

# COUNTERBALANCE

NATIONAL ASSOCIATION OF WOMEN JUDGES

## Advancing Justice Like Never Before

Color of Justice  
Program  
Celebrating  
20 Years

Hundreds of Programs,  
Thousands impacted.

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**MISSION**

NAWJ's mission is to promote the judicial role of protecting the rights of individuals under the rule of law through strong, committed, diverse judicial leadership; fairness and equality in the courts; and equal access to justice.

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NATIONAL ASSOCIATION  
of  
WOMEN JUDGES

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# President's Message



“NAWJ continues to speak out on issues concerning judicial appointments and diversity on the bench. The most recent letter addressing this was sent to President Joe Biden in March, urging him to nominate women and judges of diverse backgrounds...”

This issue of *Counterbalance* will arrive as we emerge from more than a year of the pandemic. What does that mean? It means a new way of doing business for most courts, law firms, mediators, agencies and other justice partners. I hope that it also means that you are all able to travel this summer and that we can again begin to meet in person. Our districts and committees have been as active as ever, if not more so. Committee chairs and District Directors attended the midyear board meeting and reported on the tremendous amount of work that they have undertaken this year. All of you continue to inspire me with your selfless leadership and commitment.

We continue to speak out on issues of importance. Just a few examples: The Women in Prison Committee met earlier this year with the Bureau of Prison Director Carvajal and several members of his staff regarding such topics as deficiencies in health care, programming, release preparation and family visits.

NAWJ continues to speak out on issues concerning judicial appointments and diversity on the bench. The most recent letter addressing this was sent to President Joe Biden in March, urging him to nominate women and judges of diverse backgrounds to the U.S. District Court for Western Washington. NAWJ will continue to advocate for this because we know that judges serving in our courts must reflect the demographics of our society in order to instill trust and confidence in our justice system and in order to strengthen the principle of procedural fairness.

Several Districts have hosted virtual Color of Justice programs this year. This August marks the 20<sup>th</sup> anniversary of the signature program created by Judge Brenda Stith Loftin. The enduring popularity of this program underscores the importance of our message that young women and diverse youth will enhance the legal community, and our nation, with their talents, intelligence and unique perspectives. Many thanks to Judge Loftin for her creativity and vision in creating this incredible program and to those of you who continue her legacy.

This issue of *Counterbalance* will also arrive just

after the country marks the one-year anniversary of George Floyd's death. NAWJ joined the chorus of voices speaking out against racial inequality and inequity and has continued the conversations necessary to bring about change. We have held three educational sessions on racial inequity, with a fourth in the planning stages. I participated in the NJC Racial Justice Roundtable on February 25<sup>th</sup> and will participate, with President-Elect Elizabeth White in the Conference of Chief Justices and Conference of State Court Administrators *Blueprint for Racial Justice*. Under the leadership of Commissioner Pennie McLaughlin and Judge Pam Washington, we have outlined a mammoth project to gather data and educate our judges and communities about racial disparities in the judicial system. We are awaiting word on our grant application for this important initiative.

The work of NAWJ has continued – and even prospered given the connectivity that technology has introduced – but I miss the ability to host events in person. I believe that is about to change thanks to vaccinations and the lessening of restrictions. I look forward to being able to travel to NAWJ events as frequently as past presidents have done. At a minimum, I'm booking my airline travel to Nashville and hope to see you there.

Warm regards,

**Hon. Karen Matson Donohue**  
President

# Vice President of Publications Message

## NAWJ's Award-Winning Color of Justice Program *Two Decades of Success*



“We owe our thanks to long-time NAWJ member Hon. Brenda Stith Loftin who created the program which debuted across the country in St. Louis Missouri, September 20, 2001.”

This September, NAWJ will be celebrating 20 years since its award-winning *Color of Justice* program was created. We owe our thanks to long-time NAWJ member Hon. Brenda Stith Loftin who created the program which debuted across the country in St. Louis Missouri, September 20, 2001. Recently, I asked Judge Loftin how this program came about, and she explained that “in 2001, then-NAWJ President Noel Kramer called to say she had ‘a few dollars’ left that had not yet been spent in a grant from the Jesse Smith Noyes Foundation.” Judge Kramer said she wanted NAWJ to create a program that would be targeted toward young girls and which would introduce them to the judicial profession. Never one to avoid a challenge, Judge Loftin set to work and created the program with three goals in mind:



Hon. Brenda Stith Loftin

- First, it would target minority girls from junior high school through the twelfth grade. The idea was to introduce them to the legal profession and the judiciary, in particular;
- Second, it would offer a way to give judges, especially those that were elected, an opportunity to be involved in their community in a manner that couldn't be confused with political activity; and
- Third, it could raise the national profile of the NAWJ.

The first *Color of Justice* program was presented alongside NAWJ program co-chairs in St. Louis, and following that successful event, Judge Loftin put pictures about the program into a beautiful album, which she brought to a then-upcoming NAWJ conference. She laid the album out for conference participants to review, and, she reports, things really took off at that point. “Everyone was so excited and the judges loved it. They wanted to understand how they could bring the program back to their locales.”

So, Judge Loftin set about creating a step-by-step NAWJ Program Manual, called *The Color of Justice Program Manual*. In it, she mapped out everything from the learning objectives to presentation tips. Judges around the country followed the manual, and began holding these successful programs. She credits the manual with actually leading to completion of all of her initial three goals. In addition, in those days, because the judges didn't see each other very often in their districts, the program became a vehicle for them to work together on a structured program that was good for the judges, the girls, and for the NAWJ.

Over time, and building on the program's success, some judges wanted to expand it in ways that would better support their communities. What had begun as a program for girls, expanded to one for boys, as well. Some judges modified it from a half-day program to a two-hour program in an effort to be more responsive to the needs of a particular community. As a result, the program leadership received awards from a range of groups, including state Supreme Court judges, and some judges received awards for putting on the programs year after year. One judge filmed her *Color of Justice* program and it received significant media attention, which resulted in an award from the media for her work.

Today, every state in the country has put on at least one of these programs. It's become a programming staple in New York, for example, where Judge La Tia W. Martin has put it on year after year. The program is so effective because it serves the needs of girls and youth in a way that many of our communities still require. There have been a couple of states that have even expanded the programs into law schools. It serves the target group which began as minority girls and has now expanded to support girls and boys and female law students. It has given NAWJ women judges an opportunity to participate in and be a part of their community



in a way that hasn't been political. And it has clearly given visibility, nationally, to the NAWJ. Judge Loftin explained that without the creation of the *Color of Justice Manual*, this program might never have expanded.



"If we hadn't documented it, I don't think anyone would have really known what we had accomplished."

One particular highlight was at the program's ten-year anniversary. At the prompting of then-NAWJ President Judge Amy Nechtem, Judge Loftin and Judge Nechtem decided to reach out to the Native American community at the Native American reservation in Bemidji, Minnesota. Alongside the leadership of Judge Renee Worke, they invited Native American high schoolers to the Minnesota State Appellate Court for a *Color of Justice* presentation. It was an enormous success.

Today, the program encourages participants to consider the law and judgeships as career

goals. It focuses on career preparation, offers panel discussions with judges and lawyers sharing personal and professional insights, and enables small group discussions during box luncheons. The program provides an environment where discussion and debate among participants can flourish. Members of the NAWJ are encouraged to present this program on Law Day, or at another convenient time. The *Color of Justice* program is a wonderful opportunity to become involved in the community and at the same time broaden the visibility of our organization. We thank Judge Loftin for creating this incredible program that has touched so many, and all those NAWJ judges over the past 20 years that have brought the *Color of Justice* program to their state. This is an example of NAWJ at its best, offering NAWJ judge members a chance to have a lasting impact on their communities and the legal profession.

**Hon. Mimi Tsankov**  
Vice President of Publication



*Judge Tsankov is the Eastern Region Vice President of the National Association of Immigration Judges. The views expressed here do not necessarily represent the official position of the United States Department of Justice, the Attorney General, or the Executive Office for Immigration Review. The views represent the author's personal opinions.*

## Executive Director Message



I want to express my gratitude to the Search Committee and many others who provided support as I begin my tenure as your permanent Executive Director. Because we are in this journey together, I am sharing my vision statement and I am excited to be walking along side you.

Being the voice of women in the judiciary is the notable legacy of the National Association of Women Judges. For more than forty years NAWJ has been the United States' leading advocate and educator for women on the bench and seeking the bench. The organization's success derives from the diversity of its members; racially, geographically,

and professionally. NAWJ has adjusted, evolved, and expanded its influence on wide-ranging issues such as voter education, equal access to justice, women in prison, elder abuse, the opioid crisis, sexual harassment, domestic violence, and human trafficking.

New challenges emerged in 2020 that have brought disruption in the courts: the COVID 19 pandemic, and troubling cultural and civil unrest, including the amplification of racial tensions and inequalities. Through the pandemic, our members have been unable to meet together in person. NAWJ demonstrated agility in pivoting within a few weeks to virtual meetings, and from operating in the office on local servers to operating remotely in the cloud. Moving to remote

*“ We will become an even stronger and clearer regional and national voice, as together we move toward implementing this vision and reaching our goals.*

and virtual format actually has helped us offer more events, and to expand awareness of NAWJ around the country. Membership and member engagement have increased.

Over the next several years, NAWJ has opportunity to strengthen its foundation, and to increase recognition of its vital work. Creativity and technology are enabling the Districts to produce more of their own programs and webinars, as current NAWJ programs can be streamlined into models for all of them to use. This enhances ability of our programs to be hosted in person and virtually, potentially broadening NAWJ's diverse membership, and our advocacy for fairness and access to justice. We also have developed a list of

several like organizations with whom we can begin to collaborate on joint projects and events. Developing relationships with these groups, while maintaining and growing the Resource Board, is important to our growth.

NAWJ always has been passionate about crucial issues facing the courts, the overall justice system, and our country as a whole. We will become an even stronger and clearer regional and national voice, as together we move toward implementing this vision and reaching our goals.

**Laurie Hein Denham, CAE**  
Executive Director

## COMMITTEE SPOTLIGHT

# NAWJ Domestic Violence Committee

It is our pleasure to introduce ourselves and tell this fantastic organization a bit about our committee and the plans for the DV Committee.

As all of you know, Domestic Violence and Sexual Assault are very specific issues with specific features that, as judges, we should receive training and guidance on handling these types of cases.

Starting with the definition of domestic violence in Michigan under the legislation enacting the MI Domestic and Sexual Violence Prevention and Treatment Board under MCL 400.1501:

### Michigan State Definition of Domestic Violence

(d) “Domestic violence” means the occurrence of any of the following acts by a person that is not an act of self-defense:

- i. Causing or attempting to cause physical or mental harm to a family or household member.
- ii. Placing a family or household member in fear of physical or mental harm.
- iii. Causing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress.
- iv. Engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested.



By Hon. Amy Ronayne Krause, Judge, Michigan Court of Appeals and Hon. Tracey Flemings-Davillier Judge, Orleans Parish Criminal District Court



Many judges deal with domestic violence and sexual assault scenarios under many different cases in addition to criminal charges. Custody and termination of parental rights are cases in which DV and sexual assault are prevalent and have a different aspect to them from criminal cases. For example, animal abuse in front of children should be taken into account in a custody case, at least under MI law and actually the same should hold true everywhere.

The DV committee plans to work on training

for judges in all of these areas. We also believe it is important that as an organization we recognize stalking, sexual assault and domestic violence awareness months.

As Co-Chairs, we are planning a meeting in the near future and hope to make plans for all of these important aspects of all of these crimes that impact so many people. The pandemic, as we have all read, has increased the number of cases and the lack of reporting as people who are victims who many times have no where to go, truly had no where to



go and be safe from their abuser and the pandemic, and a place in which they could keep their children safe.

Our hope and goal is to be very involved with NAWJ and raise awareness. Many years ago, I (Amy) was very fortunate to have a training by Lundy Bancroft. Everyone, not just judges, should read his book, “Why Does He Do That?” It should be required reading for all people, in my book. (pun intended!) Having been a prosecutor since 1989, when I heard and saw Mr. Bancroft speak in 2004 or so, I had just started a domestic violence court and thought I was pretty darn smart. Mr. Bancroft gave me a whole new perspective on how to handle these cases.

He said that in the “olden days”, people did not think twice about bragging that they had so much to drink and then drove home. Somehow, it was OK to say that out loud. Not anymore. As Mr. Bancroft pointed out, MADD and SADD and just general public outrage changed what communities thought of drunk driving. It is not cool. He teaches, we need to do the same with domestic violence. It is not a private family matter, it is a public health crisis. His teaching is that everyone, from the police, to the courts, to probation have to be saying: This is not tolerated in this community. We are checking to see if Mr. Bancroft is available to come speak to us at our Detroit conference next year and that would be a thrill and so educational.

In terms of domestic violence being a public health crisis, please visit: <https://www.cdc.gov/violenceprevention/intimatepartnerviolence/index.html>

It is an eye-opening look at how the CDC views domestic violence and this look applies to how we as judges should view domestic violence.

*We as co-chairs are so honored have the work of our committee spotlighted in this issue of Counterbalance. Thank you and we hope to have all our members raise awareness and keep on saying: Domestic Violence will not be tolerated in our communities.*

# Life After the Bench

I was first appointed to the state trial bench at the age of thirty-eight in 1989. I loved my years serving as a trial judge and, later, as a judge on the Oregon Court of Appeals. And in a few years, due to Oregon’s unique judicial retirement system, I expect to be back on the bench for a while.

During my 22 years as a judge, I especially enjoyed getting to know my women judge colleagues around the country and even had the honor of chairing the NAWJ Annual Conference in Portland in 2008, along with the Honorable Julie Frantz, who later became the first NAWJ president from Oregon. (The NAWJ President that year was Hon. Fernande “Nan” Duffly, who has become a very special friend since then and who has strong family connections in Portland, including a fabulous Indonesian restaurant owned by her son and daughter-in-law.)

During my years on the bench, I was about as active as a judge could be in the community, spearheading all manner of judicial outreach programs, like a Citizens Justice Conference in 2000, a “Tell it to the Judge” Annual Law Day Program, and a Jury Reform Symposium. While I always found the work of the

court rewarding and important, and I enjoyed making a difference through community activities, as retirement age approached, I began to get excited about the idea of that life I had only dreamed of — one that could include more travel, catching up on reading, and who knows, maybe even finally clearing out the basement and garage from thirty years of accumulation! I must admit I also had hopes for even higher office in the American Bar Association, having been the first sitting judge to serve as an ABA officer — Secretary — from 2002-2005. And then, there was always the possibility of another phase of my legal



“While I always found the work of the court rewarding and important, and I enjoyed making a difference through community activities, as retirement age approached, I began to get excited about the idea of that life I had only dreamed of — one that could include more travel, catching up on reading, and who knows, maybe even finally clearing out the basement and garage from thirty years of accumulation!”

career. But I honestly had no idea what that might look like, other than a vague notion that I might make a decent mediator — like some of you. So, in May 2011, having recently turned the magic age of sixty, I retired from the bench.

My first post-retirement vacation took me to NAWJ's 2011 annual meeting in Newark NJ, from which I headed into New York City for Broadway shows and visits with family and friends. It was during a lovely walk around the Jacqueline Onassis Reservoir with a dear friend that I learned Oregon's then-attorney general, who had begun his re-election campaign, was suddenly bowing out. I had great admiration for the office of Attorney General, and frankly, had been disappointed that no woman had previously run for the job in Oregon. But until that moment, I had NEVER considered doing so. After all, I was a judge, and the judiciary wasn't exactly a common path to AG. (And there was no precedent in our complex retirement system for addressing the issues for which I needed clarity — like could I get my benefits while serving as AG? The answer: No!)

As noted, Oregon had never had a woman in the job. Morale at the state's Department of Justice was low. And I thought I had what it took, both to do the job and to bring the agency back to health. So I ran — and much to the surprise of just about everyone — won handily. I ran again in 2016, and again this past year. I recently turned 70! These past ten years have just flown by, with truly never a dull moment. Surely no one could have predicted how much fun this would be.

Having been involved in the practice of law from virtually every angle, I find myself surprisingly well-equipped to serve as what I call Oregon's "Mama Bear." My role as I have defined it is to look out for my "cubs" — who include the most vulnerable people in our state. That means I've prioritized bringing powerful bad actors to justice. I've defended Oregonians' rights, well-being and environment. And I've done my utmost to protect Oregonians least able to protect themselves — the very young, the elderly, those of limited means, and our immigrant populations. Standing up against the most lawless federal administration

in modern history became another, sometimes nearly overwhelming, aspect of my work these past four years. Happily, we at the Oregon Department of Justice managed to protect the people of our state from some of the very worst assaults imaginable on our safety and well-being.

One of my roles as Oregon's Attorney General is not that different from judges' — that is, to ensure that our justice system is fair and serves everyone equally. In that role, I have advocated for common sense reforms, especially to reduce disparate impacts on people of color. My office has led successful efforts to curb police profiling, hate crimes and bias incidents. We focus on expanding access to justice in Oregon's most underserved communities through our Community Conversation sessions, inviting community-driven reforms to how our agency serves survivors of crime. We have made huge inroads into fighting human trafficking and other internet crimes against children. And, I take real pride in having begun a new elder abuse unit that assists in prosecuting cases of financial exploitation of our seniors as well as those involving horrific acts of physical and sexual abuse and neglect.

My office has a robust Consumer Protection program. We have retired volunteers trained to respond to 40,000 calls a year on our Complaint Hotline. We've recouped hundreds of millions of dollars in settlements from large corporations (including drug, insurance and auto companies) that have defrauded our students, consumers, medical patients and elders. Then, this past year, when scammers tried to take advantage of Oregonians in the midst of a pandemic and a spate of historic wildfires followed by one of the worst ice storms in Oregon history, we worked swiftly to address and put a stop to price gouging of essential products and services, such as lodging.

As you well know, most judges are generalists. You have to be prepared for whatever comes your way — and to be scrutinized for your decisions. Being AG has real similarities. It means being confronted every day with novel

issues of policy, legal, or even a political nature. There are a lot of them. And the ones that are brought to my attention are nearly always incredibly important and time-sensitive. (Like providing legal guidance on our Governor's Executive Orders related to COVID-19.) Thankfully, I have a great staff, with expertise in just about everything imaginable.

Finally, and perhaps most important: There's a lot that I have to do that calls for objectivity. Writing ballot titles, for example, is one of the responsibilities of my office. In today's highly politicized environment, my years on the bench are invaluable in helping me perform this — and other — judicial-like tasks fairly. So while I may have retired from judging, the experiences I had as a judge and the values I developed during my years on the bench, focused in particular on the importance of trust and confidence in the justice system, continue to inform the work I do today. I feel extremely lucky to have had such a fulfilling career as a judge, and now, to get to have an equally rewarding "bonus career" as Attorney General.

I look forward to getting together again with my NAWJ friends. In the meantime, be well and thank you for doing this important work and for inviting me to share my "story."



**Hon. Ellen Rosenblum**

*After retiring from the bench, Ellen Rosenblum was elected the first woman Attorney General of Oregon. She was reelected last November for a third term. She served 22 years as a judge, first on the Multnomah County Circuit Court (Portland area) and later on the Oregon Court of Appeals. She chaired the 2008 NAWJ Conference in Portland, OR.*





# ADR as an Alternative to the Courts

## Observations on the Pandemic from a Newly Retired Judge



**By Hon. Elizabeth Allen White (Ret.)**

*Hon. Elizabeth Allen White (Ret.) is NAWJ President Elect and an Arbitrator and mediator at JAMS, handling disputes in business and commercial, civil rights, employment, entertainment and sports, insurance, personal injury and torts, professional liability, real property and construction.*

**A**lternative dispute resolution (ADR) has become ingrained in the fabric of our judicial system. As a civil judge in the Los Angeles Superior Court, I handled a wide variety of matters: real estate deals gone awry, embattled entertainers going up against directors and production companies, civil rights and employment cases, and a heavy dose of contract disputes and consumer actions. In over two decades as a judge, I saw my inventory of cases rise from around 400 cases to over 600 when I left the bench in 2020 to join JAMS as a neutral.

ADR is a generalized term that encompasses the field of mediation, arbitration, sitting as a reference judge to decide a single issue and serving as a discovery referee to help the parties resolve thorny discovery battles. Whatever form it took, as a judge, I was always grateful for those individuals who chose to work in the alternate private sector to resolve matters brought before public tribunals or that bypassed those tribunals altogether. Their work kept my inventory in a manageable state.

Now that I'm retired, I truly appreciate how much neutrals can assist the courts. This has become particularly true during the pandemic, with courts struggling to comply with social distancing and mask mandates, when most litigation has occurred virtually. When I left my courtroom in January 2020, everything was conducted in person except for the occasional conference call. I followed this by a brief sojourn at the California Court of Appeal, where I served as a justice pro tem. When the pandemic hit in March, I, along with my appellate justice colleagues, pivoted nicely to working from home, where we were still able to access briefs, perform legal research and write opinions. The twice-monthly oral arguments were initially conducted telephonically, and later via the virtual platform BlueJeans. Any conferences between the justices were conducted either telephonically or via Zoom. It was seamless.

In the meantime, the nature of the in person work of the trial courts made pivoting to a virtual environment much more difficult. The courts partially closed for a period of time, and when they reopened, judges began working virtually from their chambers, with only a few jury trials conducted in larger courtrooms, which are more suitable for social distancing.

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After Four Decades  
of Federal Legislation

# Domestic Violence



**O**n March 17, 2021, the U.S. House of Representatives voted 244 to 173 to renew the Violence Against Women Act (VAWA), with 29 Republicans joining all House Democrats in support of the bill. President Joseph R. Biden, Jr. has made it a priority of his administration to strengthen VAWA and has personally urged the Senate to “bring a strong bipartisan coalition together” in support of the law. The President has emphasized the need to reauthorize VAWA and to strengthen it, due to the excessive increase in the rate of intimate partner violence (IPV) during the COVID-19 crisis, an increase that has made the reauthorization of VAWA more important than ever before. To understand the need to

renew VAWA, it is important to consider the context of intimate partner violence and two other federal responses to it, the Family



**By Commissioner Doreen B. Boxer**

Vice Chairwoman of the Los Angeles Superior Court's Domestic Violence Issues Committee

**Where we have been,  
Where we are now, and  
Where we need to go.**

Violence Prevention and Services Act (FVPSA) and the Victims of Crime Act (VOCA).

## Intimate Partner Violence

While definitions vary among statutes that govern different community responses to domestic violence, in general, “intimate partner violence,” “domestic violence,” and “domestic abuse” are largely synonymous terms that refer to physical violence, stalking, and/or psychological coercion by a person against a current or former intimate partner or spouse. “Physical violence” encompasses acts by which a person, directly or through an agent, harms, or attempts to harm, the other person by using physical force. “Sexual violence” includes both physical violence by means of which the perpetrator forces, or attempts to force, the

other person to participate in a non-consensual sexual act, and also non-physical conduct such as “sexting,” in which the actor sends, or demands that the other party provide, sexually explicit material via electronic means. Birth control sabotage and sexual or reproductive coercion by male partners in order to make female partners become pregnant – or, conversely, to force termination of a partner’s pregnancy against her wishes -- also constitute IPV. “Stalking” is defined as “a pattern of repeated, unwanted attention and contact by a partner that causes fear or concern for one’s own safety or the safety of someone close to the victim.” “Emotional abuse” includes verbal and non-verbal acts intended to harm the other person mentally or emotionally in order to exert control over them.

Each year in the United States, IPV impacts an estimated 5.3 million women ages 18 and older and causes 2 million injuries, of which 550,000 require medical attention. On average, victims lose nearly 8 million days of paid work annually and between 21 and 60% of victims lose their jobs due to the abuse.

While statistics reveal the unsurprising fact that IPV affects more women than men, at 33% of the female population, males also represent a significant victim group: 25% of American men will experience IPV during their lifetimes. Persons identifying as LGBTQ suffer IPV at the same rates as the general community, at between 25% and 33%.

Native American women suffer IPV at higher rates than does the general population. On average, during their lives, 60% of Native American women will encounter domestic violence, and they are two-and-a-half times more likely than other groups to be raped.

Rates of IPV in the context of teen dating are equally alarming. Almost 21% of female high school students and 13.4% of male high school students report physical or sexual abuse by a dating partner. One in ten high school students experiences physical violence from a current or former dating partner.

As concerning as the statistics are for direct victims, IPV also greatly impacts children who

witness it. Congressional findings establish that as many as 10,000,000 American children witness acts of domestic violence each year, and that such an experience poses a great risk to a child thus exposed, of that child becoming either a victim or an abuser later in life.

The COVID-19 crisis has laid fertile ground for extensive increases in the number and severity of IPV incidents. Abusers may easily take advantage of their victims' increasing isolation and of the abusers' expanded ability to monitor victims' contact with others – circumstances that result, in part, from government stay-at-home orders. As expected, some law enforcement agencies are reporting upticks in domestic-violence-related (DV) calls. For instance, the Seattle police department reported a 21% increase in DV-related reports in March 2020 as compared to March 2019. Meanwhile, challenges to effective community responses have emerged. For example, in-person services, such as short-term emergency housing, have been impacted during the

pandemic, due to necessary social-distancing measures that reduce the number of persons who can share a given space.

## Contemporary Cultural Awareness

Marriage laws in the United States formerly permitted men to hit their wives. Family violence was concealed, and the mostly-women victims suffered silently. They were often afraid to seek assistance because of potential retaliation by their abusers and because of public perceptions surrounding abuse that, among other things, often included blaming the victim. During the 1960s, the nation's growing concern for the perceived increase in the rate of all violent crime prompted a national investigation into the nature, causes, and prevention of such crime, including IPV. This research led to broad shifts in the perception of, and response to, the violence -- changing it from a private family matter to a criminal act. By the 1980s, these shifts in public sentiment -- especially amongst the law enforcement community -- had measurably reduced the

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## ADR as an Alternative to the Courts

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The already-large inventory of cases that I had left behind, along with those of my colleagues, grew even larger.

Given my work at the Court of Appeal, when I joined JAMS, I was already accustomed to working in a virtual world. JAMS had already transitioned to conducting mediations and arbitrations virtually, despite the fact that these were seen as being optimally performed in person. JAMS' offices, with large conference rooms and smaller breakout rooms, have been replicated virtually, allowing mediations and arbitrations to be performed in a virtual environment.

Mediations and arbitrations were configured virtually to resemble the physical space. Witnesses would await their turn to testify in a virtual breakout room, and counsel

were allocated breakout rooms in order to separately caucus with their clients. The number of rooms needed is determined at the outset of each proceeding with JAMS virtual moderators assisting in setting up the Zoom and facilitating the configuration of rooms.

While videoconferencing and conference calls are tools that many JAMS mediators and arbitrators were familiar with, there was an increased level of training to assist everyone in making the transition to a virtual world. Learning how to share screens and move parties, counsel and witnesses in and out of the virtual breakout rooms became second nature for us as we attended these ongoing trainings.

I have yet to experience an in-person mediation or arbitration at JAMS. Instead, I

work from my home office, happy to avoid my previous lengthy commute to downtown Los Angeles. Because I am comfortable working in the virtual environment, the work is seamless. Likewise, my training in both arbitration and mediation has allowed me to dispense justice within a framework that is efficient and meaningful. Finally, JAMS recognizes that collegiality is important and provides the opportunity to get to know our fellow neutrals through virtual gatherings.

While I hear the JAMS offices are beautiful, I have to say, looking out my window past my computer screen at the trees, while my dog sleeps peacefully beside me, is something I never got to enjoy under the fluorescent lights of my courtroom. That and being able to eat lunch with my husband, have made doing justice during the pandemic enjoyable.



rate of IPV.

Responding to these forces, Congress enacted several laws to address IPV. Each of these laws makes a unique contribution to the patchwork of federal responses currently available.

## Family Violence Prevention and Services Act

In 1984, the U.S. Department of Justice issued its Attorney General's Task Force on Family Violence Final Report, which advocated for a comprehensive approach to addressing family violence. In the wake of this report, and supported by community advocates, Congress enacted the Family Violence Prevention and Services Act (P.L. 98-457, FVPSA) as a means to help states address family violence and to provide assistance to its victims and their dependents.

FVPSA's programs are administered by the U.S. Department of Health and Human Services (HHS). FVPSA is the primary federal funding stream to support immediate assistance to victims and temporary emergency shelters. FVPSA provides funding to states, tribes, and other non-governmental groups that meet specific guidelines to establish, operate, and maintain local community projects working to prevent family violence, domestic violence, and dating violence. Appropriations for these services are carefully regulated in order to ensure distribution of grant funds to states and territories, with no less than 10% of funding earmarked for Native American tribes. As of October 2020, FVPSA has funded over 1,500 domestic violence shelters and programs, has supported over 240 tribes and tribal organizations, and has served more than 1.3 million IPV survivors. FVPSA's front-line immediate response program, the National Domestic Violence Hotline (the Hotline), is a 24-hour-a-day, 365-days-a-year, national, toll-free, confidential hotline – with online chatting and social media availability – that provides

immediate counseling, safety plan advice, and referral services to victims and that connects callers to service providers in local communities. In February 2007, the Hotline began operating “loveisrespect,” a 24-hour-a-day, 365-days-a-year resource for teens who experience dating violence or abuse. In addition, since 2017, the Hotline has collaborated with the National Indigenous Women's Resource Center to operate the “StrongHearts Native Helpline” for Native American abuse survivors.

StrongHearts Native Helpline, like the



Hotline, operates 24 hours a day; it, too, is a national, toll-free, confidential hotline, and StrongHearts offers culturally appropriate services to Native American and Alaska Native IPV survivors.

Since their beginnings, the Hotline and loveisrespect have answered more than 5 million calls, chats, and texts. In 2019, these programs have, in total, received 321,573 calls, 237,012 online chats, and 14,085 texts. The pandemic increased the number of contacts. According to data collected between March 16 and May 15, 2020, the Hotline experienced a 15% increase in contacts during the months of the COVID-19 pandemic, as compared to the same months in 2019, even though the Hotline experienced an initial decrease of calls during the first month of the pandemic. Likewise, StrongHearts reported an initial decrease in contacts over the first months of the COVID-19 crisis, but also saw an increase in its website activity and social media channels during the same period.

StrongHearts reports that the initial decrease in call volume was reflective of victims' inability to access services due to their sheltering in place with abusers.

Since its enactment in 1984, FVPSA has been reauthorized seven times, most recently by the Child Abuse Prevention and Treatment Act (CAPTA) Reauthorization Act of 2010 (P.L. 111-320). FVPSA programs enjoy secure funding for the remainder of FY 2021 (P.L. 116-260), and have also received supplemental appropriations under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act; P.L. 116-136).

## Victims of Crime Act

In addition to providing for immediate assistance to victims, funded by the FVPSA programs, and in response to the emerging understanding of the scope of the IPV problem, Congress in 1984 created a national fund from which victims may receive compensation for their injuries. The Victims of Crime Act of 1984 (P.L. 98-473, VOCA) established the Crime Victims Fund (“the Fund”) in order to provide compensation to victims of violent crime, including IPV, for their unreimbursed losses from crime. The Crime Victims Fund is financed by bail forfeitures and by fines and penalties paid by federal criminal convicts, and, since 2002, is also funded by gifts, donations, and bequests by private parties. The money that is collected by the Fund is overseen by the U.S. Office for Victims of Crime and is distributed to qualified state programs for the compensation of crime victims. By 2020, the Crime Victims Fund held more than \$6 billion.

The Crime Victims Fund issues grants to state-level crime victim compensation programs and to national-scope demonstration projects, and also offers training and technical assistance to victim service providers. In addition, the Fund underwrites victim-witness coordinators in U.S. Attorneys' Offices, FBI victim specialists, and the Federal Victim

Notification System, to help victims as they navigate their participation in a federal criminal case from initial contact through court proceedings, sentencing, and restitution hearings.

The Crime Victims Fund receives no funding from taxpayers, and needs no reauthorization from Congress.

## Violence Against Women Act

A decade after implementing FVPSA and VOCA, Congress enacted the Violent Crime Control and Law Enforcement Act of 1994. This bill created programs to help local law enforcement address violent crime, and also provides services to victims.

As part of the Violent Crime Control and Law Enforcement Act of 1994, Congress enacted the Violence Against Women Act to create new programs within the Departments of Justice (DOJ) and Health and Human Services, geared at reducing the incidence of IPV, at protecting victims, and at facilitating survivors' recovery.

VAWA enacted new criminal penalties and criminal justice procedures and coordinated and funded efforts by law enforcement and governmental agencies to investigate, prosecute, and punish IPV offenders. VAWA established pretrial detention requirements in sex offense cases; encouraged jurisdictions to implement pro-arrest or mandatory arrest policies; established protections to keep victims' addresses confidential; mandated HIV testing of those charged with sex crimes upon request of the victim; established prohibitions against firearms possession by persons who have committed domestic abuse; and created requirements for each state to afford full faith and credit to orders of protection issued by other states. The law also collected and provided resources to create better-informed policies to address IPV in the criminal context, including specialized law enforcement and prosecution units, the use of evidence-based lethality assessments and improved medical forensic examinations in

sexual assault matters, and in addition the law ensured that policies and practices focus on the offender, while simultaneously taking account of victims' trauma. The legislation also funded a variety of victim services through grant programs to state, tribal, and local governments, to nonprofit organizations, and to universities.

VAWA 1994 extended some protections to noncitizen survivors. The law empowered abused noncitizen spouses to "self-petition" for lawful permanent resident status for



themselves and their minor children without involvement of a sponsoring spouse.

In addition to coordinating the federal law enforcement and prosecution response to criminal IPV, VAWA provided grant funding for domestic violence temporary shelters and other victim services. The Office on Violence Against Women (OVW), an office within the DOJ, oversees VAWA grants to state and local governments that fund programs geared at: preventing IPV and child abuse by training agency responders and victim advocates; operating shelters; providing rape prevention and domestic violence education to victims and the general community; and reducing sexual abuse of runaway and homeless youth. Currently, OVW administers 19 VAWA grant programs, of which four are "formula" programs that are required to comply with fund distribution parameters specified in enacting legislation, and 15 are "discretionary," permitting OVW to create guidelines for distribution in accordance with authorizing legislation.

While the appropriations authorizations for grant programs in VAWA expire and require reauthorization, the remaining provisions of VAWA do not expire. VAWA appropriations were reauthorized in 2000, 2005, and 2013, and with each of these reauthorizations, legislators refined and expanded VAWA's protections.

## Violence Against Women Act of 2000

Congress adopted the Violence Against Women Act of 2000 (P.L. 106-386, VAWA 2000), which expanded grant guidelines for increased training on investigation, prosecution, and victim advocacy in sexual assault cases, enhanced and enforced requirements for agency collaboration as a requirement for grant funding, added biennial requirements for reporting on the effectiveness of VAWA grants, and also increased protections for non-immigrant nationals, sexual assault victims, and victims of dating violence. It provided funding for rape prevention and education programs, and established legal assistance programs for victims of elder abuse, stalking, and violence against individuals with disabilities. VAWA 2000 added protections for IPV victims who flee across state lines, and established programs to promote safe child exchange and visitation and to prevent child abuse, sexual assault, and stalking.

VAWA 2000 also added criminal penalties for certain acts. It amended federal criminal laws in order to include as crimes acts by a person in which the person: commits a crime of violence with the intent to kill, injure, harass, or intimidate a spouse or intimate partner in connection with interstate or foreign commerce travel; causes a spouse or intimate partner to travel in interstate or foreign commerce by force or coercion; travels, or causes another to travel by force or coercion, in contravention of an existing restraining order; or, uses the mail or any facility of interstate or foreign commerce to engage in a course of conduct that would

*“Why Live Court Performance Matters”*

# Justice is like a Tap Dance



**By Hon. Sharon Kalemkiarian**

*Judge Kalemkiarian, a graduate of Princeton and the University of San Diego School of law, is a teacher of the New Judge Orientation for California Judges, and a member of the Family Law Committee and the Compensation and Benefits committee of the California Judges Association. She participates in numerous classroom civics programs throughout the year.*

**L**ast weekend I tuned into a “streamed” performance by the award winning tap-dancer Ayodel Casel. The performance was filmed at the Joyce Theater, a large, well-known, professional dance theater in New York City. As I watched the jaw-dropping artistry of her and her five tap-dancing colleagues, I was struck by what I was missing.

Every time her shoe hit the floor, I heard the noise but I couldn’t feel the vibration. As she riffed through an improvisation with Afro-Cuban pianist Arturo O’Farrill, I could not hear her breath quicken or see his fingers flex. There was a great deal of visual coordination between the five tap-dancers, but through the screen I couldn’t catch the “aura” of their joy as they collaborated and created together. And the number offered by the jazz vocalist Crystal Monee Hall about the

“magic” within all of us, “blew the roof off” the place. But it was hard for me to feel that roof come off when sitting in my easy chair.

We all have some favorite memory of a live dance, music or theater performance. We go to a performance to see artistry in all of its immediate glory and wonder. We hope to experience, during the best of performances, some personal growth. Perhaps even an epiphany. And for a moment, we feel like we have entered a different world, one that belongs to the artist.

Our performance – and let me call it that for a moment – is in the courtroom, with other “players” sitting at counsel table, in the jury box, or on the witness stand. The deputy and





the clerk also have their roles to play. Our purpose, of course, is not to entertain but to do justice.

Now that my courtroom has been reopened to in-person family law trials, I am struck by how much everyone's experience in the courtroom was compromised during remote proceedings. I'm not referring to hearings that are merely procedural, such as an arraignment or a case management conference. I am referring to hearings that involve taking testimony, presenting evidence, and listening to argument. Since March 2020, I had been conducting all proceedings in my family law trial department remotely. Two weeks ago, we opened my courtroom to proceedings in-person – socially distanced, with Plexiglas and masks in place – but in-person nonetheless.

The difference has been dramatic – more than I would have honestly anticipated. First, all of the players are back in my theater – the courtroom. We design courtrooms, even in the smallest rural county, to have a level of formality and solemnity. There are United States and California flags and a state seal. The Judge sits apart from, and usually above, everyone else in the courtroom. The litigants and their counsel have a special place to sit. There is good lighting, water in the pitchers, and a deputy in uniform to keep the peace. The clerk sits at her desk assisting the Judge. What is projected is the score for the day: This is serious business. You will be expected to act accordingly.

That formality and solemnity is entirely missing in a remote proceeding. While that formality may intimidate a bit, it is intended to. But on the screen, the litigants and counsel can't fully see the bench – usually just my head and shoulders, with just a glimpse of the flags behind me. When litigants sit in their lawyer's office or in their car, or witnesses testify from their dining room table or (god forbid) the bathroom, you lose formality and solemnity. This affects how people behave during the proceedings, and how they view the proceedings. For the Judge, you want to deliver a ruling to someone sitting in front of you, not to a face or circle on a screen. I can

only imagine that for litigants, receiving the ruling remotely doesn't feel as immediate or serious as when they are in the courtroom.

Remote hearings rob the judicial officer (and other participants) of the nuances in the "performance". A sensory deficit is created because we can't see everyone all the time during the remote proceeding. We need multiple cameras, which of course we don't have. So I can't usually see when a litigant listening to testimony might be passing a note to their lawyer, or making faces, or getting agitated off screen. Or if a witness is being improperly prompted during their testimony. Witnesses are often self-conscious of being on screen, especially because they can see themselves at the bottom of the monitor when they are speaking. This affects their testimony. And just as their performance is filtered by the remote transmission, so is mine. It is harder for participants to catch the nuances of my performance. When I turn my back to reach for something, am I reaching my code book or a box of Kleenex? And my facial expression or body language is being read from afar, and I may also be conscious of the screen.

It is almost impossible for anyone to collaborate during an online proceeding. In the courtroom, at least in a family law trial, counsel and the Judge will communicate quite a bit during a trial. I'll let them know where to focus their questioning. Often I will ask them to go outside and talk during the break about one issue or another, and see if with a bit of direction from me, they can settle some items. This just can't happen online – the platform is cumbersome, connections get dropped, and I simply can't persuade as well through a screen. Likewise, litigants can't often easily speak with their counsel. If they are sitting in different rooms on separate laptops, they can only talk to each other by asking me to stop the proceeding, or by picking up a cell phone. If they sitting next to each other at their location, they can chat, but my view of them is so much smaller.

And then, "auras" just don't project over a screen. Oxford Languages defines "aura" as "the distinctive atmosphere or quality that

seems to surround and be generated by a person, thing, or place." In the theater, the "aura" comes from the theater itself, as well as from the quality projected by the performer. When listening to a witness, I am as much assessing their aura as I am their words. When judging credibility or sincerity, as the trier of fact I am handicapped when I can't feel what is happening between that witness and the attorney. Or that witness and a party. Or that witness and me. Assessing the "atmosphere" of a case requires people to be together in the room. Lawyers know this. Effective lawyers calibrate their examination and cross-examination to the "aura" of the witness. This is very difficult to do online.

I do not fool myself into thinking that I have any "magic" influence over litigants when giving my rulings. But I always explain my rulings, encouraging parents to cooperate for the sake of their child, and to move on with their lives. On occasion, my comments are taken to heart. But it is much less likely that my rulings have any impact at all, except to give enforceable orders, when they are delivered remotely. I can't look the litigants or counsel "in the eye" and I can't assess their "whole body" reaction when I am looking at them on the screen. Guidance is a part of my job – a part of my role in the performance – particularly if I was sitting in a collaborative Court. We don't have the training or the technological resources needed to encourage and cajole better behavior from litigants through remote transmission.

Remote hearings are likely here to stay. These hearings have improved access to the courts for many people, and have saved attorneys and clients time, and therefore money. For certain hearings, the online platform works. But a person's "day in court" should not become a person's "day in a virtual hearing". Much is lost in our justice system when evidentiary hearings and trials are not conducted in a courtroom. Just as a theater performer needs the audience to create her art, a Judge needs the presence of people in-person before her, with all their imperfections, to really deliver justice.

# AN ARTICLE I IMMIGRATION COURT

## An idea that is Growing

*A history of efforts to make it a reality*

Proposals for an Article I Immigration Court were first advanced over 40 years ago. An Article I Court would be an independent tribunal created by Congress, under Article I of the Constitution. Its decision making would be free from political influence by policy makers.

I recall seeing a draft bill to create an Article I Immigration Court prepared by the National Association of Immigration Judges [NAIJ] when I first became an Immigration Judge [IJ] in 1980. It was during the NAIJ Presidency of Judge Joseph Monsanto. I don't know when the draft bill was prepared. Judge Monsanto served as NAIJ President from 1975 – 1981. When I became an Immigration Judge I recall my new colleagues emphasizing the importance of observing independence in our decision making, notwithstanding we were housed in the Immigration & Naturalization Service [INS], which was then a component of the United States Department of Justice. NAIJ had recently, in 1979,

been certified as a collective bargaining unit, based on a unanimous petition by the entire 30 person corps of judges. As such, it was recognized as a Federal union. Given the unanimity of the corps, and its strong focus on judicial independence, I suspect that the move for a new structure grew out of its recognition that the immigration adjudicative function needed to be restructured to assure the reality of independence.

The structural conflict was

probably best exemplified by the fact that when I became an Immigration Judge [IJ], I shared my secretary with the INS trial attorney who prosecuted the cases before me.

### Early History

In 1978, President Carter established an InterAgency Task Force on Immigration Reform.<sup>1</sup> The Agencies involved were State, Labor & Justice. The work of the Task Force was soon superseded by a Congressionally created Select Commission on Immigration & Refugee Policy [hereinafter referred to as Select Commission].<sup>2</sup> Select Commission staff



**By Hon. Joan Churchill**  
Immigration Judge  
retired, is a past  
President of NAWJ

*She served on the Washington DC/ Arlington VA Immigration Court 1980-2005, during which she served 5 terms as a Temporary Member of the Board of Immigration Appeals.*

member Peter Levinson was assigned to study existing Administrative Courts. At the conclusion of his study, Levinson issued a memo advocating that an Article I Immigration Court be established, following the model of the Tax and Veterans Appeals Courts. He attached language for a proposed bill to his memo. The Final Report of the Select Commission, issued March 1, 1981 calls for creation of an Article I Immigration Court<sup>3</sup>. Levinson's draft bill and the draft bill prepared by NAIJ are both in the papers of the Select Commission. A law review article explaining Levinson's thinking, the rationale behind his recommendation, was published by the Notre Dame Law Review in 1981.<sup>4</sup>

While the Select Commission was examining the issue, the Hon. Maurice Roberts, then the former Chair of the Board of Immigration Appeals, wrote an article entitled "Proposed: A Specialized Statutory Immigration Court:" to which he attached his own draft bill for an Article I Immigration Court<sup>5</sup>. He states that after considering the conclusions of the Select Commission he recognizes that "the overall system itself seems badly in need of reappraisal and overhaul." He credits Peter Levinson's draft bill as the inspiration for his own, and mentions the NAIJ draft bill, which he characterizes as "more detailed." Mr. Roberts' article was published in the December 1980 Issue of the San Diego Law Review. The text of his draft bill was attached in the Appendix of his Article.<sup>6</sup>

The structural problems identified by the Select Commission, referenced at the time by

Mr. Roberts, Mr. Levinson, and the NAIJ, have continued to be recognized throughout the years, and have not changed. It was those concerns which led to their drafts of bills to create an Article I Immigration Court. Those same issues are cited by current advocates for an Article I Court,

The immigration judiciary at both the trial and appellate level is housed in the Department of Justice [DOJ], where it is subject to political influence by political policy makers. The Attorney General, the nation's top law enforcement officer, selects all Immigration Judges, at both the trial and appellate level, and has the power to:

- reverse their decisions --even when not appealed,
- set policy binding on the legal issues,
- set procedural direction which can affect the outcomes and
- reassign cases if displeased with a particular judge's handling of a case or group of cases.

These political policy influences interfere with immigration judges' responsibility to be impartial, to be neutral decision makers who can administer due process, a right guaranteed by the 5th Amendment of the U.S. Constitution to all persons facing deprivation of life, liberty and property, all of which are at stake for persons in removal proceedings.

The issues identified are an outgrowth of years of focus on the functioning of administrative courts, which culminated in

the adoption of the U.S. Administrative Procedures Act [APA] in 1946. The APA includes a merit-based selection process outside the control of the appointing agencies and a provision requiring that removals be for cause. These safeguards were designed to insulate administrative judges from political influence.

In a landmark case challenging the conduct of deportation proceedings because the adjudicators were authorized to perform both prosecutorial and adjudicative functions, the Supreme Court held in 1950 that the APA, which contains a prohibition on commingling prosecutorial and adjudicative functions, applied to deportation proceedings.<sup>7</sup> In its *Wong Yung Sung* decision, the Supreme Court, citing the 1937 report of the President's Committee on Administrative Management considered by Congress in enacting the APA, stated that the purpose of the APA was to eliminate the commingling of prosecutorial and fact-finding functions, because it "not only undermines judicial fairness; it weakens public confidence in that fairness." *Ibid*, p. 42. The Supreme Court noted that:

"this commingling, if objectionable anywhere, would seem to be particularly so in deportation proceedings, where we frequently meet with a voiceless class of litigants who not only lack the influence of citizens, but who are strangers to the laws and customs in which they find themselves involved and who often do not even understand the tongue in which they are accused." *Ibid* at 46.

1 I had the honor of being selected to serve as the legal member of the interdisciplinary staff.

2 The Select Commission on Immigration and Refugee Policy was created pursuant to the Act of Oct. 5, 1978, Pub. L No. 95-412, 92 Stat. 907 (1978).

3 U. S. Immigration Policy and the National Interest – The final Report and Recommendations of the Select Commission on Immigration and Refugee Policy to the Congress and the President of the United States, (at pp. xviii-xxix:

“SVii.C Article I Court:

The Select Commission recommends that existing law be amended to create an immigration court under Article I of the U.S. Constitution.

SVii.C.2.: Resources for Article I Court:

The Select Commission urges that the court be provided with the necessary support to reduce existing backlogs.”

Detailed recommendations regarding the proposed structure are set out in the body of the Report at pp. 245-250.

4 Peter J. Levinson, *Specialized Court for Immigration Hearings and Appeals*, 56 NOTRE DAME L. REV. 644 (1981). The article can be found online at: <https://scholarship.law.nd.edu/ndlr/vol56/iss4/4/>.

5 Maurice A. Roberts, *Proposed: A Specialized Statutory Immigration Court*, 18 SAN DIEGO L. REV. 1 (1980).

Available at: <https://digital.sandiego.edu/sdlr/vol18/iss1/2>

The article and Roberts draft bill can be accessed online at [https://digital.sandiego.edu/do/search/?q=author\\_iname%3A%22Roberts%22%20author\\_fname%3A%22Maurice%22&start=0&context=4847542&-facet=publication\\_facet%3ASan%20Diego%20Law%20Review#](https://digital.sandiego.edu/do/search/?q=author_iname%3A%22Roberts%22%20author_fname%3A%22Maurice%22&start=0&context=4847542&-facet=publication_facet%3ASan%20Diego%20Law%20Review#)

The draft bill is at page 19, in the Appendix to the article.

6 *Ibid*, p. 2.

7 *Wong Yung Sung v. McGrath*, 339 U.S. 33 (1950).



When Congress enacted the 1952 Immigration & Nationality Act [INA], (which it passed overriding President Truman's veto), Congress specifically provided that the APA would not apply to deportation proceedings. The INA established a roughly parallel system that incorporated many of the features of the APA, albeit not including the safeguards of merit-based selection or for cause removal for the adjudicators (then called Special Inquiry Officers [SIOs]). When challenged, the 1952 Act's scheme for deportation proceedings was upheld by the Supreme Court in the case of *Marcello v. Bonds*<sup>8</sup>, decided in 1955. The INA, as amended, continues in force today. Interestingly, just a year after the Supreme Court's 1955 *Marcello* decision, in 1956, the SIOs were removed from the supervision of the INS District Directors, and the position of Chief Special Inquiry Officer was created.<sup>9</sup>

*The main structural issue of concern throughout has been the commingling of political, policy making functions with the functions of adjudication, with the subservience of adjudicative functions to prosecutorial functions.*

The main structural issue of concern throughout has been the commingling of political, policy making functions with the functions of adjudication, with the subservience of adjudicative functions to prosecutorial functions. This conflict of interest undermines both the neutrality and appearance of neutrality of adjudicators

working in agencies which have political, especially prosecutorial functions.

The Attorney General, who heads the Department of Justice where the Immigration Court is housed, is the top prosecutor in the United States. The structural flaw this presents was cited as recently as May 9, 2021 in a New York Times Sunday lead editorial by its Editorial Board entitled "*Immigration Courts Aren't Real Courts. Time to Change That.*"

"[Immigration Judges] are attorneys employed by the Executive Office for Immigration Review, which is housed in the Department of Justice. It's hard to imagine a more glaring conflict of interest than the nation's top law-enforcement agency running a court system in which it regularly appears as a party."<sup>10</sup>

The editorial characterizes the situation as "structural rot at the core of the nation's immigration courts."

To address these concerns, some gradual steps have been taken over the years to amend the structure. The first such step was, as mentioned above, taken a year after the Supreme Court decision of *Marcello v. Bonds*, 349 U.S. 302 (1955) –which upheld the INA's creation of a sort of parallel structure for the Immigration Courts specifically not bound by the APA – when the SIOs [Immigration Judges] were removed from the supervision of the INS District Directors and the position of Chief SIO created to provide separate administrative support.

After the recommendations of the 1980 Select Commission on Immigration and Refugee Policy for establishment of an independent Immigration Court, under Article I, published in 1981, and the strong scholarly articles published contemporaneously by Maurice Roberts and Peter Levinson,<sup>11</sup> the Department of Justice [DOJ] took another step, albeit a half step, to address the concerns raised. Instead of proposing legislation for an independent immigration court, it created a new Office within DOJ, which was named the Executive Office of Immigration Review [EOIR]. The Immigration Judges were removed from the Immigration & Naturalization Service, and consolidated with the Board of Immigration Appeals in the newly created DOJ Executive Office along with a new component, the Office of the Chief Administrative Hearings Officer [OCAHO].<sup>12</sup> This restructuring, which could be accomplished by executive action, without legislation, removed the judges from within the INS, but left them within the DOJ, which is a prosecutorial agency, responsible for enforcement of the INA. Critics continue to point out the continuing structural flaw, the co-mingling of prosecutorial and adjudicative functions.

Congressman, Bill McCollum (R-FL), who served in the US House of Representatives from 1981-2001 and chaired the Immigration Subcommittee for a time, introduced bills in Congress to create an Article I Immigration Court in successive sessions of Congress: 1996, 1998, and 1999.<sup>13</sup> The bills did not advance. To date, no further bills have been introduced in Congress to establish an Article I Court.<sup>14</sup> In the years since then, however, an

8 *Marcello v Bonds*, 349 U.S. 302 (1955).

9 The history described in this paragraph relies on the history and citations presented in the NAJ position paper entitled *An Independent Immigration Court: An Idea Whose Time Has Come – A Position Paper by the National Association of Immigration Judges*, January 2002 at p. 6. [https://www.naij-usa.org/images/uploads/publications/An-Independent-Immigration-Court-An-Idea-Whose-Time-Has-Come-January-2002\\_1.pdf](https://www.naij-usa.org/images/uploads/publications/An-Independent-Immigration-Court-An-Idea-Whose-Time-Has-Come-January-2002_1.pdf)

10 The New York Times Editorial Board, *Immigration Courts Aren't Real Courts. Time to Change That*.

May 8, 2021, 2:30 p.m. ET, published Sunday May 9, 2021 in the Sunday Review, p. 6. <https://www.nytimes.com/2021/05/08/opinion/sunday/immigration-courts-trump-biden.html?action=click&module=Opinion&pg-type=Homepage>.

11 See footnote 3 above for citations.

12 A third small component was created and added to EOIR, the Office of the Chief Administrative Hearings Officer [OCAHO], which hears cases involving violations of employment provisions in the INA. The OCAHO judges are Administrative Law Judges. They preside over employer sanction matters and employment discrimination cases. Their cases, by contrast to the Immigration Judges', are subject to the APA. Furthermore, the APA provisions for rulemaking are applicable to EOIR in its rulemaking capacity.

13 1999: Immigration Court Act of 1999, HR 185 (106<sup>th</sup> Congress 1999); 1998: United States Immigration Court Act of 1998, H.R. r107, (105<sup>th</sup> Cong. 1998); 1996: United States Immigration Act of 1996, H.R. 4258 (104<sup>th</sup> Cong. 1996).

14 In 2013, then former Congressman McCollum wrote an op/ed reiterating his support. <https://www.washingtontimes.com/news/2013/jun/17/immigration-courts-need-an-upgrade/> also available at: [https://www.naij-usa.org/images/uploads/publications/McCollum-Immigration-Courts-Need-an-Upgrade\\_6-17-13\\_2.pdf](https://www.naij-usa.org/images/uploads/publications/McCollum-Immigration-Courts-Need-an-Upgrade_6-17-13_2.pdf).

ever increasing number of professional legal organizations have endorsed the idea.

## Endorsements by Organizations

Our own National Association of Women Judges [NAWJ] was the first judicial organization, apart from NAIJ itself to endorse an independent Court outside DOJ for the Immigration Court.<sup>15</sup> We adopted a resolution in 2002 calling for “an independent structure for the Immigration Courts (at both the trial and appellate levels) outside the Department of Justice, to assure fairness and equal access to justice, and to assure both the appearance and reality of impartiality.” Since then, more and more organizations have followed our lead, organizations of many types including: immigration, civil rights, faith-based, government accountability, legal, labor and judicial organizations.

In 2007, Dana Leigh Marks, then President of the NAIJ, wrote an article calling establishment of an Article I Immigration Court “an urgent priority.”<sup>16</sup>

In 2010 the American Bar Association, after an exhaustive study, published a detailed report entitled Reforming the Immigration System<sup>17</sup>. The ABA Commission on Immigration report recommended consideration of 3 options for restructuring the Immigration Judiciary to assure judicial independence and protection from politicization of the Board and Courts. The

Report stated that creation of an independent Article I Immigration Court was the Number #1 choice of the Commission.

The Federal Bar Association, another national legal organization, started urging Congress in 2013 to establish a specialized Article I United States Immigration Court.<sup>18</sup>

*The number of organizations joining the call for an independent Immigration Court has increased exponentially in the past few years, following a series of developments which have exposed the seriousness of the systemic flaws of the current*

The number of organizations joining the call for an independent Immigration Court has increased exponentially in the past few years, following a series of developments which have exposed the seriousness of the systemic flaws of the current structure. In a statement submitted to Congress in 2017, the Round Table of Former Immigration Judges noted that: “DOJ and EOIR have issued policies that will threaten the integrity and independence of the immigration courts.” After describing several policies to which it objected, the Round Table’s statement concludes:

“The solution is to create an independent, Article I immigration court, allowing IJs to continue to decide cases with fairness and

neutrality free from such policy-driven interference.”

The Round Table’s statement included a footnote with citations to numerous articles by retired immigration judges on the subject.<sup>19</sup>

The many recent developments that caused concern led the ABA Commission on Immigration to undertake an extensive review of the many changes to the immigration system since its 2010 report. This review resulted in a thorough update to its earlier report.<sup>20</sup> In its updated report, published March 2019, the ABA revisited its prior endorsement of three options and instead wholeheartedly endorsed creation of an Article I Immigration Court stating that it no longer considered the other options it had considered in 2010 to be viable options. It reached this conclusion after reviewing developments since its report in 2010. The ABA 2019 Update, cited recent “specific executive policies and practices exerting unprecedented levels of control over immigration judges and their job performance.” Among those new policies it noted:

“Policies implementing case production quotas and limitations on discretionary decisions of judges to continue or terminate cases raise concerns about due process and fairness within the current immigration court system.”<sup>21</sup>

15 The seriousness of the need to insulate the Immigration Court from “political whims of the Executive” is recognized by an increasing number of stakeholders.

16 An Urgent Priority: Why Congress Should Establish an Article I Immigration Court, by Hon. Dana Leigh Marks, Benders Immigration Bulletin, January 1, 2008.

17 [https://www.americanbar.org/content/dam/aba/publications/commission\\_on\\_immigration/coi\\_complete\\_full\\_report.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publications/commission_on_immigration/coi_complete_full_report.authcheckdam.pdf).

18 Ibid.

19 Jeffrey S. Chase, The Need For an Independent Immigration Court, Jeffrey S. Chase Opinions/Analysis on Immigration Law, (Aug. 17, 2017), <https://www.jeffreyschase.com/blog/2017/8/17/the-need-for-an-independent-immigration-court>.

Jeffrey S. Chase, US, Tiered Review and Completion Quotas, Jeffrey S. Chase Opinions/Analysis on Immigration Law, (Nov. 9, 2017), <https://www.jeffreyschase.com/blog/2017/11/9/ijs-tiered-review-and-completion-quotas>.

Bruce Einhorn, Jeff Sessions wants to bribe judges to do his bidding, Washington Post, (Apr. 5, 2018), [https://www.washingtonpost.com/opinions/jeff-sessions-wants-to-bribe-judges-to-do-his-bidding/2018/04/05/fd4bdc48-390a-11e8-acd5-35eac230e514\\_story.html?utm\\_term=.758f0b92e2e6](https://www.washingtonpost.com/opinions/jeff-sessions-wants-to-bribe-judges-to-do-his-bidding/2018/04/05/fd4bdc48-390a-11e8-acd5-35eac230e514_story.html?utm_term=.758f0b92e2e6).

John F. Gossart, Time to fix our immigration courts, The Hill, (Feb. 26, 2014), <http://thehill.com/blogs/congress-blog/judicial/199224-time-to-fix-our-immigration-courts>.

Paul Wickham Schmidt, Retired Immigration Judge and Former Chairman of the BIA Responds to Implementation of Production Quotas, Immigration Courtside, (Apr. 4, 2018), <http://www.aiala.org/infonet/retired-immigration-judge-and-former-chairman>.

Paul Wickham Schmidt, We Need An Article I United States Immigration Court — NOW — Could The Impetus Come From An Unlikely Source?, Immigration Courtside, <http://immigrationcourtside.com/we-need-an-article-i-united-states-immigration-court-now/>.

Robert Vinikoor, Take it From a Former Immigration Judge: Quotas Are a Bad Idea, Minsky, McCormick & Hallagan, P.C. Blog, (Apr. 12, 2018), <https://www.mmhpc.com/2018/04/take-it-from-a-former-judge-quotas-for-immigration-judges-are-a-bad-idea/>.

20 The full report is available at [https://www.americanbar.org/content/dam/aba/publications/commission\\_on\\_immigration/2019\\_reforming\\_the\\_immigration\\_system\\_volume\\_2.pdf](https://www.americanbar.org/content/dam/aba/publications/commission_on_immigration/2019_reforming_the_immigration_system_volume_2.pdf).

21 Ibid at page ES-15.

The ABA's updated report called the Immigration Courts "irredeemably dysfunctional." It stated emphatically: "[T]he only way to resolve the serious systemic issues within the immigration court system is through transferring the immigration court functions to a newly-created Article I court."<sup>22</sup>

Rejecting the earlier report's recommendation to consider 3 options, the 2019 report commented:

"[The Article I] approach is the best and most practical way to ensure due process and insulate the courts from the capriciousness of the political environment. It is further our view that the public faith in the immigration court system will be restored only when the immigrations courts are assured independence and the fundamental elements of due process are met."<sup>23</sup>

On July 11, 2019, the ABA, AILA, the FBA and NAIJ sent a joint letter to Congress urging adoption of an Article I Immigration Court<sup>24</sup>.

ABA President Judy Martinez testified On January 29, 2020 before the House Subcommittee on Immigration and Citizenship at a hearing on "Courts in Crisis: The State of Judicial Independence and Due Process in U.S. Immigration Courts". In her testimony, she strongly endorsed creation of an Article I Court.<sup>25</sup> She stated:

"The immigration court's continued existence within the Department of Justice, with its personnel and operations subject to direct control by the Attorney General, who is also the chief law enforcement officer for the Federal government, is a fatal flaw to the reality, and perception, of independence."<sup>26</sup>

*"The core principle of any fair adjudication system must be that independent and impartial judges decide cases on the merits, evaluating the facts and the law in each case, after a hearing that fully comports with due process. . ."*

She concluded with the statement:

"The core principle of any fair adjudication system must be that independent and impartial judges decide cases on the merits, evaluating the facts and the law in each case, after a hearing that fully comports with due process. The current immigration court system fails to meet those goals in many respects. It is time for Congress to establish a truly independent Article I court."<sup>27</sup>

There has been an avalanche of organizational endorsements in the past 3 years. In addition to the ABA's support, which had passed a formal resolution in support of an Article I Immigration Court containing detailed guidelines for

implementation on February 8, 2010,<sup>28</sup> the Federal Bar Association [FBA], the American Immigration Lawyers Association, [AILA], NAWJ, and the Appleseed Fund for Justice<sup>29</sup> all issued strong statements of support. The FBA prepared and disseminated a draft bill.<sup>30</sup> The National Association of Immigration Judges [NAIJ] endorsed the FBA proposed bill<sup>31</sup> and the American Immigration Lawyers Association [AILA] passed a resolution in support of the idea.<sup>32</sup> The ABA, FBA, AILA and NAIJ issued a joint letter to Congress, dated July 11, 2019, calling for an Article I Immigration Court.<sup>33</sup>

In February 2020, the American Immigration Lawyers Association [AILA] sent Congress a letter entitled "Congress Must Establish An Independent Immigration Court" which was co-signed by 54 non-government organizations.<sup>34</sup>

NAWJ sent a separate letter in support.<sup>35</sup>

The Alliance For Justice, representing 120 organizations, sent a letter to Congress March 30, 2020 joining the call for an Article I Immigration Court stating "it is desperately needed as a part of the solution" to "solve the ills of the current system."<sup>36</sup>

On October 21, 2020, the New York City Bar renewed its call for an independent Article I Immigration Court.<sup>37</sup>

I expect there have been additional

22 P. 25 of the summary report, denoted as ES-25.

23 Ibid at page ES-25.

24 <https://www.fedbar.org/wp-content/uploads/2019/10/19070802-pdf-1.pdf>.

25 <https://docs.house.gov/meetings/JU/JU01/20200129/110402/HHRG-116-JU01-Wstate-PerryMartinezJ-20200129.pdf>

26 Ibid p. 9.

27 Ibid p. 11.

28 [https://www.naij-usa.org/images/uploads/publications/ABA-Article-I-Resolution-114F-adopted\\_2-8-10\\_%281%29.pdf](https://www.naij-usa.org/images/uploads/publications/ABA-Article-I-Resolution-114F-adopted_2-8-10_%281%29.pdf).

29 Assembly Line Injustice: Blueprint to Reform America's Immigration Courts, p. 35.

30 Text of the FBA's proposed bill is available at <https://www.fedbar.org/wp-content/uploads/2019/10/proposed-Article-I-immigration-ct-model-bill-07162019-pdf-1.pdf>. For background information see the FBA website at: <https://www.fedbar.org/government-relations/policy-priorities/article-i-immigration-court/>.

31 [https://www.naij-usa.org/images/uploads/publications/NAIJ\\_endorses\\_FBA\\_Article\\_I\\_proposal\\_3-15-18.pdf](https://www.naij-usa.org/images/uploads/publications/NAIJ_endorses_FBA_Article_I_proposal_3-15-18.pdf).

32 [https://www.naij-usa.org/images/uploads/publications/AILA\\_Resolution\\_Passed\\_2.3\\_2018\\_.pdf](https://www.naij-usa.org/images/uploads/publications/AILA_Resolution_Passed_2.3_2018_.pdf).

33 <https://www.fedbar.org/wp-content/uploads/2019/10/19070802-pdf-1.pdf>.

34 <https://www.aila.org/advo-media/aila-correspondence/2020/advocates-call-on-congress-establish-independent>

35 Available at: <https://www.nawj.org/blog/newsroom/counterbalance-archive/nawj-counterbalance-spring-2020-volume-19-issue-1>, pages 5&6.

36 <https://immigrationcourtside.com/wp-content/uploads/2020/03/AFJ-Letter-to-Chair-Lofgren-and-Ranking-Member-Buck-3.30.20.pdf>.

37 <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/independence-of-us-immigration-courts>.



expressions of support which I have failed to include.

## Public & Political Support

Endorsements have been growing in the public sector as well.

- In August 2020, the Democratic Party adopted a platform plank stating: “Democrats believe immigration judges should be able to operate free of inappropriate political influence, and will support steps to make immigration courts more independent.”<sup>38</sup>
- The Biden-Sanders Unity Task Force, which met during the 2020 Presidential campaign, embellished the above plank with the recommendation of: “consideration of Article I designation” with a goal to “making immigration courts more independent, and free from influence and interference...”<sup>39</sup>
- Of huge importance, Rep. Zoe Lofgren, Chair of the House Judiciary Subcommittee on Immigration and Citizenship [House Immigration Subcommittee], has expressed her support. She was quoted in the San Francisco Chronicle during October 2020 as stating: “[T]he immigration court system should be an independent body, separate from DOJ and free from the political whims of the Executive branch.”<sup>40</sup>

*“The immigration court system should be an independent body, separate from DOJ and free from the political whims of the Executive branch.”*

- Given the Immigration Subcommittee has

the power to initiate legislation to make it happen, and Rep. Lofgren’s position as Chair of the Subcommittee, her support is especially important. The Subcommittee staff has reportedly prepared a draft bill to create an Immigration Court which is pending internal processing to ready it for introduction.

There is clearly some support in the Senate as well.

- In the prior Congress, (the 116th), as mentioned above, hearings were held by the Senate Judiciary Subcommittee on Border Security and Immigration, on April 18, 2018, on the topic of “Strengthening and Reforming America’s Immigration Court System.” Thereafter, on March 19, 2019, Sen. Hirono introduced S. 663<sup>41</sup> on behalf of herself and 7 other Senators. The bill was drafted to codify Immigration Judges’ decisional independence “that is free from political pressure or influence,” to provide that completion goals may not be used to evaluate performance, and to prohibit disciplinary action “for any good faith legal decisions.” It set a deadline for promulgation of contempt regulations, which had been authorized by prior legislation, but never promulgated. While S. 663 did not provide for a court independent of the Justice Department, and was not enacted into law, it demonstrates concern in the Senate for obstacles faced by Immigration Judges in according due process.
- Seven Senators wrote Attorney General Garland on March 23, 2021 asking him to address needs of the Immigration Court system within the Justice Department to ensure fair proceedings by making structural changes “in preparation for an eventual shift to an Article I court system

to ensure judicial independence and protection from political interference.”<sup>42</sup> (highlighting supplied) The highlighted quote is a clear signal of support by the Senators signing the letter for adoption of an Article I court.

The forceful endorsement of an Article I Immigration Court in the Sunday New York Times,<sup>43</sup> May 9, 2021, is particularly powerful given the paper’s prestige and the huge circulation of its Sunday edition nationwide. Such an endorsement could well galvanize more support.

## Conclusion

In conclusion, history of the efforts to establish an independent Article 1 U.S. Immigration Court is not at an end. It is ongoing. While the reasons for supporting the effort remain basically unchanged --assurance of impartial adjudication by the Immigration Court free of political interference -- the seriousness of the need to insulate the Immigration Court from “political whims of the Executive,” to quote Rep. Lofgren, is recognized by an increasing number of stakeholders. To quote her again more precisely:

“[T]he immigration court system should be an independent body, separate from DOJ and free from the political whims of the Executive branch.”<sup>44</sup>

While legislative prospects cannot be predicted, there is reason to hope, given the ever building support, that Rep. Lofgren’s work to make it happen will reach fruition, and that the idea of an Article I Immigration Court can become a reality, so that the long recognized structural flaw in the Immigration Court system can at long last be remedied.

38 <https://democrats.org/where-we-stand/party-platform/creating-a-21st-century-immigration-system/>

Approved by the Democratic National Convention on August 18, 2020. A pdf document can be downloaded from the DNC Website at: <https://www.demconvention.com/wp-content/uploads/2020/08/2020-07-31-Democratic-Party-Platform-For-Distribution.pdf> The above quote is located on p. 64 of the pdf version.

39 BIDEN-SANDERS UNITY TASK FORCE RECOMMENDATIONS, p. 104. <https://joebiden.com/wp-content/uploads/2020/08/UNITY-TASK-FORCE-RECOMMENDATIONS.pdf>.

40 <https://www.sfchronicle.com/politics/article/Justice-Department-cancels-diversity-training-15635203.php> published October 9, 2020.

41 <https://www.congress.gov/bills/116/congress/116th-congress/senate-bill/663/text>, S. 663, 116th Cong. (2019) – Immigration Court Improvement Act of 2019.

43 <https://www.gillibrand.senate.gov/imo/media/doc/Let.ImmigrationCourtReform.AGGarland.3.23.21.pdf> (highlighting supplied)

44 <https://www.sfchronicle.com/politics/article/Justice-Department-cancels-diversity-training-15635203.php> published October 9, 2020.

# Gender Issues in the Ranks

## Does the Military Really Want



*The number of women working in many civilian fields has grown significantly, but only slightly in the military. Why?*



**By Justice Eileen C. Moore**  
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*Justice Eileen Moore served as a combat nurse in Vietnam in the Army Nurse Corps. She was awarded the Vietnam Service Medal, the National Defense Service Medal and the Cross of Gallantry with Palm. She is a member of the American Bar Association's Standing Committee on Armed Forces Law, is an advisor to the California Lawyers Association's Military and Veterans Committee and the Orange County Veterans & Military Committee. She is the author of two award-winning books, *Race Results* and *Gender Results*.*

From the Revolutionary War to present day conflicts, women have proudly served in the military. During World War I, about 35,000 women officially served as nurses and support staff. During World War II, 140,000 women served in the U.S. Army and the Women's Army Corps, performing critical jobs such as military intelligence, cryptography and parachute rigging. Over 1,000 women flew aircraft for the Women Airforce Service Pilots.

In 1948, President Harry Truman signed the Women's Armed Services Integration Act into law. That was the first time women were recognized as full members of the armed services. During the Vietnam War, 7,000 American military women served in Southeast Asia. The Pentagon's Combat Exclusion Policy for women was lifted in 2013, and qualified women were authorized for full combat positions in 2016.

Despite the fact that women can now serve in all jobs in the military, the number of women volunteering to serve is only marginally increasing. Meanwhile in the civilian world, the number of women has been rising in many fields, and their economic clout is dramatically increasing. Women are starting and running new businesses at a rapid rate. In politics, women are being elected all over the country. About a third of the lawyers and doctors are women. While the number of female engineers is not that high, younger women are entering the field at a dramatic pace. More and more, women are the breadwinners of the family and 40% of households are



now headed by women.

This article will explore some of the reasons why the numbers of women are growing in many areas of the civilian world, but only slightly increasing in the military. Recent reports of federal agencies draw much needed attention to the problems of gender bias and

their career in the military, as some viewed pregnancy detrimental to mission readiness. A male officer remarked, “I guess it can be perceived by the unit, not necessarily rightfully or wrongfully, that the female has chosen to be pregnant instead of working.” A male enlisted man said that pregnant service members “are viewed as dead weight.” An enlisted woman reported that “women have been shunned after getting pregnant.”

Another enlisted woman described how she was hesitant to tell people she was pregnant because her unit would be disappointed in her. A woman officer said a toxic environment is created when a pregnant woman cannot share the load.

DACOWITS also found that some military guidelines for physical fitness are based on outdated science. For example, height, weight and body fat standards are inappropriate for women. It points out that improper or ill-fitting equipment and clothing, such as combat boots, body armor and sports bras, contribute to the high rate of injuries among active duty women.

An article titled “The DoD’s Body Composition Standards Are Harming Female Service Members” is listed on DACOWITS’ website. The article looks at the two parts of the Department of Defense’s body composition standard. The first part is the weight for height calculation, developed nearly 200 years ago by a Belgian astronomer using a non-diverse Belgian sample. It is called the Body Mass Index and often mislabels people with muscular builds and those of non-Caucasian ethnicities as obese. The second part of the body composition standard is the estimation of body fat percentage, calculated by measuring men around their abdomen and neck. But women are measured around their buttocks, the place where many women hold the largest deposit of fat. One female Marine, who twice competed on American Ninja Warrior, was measured above allowable body fat despite being 30 lbs. below the maximum allowable DoD weight.

As a consequence of having to meet standards that were never meant for women, service

women are doing irreversible damage to their bodies to try to meet those standards. Twice a year, each has to weigh in, and military eating disorders are six to 10 times the civilian equivalent, approaching up to 97.5% as they approach the weigh-in.

High numbers of injuries are another problem military women face. Because of estrogen, women have fewer muscles and less lean body mass and greater ligament laxity than men, meaning less power and performance. The dissimilarities in the male and female pelvic structure predispose women to a higher risk of pelvic stress fractures, femoral fractures, anterior cruciate ligament, ACL, tears and other injuries. The diagnosis of pelvic stress fracture has been made in one in 367 female recruits, compared to one in 40,000 male recruits, a condition that requires a long length of rehabilitation and often has complications. Back injuries are also more common in military women, even when given a lighter load.

Since 1978, DACOWITS has recommended that DoD procure gender specific clothing, equipment and gear, including running shoes designed for the shape of women’s feet, shock absorption capabilities in combat boots to reduce stress fractures, sports bras to prevent independent breast movement and reduce breast pain, clothing and body armor specifically made for women’s bodies, and back packs customized for a woman’s body. But the DoD has not fully implemented these recommendations.

The Defense Health Board, or DHB, is a federal advisory committee to the secretary of defense that provides independent advice and recommendations to maximize the safety, health and quality of life for DoD beneficiaries. In November 2020, it reported to the DoD on health care for active duty women.

In its recent report, DHB reported that gender-related sexual trauma continues to increase. The report notes that hypermasculinity and militarism fosters a climate that supports military sexual violence. It states that culturally supported gendered roles and military structure contribute to the staggering number

# Women in its Ranks?

sexual assaults in the military, and may provide some reasons that not many women are entering or staying in the military.

## ★ DACOWITS ★

Shortly after Congress enacted the Women’s Armed Services Integration Act in 1948, a federal advisory committee was formed to monitor and provide advice relating to service women. The Defense Advisory Committee on Women in the Services, or DACOWITS, was established in 1951. The committee is composed of 20 prominent civilians appointed by the secretary of defense. It usually meets four times a year. Its mandate is to provide the secretary of defense with independent advice and recommendations on matters and policies relating to the recruitment of service women in the Armed Forces of the United States.

The DACOWITS group interviews service women, questions military leaders and visits military bases to study how the military structure promotes, retains and treats women. Its last annual report was in 2020.

That latest DACOWITS report states that women are discouraged from joining the military because of concerns about sexual assaults. Participants in nearly all the focus groups reported that gender bias exists in the military. They said that gender bias was more evident in occupational specialties that were recently open to women.

An appendix to the most recent report states that pregnant servicewomen were stigmatized and that pregnancy had a negative effect on the unit. Women believed that pregnancy harmed

of sexual assaults committed by higher-ranked military personnel. The DHB report recommends that allegations of sexual assaults should be reported and investigated promptly including medical forensic examinations. The report states there should be timely adjudications and delivery of judgment, and that, whenever possible, commanders should reinforce a culture of zero-tolerance.

Making matters worse for women, DHB says they have limited access to urologic/gynecologic care or for medical and mental health care after sexual assaults. The report says there are limitations in the skillsets of personnel to react to assaults.

The DHB report analyzed pregnancy discrimination in all the branches of service, and that the branches do not uniformly apply or execute policies to support breastfeeding. The report states that some military leaders perceive allocated break times for pumping breast milk as a way for active duty women to avoid work, and that women feel resentment when they have to do that during working hours.

DHB says that gynecology related conditions such as urinary tract infections are more common in severe climate and environment, but that women have limited access to services for self-care of treatable and preventable urogenital conditions that hinder their capabilities. It recommends that the DoD allow and enable women to perform self-care by supplying testing kits and hygiene devices. Regarding physical fitness, the DHB report stresses that urgent action is needed to minimize the undesirable gender-associated best practices for fitness, safety and performance. The report notes the musculoskeletal injury risk to women is increased by a number of factors. One is that both basic training and ongoing fitness-for-duty evaluations have a one-size-fits-all approach that does not recognize that women are more susceptible to overuse and lower limb injuries, noting that women attempt to meet gender-neutral health fitness standards without access to gender-customized equipment.



The United States Government Accountability Office, or GAO, is an independent nonpartisan agency that works for Congress. It is often referred to as a congressional watchdog. The GAO reported to Congress in 2020 regarding what is needed for recruitment and retention of active duty female personnel.

GAO told Congress that the DoD experienced slight increases in the overall percentage of female active-duty servicemembers from fiscal year 2004 through 2018, and that females had higher annual attrition rates than corresponding males. Promotions for the female enlisted population were lower than those for males, but promotions for women officers were higher than their counterparts. The report strongly criticizes the DoD for its lack of guidance, plans and goals to retain women in their ranks, and told Congress that women officers often do not want to report they were sexually assaulted. Instead of reporting, they separate from the service. GAO also reported to Congress that pregnancy is one of the primary reasons women leave the military.

## ★ CONCLUSION ★

Perhaps the problems stem from a disconnect between the policymakers and the frontline personnel charged with applying those policies, because when one views the websites of the DoD and the military branches, it certainly appears that women are desired in the military. The Army's Sexual Harassment Assault Response Prevention program, SHARP, specifically lists increased training about these issues as one of its goals. The Army has also increased the diversity of body armor to accommodate women's bodies, such as the Female Urinary Diversion Device, FUDD. Notwithstanding innovative policies, service women are experiencing bias and sexual assaults.

An Aug. 3, 2020, Air Force Times article stated that promising female aviators feel they have to stay silent and endure sexual harassment to avoid derailing their careers. In one class, the women were told by the flight

commander there are two types of women who fly in Combat Air Forces: first, there are the "bros," who have "tough skin" and simply shrug off offensive comments, and second there are those women who are "easily offended." The commander told them it is the "bros" who are likely to be chosen for leadership positions.

According to a Jan. 11, 2021, article in Military.com, the Marine Corps has been training women to be drill instructors. But it hasn't been able to take that crucial step of assigning women to traditional training battalions. When one female noncommissioned officer asked for such an assignment, she was told, "We need to find the best man for the job." That leaves these trained women facing resentment because they don't have to do the work for which they are receiving special assignment pay.

As reported by the New York Times Magazine, an Air Force technician was the only woman on a team, but the announcement for a major movement was made only in the male barracks, and she was nearly left behind. A Navy woman was assigned to a ship, but was told they didn't have anywhere for her to sleep. A woman Marine said, "Being a woman in the military is basically signing a sexual assault/harassment contract."

Despite the military's stated policies, it is still not equipped to have women in all of its ranks. It could very well be that so long as young women are not required to register for the draft the way young men are, there will never be gender equality within the military. The National Coalition for Men has been unsuccessfully litigating in federal courts for years, claiming that male-only selective service registration is unconstitutional. Last August, the 5th U.S. Circuit Court of Appeals issued *National Coalition for Men v. Selective Service System*, 969 F.3d 546 (2020). That court said it was bound by stare decisis, citing the U.S. Supreme Court's holding in *Rostker v. Goldberg*, 453 U.S. 57 (1981), and ordered the action dismissed. In *Rostker*, after registration for the draft was reinstated in 1975 and Congress exempted women, the high court



held that Congress had acted within its constitutional authority to raise and regulate armies and navies.

The website for the Selective Service Commission says that “if given the mission and modest additional resources, it is capable of registering and drafting women with its existing infrastructure.” And the March 2020 report of the Commission on Military,

National and Public Service recommends that

Congress eliminate the male-only registration requirement and expand it to all individuals of applicable age.

Former members of Congress Duncan Hunter and Ryan Zinke, who vehemently disagreed with the military’s decision to open combat positions to women, reduced the issue of women serving in the military to a joke, according to a 2020 law review article. It says that in 2016 the two proposed legislation that would require women to register for selective

service “as a dare,” and then voted against their own proposed statute. 89 UMKCLR 217 The military provides valuable job training, and often acts as a steppingstone to respected civilian career opportunities. Bias against and safety for women who seek to serve their country is a serious issue that deserves thoughtful consideration. It is no joke.

*Reprinted with permission from the Daily Journal March 9, 2021*



## GLOBAL JUDICIAL LEADERSHIP

### NAWJ and IFPSD Day at the UN

**O**n June 4, the National Association of Women Judges (NAWJ) virtually hosted its fourth annual Day at the United Nations with the International Federation for Peace and Sustainable Development (IFPSD). The program was co-hosted by Col. Linda Mumane, Hon. Lisa Walsh, and Sally Kader. This year’s program focused on women in the Middle East and Africa, as well as on the global impact of COVID-19 on women. The event began with a welcome session that included prominent diplomats and dignitaries, followed by moderated discussions about witness protection in Rwanda and the issues of inheritance and statelessness of women. The program wrapped up with NAWJ’s popular “Tea and Ethics” seminar, a joint effort of NAWJ and the U.S. State Department Bureau of International Narcotics and Law Enforcement Affairs (INL). Following the Tea and Ethics, IFPSD offered an optional virtual tour of the United Nations, led by a docent. Col. Linda Mumane announced the beginning of this year’s Day at the United Nations to the fiftydomestic and international judges, diplomats, and governmental dignitaries gathered eagerly in the virtual waiting wings. Offering thanks to NAWJ, IFPSD, and INL, Col. Mumane passed the podium to Hon. Lisa Walsh, who set the tone for the day’s discussion by screen-sharing a video created by IFPSD founder Salwa Kader. The video opened with the



phrase “you can take nothing with you, it’s about what you can do to help each other now.” This phrase was especially poignant when taken in conjunction with the event’s focus on the disparate and discriminatory effects that COVID-19 responses have had on women internationally. Kader urged viewers to take to heart that we should not be idle or indifferent in the face of hate and discrimination, but rather it is our duty to stand up and change injustices towards women.

The video closed with an emphasis on the work Kader and IFPSD do with children to help dismantle generational hate and prepare for an inclusive future.

Following Mrs. Kader’s video, Hon. Walsh introduced the next honored speaker, Hon. Judge Vagn Pruesse Joensen. Hon. Joensen, a judge of the International Residual Mechanisms Criminal Tribunals, provided a

detailed discussion of the effect of gender on access to humanitarian and civil rights. He highlighted the interesting discrepancies in gender equality, specifically in Tanzania, where women are gaining more political power, but are still subject to discriminatory practices in the home. Hon. Joensen pointed to the fact that when a Tanzanian woman gets married, she must move to her husband’s home and forfeit her rights to familial inheritance. However, these practices are being challenged by Tanzania’s first female President, Samia Suluhu Hassan. Since she stepped into the role three months ago, Pres. Hassan has generated a comprehensive plan to amend her government’s policies; one of her first acts was to expand the country’s high court and selecting new judges specifically with gender equality in mind. In closing, Hon. Joensen noted that this push for women’s rights almost

*exclusively originates from female politicians, which has the effect of classifying the movement as a “woman’s issue,” not a societal issue.*

*Next, Hon. Walsh introduced Mr. Kaha Imnadze, H.E. Ambassador Extraordinary of Georgia and Permanent Representative of Georgia to the United Nations. He began his remarks by noting that the crisis created by COVID-19 has made the deficiencies in gender equality across the world more apparent. He remarked that in times of crisis, the most vulnerable, namely women and children, suffer the greatest. Mr. Imnadze emphasized that empowering women is essential for the wellbeing of society as a whole, during and after the COVID-19 crisis. He spoke to efforts towards gender equality being made on the state and local levels in Georgia, where politicians and citizens have collaborated to create mechanisms specifically geared towards addressing gender inequality. Georgia has recently created two key commissions aimed at empowering women: the Interagency Commission for Domestic Violence and the Commission for Gender Equality. He noted that while Georgia did not experience a spike in domestic violence during COVID-19 lockdowns, that is the exception not the rule. To better address domestic violence, Georgia instituted a 24/7 hotline and mobile app that provides users with legal and psychiatric help or immediately connects them with police if they are in a threatening situation. Mr. Imnadze noted that he believes that the key to achieving gender equality is to ensure that women are economically empowered and that countries should support women with monetary incentives for women-owned businesses.*

*Mr. Sidi Mohamed Laghdaf, H.E. Ambassador and Permanent Representative of Mauritania to the United Nations, closed the welcome session with a few brief remarks. He stated that it should be national policy, for every country, to empower women in leadership, politics, the military, business, and the judiciary. He made the simple and impactful statement that “women cannot be bypassed in life. Not at home and not in the state.” Mr. Laghdaf expressed hope for gender equality in Mauritania, as the new president has promised that he will clean up corruption in the government and seek a more egalitarian policy base.*

*Next, the first session of the program began with Col. Mumane introducing Rachel Irura, Head of the Witness Support and Protection Section for the United Nations International Residual Mechanism for Criminal Tribunals in Kigali, Rwanda. Ms. Irura began with a*

*discussion of the impact COVID-19 had on the women of Kigali. The crisis brought the highest rate of teen pregnancies to date in Rwanda, worrisome not only for the social and economic impact on these girls, but also because the nation’s age of consent is twenty-one. She also spoke to the disastrous effect that distance learning had on young girls, as many were forced to drop out of school to work or provide health care for sick family members. Additionally, as in most parts of the world, domestic violence rates in Rwanda increased sharply as people were confined to their homes with their abusers during lockdowns. To close the session, Ms. Irura left the attendees with a reminder: the most important thing we can do for each other during COVID-19 is to have empathy for each and every person in our community, especially as we all struggle through the psychological effects of the crisis.*

*For session two, Mrs. Kader moderated a discussion on the issues of inheritance and statelessness of women with Mrs. Maha Fatha, President of the Committee for Women’s Liberties and Family Preservation in Lebanon, and Mrs. Neziha Laabidi, Peace Ambassador, Social and Public Policy Expert, and former Minister of Women and Family Affairs for Tunisia. Mrs. Fatha began with a discussion of the right of women to pass their nationality to their children in the Middle East/North Africa (MENA) region. Her work has identified twenty-two countries in the MENA region that do not allow for mothers to pass their nationality on to their children, instead tying the child’s nationality solely to the father’s. In Lebanon, the state only gives nationality to children born to Lebanese fathers and orphans of unknown parental origin. This policy directly discriminates against Lebanese women who are married to foreigners by denying their children the right of Lebanese citizenship.*

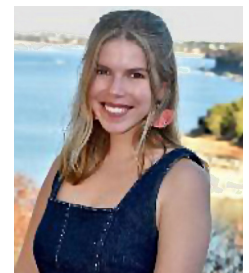
*Mrs. Neziha Laabidi continued the discussion on women in leadership, focusing on the ongoing battle for female representation across professions in Tunisia. During her time as the Minister of Women and Family Affairs, she worked to pass a law that protects women against all forms of violence, with an emphasis on addressing sexual assault. The law raised the age of consent from 13 to 16, criminalized sexual harassment, and established a 24/7 call line for legal and emotional support for survivors of gender violence. Tunisia has a history of supporting women’s rights, having granted women the right to vote and the right to seek office during the nation’s first year of independence from French colonialist rule under President Habib Bourguiba. Mrs. Laabidi encouraged attendees to*

*educate themselves on the hidden issues of gender inequality, such as inheritance, and advocate for women globally.*

*The NAWJ Day at the United Nations closed with the ever popular Tea and Ethics session, which took place in virtual breakout rooms. Tobin Bradely, the Deputy Assistant Secretary of the Bureau of International Narcotics and Law Enforcement Affairs (INL) prefaced the discussions by reviewing INL’s efforts to advance women’s rights domestically and internationally. He poignantly stated that “no democracy can thrive if it leaves half of its population behind,” emphasizing that advancing women’s rights is non-negotiable in justice reform.*

*As the breakout room discussions commenced, international and domestic judges were able to freely discuss issues stemming from COVID-19 and gender inequality that they have encountered in the judiciary. Many groups agreed that the ability to conduct court proceedings virtually should remain in the toolbelt of the judiciary, as it eases the burden of appearing on people with disabilities and solves many jurisdictional issues regarding location. However, one group noted that delays and adjournments caused by moving to a virtual format has increased ethics issues by lowering access to courts, begging the question “is slow justice better than no justice?”*

*The breakout groups returned to the main Zoom room together after an hour of discussion. With newfound international camaraderie and an increased understanding of how COVID-19 has impacted judiciaries across the world, the judges and hosts expressed gratitude for the opportunities for communication provided by the Day at the United Nations. At the conclusion of the event, attendees signed off, with some participating in an optional virtual tour of the United Nations.*



**By McLean Ewbank**

*McLean is pursuing a J.D. at the University of Colorado, with a focus on International Law.*

# Advancing Racial Equity

## Through the UN Sustainable Development Goals



The urgency for racial equity is a clarion call for the legal profession. As legal practitioners consider how best to support this global movement, the FBA Diversity and Inclusion (D & I) Committee collaborated with the UN Global Compact to develop a comprehensive Certified Program for law students studying throughout the U.S. to promote understanding and action in addressing systemic racism. The program contextualized these efforts within the UN Sustainable Development Goals ('SDGs') framework.

Offered free of charge over a period of three sessions, the program exemplified diversity in terms of race, age, gender, nationality, background, and focus areas. Co-badged along with the and the UN Global Compact Network UK, it highlighted practical avenues for lawyers to advance the cause of racial equity, either in public-sector work within government or non-governmental civil society organizations or in corporate work, either through a law firm or general counsel's office. The program looked abroad, as well, to recent and pending human rights legislation as a means to inform and amplify the racial equity movement.



**By Christina Bartholomew**

*Christina Bartholomew is a London-based American attorney, university educator, and founder of Stories Evolved ([www.stories-evolved.com](http://www.stories-evolved.com)), a sustainability training and education consultancy.*

Adopted in 2015 by every nation on the planet, the SDGs enshrine the enforcement of human

rights and the promotion of equality and rule of law, articulating an ambitious fifteen-year achievement timeframe. While it is national governments that have committed to these objectives, private sector action is also envisioned. Drawing from this universally accepted agenda offers a comprehensive and quantifiable framework for tackling the issues that continue to disproportionately impact minority and impoverished communities throughout the world. For lawyers to advance the cause of racial equity, they need to understand how these objectives and their underpinning principles can guide progress for governments, businesses, finance and civil society.

### Public Sector and Civil Society

The first session held on October 9, 2020 showcased careers in civil justice. Hon. Nannette Jolivet Brown, Chief Judge, U.S. District Court for the Eastern District of Louisiana moderated the event entitled *How Lawyers Can Contribute to Civil Justice*, and opened the program explaining that lawyers must seek an end to unjust practices and policies contributing to the systemic problems "embedded in the fabric of our nation." A recent report compiled by the American Bar Association shows that minorities are badly underrepresented in the legal profession. Therefore, Judge Brown encouraged every member of the bench and bar to address this inequity, noting that it is an attorney's obligation "to help our democracy evolve and improve so that we all live and thrive in the America our forefathers dreamed of and for which they planned."



At the October 9th program, panelists with distinguished legal careers in the Federal Courts, in the U.S. Department of Justice, in State Governments, and in NGOs discussed a range of opportunities for lawyers to influence policy and the justice system and to initiate impact litigation challenging laws or policies that unfairly target minorities. They also offered useful advice for law students interested in pursuing a public-sector career.

Panelist Natasha Lycia Ora Bannan, Senior Counsel at LatinoJustice PRLDEF, emphasized how important it is for law students to develop the skills necessary to “embody the change you want to see,” and suggested students avail themselves of “Know Your Rights” or “Movement Law Lab” training. Clinics and internship placements can also help students “show up to this historical moment.” These work experiences offer opportunities to understand the law that is relevant to equity issues. Participation in student chapters of the National Lawyers Guild which works on issues such as the school-to-prison pipeline, or training to serve as a legal observer to ensure the right to peaceful protest, represents additional paths towards developing meaningful experience, according to Bannan.

Nevertheless, Bannan acknowledged the contradictions of marginalized communities needing to seek justice through a legal system that has been historically hostile to them. She urged the legal community to engage in deep thinking about how to evolve the system to address this tension.

Panelist Professor Lawrence Baca emphasised the importance of representation. Drawing from his rich but often troubled experience as the first Native American lawyer hired into the U.S. Department of Justice’s Civil Rights Division, he described the solitude he sometimes felt as the only minority present in the courtrooms in which he practiced. Being a ‘first’ or ‘only’ brings outside pressure to those breaking barriers, Professor Baca explained, and suggested that lawyers who find themselves in this role should focus on recruiting minority attorneys and inspiring them with examples of progress. In-person

school recruitment, including attendance at various Law School Association meetings, offers the best chance of drawing applicants, in Baca’s experience. Also crucial is supporting fellow minority attorneys in their pursuit of leadership roles within the profession. Professor Baca’s activities with fellow bar members, and certainty that his work could improve lives, helped make him resilient to the challenges of racial bias and discrimination he encountered during his career.

Pro bono support is another crucial avenue for correcting racial inequity. Panelist Kristen Clarke, President of the National Lawyers’ Committee for Civil Rights Under Law, explained that her organization draws on the private bar to pursue litigation supporting a fairer justice system, enhanced voting rights, fair access to housing, equal education opportunities, and the protection of peaceful protest. Founded in 1963 at the height of the protest movement that led to the Civil Rights Act, the Lawyer’s Committee is facing a similar moment in our fight against racial injustice. Clarke pointed to the Covid-19 pandemic as an amplifying factor that heightens the need to address the digital divide in education, voter registration challenges, unemployment and homelessness among minority populations, prison overcrowding, and reduced access to criminal counsel as but a few of the issues the Lawyer’s Committee is working to address through its vast network of over 200 attorneys providing pro bono legal assistance.

Panelist Karl Racine, Attorney General of the District of Columbia, cited a foundationally biased and discriminatory justice system as the cause for the disproportionate arrest, prosecution and punishment of minorities. Bannan echoed this view, explaining that the law wasn’t designed by or for minorities and urged a thorough examination of the legal system’s complicity in perpetuating racial injustice. Indeed, these communities have often been on the other side of the law which provides, she believes, important context for the social justice movement now. Attorney General Racine added that this systemic inequity also underpins longstanding educational

and economic discrimination. But the role of Attorney General is pivotal and can drive reform through, for example, its handling of police-brutality prosecutions. In Racine’s office, he has focused particular attention on transforming the juvenile justice system from one that is punitive to one that is rehabilitative and reactive to the underlying needs of young people through services that are trauma-informed. As the recently elected president of the National Association of Attorneys General, he aims to combat hate in all its forms, tackling its causes through education programs and persuading member-Attorneys General to pledge that hate has no home in their jurisdictions.

## Opportunities for Private Sector Impact

Lawyers who choose to practice in the corporate or law firm setting can also contribute to this cause through their role as trusted advisors to corporate America. Indeed the business and service sector represents nearly 90% of global GDP, and 74% of worldwide employment, and their resources offer leverage for driving progress. Moreover, corporations are increasingly focused on engaging on these issues, and the program’s October 23rd second session, *How Fiduciary Duty Can be a Force For Change - The Role of the Lawyer in Advancing the SDGs*, explored corporate efforts around racial equity and human rights and how law firms and corporate general counsel divisions can contribute to this effort.

Moderator Adam Roy Gordon, Engagement Director for the United Nations Global Compact’s Network USA, explained that his organization offers support to attorneys adapting to the changing context of business. Indeed, macro-pressures such as international human rights legislation, increased transparency and disclosure requirements, activist litigation and consumer demand are transforming business strategy, as are the desires of job recruits who seek a shared-value approach to their professional lives whether they use this terminology or not.



Understanding this, corporations are considering these issues not just through a separate corporate responsibility function, but by incorporating human rights practices into their core strategies. Panelist Tim Wilkins, Global Partner for Client Sustainability and a Corporate and M&A partner at Freshfields Bruckhaus Deringer, said that nowhere was this more evident than in the corporate statements responding to the deaths of George Floyd and Brianna Taylor. Wilkins identified the social bonds undertaken by Alphabet and Coca Cola that were inspired by these protests, and explained that these corporations will use this financing to increase their investment in and *skilling-up* of black-owned businesses and suppliers. This interest in supplier diversity embodies a shift in corporate purpose from the Milton Friedman doctrine of the 1970s that 'the social responsibility of business is to increase profits' to, as Wilkins explained, a multi-stakeholder approach which appreciates the interests not just of shareholders, but of suppliers, employees, consumers and the communities in which an enterprise operates.

General Counsel divisions must also advise their companies about the potential reputational, financial and operational risks associated with negative human rights impacts. As program panelist Jaren Dunning explained, his role as Senior Counsel for PepsiCo requires him to not "just say yes or no, but should we?, and how should we?" For PepsiCo, that means going beyond legal compliance to evaluating whether an action or decision meets the spirit of the business's core objectives. Consequently, his fiduciary duty to PepsiCo obligates him to evaluate, manage and mitigate PepsiCo's human rights risks.

To do this, advisors often look to both the SDGs and its complementary framework the UN's Guiding Principles on Business and Human Rights ('Guiding Principles'). The Guiding Principles, endorsed by unanimous vote of the Human Rights Council in 2011, identify the role of the private sector in understanding, preventing and mitigating its human rights impacts. As panelist Ariel Meyerstein of Citi explained, these principles draw on the legal obligation of due diligence. In his role as Senior

Vice President, Corporate Sustainability, Meyerstein asks business clients probing questions about their human rights records and commitments.

Meyerstein explained that he uses the Guiding Principles as a normative framework for discussions around the corporate duty to protect, respect and remedy human rights, ensuring that the businesses he works with understand that these obligations extend throughout their global supply chain. He also advises clients seeking the social and sustainability bonds that finance specific initiatives, to ensure that the targets associated with this financing are sufficiently ambitious and achievable.

Diversity and inclusion practices sit at the heart of racial equity, and corporations are grappling with their sometimes dismal records. But Wilkins sees business as increasingly reflective about the racial make-up of the voices that contribute to strategic decisions. He believes it's an exciting time, with lawyers able to advance this agenda in ways that would have been "unimaginable even a few years ago."

And corporations are demanding diversity in-kind from the law firms they engage. Some even cut fees when firms fail to provide a sufficiently diverse team. Wilkins explained that the voices of counsel must connect to the core business strategy of its clientele, and a diverse legal team is an important way to achieve this.

Wilkins further explained that the use of diversity targets and disclosures must extend beyond new hires to retention and promotion. Measurement and disclosure exposes areas of inequity and offer powerful tools for lasting change. Wilkins sees annual reviews as a time to hold managing attorneys accountable for their diversity and inclusion efforts both within the firm and externally. Solutions that transfer wealth and influence from people in senior positions to those who have struggled to access these, offer the best hope, he says. Meyerstein supports this view noting that radical transparency around racial pay gaps,

such as those undertaken by Citi, help drive efforts to improve representation.

Nevertheless, according to Dunning, sustainable corporations need to be thoughtful about how to build on their existing efforts. At PepsiCo, the Summer, 2020 protests prompted self-reflection about its hiring and training practices as well as their broader equity goals including gender parity since inequities can "sometimes compound themselves." Externally, Dunning said, they considered whether they were "sufficiently engaging their minority-owned suppliers and nurturing that component of their value chain." Finally, the company evaluated its advocacy role to see if there were ways they could engage in the political process. As a widely-known brand, he sees PepsiCo as having an opportunity to show consumers the future "we want to fight for."

Dunning believes every lawyer can make a positive impact no matter what their role, but should be guided by their own personal interests. He recommends asking, 'What questions do I want to answer?' as a guide for involvement. Gordon echoed this view. "There's room for this type of sustainability discussion no matter where you are in the marketplace." But it's the younger, newer voices that, from Wilkins view, are most critical in how we rethink equity issues. Wilkins sees the remote work necessitated by the pandemic as an opportunity to advance equity discourse. Because video-conferencing permits "everyone on a call to have an equal footprint", new ideas and voices are being listened to in ways they weren't before. He believes, and Gordon concurs, this creates an opportunity for young lawyers in particular to move the organisation towards discussions they care about.

## An International View on Human Rights

International human rights efforts are increasingly guided by the SDG Agenda which November 13th session moderator and Executive Director, United Nations Global Compact's Network UK Steve Kenzie explained, has achieved extraordinary global consensus. Kenzie noted that the SDGs reflect a "leave no

one behind” ethos, which is why, according to panelist Julie Kofoed, Head of Human Rights at the United Nations Global Compact (‘UNGC’), 92% of the goals -- even its environmental targets -- are grounded in human rights concerns.

In Kofoed’s work with the world’s largest corporate sustainability initiative, she urges members to prioritize remedying their most severe human rights impacts first. Nevertheless, she expressed concern about the gap between corporate aspiration and action in this area, citing that while 90% of the UNGC’s signatories have human rights policies in place, less than 15% of these businesses are actually doing human rights assessments and taking action on the results. There’s clearly much more work to do. Kofoed encouraged law students to educate themselves on the SDGs, including racial inequities, and to raise awareness within local communities, advocating within law schools for courses and programs on the SDGs and human rights.

But regulation is also a crucial tool for progress, and the program’s final session, *The Legislative Horizon – An International View of Human Rights Protections*, offered students a glimpse into the laws enacted in or percolating through numerous jurisdictions, as well as the approaches and debates guiding these regulations.

Panelist Roger Leese, Partner and co-Head of Clifford Chance’s Global Business and Human Rights Practice, noted the distinction between ‘soft’ and ‘hard’ law. While the SDGs and Guiding Principles are ‘soft’, in the sense that they have no direct binding effect on businesses, they can still serve as the basis for corporate policies or governmental regulations, which is increasingly the case, he noted, citing several legal trends. The first is legislation around corporate transparency and reporting which force businesses to publicize their actions around human rights in the hope that peer and consumer pressure will force corrective action. He identified the UK Modern Slavery Act of 2015, which aims to tackle the 25 million victims of modern slavery worldwide, as an example of this approach. But, Leese

argued, that with little enforcement, compliance has been poor and that the legislation is under review.

According to Leese, frustration with this market-based approach has led to legislation such as France’s Duty of Vigilance Law requiring mandatory corporate due diligence for human rights violations throughout a business’s global supply chains. The European Union is considering adopting similar legislation but with further consideration being given to penalties for noncompliance, such as injunctions or criminal prosecution. Finally, Leese described a treaty approach with civil and criminal penalties for corporate failure to respect human rights. As requirements become more concrete, businesses are increasingly appreciating their need to act, which is a key development from Leese’s perspective. And it’s the attorney’s job to educate her clients by highlighting the risk of inaction. At Clifford Chance, when onboarding new clients where human rights issues are likely to arise, they will obtain the client’s advanced agreement to accept advice for remedying abuses, leveraging resignation should a client fail to comply.

Of course, lawyers must be vigilant not just to corporate-, but governmental-abuse of human rights. Panelist Steven Feldstein, Senior Fellow at the Carnegie Endowment for International Peace in the Democracy, Conflict and Governance Program, described how state use of emergent technologies, such as artificial intelligence and surveillance, can lead to the exploitation and manipulation of citizens. His research shows sharp degradation of protections of individual rights and liberties across all governance systems including liberal democracies, over the course of the past decade, accelerating considerably during the Covid 19 pandemic.

Feldstein cited the need for legislation in this area to balance freedom of expression and disinformation. In the US, Internet platforms are currently immune from liability for the content posted on their platforms. But legislators are rethinking this approach, aware of the proliferation of extreme and hate speech

that can exacerbate racial discrimination and inequity. The assumptions underpinning the ‘marketplace of ideas’ approach to free speech have been turned on their head by social media, according to Feldstein, and can negatively impact the very political process which supports protected speech and human rights. Feldstein also identified the tension between data privacy and surveillance, recognizing that while regulators have a legitimate interest in the need to track and monitor criminal or conspiratorial behavior, they must also ensure individual rights.<sup>1</sup>

Corporations play a role in this debate as well since many technology business models rely on the personal data of their users. Many governments have foisted responsibility for resolving these tensions onto the private sector, said Feldstein. However, some jurisdictions are beginning to grapple with these complex issues. In the area of data exploitation, the European Union has introduced the General Data Protection Regulation. This development shows how, as Feldstein noted, “the sharpened angles of this debate are coming to the fore.” The pandemic, Feldstein observed, is only “putting a finer edge on these debates,” due to valid public health goals being undermined by broad use of citizen data for law enforcement or other governmental objectives. In addition to creating a troubling precedent, he worried that citizens would become inured to data collection which may lead to even further exploitation. He predicted that in the coming years, both governments and businesses will need to rethink the interaction between data privacy and business and governance models using algorithmic exploitation.

Panelist Safaath Ahmed Zahir, Founder of Women & Democracy, noted the need for any new legislation to take an inclusive approach. Her organisation, which is based in the Maldives, provides feedback on bills, policies and initiatives prior to implementation including those regulations that have arisen during the pandemic. While her work is focused on gender equity, Zahir believes “gender and racial inequity are inseparable.” Her organization raises awareness and advocates

for increased female participations in the political systems that create regulation. The downward trend of female involvement in Maldives' Parliament highlights institutional barriers to entry. So Zahir's work empowers women in political, party and parliamentary leadership through public-speaking and campaign-strategy workshops that have reached over 600 women. Her organization also educates about human rights. This approach is also relevant to the racial equity movement. Zahir noted that expectations are higher when those who are marginalized finally do manage to obtain leadership positions, a view echoed by Judge Brown and Professor Baca. Zahir urged students to nevertheless be relentless in removing the institutional barriers of gender, class, ethnicity, race, educational background and faith traditions that impede positive social change.

## Conclusion

Leadership in this moment means rejecting complacency and pursuing bold, ambitious action. As both law firms and their clients face increased legal, financial, employee, customer and societal scrutiny, lawyers must seize this moment to lead. From legislation to litigation, organization to education, activism to influence, and as trusted advisors to the business community, lawyers can effect change. "We must help our clients do the right thing," Leese said. Indeed, Meyerstein believes that lawyers should view themselves as ethical compliance officers. And ethics must have racial equity and human rights at its core. As Zahir noted, 'we know how far we've come, so we can see how much further we have to go.'

*Many thanks to my co-Chair Mimi Tsankov, who participated in her capacity as Board of Directors Liaison to the D & I Committee, our FBA Advisory Board including Wylie Stecklow, Bryan Branon, Brandi Burris, Lanna Allen, Stephanie Moncada Gomez and Helen Padilla, as well all the distinguished moderators and panelists who participated in this ground-breaking program.*

<sup>1</sup> Numerous amendments to Section 230 of the Communications Decency Act have recently been introduced to Congress.

# Moments from the Midyear Meeting

*NAWJ's successful Midyear Meeting provided excellent education sessions and the annual Tea and Ethics session with breakout rooms by topics, both were well attended by participants from twenty countries. We hope to continue the conversations started in the breakout sessions throughout the year.*



**By Natalia Huguaburo**  
Research Intern,  
University of Virginia  
School of Law

## Helping Women Return to the Workplace

*Co-Moderators Judge Maria Salas Mendoza and Nicole Erb, White and Case, LLP*

Nicole Erb shared several articles and studies including: *Mothers Anxious to break out of 'she-cession' and get back to work* (CNN, Business, April 1, 2021), *Pandemic-Struck Law Reviews Face Loss of Women and Diversity* (Law360 Pulse, April 1, 2021), *How Law Firms Are Supporting Women Lawyers in the Pandemic* (National Law Review, March 17, 2021), *Creating a postpandemic recovery for women in the workplace* (McKinsey & Company, March 8, 2021), *Work-Life Imbalance: Pandemic Disruption Places New Stresses on Women Lawyers* (ABA, Perspectives, December 18, 2020).

Nicole opened the discussion by stating what we all know: that the pandemic was a real hit to women in the workplace. Women had to step out altogether or take leave and these choices have continued even as the pandemic has eased. She asked,

"What does 'return to work' mean?" Does this mean back to where we were? How can we ensure access and that 'return to work' provides for equal opportunity and options for women?



Judge Carmen Velasquez, President of the New York State Supreme Court Judges, shared that she was at the center of the pandemic in Jackson Heights, New York. The situation was especially hard hitting on Latinos and women.

After many collaborative efforts at providing basic needs, she formed a non-profit to provide information about ill family members to family, assist in identifying family, providing food (all the while leading, maintaining and enforcing mask-wearing, social distancing and calm among very distraught people) and tending to children. Through this effort she learned and shared that all of our efforts moving forward must be guided by empathy and flexibility.

## New Ways To Address the Old Problem of Sexual Harassment in the Legal Workplace

*Judge Sheva Sims, Elaine Metlin and guest Cory Amron, the President of Women Lawyers on Guard (WLG)*

As background and to lay a foundation, Cory briefly discussed Still Broken, WLG's recent report on sexual harassment in the legal profession, including the judiciary, and WLG's new initiative to address the problem, Conversations with Men. The session was then divided into two primary topics: (1) Has your courthouse done anything new or creative to address the problem of sexual harassment? (2) How can we get more men to become active allies against sexual harassment?

As to the first topic, many courthouses require some training videos but not much more, and more often it is required for employees but not judges. Also, data collection is difficult and the reporting process is confidential so the identities of offenders are not known. Fortunately, there

are greater efforts being made in some districts, including in-person presentations by the Judicial Institute or the AG's office, with deeper discussions on the ethical obligation of judicial officers to address the issue.

Nevertheless, the feeling was that people are still afraid to complain and the disparity of power is nowhere more evident than in a judge's chambers. The overall sense of the group was that much more can be done but that will require senior people to speak up and wield their authority.

With regard to the second topic, the overall sense was that male judges often do not see the issue as a serious problem unless they have personal experience with it, such as harassment of a family member. The participants observed some generational

differences among male colleagues, and the overall sense again was that change will require people in positions of power to speak out and make clear that this is a serious problem. There was general agreement that getting men on board to work on this issue would be extremely helpful.

At the end of the session, Judge Sims briefly addressed the issue of same-sex harassment and harassment by women of men, which is underreported and also very serious.

The topic of sexual harassment in the legal profession, particularly in the judiciary, was clearly of great concern to the participants, who felt that much more can and should be done to address and eradicate it.

## What Can the Courts do to Promote Equity?

*Judge Samantha Jessner and Sarah London, Lief Gabraser Heimann & Bernstein, LLP*

- Play a role in appointing plaintiffs' counsel in complex proceedings, rather than allowing self-ordering.
- Nudging—reminding the white guys to make room at the table (juries are watching)
- When making selections about who can chair a committee/set up a new court—think about how to be more inclusive in any kind of appointment.
- Local rules/standing orders are an opportunity to express your policies that encourage greater participation for women and persons of color.
- Make proactive efforts to recruit women attorneys and persons of color to assist with indigent defense.
- Some courts make efforts to address implicit bias and racism within the judiciary and require certain trainings for attorneys practicing in their bar.
- Outreach to law students to encourage them to handle pro-bono cases to promote equity.
- Require the lawyer who handled the briefs to argue the motion.
- Engage in outreach to LGBTQ communities as harder to track inclusion.

## The New Normal

*Judge Tanya Brinkley and Tom Leighton, Thompson Reuters*

The pandemic affected everyone profoundly but often in different ways.

### Challenges:

- Work/life balance all thrown out of whack
- hard to maintain separation especially in work from home scenarios
- Access to justice concerns as most courts experienced significant backlogs and almost universal inability to hold jury trials
- Complications working with court employees as most were work from home even when judges were in the courthouse
- Judge/clerk (partner/associate) relationship – most judges view it as critical role and a



mentoring opportunity, much harder to do at a distance

- Hiring and new employee development overall much harder
- Complications working with new technology for the first time

#### Current and potential benefits:

- Access to justice – argument can be made that it improved for some people, particularly self-represented litigants

as statistics showed SRLs more likely to make an appearance for video hearing and more likely to have witnesses and present evidence.

- Video conferencing a great improvement over teleconferences
- Proliferation of informative webinars was a very positive development
- The commitment demonstrated by judges and court staff around the country to maintaining access to essential court

services throughout the pandemic – many examples of creative solutions.

- So many benefits from remote access to courts that people feel it's never going back to an in-person only model
- Bonds strengthened by having persevered through a long and difficult situation through teamwork and a communal spirit.

## Racial Inequities as a Judicial Officer

*Professor John A. Powell, Former Chief Justice Cheri Beasley, Justice Tamika Montgomery-Reeves and Justice Helen Whitener*

Professor John A. Powell introduced three accomplished judges who spoke about their experiences as women of color on the bench. Former Chief Justice Cheri Beasley of North Carolina, the first African American woman ever to serve as chief justice of the North Carolina Supreme Court, kicked off the event by expressing the importance of African American voices in the judicial system because “it matters in terms of how people view, trust, and have confidence in the judicial system.” She also remarked, “Our experiences bring so much worthiness to the table.” Justice Tamika Montgomery-Reeves, the first African American to serve as Associate Justice of the Delaware Supreme Court, explained how timing and sponsorship assisted her on her career path. She stated, “I stand on the shoulders of so many people who fought battles I didn’t have to fight, particularly people of color in Delaware. I have had mentors who have taken me under their wing and who made it their mission to watch me succeed. I probably wouldn’t be here without their support.” She further remarked, “Each and every one of us can help open a door and create a path similar to mine.” Justice Helen Whitener, Justice of the Washington Supreme Court, spoke about the importance of creating a pipeline for those after her and the difficulty of marginalization due to intersectional identities in the judicial system.

Professor Powell began the Q&A portion of the event by asking Former Chief Justice Beasley about how she dealt with the racism and sexism in the judicial system. She eloquently explained her two-step approach to combatting these inequities: constructive dialogue and action. She

our discretion to identify unfairness. We need to call it out to ensure fairness in our justice system.” She further urged viewers to make change one step at a time.

When asked how she has dealt with intersectionality in the court, Justice Whitener responded, “I tend to see things through accommodating eyes, because as an intersectional woman, I am so used to being on the outside of the box that I see myself trying to bring people into the box.” She further explained, “We have a lot of power within ourselves, but we also have a power to change the system in which we operate. Speak up when you see unfairness. That’s how change occurs. Be vocal. Be visible. And be vigilant.” When asked how she engages with being “outside the box” as an intersectional woman, Justice Whitener explained, “I have never had someone show me implicit bias. It has always been explicit. We need to be aware how our unconscious bias impacts the people we serve. I am a black woman first and foremost. The only identifiable factors about me are my race and gender because I am navigating in a world that doesn’t recognize my other intersections. I use that to assist people in understanding privilege. We need to concentrate on the impact our actions are having on each other.” She concluded by reminding viewers about the importance of treating others respectfully.



detailed how the North Carolina Supreme Court created a commission on equity and fairness, which focuses on creating solutions to combat disparities in North Carolina courts, and she further urged viewers to “start a conversation and be honest about it.” Justice Montgomery-Reeves expressed the importance of recognizing racial and unconscious biases in the judicial system. She explained, “Each judicial officer has a tremendous amount of power and an obligation to use

## Thriving as a Judge and as a Person During and After the Pandemic

*NAWJ Past President Judge Tamila Ipema, Judge Jeremy Fogel and Dr. Kristen Allott*

NAWJ Past President Judge Tamila Ipema introduced panelists Judge Jeremy Fogel, the founding directing attorney of the Mental Health Advocacy Panel, and Dr. Kristen Allott, an experienced clinician and author of *Feel Your Brain, Not Your Anxiety*. This presentation focused on educating judges about ways to reduce and manage stress, increase energy and mental clarity, and highlight the tools of nutrition and mindfulness. Dr. Allott made clear that not fueling the brain properly can aggravate anxiety and depression, and it may even produce hypoglycemia, – the lowering of the glucose – which causes a decreased attention span and emotional regulation.

Judge Fogel discussed how the pandemic

has affected the work of judicial officers and impacted their health and wellness. He explained how the ADA just released a study that shows judges are particularly susceptible to anxiety and depression. And, unfortunately, judges don't have the sort of support system that one would want to deal with those effects. He further stated, "The pandemic amplified things quite substantially. The thing that it amplified the most was isolation in a profession in which isolation has already been noted as a problem. And, on top of the pandemic, the year included a difficult political environment. Judges were right in the middle of that. So, it's a combination of these things that compounded the isolation." However, on a positive note, Judge Fogel explained that it has become easier for judges

to seek help and take care of themselves more.

Dr. Allott emphasized, in order to combat against lowering glucose levels, the importance of exercise or movement every hour coupled with consumption of protein and carbs every 3 to 4 hours. This, in turn, produces more energy, mood stability, decreased depression and anxiety, better sleep, less fatigue, higher metabolism, and less frequent hunger. Judge Fogel added that coping strategies such as emotion regulation, meditation, self-care, and gratitude also assist in overcoming feelings of isolation, which ultimately assists in productivity and effective decision-making.

## Domestic Violence

Continued from page 12

place a person in reasonable fear of harm to themselves or their immediate family or intimate partner.

In addition, VAWA 2000 created the "U visa" to protect those survivors who assist law enforcement agencies to investigate and prosecute crime, including domestic violence. This relief is available to a foreign national victim who has suffered physical or mental abuse, or another qualifying crime, who has information about the crime and is helpful in the investigation or prosecution of the crime.

### Violence Against Women Reauthorization Act of 2005

In 2005, Congress reauthorized VAWA through the Violence Against Women Reauthorization Act of 2005 (P.L. 109-162, VAWA 2005) and with A Bill to Make Technical Corrections to the Violence Against Women and Department of Justice

Reauthorization Act of 2005 (P.L. 109-271). VAWA 2005 reauthorized, strengthened, and broadened legal tools and grant programs and increased access to services for communities of color, immigrants, and Native Americans. These 2005 improvements added protections for battered and/or trafficked nonimmigrants, enhanced penalties for repeat stalking offenders, and added programs for Native American victims.

### Violence Against Women Reauthorization Act of 2013

The Violence Against Women Reauthorization Act of 2013 (P.L. 113-4, VAWA 2013) reauthorized and updated existing VAWA grant programs and added language to make it the first federal funding statute to explicitly prohibit discrimination on the basis of actual or perceived gender identity or sexual orientation. Prior to these

changes, 45% of LGBTQ IPV survivors seeking assistance from victim service providers were turned away, and 55% of their applications for restraining orders were denied. Likewise, before VAWA 2013, Native American IPV survivors seeking justice against a non-Native American attacker for an incident on tribal land would have found themselves in a jurisdictional wasteland without effective recourse; VAWA 2013 closed that loophole and permits prosecution in tribal courts.

This reauthorization contained a key change to the statutory scheme. VAWA 2013 changed the definition of domestic violence in the law to include "intimate partners" in addition to current and former spouses. Thus, in 1994 VAWA defined "domestic violence" to include:

*felony or misdemeanor crimes of violence committed by a current or former spouse of*

*the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other adult person against a victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction receiving grant monies.*

The 2013 reauthorization expanded the definition to:

*felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.*

Efforts to pass VAWA 2013 met with more significant political opposition than had earlier VAWA reauthorizations.

Fortunately, the National Association of Women Judges joined as a strong voice in support of the law. Opponents attempted to limit VAWA 2013's reach, but ultimately the adopted measures expanded federal protections to persons who identify as gay, lesbian, and transgender, and to Native Americans and immigrants.

VAWA 2013 also added federal criminal sanctions for specific types of IPV. Pursuant to VAWA 2013, assault of a spouse or intimate partner by strangulation or suffocation is now a distinct federal crime. Additionally, the law expanded the definition of cyberstalking to include the use of any electronic communication device or service,

and eliminated the requirement that the method used to stalk the victim involve an "interactive computer service."

## The Success of the Violence Against Women Act

Notwithstanding the recent statistical increases likely due to the pandemic -- VAWA 1994, and its progeny, have been effective in reducing the incidence of IPV. Between 1993 and 2008, the rate of IPV against women declined 53% and against males by 54%. During that same period, IPV-related homicides fell by 26% for women victims, and by 36% for male victims.

Survivor access to assistance has also improved measurably. Between 2015 and 2017, VAWA-funded grantees were able to extend over one million services to about 450,000 individuals, including a total of 1,260,316 nights of temporary shelter for individuals. A study by the University of Kentucky found a 51% increase in reporting of IPV after the pro-arrest policies in VAWA went into effect. LGBTQ IPV survivors can now access services such as shelters, referrals, and counseling that they had been denied before VAWA 2013 was enacted. Non-citizen survivors can now access services without depending on abusive spouses or partners: Petitions for legal status under the VAWA provisions have increased fourfold between 1997 and 2011, from 2,491 to 9,209.

## Violence Against Women Act Reauthorization Efforts Since 2018

Despite strong advocates such as the National Association of Women Judges, VAWA's grant authorizations expired in 2018. Since then, multiple bills have been introduced in Congress to reauthorize VAWA's grant funding, and also to expand or refine its reach. For instance, in April 2019, the House of Representatives passed the "Violence Against Women Reauthorization Act of 2019" (H.R.1585), but the progress of this Act in the Senate stalled, primarily because

of its provisions expanding firearms prohibitions to abusers who are not married to their victims. In November 2019, Senator Dianne Feinstein introduced the "Violence Against Women Reauthorization Act of 2019" in the Senate, but by November 2020, the Senator issued a press release blaming Senate Republicans for stalling the bill.

In March 2021, the U.S. House of Representatives passed the "Violence Against Women Act Reauthorization Act of 2021" (H.R. 1620, VAWA 2021). VAWA 2021 largely supports the programs and services established in earlier versions of VAWA. In addition, VAWA 2021 seeks to expand firearms restrictions. Current federal law prohibits those convicted of domestic violence from purchasing firearms, but this only applies where the perpetrator and victim were married, live together, or have a child together. VAWA 2021 would broaden this prohibition to include situations where the perpetrator and victim are current or former dating partners, and also to prevent convicted of misdemeanor stalking from obtaining firearms. Since domestic violence has been found to be a common cause of homelessness, VAWA 2021 includes provisions to assist victims in federally assisted housing to get relocation vouchers, keep their housing after the abuser leaves, or to terminate a lease early. VAWA 2021 also requires government agencies to consider the safety of transgender persons when making in-custody housing assignments; and empowers tribal courts to prosecute non-Indians for sex trafficking, sexual violence, and stalking.

Before a VAWA reauthorization bill can be signed into law both houses of Congress must agree on a version. While the House of Representatives passed its version in March 2021, the Senate has yet to act. Although no date is set, the Senate is expected to vote on reauthorizing VAWA in 2021. President Biden has urged Congress to address the lingering, ongoing problem of intimate partner domestic violence by expanding the protections offered by VAWA. This is what is called for in VAWA 2021.



# District News



## DISTRICT ONE (MA, ME, NH, PR, RI)

Massachusetts, Maine, New Hampshire, Puerto Rico, Rhode Island

## DISTRICT DIRECTOR:

**Hon. Mary Dacey White**

Brookline District Court, Massachusetts

Email: [mary.white@jud.state.ma.us](mailto:mary.white@jud.state.ma.us)

MASSACHUSETTS  
MAINE  
NEW HAMPSHIRE  
PUERTO RICO  
RHODE ISLAND

1

**Judge MaryLou Muirhead** has been doing an excellent job with her Law School Outreach Committee. As a result of her events at the various law schools the District has 7 new law school members. I have reached out by email to them.

The district also has had a few new judges appointed and Judge Janet Bostwick has joined

NAWJ and I am reaching out to the other recent women appointees here in Massachusetts. We also have a new Judge from New Hampshire that has joined and I will write to her as we do not have an email address.

NAWJ, members **Hon. Maureen Walsh** has been elevated to the Massachusetts Appeals Court and Ho. Angel Kelley has been nominated by

President Biden for a seat on the U. S. District Court for Massachusetts.

The New England area is finally opening up and jury trials are being scheduled. The region should be fully opened by Labor Day. Hopefully we will be able to hold some functions and events in fall of 2021 and throughout 2022.



## DISTRICT TWO (CT, NY, VT)

Connecticut, New York, Vermont

## DISTRICT DIRECTOR:

**Hon. Kathy J. King**

Supreme Court of New York, Kings County

Email: [kjking@nycourts.gov](mailto:kjking@nycourts.gov)

CONNECTICUT  
NEW YORK  
VERMONT

2

District Two extends kudos and congratulations to:

- **Judge Laura Taylor Swain** who was appointed Chief Judge of the United District Court of the Southern District of New York
- **Justice Baahati Pitt** who was appointed Associate Justice of the Appellate Division, First Department.
- **Judge Ruth Shillingford** on her retirement. Judge Shillingford served on the NYS Supreme Court, Criminal Term and is an active member of NAWJ.



Judge Laura Taylor



Justice Baahati Pitt

## Condolences

District Two mourns the passing of Lifetime Member **Justice Donna Mills**. Justice Mills recently retired from Bronx Supreme Court, Civil Term after serving 28 years on the bench. She will be greatly missed.

## Programming

District Two, in collaboration with Monroe College of Criminal and Social Justice, successfully concluded its 2021 COJ virtual speaker series.



Commencing in February and concluding on Law Day, May 1st, 2021, the series consisted of four parts:

**Session 1-** Why Law School? Should I Attend Law School

**Session 2-** I've Decided to go to Law School. Now What?

**Session 3-** I've survived Law School, What's Next?

**Session 4-** Advancing the Rule of Law

The program was instructive and participants engaged in robust discussion about the legal profession utilizing the Zoom chat feature. There were over 90 participants and certificates of completion were given to students who attended all four sessions.

## District Two Pilot High School Internship Program

District Two is developing an online virtual



program with Saint Barnabas High School in the Bronx. Program roll out is targeted for September, 2021.

### District Two Membership

District Two welcomes new and renewing members who have joined NAWJ under the 2021 membership initiative of NAWJ NY Chapter President Shirley Troutman: Darcel D. Clark, Amy H. Hsu, Esq., Dweynie Paul, Theresa Whelan, Christina F. DeJoseph, Kathy G. Bergmann, Donna-Marie E. Golia, Wanda Y. Negron, Chris Ann Kelley, Judith Lieb, Meredith A Vacca, Rachel E. Freier, and E. Grace Park.

### NAWJ NY Chapter Activities

NAWJ NY Chapter collaborated with a number of bar and judicial associations to provide dynamic programming opportunities for the bar and bench including:

**March 8, 2021** - *Juror Perceptions of Women Litigators* – NAWJ NY and Bronx County Bar Association, Bronx Women's Bar Association, and Franklin H. Williams Judicial Commission

**March 18, 2021** - *Discussion with Professor Marci Hamilton on Making History and Paving the Way As A Law Clerk with Justice Sandra Day O'Connor* - NAWJ NY and Brooklyn Women's Bar

Association

**March 25, 2021** - *Celebrating Women's History – A discussion on the "The Role of Women's Organizations in Shattering Glass Ceilings"* – NAWJ NY and Franklin H. Williams Commission, NYS Judicial Commission on Women in the Courts, and the Women's Bar Association of State of New York

**May 20, 2021** - NAWJ NY presented the film *Belly of the Beast* via Zoom with various co-sponsors. This powerful film exposes the pattern of non-consensual illegal sterilizations in women's prisons.



### DISTRICT THREE (DE,NJ,PA,VI)

Delaware, New Jersey,  
Pennsylvania,  
Virgin Islands

### CO-DISTRICT DIRECTORS:

**Hon. Sandra Ann Robinson** Hon. Avis Bishop-Thompson  
State of New Jersey Superior Court, New Jersey  
Email: [kwras@yahoo.com](mailto:kwras@yahoo.com) Email: [avis.bishophthompson@njcourts.gov](mailto:avis.bishophthompson@njcourts.gov)

**APRIL** - Judges Bishop-Thompson and Sandra Ann Robinson attended the April 15 and 16, 2021 NAWJ virtual mid-year meeting and leadership conference that included a Resolution Committee meeting and a National Directors meeting.

A successful virtual "Color of Justice Program" (COJ) was held in APRIL. The two and one-half hour program included college and law school scholars, high school upper class persons, paralegals, professors, State Supreme Court Justices and panelists employed in diverse areas of law – corporate law, prosecutors, defense counsel, Delaware State Chair Hon. Vivian Medinilla, New Jersey's newest Supreme Court

Associate Justice

**Fabiana Pierre-Louis**, first Black woman to serve on the court. Each attendee received a carry-bag containing a dictionary, the constitution and legal whatnots. The participant population including panelists and students was approximately 173 (includes students who attended a group session and/or doubled-up to watch the Program. District III looks forward to a seminar presentation "Successful COJ Programs" during the October 6-11, 2021 NAWJ Annual meeting and conference in Nashville, Tennessee.

**MAY** - Judge Robinson was the keynote speaker

before several hundred guests attending the JAMAICAN CIVIC & CULTURAL ASSOCIATION OF ROCKLAND, INC. (JAMCCAR) awards luncheon "Honoring Trailblazing Women in the Law". JAMCCAR is a non-profit organization established 30 years ago offering myriad educational, cultural and social programs for residents of Rockland County, New York. Five New Jersey and New York attorneys were honored for their legal expertise. The honorees were invited to become Amicus members of NAWJ.

**JUNE** - The District III goal for each state to seek and sign-up five new members each month between July 1st and December 31st remains in force!



### DISTRICT FOUR (DC,MD, VA)

District of Columbia, Maryland,  
Virginia

### DISTRICT DIRECTOR:

**Hon. Anita Josey-Herring**  
Chief Judge Superior Court of the District of Columbia  
Email: [herringa@dsc.gov](mailto:herringa@dsc.gov)

District 4 is working with the D.C. Department of Corrections to finalize a Women in Prisons Program event that will provide incarcerated women at the D.C. Jail with an opportunity to write poems to their children. These poems will also be shared by these

mothers with NAWJ members of District 4 in a virtual format. District 4 members believe that this event will help increase communication between women and their children which is often strained due to the parent's incarceration.

**Toni Clarke** and **Anita Josey-Herring** co-chaired the successful 16th Annual Meeting with the Women's Congressional Caucus with committee members Sharon Goodie and Ann Breen-Greco, titled Reimagining Access to Justice; Post Pandemic.

## COUNTERBALANCE

District 4 has had a number of new members join our ranks and has sent welcome letters to those new members. District 4 will also be seeking

volunteers for Officer positions for the next term. Moreover, District 4's Women Moving Forward Conference at the Maryland Correctional Institution

for Women has been rescheduled for September 23, 2021, providing the COVID-19 pandemic is under control.



### DISTRICT FIVE (FL,GA,NC,SC)

Florida, Georgia, North Carolina,  
South Carolina

### DISTRICT DIRECTOR:

**Hon. Tanya Brinkley**

11th Judicial Circuit Court, Miami, Florida

Email: [tbrinkley@jud11.flcourts.org](mailto:tbrinkley@jud11.flcourts.org)

FLORIDA  
GEORGIA  
NORTH CAROLINA  
SOUTH CAROLINA

5

Our goal continues to be identifying, extending, and retaining membership to legal professionals who support the NAWJ mission. This has been best accomplished by looking to vary and expand our 100 members to include not only judges, but lawyers, law students, and legal academia. We solicited young lawyers and law students to identify and recruit other young lawyers/law students to join and infuse new energy into NAWJ.

We have been very fortunate to have volunteers **Jabari Caldwell**, a 2L at St. Thomas Law School, and **Kayla Mosquera**, Esq. Kayla is taking the lead in exploring the Clubhouse platform to create a Color of Justice United room to increase diversity in the profession by targeting young professionals and students to consider the law and the judiciary. This will also allow the judiciary to better connect with mentees. Jabari increased event participation and was central to our planning and engagement with the targeted group. She also worked overtime connecting with all of the Florida law schools to ensure they are aware of our programming and will participate in law student geared activities.

The following State Chairs were appointed. Florida – **Judge Laura Cruz**, **Judge Lody Jean**, and **Judge Yery Marrero**; Georgia – **Judge Kimberly Esmond Adams** and **Judge Shana Rooks Malone**; North Carolina - **Judge Kimberly Best**; and South Carolina – **Judge Danette Mincey**. I thank the State Chairs for their commitment to NAWJ ensuring that our programming remained very active through the pandemic.

We proudly resurrected the District Five Newsletter to connect the D- 5 community. The newsletter is shared throughout the district to announce events, accomplishments, and other practical information to our membership. Issue 1 was released on

April 1st and will repeat quarterly. We thank the editor, South Carolina **State Chair Judge Mincey**, along with member **Katherine Chin, Esq.**, who did a phenomenal job and are committed to our newsletter.

On February 24, 2021, in conjunction with the Weiss Serota Helfman Cole + Bierman and in commemoration of Black History Month we co-hosted “Breaking Barriers” featuring Florida’s African-American legal leaders. Thank you, **Katherine Chin, Esq.**, for including NAWJ in this special program.

In March 2021, we hosted, “Women of the Appellate Court” featuring the female judges of the Florida Third District Court of Appeals. It was attended by over 100 participants with countless voluntary bar association co-sponsors. This program was moderated by Florida State Co-Chair, **Judge Laura Cruz**, who did an amazing job. And we co-sponsored “Black Women in the Judiciary”, with the Georgia Association of Black Women Lawyers with open and candid conversations among Black female Judges. The program featured female judicial legends of Georgia. Our Georgia State Co-Chairs **Judge Shana Rooks Malone** and **Judge Kimberly Esmond Adams** put together an amazing program in collaboration with their local bar.

On April 6, 2021 and April 8, 2021, we presented “A Day in the Life”, which was recorded and featured 16 lawyers and 5 judges. This two-part program is newly created for District 5 and discussed public/private sector careers and was geared to law students and young professionals. The panelists discussed how they landed their job, what they do on an average day, and what skills are useful. The goal was to expand the vision of possibilities for aspiring lawyers so they can widen their potential

areas of interest. All of the Florida law schools, and many other law schools were invited. Florida State Co-Chairs **Judge Yery Marrero** and **Judge Lody Jean** and **Jabari Caldwell** and **Kayla Mosquera, Esq.** did a fantastic job organizing this program.

Future programming will continue to include co-sponsors to support programming success. The Florida Bar Diversity and Inclusion Committee and Florida Supreme Court Standing Committee on Diversity and Inclusion will continue to co-sponsor shared mission-driven events. Our 2021 calendar includes the following events:

**Summer 2021 TBD** - Health and wellness virtual happy hour membership recruitment program featuring medical professionals to discuss disparity in the medical professional related to recent discussions of minority women and their experiences, as well as tips for new mothers, menopause issues, and other issues affecting women.

**9/23/2021 - Bar to Bench** – We will expand the program to a diverse mix of state appointed/elected judges, ALJs, Immigration Judges, etc. to encourage careers in the various judiciary/quasi-judicial roles.

**10/21/2021 - Color of Justice/Diversity in the Profession** – We will be seeking a panel of judges who are trailblazers in their unrepresented community and committed to raising awareness, inclusion, and inspiring young lawyers to see themselves in the legal profession.

**11/16/2021 - Good Guys** - We are partnering with the Florida Association of Women Lawyers (FAWL) with a panel featuring men who support the success of women in the legal profession and demonstrate the same through mentorships, internships, career advancement, and leadership opportunities.



## DISTRICT SIX (AL, LA, MS, TN)

Alabama, Louisiana, Mississippi, Tennessee

### DISTRICT DIRECTOR:

**Hon. Lynda Jones**

Davidson County Court, Tennessee

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ALABAMA  
LOUISIANA  
MISSISSIPPI  
TENNESSEE

6

The Metropolitan Nashville-Davidson County General Sessions Court **Judge Lynda Jones** was awarded Nashville Cable's Spirit of Leadership award on June 9, 2021.

The Spirit of Leadership Award recognizes a

Cable member not currently serving on the Board of Directors who exemplifies leadership through personal and professional accomplishments which have inspired and influenced the advancement of women. Founded in 1978, Cable is the premier leadership organization for women's professional

advancement.

We are busy planning the NAWJ Annual Conference October 6-8 and hope to see you there!



## DISTRICT SEVEN (MI, OH, WV)

Michigan, Ohio, West Virginia

### DISTRICT DIRECTOR:

**Hon. Michelle Rick**

Michigan Court of Appeals

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MICHIGAN  
OHIO  
WEST VIRGINIA

7

Michigan hosted a Face of Justice program with students from Southfield public schools and Cranbrook private school on June 1, 2021. NAWJ member mentors included **Justice Megan Cavanaugh, Judge Susan Moiseev, Judge Shannon Schlegel, Judge Cynthia Arvant, Judge Miriam Perry, Judge Mariam Bazzi**, 3rd Circuit Administrator and state co-chair **Zenell Brown**, and law student **Jocelyn Flemons**.

Planning to bring the FOJ to Michigan's Upper Peninsula in the fall and 2022 continues. **Judge Barkman** is leading the effort.

Judge Schlegel's investiture is planned for September 10, 2021. Judge Barkman's investiture is planned for October 15, 2021. Judge Rick's investiture will be held in Lansing on 9/16 and in Marquette on 9/20. The Lansing event will be live streamed.

Michigan conference planning is taking shape. I am particularly grateful to **Laurie Denham** and **TN Judge Barbara Holmes** for allowing me to listen and learn from the TN 2021 conference planning committee.

**Judge Michelle Rick's** acceptance of the 2021 Woman Lawyer's Association of MI Mary S. Coleman Award was shared at the WLAM annual conference on June 5.



## DISTRICT EIGHT (IL, IN, KY)

Illinois, Indiana, Kentucky

### DISTRICT DIRECTOR:

**Hon. Ann Breen-Greco**

Independent Administrative Judiciary Professional

Email: [annbreen-greco@sbcglobal.net](mailto:annbreen-greco@sbcglobal.net)

ILLINOIS  
INDIANA  
KENTUCKY

8

District 8's Color of Justice program is moving forward for July. On July 27, District 8 will be hosting girls from Polished Pebbles, which mentors girls on the south and west side of Chicago to empower them. They are interested in having the girls talk to lawyers and judges about career paths. District 8 is also working with the Chicago Mayor's One Summer program, which has 2,000 students/young people. We are in the process of setting a date for to talk to their young people about careers in the profession. District will be co sponsoring the NAWJ Human Trafficking Committee's webinar July 7 on the Intersection

of human trafficking, immigration, and LGBTQ youth.

District 8 has been involved in the matter of the resolution on travel ban in states with legislation that is anti-transgender. Civil rights and advocacy organizations are increasingly alarmed at the number of states passing anti-transgender legislation - so far 33 states. The NAWJ LGBTQ Committee is planning education seminars to provide an understanding on the needs of the LGBTQ community. District 8 is working with the LGBTQ community trying to find a path of unity to go forward on this, while

addressing the very real concerns regarding safety that NAWJ LGBTQ members would experience in traveling to states with anti-transgender legislation. It is clear that there are also many kinds of legislation in states that target communities of color and deny women's rights. We are quickly becoming a country where there are concerns about travel to many states which deny rights to protected classes. District 8 hopes to contribute to the development of an NAWJ policy on site selection for conferences. District 8 recognizes intersectionality and advocates for an end to all discrimination.



### DISTRICT NINE (IA, MO, WI)

Iowa, Missouri, Wisconsin

**DISTRICT DIRECTOR:**  
**Hon. Celene Gogerty**  
 Judicial District 5 Court, Iowa  
 Email: [celene.gogerty@iowacourts.gov](mailto:celene.gogerty@iowacourts.gov)

The Missouri Court of Appeals, Eastern District, welcomed **Judge Kelly Broniec** to our court. With her appointment, they now have seven women, six men and one vacancy on the court. This is the largest number of women judges on this court and the first time there is a majority of women.

The **Honorable Donna L. Paulsen** has formally stepped down as a senior district court judge in Polk County, Iowa. Judge Paulsen was the first woman appointed as a district court judge in the Fifth Judicial District.

United States Magistrate **Judge Celeste F. Bremer** and United States District Judge **Rebecca Goodgame Ebinger** spoke on January 28, 2021 on judicial security for the Polk County Bar Association in Des Moines, Iowa.

The Iowa Organization of Women Attorneys held a judicial boot camp on January 16, 2021 to encourage women attorneys to apply for judicial positions.

The Polk County (Iowa) Women's Bar Association sponsored a presentation on March 11, 2021 on the CROWN Act and race discrimination based on natural hair.

Iowa **Senior Judge Annette Scieszinski** passed

away on February 26, 2021.

The Iowa Organization of Women Attorneys hosted a Judicial Bootcamp on April 10, 2021 to encourage women attorneys to pursue judicial careers.

NAWJ member **Susan E. Block** was recently elected to the board of Missouri Foundation for Health. In addition, she was named to the inaugural LGBTQA class of awardees by the St. Louis Business Journal for her leadership in the community and support of members of the LGTQA community as well as at large. She was also selected as the Woman of the Year for the Greater Missouri Leadership Institute.

U.S. Magistrate **Judge Celeste F. Bremer** moved to Recall Status effective June 1, 2021. She was appointed as a half-time U. S. Magistrate Judge in 1985 for the Southern District of Iowa. She has held the position full-time since January 1990. She will continue to work in the Southern District of Iowa, and other Districts as requested. She can continue to be reached at [Celeste.Bremer@iasd.uscourts.gov](mailto:Celeste.Bremer@iasd.uscourts.gov). She's been a member of NAWJ since 1985. She completed her Doctorate in Adult Education in 2002 at Drake University; her dissertation topic was on Judicial Occupational Stress. Not surprisingly, she found that women judges had higher stress levels than

male judges. She hopes to continue her work with ABA ROLI on judicial education projects.

**Judge Robin Ransom** was appointed to the Missouri Supreme Court by Governor Mike Parson on May 24, 2021. She is the first African American woman and fifth woman appointed to that court, replacing **Judge Laura Stith** who retired in March. Before J. Ransom's recent retirement, the court had seven women and seven men.

**Judge Sherri Sullivan** will become the Chief Judge of The Missouri Court of Appeals, Eastern District, effective July 1, 2021.

**Chief Judge Mary K. Hoff** will be retiring in August of this year after more than 25 years on this court and over 6 years on the trial court. She is the Chief Judge of the Missouri Court of Appeals, Eastern District.

The Iowa Organization of Women Attorneys (I.O.W.A.) and District 9 of NAWJ are participating in the 21-Day Grit & Grown Mindset Challenge. The 21 Day Grit and Growth Mindset Challenge was created to help women attorneys and judges develop and enhance their grit and growth mindset by consistently engaging in short, daily challenges: reading thought provoking articles, watching videos, reviewing case studies, and taking concrete, habit-forming actions.



### DISTRICT TEN (KS, MN, NE, ND, SD)

Kansas, Minnesota, Nebraska, North Dakota, South Dakota

**DISTRICT DIRECTOR:**  
**Hon. Cheryl Ann Rios**  
 Shawnee County District Court, Kansas  
 Email: [crios@shawneecourt.org](mailto:crios@shawneecourt.org)

Kansas **Governor Laura Kelly** has appointed **Judge Lesley A. Isherwood** and **Judge Jacy Hurst** to serve on the Kansas Court of Appeals. A former prosecutor, Judge Isherwood argued more than 100 cases before Kansas appellate courts and has authored over 1,000

appellate briefs. Judge Hurst will be the first woman of color serving on the Kansas Court of Appeals. Judge Hurst was a partner with the law firm Kutak Rock LLP in Kansas City, Missouri. However, Judge Hurst's first encounter with lawyers and judges came as

a child growing up in a single-mother family with parents who didn't graduate from college. "As a child, I experienced divorce, violence, homelessness, poverty early on, and those were my introductions to the law," Hurst said at her confirmation hearing. "That's where I



met my first lawyers and judges.” She said her experiences led her to volunteer at a domestic violence shelter, and all that drove her to practice law.



Judge Jacy Hurst

In other news, NAWJ District 10 Director, **Judge Cheryl A. Rios**, received the MANA Ring of Honor Award from MANA, A National Latina Organization. In honor of Women’s History Month, MANA recognized the rapidly growing number of MANA women who have served or

now serve in an elected or appointed office of public trust. Judge Rios also received the Women Attorney Association of Topeka’s Chief Justice Kay McFarland Award. The award recognizes an individual who has achieved professional excellence in her field and has influenced other women to pursue legal careers, opened doors for women lawyers in a variety of job settings that historically were closed to them, or advanced opportunities for women within a practice area or segment of the profession.

For the first time in Minnesota State’s history, all chief judges serving on Minnesota’s appellate and executive branch courts are women! Chief judges of the Minnesota Supreme Court, the Minnesota Court of Appeals, and all three Executive Branch Courts are all women: **Chief Justice Lorie Gildea**, Minnesota Supreme Court; **Chief Judge Susan Segal**, Minnesota Court of Appeals; **Chief Judge**

**Jenny Starr**, Minnesota Office of Administrative Hearings; **Chief Judge Patricia Milun**, Minnesota Workers’ Compensation Court of Appeals; and **Chief Judge Wendy Tien**, Minnesota Tax Court.

“I am also proud to celebrate a more representative democracy today. With women now presiding over Minnesota’s appellate and executive branch courts as chief judges, this is a historic moment for our state.”

Nebraska Governor, Pete Ricketts appointed **Tressa M. Alioth** of Bennington as District Court Judge in the Fourth Judicial District in Douglas County, Nebraska. Alioth, 47, worked as deputy county attorney in the Douglas County Attorney’s Office since 1998. Governor Pete Ricketts also appointed **Lynelle Homolka** of Central City as County Court Judge in the Fifth District. Judge Homolka, 46, previously served as Merrick County Attorney and Central Nebraska Youth Services Administrator since 2011.



**DISTRICT ELEVEN (AR, OK, TX)**  
Arkansas, Oklahoma, Texas

**DISTRICT DIRECTOR:**  
**Hon. Maria Salas-Mendoza**  
120th Judicial District Court, Texas  
Email: [masalas@epcounty.com](mailto:masalas@epcounty.com)

ARKANSAS  
OKLAHOMA  
TEXAS

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Congratulations to NAWJ Members in Austin, Texas, who held a first ever virtual **Color of Justice Program** on March 25, 2021. Kudos to outstanding UT School of Law student, **Laura Rativa**, for her educational success and determination; she received a \$1000 scholarship as part of the COJ program.

A Color of Justice program was held for the first time ever in Houston on April 23, 2021. This first ever COJ was virtual, included 21 speakers (most were NAWJ members),



served 51 law students and had over 140 registrants. Six law students each received a \$1000 scholarship! The planning committee, pictured below, did an outstanding job.

### Texas Women Judges Day

In collaboration with Senator Judith Zaffirini, women judges were recognized by resolution in the Texas legislature on April 13, 2021. With the help of the Office of Court Administration, the following video highlighted NAWJ in this effort as well as its members. Special thank you to **Chief Justice Rebeca Martinez**, 4th Court of Appeals, for spearheading and leading the program. The video is here:

[https://urldefense.proofpoint.com/v2/url?u=https-3A\\_\\_youtu.be\\_IcjZRrUCgkc&d=DwlCAg&c=JwrUsAi-X5LZeeIPnLuWqOrhPik:99FZP4DtGRyQ5tXU&r=KLci5MWsjXBgvoc82EUoFsuHqlGaY2V6hIeJBQ3bmMA&m](https://urldefense.proofpoint.com/v2/url?u=https-3A__youtu.be_IcjZRrUCgkc&d=DwlCAg&c=JwrUsAi-X5LZeeIPnLuWqOrhPik:99FZP4DtGRyQ5tXU&r=KLci5MWsjXBgvoc82EUoFsuHqlGaY2V6hIeJBQ3bmMA&m)

[=M8fLAD4ufinIoJ74eY7iDHViMt5nkJ73MDD2qknGdr4&s=ctbnjTQJMi2e0sxH-VWiORX6UzoZyQyakd2Vj4n5Xc&e](https://urldefense.proofpoint.com/v2/url?u=https-3A__youtu.be_IcjZRrUCgkc&d=DwlCAg&c=JwrUsAi-X5LZeeIPnLuWqOrhPik:99FZP4DtGRyQ5tXU&r=KLci5MWsjXBgvoc82EUoFsuHqlGaY2V6hIeJBQ3bmMA&m)

### Texas Latinx Judges

On May 5, 2021, six NAWJ members launched the first statewide organization for Latinx judges. Texas Latinx Judges supports the judicial role of Latinx judges by strengthening the network of and connection between Latinx judges, recognizing their contributions to the judiciary, and increasing the advancement and number of Latinx judges. Texas Latinx Judges also encourages judicial service in the Latinx community and helps to build a talent pipeline of future Latinx judges—with the overall goal of advancing equal justice in the State of Texas.

Texas Latinx Judges is a nonpartisan, nonprofit association focused on the advancement of Latinx judges—which includes all female, male,

nonbinary, transgender Hispanic, Latinx/a/o, Chicane/a/o judges who are of Latin American origin or descent, or who identify as such. Membership is open to all current, retired, senior, or former judges in the State of Texas, whether or not they identify as Latinx. All judges—and all individuals who believe in our mission—are welcome to join, as Texas Latinx Judges is committed to enhancing inclusion and equal justice for all. Kudos to founders: **Judge Lesley Briones** (Houston), **Judge Victor Villarreal** (Webb), **Chief Justice Dori Contreras** (13th Court of Appeals), **Judge Maria Salas Mendoza** (El Paso), **Judge Antonia Arteaga** (San Antonio), **Justice Gina Benavides** (13th Court of Appeals), and retired **Judge Orlinda Naranjo** (Austin). For more information: <https://www.texaslatinjudges.org>

Congratulations to **Judge Lora J. Livingston**, 261st District Court (Austin) for receiving the Jurisprudence Award from the Anti-Defamation League (Austin) on April 13, 2021.

**Judge Tonya Parker**, 116th Civil District Court (Dallas) received the Dallas Bar Association Martin Luther King Jr. Justice Award in January 2021. The award is presented to local leaders whose lives and practices exemplify the principles embodied by King's leadership.

Great job **Judge Patricia Baca** for her participation on the ABA's Judicial Division program, Legal Path to Equity: The Progress, Challenges, and Perseverance of the LGBTQ+ Community in the Courts.

Congratulations to Supreme Court **Justice Eva M. Guzman** for her recognition by the Litigation Section of the State Bar of Texas with its 2021 Luther H. Soules III Award for Outstanding Service to the Practice of Law.

The Legal Services to the Poor in Civil Matters Committee (State Bar of Texas) has given a well-deserved honor to **Justice Gina Benavides** by bestowing her with its 2021 Pro Bono Excellence Award, the Judge Merrill Hartman Pro Bono

Judge Award.

Congratulations to Judge District **Judge Renee Rodriguez- Betancourt**! She has been appointed to serve on two boards. On December 21st, Rodriguez- Betancourt, who handles juvenile cases in the 449th state District Court, was appointed by the Supreme Court of Texas and the Texas Court of Criminal Appeals appointed Rodriguez-Betancourt to serve on the Judicial Commission on Mental Health for a two-year term that expires in 2022. On June 9, the Meadows Mental Health Police Institute appointed Rodriguez-Betancourt to serve as board director for a two-year term that ends in 2023.

Judges **Rosie Speedlin-Gonzalez** and **Antonia (Toni) Arteaga** were both recognized for their service during the Covid-19 Pandemic by the San Antonio Crime Coalition Board of Directors on June 26, 2021.



**DISTRICT THIRTEEN**  
(AK, HI, ID, MT, OR, WA)  
Alaska, Hawaii, Idaho, Montana  
Oregon, Washington

**DISTRICT DIRECTOR:**  
**Hon. Lisa A. Paglisotti**  
King County District Court  
Email: [lisaa.paglisotti@kingcounty.gov](mailto:lisaa.paglisotti@kingcounty.gov)

ALASKA  
HAWAII  
IDAHO  
MONTANA  
OREGON  
WASHINGTON

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District 13 has welcomed 5 new members since January, 2021, and welcomed back a returning member. The Book Club met in March and May. In March, we gathered again via Zoom and discussed the book "Caste". The May book selection was

"The Sum of Us".

**Rafe Majul** was appointed to the Washington State Interpreter Commission and **Linda Coburn** was elected to the Washington State Court of Appeals.

Judge Manglona welcomed members of the Northern Mariana Islands to a tour of the new state of the art federal courthouse.

We are planning our next statewide Color of Justice Program.

## NAWJ DISTRICT DIRECTORS

### DISTRICT DIRECTORS

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Brookline District Court

**District Two (CT, NY, VT)**  
**Hon. Kathy King**  
Supreme Court of New York, Kings County

**District Three (DE, NJ, PA, VI)**  
**Hon. Avis Bishop-Thompson**  
Superior Court, New Jersey  
**Hon. Sandra Ann Robinson**  
State of New Jersey

**District Four (DC, MD, VA)**  
**Hon. Anita Josey-Herring**  
Chief Judge, Superior Court of the District of Columbia

**District Five (FL, GA, NC, SC)**  
**Hon. Tanya Brinkley**  
11th Judicial Circuit Court, Miami, Florida

**District Six (AL, LA, MS, TN)****Hon. Lynda Jones**Metropolitan Nashville-Davidson County  
General Sessions Court, Tennessee**District Seven (MI, OH, WV)****Hon. Michelle Rick**

Michigan Court of Appeals, Michigan

**District Eight (IL, IN, KY)****Hon. Ann Breen-Greco**Chicago Administrative Hearing Department,  
Illinois**District Nine (IA, MO, WI)****Hon. Celene Gogerty**

Judicial District 5 Court, Iowa

**District Ten (KS, MN, NE, ND, SD)****Hon. Cheryl Rios**Shawnee County District Court,  
Third Judicial District, Kansas**District Eleven (AR, OK, TX)****Hon. Maria Salas-Mendoza**

120th Judicial District Court, Texas

**District Twelve (AZ, CO, NM, UT, WY)****Hon. Colleen Clark**

Arapahoe County Court, Colorado

**District Thirteen (AK, HI, ID, MT, OR, WA)****Hon. Lisa A. Paglisotti**

King County District Court

**District Fourteen (CA, NV)****Hon. Wendy Coats**Superior Court of California,  
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11th Judicial Circuit Court, Miami, Florida

**ABA Delegate****Hon. Vivian Medinilla**Superior Court of the  
State of Delaware,  
Wilmington**NAWJ COMMITTEES AND GROUPS**

Committees are the backbone of NAWJ. They enable us to utilize the impressive talents and knowledge of our members to support the work of the organization. Committee chairs and members are appointed each year by the current president. Members' willingness to participate is greatly appreciated.

**ADA Compliance Policy** - Hon. Marilyn Paja (Chair)**Administrative Judiciary** – Hon. Emily Gould  
Chafa and Hon. Susan Lois Formaker (Co-Chairs)**Annual Conference Site Selection** –  
Hon. Marcella Holland (Chair)**Awards** – Hon. Cindy Davis and Hon. Ariane Vuono  
(Co-Chairs)**Bylaws** – Hon. Fernande (Nan) Duffly and Hon.  
Julie Frantz (Co-Chairs)**Congressional Women's Caucus Meeting** –  
Hon. Toni Clarke and Hon. Anita Josey-Herring  
(Co-Chairs)**Domestic Violence** – Hon. Tracey Flemings-  
Davillier and Hon. Amy Ronayne Krause (Co-Chairs)**Ensuring Racial Equity in the Justice System** –  
Hon. Terrie Roberts (Chair)**Ethics** – Hon. Tam Nomoto Schumann (Chair)**Fairness and Access** – Hon. Tamila Ipema and  
Commissioner Nadia Keilani (Co-Chairs)**Human Trafficking** – Hon. Ann Breen-Greco and

Summer Stephan, Esq. (Co-Chairs)

**Immigration** – Hon. Joan Churchill (Chair)**International Outreach** – Hon. Lisa Walsh (Chair)**Judicial Education and Academic Network-**  
Hon. Elizabeth Walsh and Hon. Lisa Walsh  
(Co-Chairs)**Judicial Independence** – Hon. Robin Hudson and  
Hon. Debra Stephens (Co-Chairs)**Juvenile Justice and Child Welfare** –  
Hon. Ernestine Gray and Hon. Joy Lobrano  
(Co-Chairs)**Law School Outreach** – Hon. Marylou Muirhead  
(Chair)**LGBTQ** – Hon. Kristin Rosi (Chair)**Membership Outreach and Retention** – Hon.  
Julie Countiss, Hon. Maya Guerra Gamble, and  
Hon. Kathy King (Co-Chairs)**Military/Veteran Judges** – Hon. Kirsten Brunson  
and Hon. Linda Murnane (Co-Chairs)**Mothers in Court** – Renee Stackhouse, Esq. and  
Hon. Elizabeth Yablon (Co-Chairs)**Nominating** – Hon. Bernadette D'Souza (Chair)  
**Programs and Projects** – Hon. Brandy Mueller  
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(Chair)**Rural Courts** – Hon. Stephanie Davis (Chair)**Self-Represented Litigants** – Hon. Wilma  
Guzman and Hon. Mary Sommer (Co-Chairs)**Women in Prison** – Hon. Cheryl Gonzales and  
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Corinne Walker  
Judith L. Wheat

## NAWJ NEW MEMBERS SINCE JANUARY 1, 2021

## We welcome the following new members of NAWJ:

**Mr. Robert Ackley**, Ackley Law, Libertyville, IL

**Hon. Mary Lou Alvarez**, 45th District Court, Texas, San Antonio, TX

**Hon. Daniel Anders**, Court of Common Pleas of Philadelphia, Philadelphia, PA

**Ms. Danielle Anderson**, University of Detroit Mercy School of Law, Southfield, MI

**Hon. Linda L. Anderson**, Henrico Co Juvenile & Domestic Relations District Court, Henrico, VA

**Hon. Kori Lynn Ashley**, Milwaukee County Circuit Court, Milwaukee, WI

**Hon. Dania Ayoubi**, Maryland Office of Administrative Hearings, Silver Spring, MD

**Hon. Patricia Baca**, 346th District Court, El Paso, TX

**Hon. Amy Baggio**, Multnomah County, Portland, OR

**Mrs. Clemens Bastos-Soares**, St. Thomas University, Student

**Ms. Abigayle C. Bates**, Massachusetts School of Law, Auburn, ME

**Hon. Rachel L. Bell**, General Sessions Music City Community Court, Nashville, TN

**Hon. Te'iva Johnson Bell**, 339th District Court, Houston, TX

**Hon. Sheila Garcia Bence**, Cameron County Court At Law No. 4, Brownsville, TX

**Hon. Kathy G. Bergmann**, NYS Supreme Court, Riverhead, NY

**Hon. Beth Boniface**, Third Judicial District, Morristown, TN

**Hon. Janet E. Bostwick**, U.S. Bankruptcy Court District of Massachusetts, Boston, MA

**Mrs. Rajae Bouganza**, Massachusetts School of Law, Winthrop, MA

**Ms. Monica Briseno**, Elkins Kalt LLP, Los Angeles, CA

**Hon. Jerri Saunders Bryant**, Chancery Court, Athens, TN

**Ms. Mariah L. Cajuste**, Massachusetts School of Law, Holliston, MA



**Ms. Grace Casas-Rowe**, Eleventh Judicial Circuit, Miami, FL

**Hon. Megan K. Cavanagh**, Michigan Supreme Court, Lansing, MI

**Hon. Cory M. Chandler**, D.C. Office of Administrative Hearings, Washington, D.C.

**Mrs. Katherine A. Chin**, Weiss Serota Helfman Cole & Bierman, P.L., Coral Gables, FL

**Hon. Laurie A. Clark**, Denver Juvenile Court, Denver, CO

**Hon. Tara Clark Newberry**, Eighth Judicial District Court Nevada, Las Vegas, NV

**Hon. H. Yvonne Coleman**, Circuit Court of Cook County, Chicago, IL

**Hon. Amy C. Coppola**, 8th Judicial District of Kansas, Junction City, KS

**Hon. Natalia Cornelio**, 351st District Court, Houston, TX

**Ms. Samantha Coulter**, University of Detroit Mercy School of Law, Detroit, MI

**Hon. Lora C. Cabbage**, North Carolina Superior Court, Greensboro, NC

**Hon. Angelita Dalton**, Davidson County, TN Criminal Court, Nashville, TN

**Hon. Cole Dalton**, Office of Administrative Hearings, Pasadena, CA

**Hon. Yolaine Dauphin**, City of Chicago Department of Administrative Hearings, Chicago, IL

**Ms. Elizabeth A. Davies**, New Jersey Division of Law, Southampton, NJ

**Hon. Dedra Davis**, 270th District Court, Houston, TX

**Hon. Christina F. DeJoseph**, Onondaga County, Syracuse, NY

**Hon. Patricia Donahue**, Central District of California, Los Angeles, CA

**Hon. Genesis E. Draper**, Harris County Criminal Court At Law No. 12, Houston, TX

**Hon. Linda Dunson**, 309th Family District Court, Houston, TX

**Ms. Ayesha Durrani**, South Texas College of Law, Houston, TX

**Hon. Anita Sue Earls**, North Carolina Supreme Court, Raleigh, NC

**Hon. Ana Escobar**, Davidson County General Sessions, Brentwood, TN

**Hon. Elisabeth Espinosa**, Miami-Dade County Court, Miami, FL

**Hon. April Farris**, First Court of Appeals,

Texas, Houston, TX

**Hon. Heather P. Ferguson**, 23rd Judicial District, Roanoke, VA

**Hon. Marlene A. Fernandez-Karavetsos**, 11th Circuit Court for Miami-Dade County, Miami, FL

**Ms. Jocelyn Flemons**, University of Detroit Mercy School of Law, Detroit, MI

**Hon. Denise M. Fortenberry**, 130th Judicial District Court, Bay City, TX

**Ms. Grace A. Fox**, Sims Funk PLC, Nashville, TN

**Hon. Rachel E. Freier**, NYC Civil Court, Brooklyn, NY

**Hon. Melissa W. Friedman**, Juvenile & Domestic Relations District Court, Roanoke, VA

**Hon. Colleen Gaido**, 337th District Court, Houston, TX

**Ms. Holly D. Garcia**, Massachusetts School of Law, Everett, MA

**Miss Sovmya George**, Massachusetts School of Law, Lowell, MA

**Hon. Jessica Giner**, Renton Municipal Court, Renton, WA

**Hon. Tiffany G. Gipson**, General Sessions Court, Gainesboro, TN

**Hon. Donna-Marie E. Golia**, UCS New York State, Douglaston, NY

**Hon. Michaelle Gonzalez-Paulson**, 11th Judicial Circuit, Miami, FL

**Hon. Julie Goodman**, Fayette Circuit Court, 22nd Circuit, Division 4, Lexington, KY

**Hon. Marguerite T. Grant**, Massachusetts Appeals Court, Boston, MA

**Hon. Shera Grant**, 10th Judicial Circuit of Alabama, Birmingham, AL

**Hon. Alyson Adams Grine**, North Carolina District 15B, Hillsborough, NC

**Hon. Amparo Guerra**, Texas First Court of Appeals, Houston, TX

**Hon. Marissa L. Gunn**, D.C. Office of Administrative Hearings, Washington, D.C.

**Hon. Yahara Lisa Gutierrez**, 65th District Court, El Paso, TX

**Hon. Christina Hale**, Court of Common Pleas, Pottsville, PA

**Mrs. Patricia A. Harris**, U.S. Army, Fairfax, VA

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**Hon. Vickie L. Henry**, Massachusetts Appeals Court, Boston, MA

**Hon. Lakshmi S. Herman**, Miami Immigration Court, Miami, FL

**Hon. Tracy H. Hewett**, State of North Carolina, Charlotte, NC

**Hon. Lynne Hobbs**, Los Angeles Superior Court, Los Angeles, CA

**Commissioner Catherine Hohenwarter**, Yolo Superior Court, Woodland, CA

**Ms. Amy H. Hsu**, Suffolk County Surrogate's Court, Riverhead, NY

**Hon. Rebeca A. Huddle**, Supreme Court of Texas, Austin, TX

**Hon. Michelle Ialeggio**, San Diego Superior Court, San Diego, CA

**Hon. Claudia Isom**, Florida State Courts, Tampa, FL

**Hon. Claudine R. James**, Equal Employment Opportunity Commission, Houston, TX

**Ms. Rachel L. Jensen**, Robbins Geller Rudman & Dowd LLP, San Diego, CA

**Hon. Kelli D. Johnson**, 178th District Court, Houston, TX

**Hon. Shanice Johnson**, State of Arkansas, Little Rock, AR

**Hon. Joscelyn Jones**, Alameda County Superior Court, Brentwood, CA

**Ms. Amani Kancey**, Goodwin Procter, Miami, FL

**Hon. David S. Keenan**, King County Superior Court, Seattle, WA

**Hon. Chris Ann Kelley**, NYS Court of Claims, Port Jefferson, NY

**Ms. Mai Pham Kelley**, South Texas College of Law, Student

**Ms. Bevie Ketel**, Massachusetts School of Law, Madbury, NH

**Hon. Jim F. Kovach**, Harris Co. Civil Court At Law No. 2, Houston, TX

**Hon. Judith Lieb**, New York State, Bronx Criminal Division, Bronx, NY

**Hon. C. Renee Little**, North Carolina 26th Judicial District, Charlotte, NC

**Hon. Christy R. Little**, General Sessions Court, Division II, Madison Co., Jackson, TN

**Hon. Thomas Logue**, Third District Court of Appeal, Coral Gables, FL

**Ms. Alicia MacArthur**, Massachusetts School of Law, Saugus, MA

**Hon. Julia A. Maldonado**, 507th Family District Court, Houston, TX

**Hon. Jessica Mangrum**, 200th District Court of Travis County, Austin, TX

**Ms. Shauntel A. Martin**, Massachusetts School of Law, Woonsocket, RI

**Hon. Lynda B. McCafferty**, U.S. District Court in New Hampshire, Concord, NH

**Hon. Rickye McKoy-Mitchell**, 26th Judicial District Court, Charlotte, NC

**Miss Jylan Megahed**, M E G A H E D, E S Q., Inc, La Jolla, CA

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**Mrs. Bayyinah M. Norbi**, Barry University School of Law, Oviedo, FL

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**Hon. E. Grace Park**, NYS OCA, New York, NY

**Hon. Nancy E. Parrish**, Kansas State District Court, Topeka, KS

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**Hon. Miriam A. Perry**, 15th District Court, Ann Arbor, MI

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**Hon. Josefina M. Rendon**, Harris County Justice Courts, Houston, TX

**Hon. Jane M. Reynolds**, Spotsylvania General District Court, Spotsylvania, VA

**Hon. Cathy Anne Riggs**, Desert Ridge Justice Court, Scottsdale, AZ

**Hon. Veronica Rivas-Malloy**, Court of Appeals, First District of Texas, Houston, TX

**Hon. Theresa J. Royall**, Amelia Juvenile & Domestic Relations District Court, Amelia, VA

**Hon. Ebony Scott**, D.C. Superior Court, Washington, D.C.

**Hon. Leah Shapiro**, 315th District Court, Houston, TX

**Ms. Dianne Sheridan**, Retired, San Anselmo, CA

**Ms. Shamim Shivji**, Shamim Shivji Law, Vancouver, BC, Canada

**Hon. Clarissa Silva**, Texas Thirteenth Court of Appeals, Corpus Christi, TX

**Mrs. Lena E. Silva**, Beck Redden LLP, Houston, TX

**Hon. Jennifer L. Smith**, Criminal Court, Div. IV, 20th Judicial District of TN, Nashville, TN

**Hon. Susan Solheim**, State of Minnesota, Fargo, ND

**Hon. Dylan Sullivan**, El Dorado County, Cameron Park, CA

**Hon. Aimee Sutton**, King County Superior Court, Kent, WA

**Hon. Michelle D. Szambelan**, Spokane County Superior Court, Spokane, WA

**Hon. Lynn Tepper**, 6th Circuit Court, Florida, Dade City, FL

**Hon. Monica Thompson Guidry**, Executive Office of Immigration Review, Houston, TX

**Ms. Sherry Thompson-Taylor**, San Diego County, Chula Vista, CA

**Hon. Marisa Tinkler Mendez**, 11th Judicial Circuit, Miami, FL

**Hon. Chimere Chisolm Trimble**, City of Fort Valley Municipal Court, Ft. Valley, GA

**Hon. Dinsmore Tuttle**, Colorado State District Court, Ft. Collins, CO

**Hon. Meredith A. Vacca**, Monroe County Court, Rochester, NY

**Hon. Cindy G. Vanlandingham**, Bosque County, Kopperl, TX

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**Hon. Teresa H. Vincent**, State of North Carolina, Summerfield, NC

**Hon. Beth Walker**, Supreme Court of Appeals of West Virginia, Charleston, WV

**Hon. Toni M. Wallace**, County Court At Law Number Four, Richmond, TX

**Hon. Samantha L. Ward**, 13th Judicial Circuit of Florida, Hillsborough County, Tampa, FL

**Hon. Fran J. Watson**, City of Houston Municipal Court, Houston, TX

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**Have you been meaning to join the American Bar Association and have not due to cost or lack of time?**

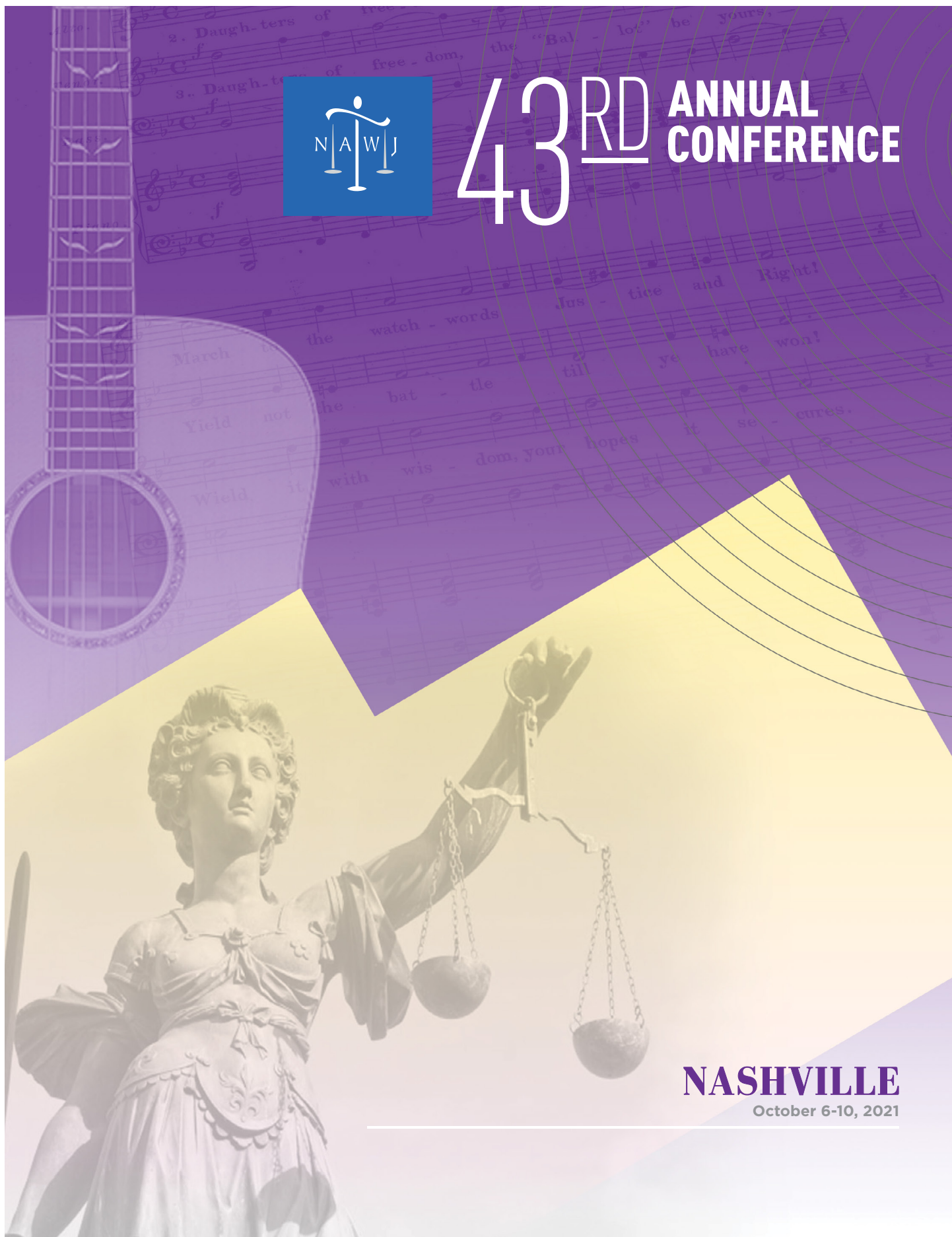
NAWJ can make this process easy and less expensive (\$50 savings) through our new ABA Group Membership.

If you are a current member of the ABA, you may convert your membership to the group membership before your next ABA dues cycle. Those whose ABA renewal date is June through September may begin renewing their ABA dues now through NAWJ. Those whose renewal date is between October and May and want to take advantage of the NAWJ Group membership must submit payment for your ABA dues by August 15th.

More details can be found [here](#). If you are interested in participating, [complete this form](#).



# 43<sup>RD</sup> ANNUAL CONFERENCE



**NASHVILLE**

October 6-10, 2021