The committee recently has taken on a number of other projects, including a survey on privacy issues, a report on the Second Circuit's en banc practices, a survey of Council members on the effectiveness of the Second Circuit's CAMP mediation program, and a book on Historical Courthouses of the Second Circuit. Most recently, the committee has been responsible for nominations for the honorees of the Legends of the Bar program.

The current chair is Laura Hall. Past chairs of the committee include Bob Begleiter, Pete Eikenberry, Vilia Hayes, Judge Mary Kay Vyskocil, Linda Goldstein, and Magistrate Judge Sarah Cave.

Public Service Committee

According to Steve Edwards (president 1998-2000), the Council formed the Public Service Committee in 1989 in response to Southern District Judge Morris Lasker's Learned Hand Medal acceptance speech in 1989, during which he challenged lawyers to become more involved in

current issues such as AIDS, drugs and homelessness. In creating the Public Service Committee, the Council was mindful of not duplicating the work of other non-profits or engaging in political activity.

After spending several years exploring topics and meeting people, the committee became involved with the issue of homelessness, specifically through pro bono work for Nazareth Housing on the Lower East Side. Nazareth had purchased abandoned buildings from the City of New York for \$1 that it then developed principally into co-ops with one or two apartments to be used as shelter housing. The Council assisted with documentation. The committee also became involved in a micro-economic project involving making candles and an unsuccessful effort to develop a store. Edwards joined the board of Nazareth and became board president in 1993. Committee member Mary Beth Hogan also joined the Nazareth Housing board and followed Edwards as president.

In addition, the committee provided pro bono representation in Social Security, immigration, and bankruptcy cases. After September 11, 2001, it represented uniformed firefighters and police officers. It also organized court visits for New York City high school students – a program that came to be supported by CSFB.

Wohl said that he appointed Lewis Liman as chair of the Public Service Committee, who expanded the work of the committee. The committee helped the Council develop into a broader organization. With Liman as chair, the committee became involved in Judge Katzmman's immigration

project working with the Second Circuit. Vilia Hayes (president 2014-2016) saw pro bono work as a big part of what the committee should do. She attended all of the committee's meetings.

The committee seeks to find ways in which federal practitioners and members of the federal judiciary can advance the public good. The committee's work has traditionally focused on pro bono projects and other public interest work that serve the needs of disadvantaged communities and members of the public who interact with the justice system, as well as ways in which the private bar can assist the federal judiciary in the administration of justice. Over the years, the committee has worked on projects to provide immigration law training to pro bono lawyers, worked with the Asylum Representation Project, and worked to improve the private bar's interactions with the federal judiciary of the Second Circuit, including through public service projects to support those who interact with the criminal justice system. Members of the federal judiciary have attended committee meetings to discuss various projects, including initiatives related to immigration, as well as the re-entry of criminal defendants into society. In addition, each year the committee administers the Thurgood Marshall awards, which are given to two practitioners – one a Veteran Deserving of Recognition and one a Rising Star – who have demonstrated an exemplary commitment to pro bono service.

The first chair of the Public Service Committee was Pete

Eikenberry, followed by Joseph Genova, Richard Rothman, Peter Vigeland and Lewis Liman. Saul Shapiro is the current chair.

Federal Criminal Practice Committee

Conceived by Frank Wohl (president 2010-2012) and founded in 2013, the Federal Criminal Practice Committee was established to connect attorneys with expertise in the federal criminal justice system. Don Buchwald was the first chair. David B. Anders was the next and is the current chair. Members of the committee represent a diverse group of attorneys involved with the federal criminal justice system in the courts of the Second Circuit, including federal judges, prosecutors, public defenders, and small and large firm practitioners.

The committee is dedicated to fostering collaboration among its members, with the goal of examining and improving the federal criminal justice system. During committee meetings, members discuss issues, policy initiatives, and noteworthy events affecting the federal criminal justice system in the courts of the Second Circuit. The committee strives to address issues of importance to “both sides of the ‘v.’” – that is, given its composition of both prosecutors and defense attorneys, the committee focuses its work on areas of general significance and not on issues important only to defense attorneys or prosecutors.

As part of its monthly programming, the committee regularly hosts guest speakers, including federal judges, past and present U.S. Attorneys, senior officials of

the U.S. Department of Justice, and practitioners with substantial experience with issues important to the committee. The committee also sponsors CLE programs and other public events concerning criminal justice topics of general interest among practitioners in the courts of the Second Circuit. The committee considers policy questions posed by the judiciary, members of the committee, and the broader bar affecting the federal criminal justice system in the courts of the Second Circuit, including proposed changes to the rules regulating federal criminal practice, pre- and post-trial detention practices, the timing and substance of criminal discovery, and access to detention centers within the jurisdiction of the Second Circuit.

As Council president, Wohl took pride in expanding committees, including committees focusing on criminal practice, made up of criminal practitioners. The Federal Criminal Practice Committee has become an active group that has developed a closer bond by working on issues relating to criminal practice. It is equal to and related to the Second Circuit Courts Committee. It takes the criminal practitioners out of the Second Circuit Courts Committee, leaving that committee to focus on the courts and civil issues.

Committee on Sentencing and Alternatives to Incarceration

Robert Anello (president 2012-2014) said that the Committee on Sentencing and Alternatives to Incarceration was started in 2009 at a time when sentences were an

issue because of the Sentencing Guidelines. He was initially the co-chair of the committee with Fred Nathan. Larry Krantz succeeded Anello as co-chair in 2012. Krantz and Carine Williams are the current co-chairs of the committee.

The committee provides a forum for prosecutors, defense attorneys, judges, policymakers and other stakeholders to stay abreast of developments in federal sentencing practice. Members also consider how they might strengthen sentencing strategies that provide alternatives to incarceration, redress individual and community harm, reduce recidivism, and promote public safety. Recent programming coordinated by this committee has addressed, among other things, the use and misuse of solitary confinement, executive clemency, the First Step Act, and prison conditions in Second Circuit facilities. The committee currently includes over 25 active members and welcomes all newcomers.

Bankruptcy Litigation Committee

When he was president, Anello established the Bankruptcy Litigation Committee to integrate more bankruptcy practitioners into the Council and to broaden its membership base. Then Bankruptcy Judge Mary Kay Vyskocil served as liaison to the bankruptcy court.

According to Jay Goffman, a chair of the committee, effective restructuring lawyers not only rely on dealmaking skills but also need to be talented courtroom lawyers who are “capable of convincing the bankruptcy court that their proposed resolution

is the best path to save a financially distressed company and the jobs of its employees.” At its founding, the goals of the committee included raising the profile of the bankruptcy and restructuring bar and providing a forum for bankruptcy and restructuring lawyers to further develop their skills as courtroom lawyers.

Since its founding, the committee has grown substantially and now includes over 60 members. Its current co-chairs, Andrea Schwartz and Eric Fisher, have focused on cultivating closer relationships between the Second Circuit bankruptcy bar and its judges, as well as better integrating the lawyers that make up the bankruptcy bar into the broader Second Circuit legal community. Recent events have included regular meetings with both experienced and new Second Circuit bankruptcy judges, focused on providing an intimate forum for lawyers to get to know the bankruptcy judges better, and also on hot topics of interest to the bankruptcy bar. In Spring 2022, the committee sponsored an event at Tavern on the Green, attended by hundreds of professionals, to celebrate the judicial careers of Bankruptcy Judges Robert D. Drain and Shelley C. Chapman upon their retirement from the Bankruptcy Court for the Southern District of New York. This year the committee plans to sponsor an event at Tavern on the Green on June 15.

Securities Litigation Committee

The Supreme Court has often referred to the Second Circuit as the “Mother Court” for its expertise in securities cases. Indeed,

from the days of Southern District Judge Henry Friendly to today, the courts within the Second Circuit have decided more securities cases than any other circuit. Not surprisingly, the Second Circuit also has the most sophisticated securities bar as well. Therefore, it seemed quite apt for the Council to establish a Securities Litigation Committee. The committee grew out of a discussion between long time Council members Russell Yankwitt and Scott Musoff just a few years ago about the need for a committee dedicated to securities litigation in an organization filled with lawyers who practice within this Mother Court of securities cases.

Interest in the committee took off immediately. The committee is made up of a nearly equal number of lawyers from the plaintiffs and defense securities bars. It provides a unique opportunity for lawyers typically on the opposite of the “v” to get together several times a year to discuss trends and novel issues. Equally important to discussing substantive legal issues, the committee also provides the opportunity for such litigation adversaries just to get to know each other better, further ensuring civility and professionalism amongst our members.

Scott Musoff, the first chair, just stepped down. Katie Sinder son and Robert Fumerton are the new chairs.

Intellectual Property Committee

The Intellectual Property Committee of the Federal Bar Council was formed in 2014. The committee consists of practitioners in the

trademark, copyright and patent fields, in-house counsel who are involved in these fields, and law school professors who teach and conduct research in these fields. Since its creation, the committee has hosted many talks between judges and committee members regarding the presentation and adjudication of intellectual property cases, including now Second Circuit Judge Richard Sullivan and District Judges Paul Engelmayer and Alvin Hellerstein, and former District Judge Katherine Forrest from the Southern District of New York and Judge Gary Brown from the Eastern District of New York. The committee also offers regular CLE panels for its members on a variety of cutting-edge topics in the intellectual property field, including trademark protection for cannabis-related products and services and the evolving standard for obtaining preliminary injunctive relief in intellectual property cases.

Kiernan Doyle is the current chair of the committee.

Employment Litigation Committee

The Employment Litigation Committee was created in 2016. Under the leadership of the committee’s co-chairs, Keisha-Ann G. Gray and Valdi Licul, the committee provides opportunities for practitioners from all perspectives to engage in thoughtful discussion about emerging issues in employment litigation.

The committee strives to regularly host enlightening programs for its members. For example, in May 2021, Anthony Pino, an EEOC

enforcement supervisor and federal investigator, and Elizabeth A. Marcus, a mediator at the EEOC, shared their expertise with the committee concerning best practices during an EEOC investigation and the EEOC mediation process. They discussed “Dos and Don’ts” and answered questions from committee members.

The committee also offers an annual Employment Law Update CLE program. Most recently, the 2022 Employment Law Update featured Eastern District Judge Kiyo Matsumoto, as well as practitioner panelists, who discussed recent U.S. Supreme Court and Second Circuit cases; the extent to which employment discrimination laws recognize intersectionality as a protected class (e.g., race and gender) and the associated difficulties created for plaintiff and management sides; mandated vaccines in the workplace and associated litigation in light of COVID-19; and how investigations play into litigation.

The committee also encourages interaction with its peer Council committees to allow its members the opportunity to further build their professional networks. For instance, in March 2021, the committee was invited to join a Second Circuit Courts Committee meeting focused on the LGBTQIA+ discrimination cases before the U.S. Supreme Court: *Bostock*, *Zarda*, and *Stephens*.

Civil Rights Committee

The youngest of the Council’s committees, the Civil Rights Committee, began in 2020 amid the George Floyd protests and national

conversations on civil rights and policing. The committee was established during the tenures of Judge Mary Kay Vyskocil (president 2018-2020) and Jonathan Moses (president 2020-2022). The committee includes civil rights attorneys from both sides of the bar and current and former judges. The committee focuses on constitutional litigation under the Civil Rights Act of 1964 and other civil rights cases, which, according to the most recent data published by the Administrative Office of the U.S. Courts (in March 2022), comprised more than 20 percent of all new cases filed in 2021. The committee sponsors educational programs on a variety of civil rights topics, works cooperatively with civil rights committees in other bar associations, and encourages fellowship among federal civil rights practitioners. Some of the committee’s most recent CLE programs include courses on religious freedom, wrongful convictions, and qualified immunity. David Shanies has been the chair of the committee since its inception.

The Westchester Committee

The Westchester Committee, chaired by Russell Yankwitt and vice-chaired by Michael Reed, is entering its 14th year.

The Westchester Committee was the brainchild of former Council President Robert Giuffra (president 2008-2100), former Executive Director Jeanette Redmond and Yankwitt. They formed the committee in 2008 and Yankwitt served as the first chair until 2014. After Yankwitt, Desmond Lyons and

Kathy Marks each served as chairs of the committee for three-year terms. In 2022, Council President Jonathan Moses asked Yankwitt to serve an additional term as chair.

The Westchester Committee is a young committee, but it has already had many successes. The Westchester legal community is a close-knit community. The goal of the committee has always been to foster collegiality among the members of the Westchester bar, and to create spaces for the bar and the bench to interact and learn from one another. Since its founding, every federal district judge and every federal magistrate judge sitting in the Southern District of New York White Plains Courthouse has addressed the committee.

In its first year, the committee organized and sponsored an event honoring Senior District Judge William Curtis Connor. This event was held at the White Plains courthouse and was attended by virtually all of the judge’s former law clerks. As the event occurred roughly one month before Judge Connor’s passing, it took on a special significance. The committee also organized an event honoring Judge Naomi Reice Buchwald at the Ritz Carlton that drew approximately 100 attendees and another event honoring Magistrate Judge George A. Yanthis upon his retirement. Additionally, the committee has hosted numerous CLE programs along with social gatherings each summer and fall. The committee recently hosted Westchester’s newest judges, District Judge Philip M. Halpern and Magistrate Judge Andrew E. Krause.

Connecticut Committee

David Schaefer took the lead on Connecticut involvement in the Council starting when Tom Evans was president in 1988-1990. Evans asked Schaefer to chair the Law Day Dinner and to involve members from Connecticut.

Schaefer said that Connecticut members wanted to involve Connecticut lawyers in the Council without clashing with the Federal Practice Section of the Connecticut Bar Association, which is very active. With informal cooperation they each ran programs often open to each other's members. The committee provided free CLE programs – often replicating successful programs the Council had done in New York or at the Winter Conference. They invited the Connecticut Bar Association to co-sponsor receptions for new judges. They have run a very successful (and popular with the federal judges) program training members of the bar who take on pro se cases pro bono. The committee also holds a popular annual dinner, at which they recognize the district's law clerks, utilizing the participation of judges who have been the Council's guests at the Winter Conference. The committee has also assisted the Second Circuit and Connecticut federal judges on their civic engagement programs.

The work supported by the committee has created a great relationship between the Council and the Connecticut federal judges and provides a way for Connecticut attorneys to learn about and participate in all the major Council programs. District of Connecticut Chief Judge Stephan Underhill

has been an avid supporter of the Council and its Connecticut Committee for many years.

After David Schaefer, the chairs of the Connecticut Committee have been Jeffrey Hellman, David Slossberg, and Rowena Moffett (current chair).

Central Islip United States Courthouse Committee

The Central Islip United States Courthouse Committee was formed in 2001, while Judge Castel was president, to promote collegiality between the judges sitting at the Central Islip courthouse and federal practitioners who appear there. Gerard Walpin (president 2002-2004) believed that developing a larger presence on Long Island was important for the Council. The founding members quickly decided the committee would best achieve its mission by hosting annual receptions and CLE programs in the courthouse. The receptions over the years, held in the Hon. Arthur D. Spatt Atrium, have provided wonderful opportunities for the court's judges and members of the bar and others to gather in an informal setting to get to know each other. During the receptions, the Council would present an award to an individual in recognition of his or her contributions to the Long Island federal bench and bar. Immediately following the receptions, the committee would hold a CLE program in the ceremonial courtroom of the courthouse with renowned speakers and panelists.

The CLE topics have varied widely, but all addressed some

aspect of federal practice, focusing on topics timely to Long Island federal practitioners in particular.

The awards have been bestowed on many distinguished honorees over the years in recognition of their significant contributions to the Long Island federal bench and bar. Awardees have included district and magistrate judges of the Eastern District and Circuit Judges Reena Raggi and Joseph Bianco (then-District Judge), along with the federal defenders assigned to the Central Islip courthouse.

CLE topics have included legal ethics and professional conduct, the attorney-client relationship and the substantive practice of law, including immigration law, Ponzi schemes, Section 1983, the FLSA, and wrongful convictions. Undeterred by COVID-19, the committee continued to meet virtually throughout the pandemic at lunchtime with guest speakers on a variety of timely topics.

The committee has strived to serve the Long Island federal practitioners well and stay true to its mission to educate and foster good relations among the bench and bar.

The First Decade Committee

Kevin Castel (president 2000-2002) came up with the idea of the First Decade Committee and chose the concept and name as a way to avoid distinctions linked to age. Gerry Walpin (president 2002-2004) saw the creation of the First Decade Committee as a significant development and worked to expand it. According to Joan Wexler (president

2004-2006), the committee grew to have a large membership and is very active. One of its activities is coordinating lunches for First Decaders with judges.

The committee creates a space for lawyers in their first ten years of practice to build relationships with each other and with other members of the Council community. The committee also serves as an entry point to the Council more generally and helps further the Council's mission of building connections between bench and bar. Membership of the committee includes lawyers in their first years of practice – law firm associates and junior partners, in-house counsel, and public service lawyers.

Recently, the committee has held regular planning meetings, brown bag lunches with judges, social events, and charitable activities. The committee also collaborates with the Second Circuit Courts Committee and Council staff to plan the annual Fall Retreat. Wexler said that attendance at the Fall Retreat doubled in size as a result of the participation of the committee, which plans a Friday afternoon program. Wexler said that the committee's June Boat Basin event started in 2004 and drew summer associates as well as lawyers in their first decade of practice. Mark Zauderer (president 2006-2008) also saw the First Decade Committee as a vehicle by which to integrate newer lawyers into the work of the Council and give them a way to play a greater role in the planning and presentation of programs. Many First Decaders have gone on to play a larger role in the Council.

During the COVID-19 pandemic, the committee kept up a regular cycle of virtual brown bag lunches with federal judges and discussions with notable practitioners. The committee has since returned to holding live events, including a series of panel discussions focused on career development topics ("Going In House," "Making Partner," "Public Service," "Starting a Firm").

Julian Brod recently stepped down as chair of the committee (and became co-chair of the Securities Litigation Committee) Joshua Bussen and Brachah Goykadosh are the new co-chairs. As of October 2022, the committee had over 40 active members. The committee is always eager to partner with other committees and outside organizations to jointly sponsor events.

Diversity Committee

Vilia Hayes (president 2014-2016) established the Diversity Committee. The Council had no written diversity platform or statement when she became president in 2014. She recruited LGBTQIA+ and African American members of the Council to form the committee to promote diversity in the Council and the legal profession. The committee has luncheons four times a year. One recent luncheon was with Asian American Eastern District Judge Pamela Chen. The committee also celebrates Black History Month, Pride Month, and other heritage months.

The committee's goal is to honor the Council's legacy of inclusion and advancing equality in the legal profession by promoting

diversity. Diversity encompasses, without limitation, race, color, creed, ethnicity, gender, gender identity and expression, sexual orientation, religion, national origin, age, disability, and marital or partnership status. It also extends to all practice areas, such as government service, not-for-profit, private practice, solo practice, and specialty fields, among others.

The current committee chair is Patricia Miller. Jason Canales co-chaired the committee with Miller from its inception but recently stepped down. During heritage month celebrations, a member of the bar or the bench is invited to discuss their professional journey with members of the Council. In addition, the committee sponsors continuing legal education programs on topics involving issues of diversity, inclusion, and the elimination of bias in the legal profession and the justice system.

Women's Issues Committee

Steve Edwards (president 1998-2000) said that he created a Women's Issues Committee charged with addressing issues like the glass ceiling, children, and part-time work thought to be of particular concern to women lawyers. However, it did not catch on.

Inn of Court

The Council started an Inn of Court program – the Federal Bar Council American Inn of Court – in 2000 when Steve Edwards was president. Edwards had been encouraged to start an Inn by Bettina

Plevan, following exploration and discussion of the idea by other leaders of the Council including Edwards, Lee Richards, John Siffert, Pete Putzel and Judge Denise Cote. Siffert and Richards said that in order to encourage federal judges to become a part of the Inn, they decided to hold Inn meetings at the courthouses to make it as convenient as possible for judges to attend the meetings. The participation of the judges in turn attracted lawyer members.

The Inn comprises approximately 120 to 130 lawyers divided into teams headed by federal judges. Each team includes two to three senior lawyers, a few junior-level partners, upper level associates and junior associates. The teams hold meetings and put on programs for each other. There often has been a waiting list to get into the Inn.

The Inn traditionally meets in either the Pearl Street courthouse or in the Brooklyn courthouse with receptions first and then hour-long programs presented by the teams. Richards said that the founders of the Inn decided to have receptions rather than dinners in connection with Inn meetings to attract more busy New York lawyers and judges. During the COVID-19 pandemic, after a period to regroup, starting in the fall of 2020, the programs along with receptions were virtual, giving members the opportunity to chat before the programs began. Teams had to adapt to prerecording programs and became quite good at it. In the fall of 2022, live programs started up again.

In the past 20 years, Inn programs have covered a wide range of topics.

There have been many historical reenactments and imagined trials such as the Trial of Ethel Rosenberg, the impeachment of Supreme Court Justice Samuel Chase, the Trials of Lizzie Borden, Aaron Burr, Galileo, Sacco and Vanzetti, Wyatt Earp, Susan B. Anthony, and many others; programs on various constitutional issues involving civil rights, the First Amendment, privacy rights, and birthright citizenship; programs focusing on statutes and rules; programs focusing on retired Supreme Court Justice John Paul Stevens, Second Circuit Judge Robert Katzmann, and Central District of Alabama Judge Frank M. Johnson; and other programs about unauthorized leaks of confidential information, Supreme Court decisions, including dissents, media issues, and racism. The Inn programs also provide a good source for Council programs at the Winter Meeting and Fall Retreat.

The Inn has a dinner in June at the end of each Inn year during which the new president takes office and a group of members – the Inn Players – provide entertainment. The entertainments focus on a legal theme and feature songs based on familiar music with original words. Edwards wrote a rock opera that was first performed at the Inn's end-of-year dinner in 2002 at Bargemusic. Edwards, who was inducted into the Iowa Rock and Roll Hall of Fame, agreed to write the opera during a conversation about the entertainment for the Inn's dinner. He wrote the songs for the opera and was able to take advantage of unused recording time to record a demo shortly after September 11.

Edwards used the demo to recruit a cast of ten and an orchestra of six. The opera was a huge success and was subsequently performed as part of the Bargemusic programming in 2002, at the Second Circuit Judicial Conference in 2003 and at the City Bar in 2004.

Although there are three other Inn groups in New York City, Edwards said that the Council Inn of Court has the greatest participation of federal judges and is the only program to meet in the federal courthouses of the Southern and Eastern Districts. The other Inns are run by the New York County Lawyers Association, the New York City Bar, and the William E. Connor Inn of Court.

Second Circuit Judge Reena Raggi, who was involved in the Inn for a number of years and was president in 2011-2012, described the Inn as committed to quality programs providing strong content that would merit CLE credits, but which were often infused with humor and lightheartedness. Judge Raggi chaired teams that presented programs on the revision of the Bankruptcy Code where Ebenezer Scrooge filed for bankruptcy and a program on the Scopes trial, among others.

Judge Raggi also noted that the Inn provides strong mentorship opportunities, where less experienced lawyers are given an opportunity to shine, for example by questioning witnesses played by more experienced lawyers. It also provides an environment for lawyers to work on programs with and get to know lawyers outside their practice areas and firms. Members of each team

develop a camaraderie and sense of accomplishment as they create and present their programs.

The first president of the Inn was Pete Putzel, followed by Lee Richards, John Siffert, Judge Denise Cote, Judge David Trager, Steve Edwards, Judge Carol Amon, Ann Vladeck, Judge Denny Chin, Arthur Greenspan, Judge Reena Raggi, Milton Williams, Frank Velie, Judge Brian Cogan, Sheila Boston, Judge Roslynn Mauskopf, Magistrate Judge Peggy Kuo, Harlan Levy, Marjorie Berman, Judge Vernon Broderick, James Bernard, Judge Kiyo Matsumoto, and current president Harold Gordon.

Staff

The Council could not function without its staff. Evelyn Gelman was the first executive director and the first staff member. She began at the Council in 1964. She said in an interview that she did everything. She was later joined by Assistant Executive Director Shelia Cohen.

When Gelman first started there were about 700 to 750 Council members, each paying \$10 a year in dues. She was paid \$45 per week. The Council did not have a regular office; instead, Paul Windels (president 1965-1966) said that Gelman collected all the files in the office of the current president, moving when each new president was installed. The savings in overhead, Windels said, enabled the Council to pay Gelman's salary. Gelman left the Council during George Yankwitt's tenure as president in 1992.

After Gelman's departure, Sheila Cohen was interim executive director

from 1992 to 1994, followed by Peggy Brown, who was executive director from 1994 through 2002.

Gerald Walpin (president 2002-2004) said that the Council's activities expanded in the years before he was president. The Council transformed to a full-fledged bar association. Accordingly, the staff expanded as well. Jeanette Redmond became executive director in 2002. During Redmond's tenure, while Joan Wexler was president (2004-2006), the Council office moved to Westchester. Redmond expanded the staff that was responsible for managing CLE programming and credits, and running the Winter Meeting, the Thanksgiving Luncheon, the Law Day Dinner, and the Fall Retreat. While she was president, Vilia Hayes (president 2014-2016) encouraged Redmond to update and develop a personnel manual for employees and adopt personnel policies.

Joan Salzman followed Redmond as executive director in July 2014. Hayes moved the Council office back to New York City. She enlisted lawyers from her firm, Hughes Hubbard, to negotiate the lease and got Hughes Hubbard to donate furniture. The Council moved into the new space in the summer of 2016. Robert Anello (president 2012-2014) was happy with the enthusiasm of the staff when Salzman was director. He was glad that the Council moved back to New York.

Salzman announced she was leaving in late 2016. Six months before David Schaefer took over as president in November 2016, Hayes, the current president, involved him in the search for a

new executive director. Staff had departed following the move of the Council's office from Westchester back to New York City, and it was a major task to hold the staff together and find a new executive director.

Anna Stowe DeNicola became executive director in March 2017 after Salzman left. She was an oboist, a lawyer, and then manager of musical organizations. She reorganized the staff and was able to manage all of the events and programs with a leaner staff. DeNicola and her staff took on projects that support court initiatives including the Circuit's Justice for All and the Courts and the Community project, and under DeNicola's leadership they established the Access to Counsel Project, which mobilizes the private bar to take on matters from the civil pro se dockets in the Southern and Eastern Districts of New York. DeNicola and her staff also oversee parts of the When There Are Nine Project, established by a group of alumnae from the Southern District of New York U.S. Attorney's Office to honor the late Justice Ruth Bader Ginsburg, which creates scholarships and related programming to advance equity and diversity within the legal profession.

DeNicola was able to guide the Council through the pandemic which required a shift to virtual CLE programs, a virtual Law Day Dinner and Thanksgiving Luncheon, virtual board and membership meetings, and many other changes necessary after in-person meetings became impossible. Past and current leaders of the Council unanimously and consistently praised DeNicola's dedication to and accomplishments

for the Council. As Council President Sharon Nelles noted in her column earlier in this issue, Anna left her position with the Council in early April to pursue another professional opportunity. Aja Stephens is now acting executive director.

Staff members of the Council include, in addition to Aja Stephens, David Quiles, manager of CLE; Teresa Ngo-Gutman, manager of membership; Laron Tolliver, administrative coordinator, membership and foundation; Jason Maryeski, administrative coordinator, events and CLE; and the Council's bookkeeper, Mary DeBernardo.

In the Courts

2023 Judges Reception Honors U.S. Marshals

By Sam Bieler



If you really want to know how you are doing at trial, do not ask the judge and do not ask the clerks. Ask the marshals. With that

wisdom, Jonathan D. Polkes of Weil, Gotshal & Manges captured the spirit of the Federal Bar Council's 2023 Judges Reception, which took place on March 16, 2023, at the Union League Club.

Marshals Honored

This year's reception honored the essential contribution of the U.S. marshals to the Second Circuit courts. The evening, organized by event co-chairs Polkes and Colleen Faherty of the New York Attorney General's Office, marked the first Council reception specifically honoring the marshals. The reception's timing and honorees were particularly apt given the passage of the Daniel Anderl Judicial Security Act last year. The Council was instrumental in securing that law's passage and the reception offered the Council another opportunity to show its support for the men and women who are so essential to providing that security.

Attendance did not disappoint as about 175 people, including 50 judges, came out to show their support for the marshals, who also came in from across the Second Circuit.

The Eastern District of New York was represented by U.S. Marshal Vincent DeMarco, Chief Deputy Marshal Bryan Mullee, Assistant Chief Deputy Bud Spellman, Judicial Security Inspectors Melissa Salcedo, Ralph Rosado, and Paul Brunhuber, and Deputy U.S. Marshal Matthew Forrest.

In attendance from the Southern District of New York were Chief

Deputy Marshal Peter McCauley, Assistant Chief Deputy Joel Blackman, Supervisory Deputy Eric Weiss, Judicial Security Inspector James Gutowski, and Supervisor Eiad Saleh.

Acting U.S. Marshal Lawrence Bobnick represented the District of Connecticut along with Acting Chief Deputy Marshal John Iverson and Supervisory Deputy Caitlin Duncan.

The night's speeches also recognized U.S. Marshal David McNulty from the Northern District of New York, U.S. Marshal Charles Salina from the Western District of New York, and U.S. Marshal Bradley LaRose from the District of Vermont.

Council President Sharon Nelles began by praising the integral role the marshals play in the administration of justice. After those remarks, Faherty and Polkes lauded the vital work of the marshals and introduced Chief Judges Laura Taylor Swain of the Southern District of New York and Margo K. Brodie of the Eastern District of New York, who spoke on behalf of the judges of the Second Circuit.

Integral to the Courts

The two judges honored the marshals' perseverance and commitment to excellence under trying conditions. Chief Judge Swain praised the marshals as "integral to the U.S. courts," stating that they face the particular challenge of balancing the safety of everyone in a courthouse with the need to ensure that the public can access court proceedings. She also

thanked Southern District of New York Marshal Ralph Sozio for his tireless work protecting the court.

Chief Judge Brodie focused on the efforts by the marshals navigating the difficulties created by the closure of the Metropolitan Correctional Center (MCC). The MCC's closure has created a particular challenge for the administration of justice that the marshals have handled adeptly. She concluded by praising the marshals for going above and beyond even when short-staffed, saying "we could not do the daily work of justice without you."

Marshal DiMarco spoke on behalf of the night's honorees. The marshals' work, he acknowledged, has become more challenging over the past years as the number of threatening communications to judges has increased dramatically. Indeed, it was the tragic 2020 murder of District of New Jersey Judge Esther Salas' son that spurred the introduction of the Daniel Aderl Judicial Security Act. While threats to the judiciary have increased, the marshals of the Second Circuit continue to rise to the challenge of keeping judges secure. The recent formation of new dedicated judicial protection units will further enhance the marshals' ability to provide judicial security throughout the Second Circuit.

In closing, Nelles presented a special challenge coin to the judges and marshals. The front of the coin features a Federal Bar Council logo with five stars. The reverse bears an American flag, the reception's date, and an apt inscription: "In Honor of Your Dedication to Judicial Protection."

Access to Counsel Project

Recruiting and Training Lawyers to Represent Pro Se Litigants

By Larry Krantz



The Federal Bar Council's Access to Counsel Project, known as the A2C Project, has been in high gear for the past year. The project recruits and trains counsel to represent pro se civil litigants, on a pro bono basis, in the U.S. District Courts for the Southern and Eastern Districts of New York (with the hope of expanding to other district courts within the Second Circuit).

Since its inception, the A2C Project has formed a corps of qualified civil litigators willing to handle these cases, when requested by the courts. Lists of the available cases are circulated by the Southern and Eastern District courts on a monthly basis,

and attorneys volunteer to take on the representation. The cases include opportunities for trial work as well as more limited representation in the discovery and settlement phases of litigation. Those who take on cases also have at their disposal a group of experienced attorneys comprising the A2C Pro Bono Advisory Panel. These veteran attorneys provide advice on an as-needed basis.

Skills Training

As a key part of the A2C Project, and in partnership with the Downstate New York Chapter of the American College of Trial Lawyers (ACTL) and the National Institute for Trial Advocacy (NITA), the Council has been conducting trial skills training programs for lawyers willing to commit to taking on cases on behalf of pro se litigants. Three programs have been held to date, covering (1) depositions; (2) direct and cross examination; and (3) opening and closing statements. All of the programs have followed NITA's "learn by doing" method, which requires participants to prepare for and perform mock exercises under the observation of highly experienced faculty members. At the programs, the participants perform the exercises in a simulated deposition or trial environment. Following each performance, the participants are critiqued by two or more faculty members, with an emphasis on concrete suggestions to improve performance. The participants' performances are also video recorded on their phones, and the video is reviewed and critiqued by another faculty member.



Each all-day program has had about 20 participants and 12 or more experienced trial lawyers serving as faculty members. The reviews from the participants have been outstanding, with the general consensus being that their trial skills improved significantly from the experience. The faculty members as well have given very positive feedback, noting what a pleasure it is to watch less-experienced lawyers improve their skills over the course of the training.

These trial training programs, along with the A2C Pro Bono Advisory Panel and a detailed Manual

that the A2C Project is developing, are intended to encourage lawyers who do not already have trial and other litigation experience to volunteer for pro bono service. They can volunteer knowing that the A2C Project will be behind them every step of the way.

At its core, the A2C Project is about providing justice for litigants who cannot afford representation. As a bonus, participants get the benefit of dedicated mentoring from experienced trial attorneys. If you have an interest in volunteering for the A2C Project as a pro bono attorney,

please reach out to the Council at: fbca2c@federalbarcouncil.com.

The A2C Project extends its thanks to Wachtell Lipton Rosen & Katz and Sullivan & Cromwell for generously hosting these programs, and to NITA and the ACTL for supporting the project. Special shout outs to Marty Karlinsky for co-coordinating the trial training programs; to Magistrate Judge Steve Gold (Ret.), A.J. Agnew and Margie Berman for leading the A2C project; and to all the lawyers who have donated their time as faculty (too many to name).

* * *

Coming in our next issue:

- The Associate's Dilemma: C. Evan Stewart recalls his first pro bono matter.
- In the Courts: Joseph Marutollo writes about a recent naturalization ceremony presided over by District Judge Rachel Kovner in the Jack B. Weinstein Memorial Courtroom at the Theodore Roosevelt Courthouse in the Eastern District of New York. (The photo on page 1 of this issue is of this ceremony!)
- An Inside View: Sherry N. Glover provides an inside view of the Council's First Decade Committee.
- Pete's Corner: Yes, we'll have at least one article from Pete Eikenberry.

... and much more!

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