ILLINOIS STATE BAR ASSOCIATION

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Bench & Bar

The newsletter of the Illinois State Bar Association's Bench & Bar Section

Chair's column: Truth and the law

BY DAVID W. INLANDER, CHAIR

This is not a political column. Rather, it is a statement of profound concern from the chair about the increasing number of attacks on the profession I love.

In recent months, lawyers and non-lawyers alike have made extraordinary statements to the public about our legal process. And, sadly, some attorneys have even abused the laws.

Most recently, we have been told by a well-known New York attorney that the "truth isn't always truth." Others have publicly stated a jury verdict should not be recognized because, at its core, the case was part of a witch hunt. Justices on state supreme courts are facing the prospect of impeachment, not so much for high crimes, but apparently for the violation of being identified as members of the opposition party from legislative representatives of their states. To some, it's acceptable to lie to the FBI, to a grand jury,

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A call to end routine shackling of custodial defendants

BY EVAN BRUNO

In most Illinois criminal courtrooms, defendants are separated into two categories: those who have the financial means to post bail and the dangerous, berserk animals who cannot.

Well, at least that's the conclusion a courtroom spectator might draw at a routine pretrial hearing, when the side door opens and the in-custody defendants shuffle into the courtroom, flanked by armed deputies, jingling and jangling like Harry Houdini taking the stage for an escape trick.

It's not often we see our fellow citizens in chains. After a subtle physical recoil, we usually take mental note—perhaps subconsciously—of the social distance between us and ***them***. "There go the bad guys," one might reasonably think, "the ones who would do harm if not restrained."

But this is almost always wrong. In most Illinois courtrooms, shackles are the uniform attire of all in-custody defendants, with no individualized consideration given to a defendant's dangerousness or likelihood of escape. Most often the difference between the defendant in chains and the defendant in khakis is nothing more than financial ability to post bond.

Consider a recent personal experience in a Champaign County courtroom. I was appearing in arraignment court with a client who had posted bond after being charged with criminal sexual abuse. He entered the courthouse through the metal

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Truth and the law

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or otherwise under oath, if you disapprove of the proceeding, or deem that laws on our books should not be applied to them. What we learned as sacred from our first year in law school from taking civil procedure and criminal law courses is suddenly turned upside down.

Truth is at the core of our legal profession, and with each astounding statement attacking that ideal, our judicial system is diminished. We take seriously oaths to tell the truth, to uphold and follow the law, and view them as essential to a democracy. Selectively deciding when it is convenient to be truthful, and when it is expedient to lie, is foreign to our legal training and our lives as attorneys and respected members of this society.

The cumulative effect of these attacks undoubtedly erodes the public's confidence in the law. As the Brennan Center for Justice at New York University School of Law recently opined: "The courts are bulwarks of our Constitution and laws, and they depend on the public to respect their judgments and on officials to obey and enforce their decisions. Fear of personal attacks, public backlash, or enforcement failures should not color judicial decision-making, and public officials have a responsibility to respect courts and judicial decisions. Separation of powers is not a threat to democracy; it is the essence of democracy." (June 5 2017)

Kevin D. Judd and Keith Watters likewise sounded the alarm over the serious and damaging nature of the attacks on the judiciary when they wrote in the June 2018 in the American Bar Association Journal: "When citizens lose confidence with the branch of government responsible for interpreting the laws, all of our institutions are diminished."

What can be done to counter this drumbeat of negative pressure being placed on our legal system? As responsible practicing lawyers and judges, we must speak out to defend our judicial system. Family, friends, and colleagues should hear from us, and be made aware that these outrageous statements are not only harmful to our society but harm the benefits of living in a democratic society governed by the rule of law. This is not a partisan issue. It is an American one. ■

A call to end routine shackling of custodial defendants

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detectors, wearing a black polo shirt tucked into khaki pants, and sat in the gallery of the courtroom along with other members of the public. As I sat waiting for his case to be called, the side door to the courtroom opened, and in came an armed correctional officer escorting a man wearing a full orange jumpsuit, orange flip-flops, metal chains around his ankles, and handcuffs that were secured tight to his waist with a thick, black Velcro belt. I came to learn that he too was charged with criminal sexual abuse, but the alleged facts of his case were no more alarming than those of my client.

On paper, the man in chains was different from my client in only one meaningful way: he couldn't post bond. The judge had not found him to be dangerous (at least no more dangerous than anyone else accused of such an offense). Having no pockets, there was no risk he had a weapon. And he was certainly no more likely than my client to make a break for Mexico. Yet, purely as a consequence of his being financially unable to post bond, he was forced to make his public court appearance draped in the trappings of a dangerous person.

Bench & Bar

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Last year, the Ninth Circuit Court of Appeals ruled that, even in pretrial proceedings, "[b]efore a presumptively innocent defendant may be shackled, the court must make an individualized decision that a compelling government purpose would be served and that shackles are the least restrictive means for maintaining security and order in the courtroom."[1] In so ruling, the court held that the fundamental, constitutional right to be free from unwarranted restraints prohibited the courts from (1) delegating that constitutional question to those who provide security and (2) instituting routine shackling policies reflecting a presumption that shackles are necessary in every case.

Judge Kozinski, writing for the court, astutely concluded that "[a] presumptively innocent defendant has the right to be treated with respect and dignity in a public courtroom, not like a bear on a chain."

This past term, the U.S. Supreme Court accepted *Sanchez-Gomez* for review, but reversed the ninth circuit's decision on mootness grounds without reaching the merits of the constitutional question of routine shackling.[2]

As is often proclaimed from legal soapboxes, *optics matter.* Placing a fellow citizen in chains sends the message that the person is dangerous and unsuited for freedom. It dehumanizes—and not in a liberal arts, snowflake-y kind of way, but in an old school, ***I**ndiana Jones and the Temple of Doom* kind of way. It's primitive, and our criminal justice system is better than that.

Our courts should respond to risk and minimize threats, but the routine shackling of all custodial inmates is grand overkill. If security personnel have reason to believe a custodial defendant presents a particularized danger, they should be able to make their concerns known to the court and request permission to use appropriate restraints, as the situation demands. But the routine shackling of all custodial inmates at all court appearances reflects a constitutionally imbalanced approach, one that cuts away far too much liberty in the pursuit of absolute safety. ■

1. ***U.S. v. Sanchez-Gomez***, 859 F.3d 649 (2017).
2. ***U.S. v. Sanchez-Gomez***, 138 S.Ct. 1532 (2018).

The historic nature of #MeToo: Best practices to ensure equal access from the perspective of Judge Debra Walker, Circuit Judge, Cook County Circuit Court

BY AVA GEORGE STEWART AND KENYA JENKINS-WRIGHT

When sitting with Judge Walker, you realize she was ready for the long battle. And, she persisted.

Perhaps it was being the lone girl at home with four brothers. Her older sister left the farm for university when Walker was eight. A farm!? Yes, a farm. While many of us enjoy the stories of farm life

from our sistren and brethren throughout Illinois, we are not accustomed to hearing that any of our

jurists in the City of Big Shoulders started out on a farm!

Judge Walker grew up in a farming community. Her dad was a tenant farmer for the first nine years of her life. The farm house provided by the landlord did not even have an indoor bathroom. She attended public schools in Carthage, graduating as valedictorian of her class.

When Judge Walker left the farm and headed to the University of Illinois, Champaign, she set her

sights on a profession with very few women: accounting. She also actively worked for the passage of the Equal Rights Amendment. She passed the certified public accounting exam on her first try during her senior year. Today, according to a 2017 study by the American Institute of Certified Public Accountants, women make up roughly 22 percent of all partners in accounting firms.[1] The certification exam for accountants is deemed by many to have a less than 50 percent pass rate historically.[2] That test was not going to get in her way.

After obtaining her bachelor's degree, she worked a couple of years as a CPA in downtown Champaign before entering the University of Illinois College of Law in the mid-80's. There was no doubt she wanted to stay in Illinois as a practitioner.

She was very active in law school, including serving as the student delegate to the American Bar

Association. So, it is with some irony that the challenges Judge Walker first experienced occurred during law school.

The summer after her second year of law school was spent working for a law firm in Chicago as a summer associate. On a firm outing, she was sexually harassed by a partner. At the time, she only told a friend who was a first year associate at the firm. There was genuine concern about needing to secure a job offer. There was no report of the incident to the managing partner. At the end of the summer, she headed back to campus in Champaign. A month or two later, a new first year associate was being harassed by the same unreported partner. The summer colleague phoned to ask if Judge Walker's name and the circumstances of her harassment could be revealed in order to bolster the first year associate's harassment claims. The partner was literally making comments about the first year associate's breasts. Judge Walker agreed to have her situation revealed, but never heard from any of the decision-makers at the firm regarding the incident. Meanwhile, a job offer was made and accepted, and by the time she joined the firm after graduation, the harassing partner was no longer working there.

She enjoyed her assignments at the firm. There was a lot of hard work. She was given opportunities to participate in the partners' (she was the sole associate) client development training. She left that firm after about five years for a smaller firm. Alas, she experienced sexual harassment at this firm as well. This time, she did report it to a partner. Afterwards, she noticed her opportunities for advancement were stalled. There was a shift in the law firm. Seeking new employment was paramount, given the environment.

Within a few months, she landed at a large LaSalle Street law firm. She thrived in this environment. She experienced no more incidents of sexual harassment. For a couple of years, she even generated the highest revenues of any income partner. Somehow, her efforts to become an equity partner were stymied. Still, there was a lot of support from the firm once she decided to pursue becoming a jurist.

However, support does not automatically mean an easy ride to the bench. It took Judge Walker nine years of concerted efforts to finally get on the bench. Judge Walker did everything she thought was necessary to strategically pursue the bench. She served on WBAI's Judicial Evaluation Committee and on Senator Durbin's commission for vetting federal judicial candidates. She had an insider's view serving in those capacities—state and federal—on what it took to get on the bench. Despite this knowledge, "[i]t took me nine years of trying [to become Judge]. I tried four times through the associate judge process. I also applied for federal magistrate judge. I even put in for federal bankruptcy judge one time because with my CPA background I thought, 'Well I learned the tax code, so I could probably learn the bankruptcy code.' I could never really get much traction," Judge Walker explained. "The fourth time I applied for associate judge, which was in 2007, I made the short list and then I wasn't selected. I found that it was incredibly political. I basically decided at that point that if there were a sufficient number of county-wide vacancies for the next race, I was just going to run. And I did. I was elected the first time I ran. Maybe I should have run sooner," Judge Walker noted. However, Judge Walker now utilizes her experience to motivate others who desire to join the bench. "If [becoming a judge] really is your life goal, don't give up. Keep trying, and it will come your way. You have to persevere. Especially women and people of color, I don't want them to give up on their dreams."

Dedication to the legal community is the thread woven into the fabric of Judge Walker from the time she entered law school through today as an experienced jurist. "I was raised in an environment where service was expected. My mother taught Sunday school for over 20 years. She instilled in all of us that we were to give back. We were to use our God-given talents. So, I always have been active, especially in service to others."

Judge Walker began her bar association leadership with the Women's Bar Association of Illinois (WBAI). Judge Walker initially joined WBAI in order to find like-minded individuals who understood what she was dealing with as a young female attorney. "I did get very active in the WBAI because I saw it as an opportunity to, number one, have the support of other women who were probably facing the same things I was facing, and number two, to try to make a difference," Judge Walker explained. She quickly rose through the ranks of WBAI eventually becoming President during the 1998-1999 bar year. "The Women's Bar was founded to work on suffrage to obtain the right to vote for women. I've always been all about equal rights for women, so the mission was important to me," noted Judge Walker. She continues to mentor several WBAI board members and presidents.

She has also been active in the Illinois State Bar Association, where she participated on a number of its section councils. She served on the Illinois Bar Foundation (IBF) Board for 15 years consecutively (2000-2015). Judge Walker was only the second woman to be president of the IBF. During her tenure with the IBF, Judge Walker focused on increasing the diversity of the IBF board. Towards the end of her tenure with IBF, she served one term on the Board of the National Conference of Bar Foundations (NCBF). For her outstanding service, in 2017, Judge Walker became the first judge to receive the NCBF Excellence Award.

In 2001, Justice McMorrow, a past WBAI president and mentor to Judge Walker, appointed Judge Walker to the Illinois Supreme Court Committee on Civility. In 2005, the Illinois Supreme Court decided to make it a permanent commission and it became the Illinois Supreme Court Commission on Professionalism. Judge Walker has served on this body since its inception in 2001 and this is her sixth year as chair. Judge Walker takes all of her commitments seriously, and she understands that her success is paving a way for other women to follow in her footsteps. "When women achieve anything, we need to reach back and help those other women to achieve things as well. If we are the first, we need to do a great job at whatever that first is, so we are not the last," she said.

Judge Walker believes that professionalism and civility are the best methods to ensure that everyone is successful in the workplace. The first step towards creating an environment in which both men and women can develop and advance requires civility and professionalism; however, she notes that women must also be go-getters who demand advancement in their careers. "I think it is just a question of educating the men to treat women with respect and civility and with equal access," noted Judge Walker. However, she also explained that some women don't ask for mentorship or introductions. "Some women don't ask. They don't ask the male partner to mentor them. They don't ask a male partner if he can introduce her to [a specific] client," said Judge Walker. Judge Walker further explained that "[women need] to be more aggressive. We have this old-fashioned stereotype that if a woman is aggressive, she is a b**ch, but if a man's aggressive, he is a go-getter. Well, we need to teach the men that a woman being aggressive means she's a go-getter. And we need to teach the women to be a go-getter. It is a multi-faceted approach that has to be taken, and if we just treat one another the way we like to be treated, so that old 'Golden Rule' in the workplace, we'd all be a lot better off."

Although it has not been an easy road, Judge Walker was able to overcome several obstacles. In light of her difficulties and the difficulties many others face regarding sexual harassment and sexual discrimination, Judge Walker sees the #MeToo movement as a way to give all people a platform that will promote civility in the workplace and encourage an environment without such harassment or discrimination. "[The #MeToo movement] enables women and others, because it is not just women who are victims of sexual harassment. There are also male victims of sexual harassment." Judge Walker believes the movement is empowering people to come forward with stories, and people now feel more emboldened after seeing family, friends, and national figures come forward with their stories of harassment and discrimination.

In fact, just maybe, after learning about Judge Walker's challenges and triumphs, people will feel emboldened to tell their story and run for judge. ■

1. Women's Initiatives Executive Committee, American Institute of Certified Public Accountants, AICPA Women's Initiatives Executive Committee: 2017 CPA Firm Gender Survey (2017), available at https://www.aicpa.org/content/dam/aicpa/career/womenintheprofession/downloadabledocuments/wiec-2017-cpa-firm-gender-survey-brochure.pdf
2. Illinois Board of Examiners, available at https://www.ilboe.org/about-us/brief-history/ .

Recent appointments and retirements

1. Pursuant to its constitutional authority, the supreme court has appointed the following to be circuit judge:
   - Hon. William A. Yoder, 11th Circuit, August 6, 2018
   - J. Jason Chambers, 11th Circuit, August 21, 2018
   - William D. Stiehl, 20th Circuit, August 22, 2018

2. The circuit judges have appointed the following to be associate judge:
   - Tameeka L. Purchase, 20th Circuit, August 7, 2018
   - William S. Dickenson, 21st Circuit, August 16, 2018

3. The following judges have retired:
   - Hon. Carla Alessio Policandriotes, 12th Circuit, August 3, 2018
   - Hon. Patrick F. Lustig, Associate Judge, Cook County Circuit, August 17, 2018
   - Hon. Alexander P. White, Cook County Circuit, August 31, 2018