

# Law Related Education

The newsletter of the Illinois State Bar Association's Committee on Law Related Education

## 2020-2021: A Time of Terror and Great Challenges to the Legal Community and Beyond: Past, Present, and Future

BY SHARON EISEMAN

This January issue of the ISBA's Committee on Law Related Education for the Public ('LRE') explores how we have coped, even prevailed, in managing the phases of our personal and work-related lives, especially in the courtrooms where

the lawyers representing their clients and the judges overseeing that litigation must continue their respective roles in presenting the evidence and dispersing justice for the parties. And on the personal side,

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## Martin Luther King Jr. Day: A Different Perspective on the 'Legacy' of MLK Jr. From Civil Rights Attorney Vernon Jordan

BY SHARON EISEMAN

### 2021 and THE MLK JR. HOLIDAY:

- What it has meant through the decades,
- A DIFFERENT PERSPECTIVE on the 'LEGACY' of MARTIN

LUTHER KING JR. from Civil Rights attorney VERNON JORDAN, and, perhaps due to lessons learned from the

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## 2020-2021: A Time of Terror and Great Challenges to the Legal Community and Beyond: Past, Present, and Future

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sometimes we need a break and for that, we offer an intriguing list of potential new holidays to observe each day in January which might make you smile, even chuckle.

Among our articles in this issue, you will find some terrific guidance from a law clerk and a law student who present helpful perspectives on: (1) how to stay out of trouble while navigating social media—a timely topic since so many of us are using that means of communication more often now that we spend most of our daily lives on-line and on smartphones, through texts and Facebook and Twitter, etc.; and (2) the specifics for lawyers re: how to present a case remotely to the court. We also share with you, in a persuasive report, a new ISBA project to help bring much-needed legal representation to people living in the rural areas of the State which historically has

### Martin Luther King Jr. Day: A Different Perspective on the ‘Legacy’ of MLK Jr. From Civil Rights Attorney Vernon Jordan

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PANDEMIC, and

- AN ENHANCED APPRECIATION of the need for RACIAL EQUALITY to become THE ‘NORM’\*

#### When Was the MLK, Jr. Holiday Established and Why?

First, before turning to a discussion of Dr. King’s legacy and what it means, let’s review how a holiday in his memory was established. Are you surprised to learn that serious controversy arose in 1983 when Congress moved to create a national holiday to honor Dr. Martin Luther King, Jr. and commemorate his legacy? It did, from southern legislators as well as from President Ronald Reagan who opposed any national observance for Dr. King who was variously described as “an outside agitator” (by Senator Strom Thurmond in 1968 following King’s assassination), and as someone who “welcomed collaboration with Communists”

limited access to attorneys, most of whom practice in the more heavily populated urban areas. You will enjoy reading about this innovative Rural Practice Initiative and its Fellowship Program.

And finally, because of the occurrence of Martin Luther King, Jr. Day on January 18 in this year of 2021, we republish in our January newsletter an informative piece from two years ago about MLK, Jr., the history of his struggles and his rise in the public eye, and the battles he waged for racial justice and equality. You will learn or be reminded as to why it is so important to remember and honor him, and to do so in this particular moment as we celebrate both the man and the powerful messages he fought so hard to communicate and implement. ■

(by North Carolina Senator Jesse Helms). To express his resistance that year, Helms led a sixteen-day filibuster of the MLK Holiday bill but then finally voted for it in exchange for Congress’ approval of his tobacco bill. Despite this opposition, the bipartisan vote in favor of the bill handily won the day, possibly because many Republicans may have believed they needed to show the public their support for civil rights.

And did you know or do you recall that Dr. King died before he even reached the age of forty, having been assassinated in Memphis, Tennessee on April 4 of 1968 when he was in the midst of preparing to lead a protest march in support of the City’s striking sanitation workers? Yet in his short lifetime, Dr. Martin Luther King accomplished the unimaginable, especially for a black man from the South and one advocating for peaceful integration. Thus, this year as in

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every previous year the holiday has been observed, people all over our country—and beyond—will pay homage to this great man, preacher, and acknowledged leader of the civil rights movement in America that has defined for generations what our country must acknowledge and address in order to *eliminate racism* in our society.

## Dr. King's Early and Relevant Education

Even before he stepped onto the national 'stage' and ignited a widespread movement for peace, justice and racial equality through his electrifying voice and powerful words invoking hope for the dreamers in his audiences, Dr. King had achieved many impressive goals. At an early age, and in short order, Dr. King proved the belief that he was bright, articulate and driven by earning a B.A. in Sociology from Atlanta's Morehouse College when he was only nineteen, a B.A. in Divinity just three years later, and then, in 1955, a Doctorate in Systematic Theology from Boston University. Those studies and his degrees both reflected his interest in canonical teachings and grounded him in the power of oratory of a spiritual nature that would engage his listeners and move them to action.

## How Rosa Parks' Courage Helped Inspire Dr. King's Early Activism and Advocacy for the Oppressed and Dispossessed

Also in 1955, Dr. King was chosen by local civil rights activists to lead a one-day boycott of the buses in Montgomery, Alabama. Their protest was spurred by area residents upset when Rosa Parks, a black woman, was arrested and fined on the bus she was taking home from work for violating the City's segregation laws. Parks had refused the order of the bus driver to give up her seat to a white man who had been standing on the crowded bus. Under local law governing public accommodations, he was entitled to preferential seating because of his race. That single day turned into a year which is how long it took Montgomery to desegregate the buses.

By persisting in its defense of racial segregation within its public transportation system, the City not only faced legal and

financial challenges but it also, perhaps unwittingly, simply stoked the flames of a significant and growing national civil rights movement. That movement, which engendered many other battles for racial equality, was borne of one black woman's using her **voice** to demand equal access to public services. Ms. Parks later explained that she claimed her seat that fateful day, not because she was physically tired but because she was "tired of giving in". For more about Rosa Parks, who was lauded for her courage, wrote two compelling memoirs, and lived into her nineties, see <https://www.biography.com/people/rosa-parks>.

## Etched Forever in Our Collective Memories: Dr. King's Compelling Words

Events in the sixties related to Dr. Martin Luther King Jr. are forever etched in our memories and in America's history. On August 28, 1963, King delivered perhaps his most stirring and memorable speech, one that has come to be known as the "I Have a Dream" speech. To the 250,000 participants in that day's organized march to D. C., King pronounced: "***I have a dream that one day this nation will rise up and live out the true meaning of its creed, 'We hold these truths to be self-evident: that all men are created equal.'***" In that same speech he made the dream personal when he stated: "***I have a dream that my four children will one day live in a nation where they will not be judged by the colour of their skin, but by the content of their character.***" The theme of non-judgmental equality and respect for human rights and opportunity for all without regard to color resonated with many individuals besides the marchers, which is what King intended: that his message of hope would take hold across the nation and trigger needed changes in the law.

## In the Face of Many Threats to Him and His Family and All His Detractors, Dr. King Received the Nobel Peace Prize in 1964

The era of the sixties was also witness to the award of the Nobel Peace Prize to Dr. King—in 1964. In the presentation to King, Nobel Committee Chairman Gunnar Jahn described the Reverend as an "undaunted

champion of peace" who had distinguished himself by showing that "a struggle can be waged without violence". Mr. Jahn also praised Dr. King for never abandoning his faith despite his having been subjected to numerous imprisonments and bomb threats, as well as repeated death threats against him and his family. Although detractors continued to attack Dr. King's teachings, much progress had been made toward the goals of equality, justice and peace that King was preaching. As notable examples, in the middle of the sixties, Little Rock High School and the University of Mississippi were integrated, Congress enacted the 24<sup>th</sup> Amendment to the U. S. Constitution, and President Lyndon Johnson signed the Civil Rights Act of 1964.

## Dr. King's Assassination: A Dark Day for All, and Its Aftermath

Sadly, as we all know, that decade didn't end well. Dr. King's good fortune, and possibly the momentum toward a more civil and just society, took a tragic turn on **April 4, 1968** when Dr. King was assassinated in Memphis, Tennessee and it seemed the world had come to a stop. By that time, many who questioned his motives and his means to achieving peace and equality had begun to appreciate the import of his messages and his work on the ground toward implementation of his mission—even though some believed Dr. King was espousing more aggressive actions to bring about the change he wanted. While his death left a terrible void, his legacy as a 'champion of peace' has continued to move us forward toward a more just society, even if slowly and with 'bumps' in the road in recent years. Still, we all need to keep vigilant to make sure we don't lapse in our efforts or allow prejudice, anger and distorted perspectives to further divide us as a nation into separate and unequal factions. And this is where Vernon Jordan enters the scene and shares a somewhat different and thus refreshing view of how to best honor the work done and progress achieved by Dr. King.

## Who Is Vernon Jordan and What Does He Have to Say About MLK Jr.?

Vernon Jordan, who is African-American,

graduated from Howard University Law School in 1960 and joined the firm of a prominent civil rights attorney in Atlanta as a law clerk earning \$35 a week, eventually becoming a well-known civil rights advocate in his own right. As a new lawyer, Jordan was part of an NAACP team representing a young black man who, in a mere 48 hours, had been arrested, arraigned, indicted, tried, convicted and sentenced to death by electrocution. That was a time when 'colored' people had to find outlying black-only motels when transacting business in the courts—or anywhere. And because they were banned from restaurants, they had to buy food at a grocery store and eat in their car.

Mr. Jordan's firm, which included Constance Motley, sued the University of Georgia in Federal Court, alleging that its restrictive admission policies constituted racial discrimination. Despite challenges and a stay that was reversed, the case concluded successfully for the plaintiffs in 1961 with the Court Order directing that the two named African American plaintiffs be admitted to the University. (See *Holmes v. Danner*, 191 F. Supp. 394 (M. D. Ga. 1961.)) In 1970, having left his firm, Jordan became the executive director of the United Negro College Fund, and in 1971 he assumed the presidency of the National Urban League, a position he held until 1981 when he resigned to become legal counsel in the Washington, D.C. law office of a Texas firm.

Aside from serving as a presidential advisor and a consultant to other high level government officials, and in demand for appointment to the boards of multiple corporations, Jordan has recently held the position of senior managing director for an investment banking firm. He has also authored two books, most recently (2008) *Make It Plain: Standing Up and Speaking Out*, a collection of his public speeches with commentary. The title certainly makes plain what Jordan has fought for all of his life and career. This indefatigable humanitarian has continuously used his legal and oratory skills and his talent for advocacy to help move the dial forward on the task of eliminating racial injustice.

Vernon Jordan's Characteristic 'Call

### to Action' as a Means to Change

It is on the stage before attentive audiences such as college graduates, that Jordan is most effective. In June of 2015, speaking to Stanford's graduating class at a multi-faith celebration for the students and their families, he minced no words, instead urging the audience to be '**disturbers of the unjust peace**'. Using a question from the prophet Isaiah: "Who will go, and whom shall we send?" as a basis for his message that day, Jordan said he prays the answer is "Here am I. Send me." He continued on: "**Send me to help clear the rubble of racism still strewn across this country. Send me to be one of the bulldozers on behalf of equality and in the cleanup crews against injustice. Send me to 'disrupt' injustice. Send me to 'hack' bias and bigotry. Send me to 'lean in.'**"

And now, 'fast tracking' right to 2018: Vernon Jordan, at 83 years of age, was invited by Dr. Otis Moss III, the young and engaging Senior Pastor of the Trinity United Church of Christ in the Washington Heights Community on Chicago's South Side, to give the guest sermon at the Church's September 30, 2018 Sunday morning service focused on 'Honoring Our Elders'. How did I learn about this meaningful event? Attorney **Juan Thomas**, a member of the ISBA's Standing Committee on Racial and Ethnic Minorities and the Law, had invited his REM colleagues—which includes me—to this special church service, and I decided to attend—with my husband Noel. Besides being quite touched by the warm welcome we received from the congregants that day in a venue where we were two of just a handful of white people in attendance, we were moved by Pastor Moss' sermon and by Mr. Jordan's compelling insights.

The primary message Jordan conveyed is simple: **While it is important to honor MLK Jr. for his accomplishments and celebrate his storied career as a civil rights activist, we cannot, must not, stop there as we often do, assuming it is enough to pay a yearly tribute to Dr. King as our means of supporting racial, ethnic and gender equality. Instead, we have to keep King's DREAM alive by working to achieve the goals he pursued. In other words, we**

**should consider ourselves the heirs of his legacy and take on the tasks he left to us—unfinished—until they are finished.**

### What Can We Do to Make a Difference 'Going Forward'?

For us to stay on track toward achieving justice for all, we must have strong leadership in our local, state and federal governments and in the private sector, as well as great teachers in our schools. It is through the polls at each election and, of course, through our political discourse and educational systems, that we can encourage each new generation to attain a better understanding as to the positive outcomes when diverse communities live and work together in mutual respect for their differences. We must also do what we can to assure that equal opportunities for achievement are available to all. Part of this equation is having **the will to speak up** when we see imbalances and inequities. It is especially important that, as lawyers, we also use our knowledge, our words, and our penchant for persuasion to convince others to join the movement and commit to action toward a more fair and just treatment of those groups in our communities who have no voice, no advocates, and waning hope.

Meanwhile, let's not forget the upcoming 2021 Martin Luther King, Jr. Holiday to be observed on Monday, January 18, 2021. We hope you will join in the tributes likely taking place all over Chicago—especially in our public schools and in other public arenas, as Chicago is a City that particularly and warmly embraced King and to which he had many close ties. Between 1956 and 1966 Dr. King gave three speeches at the University of Chicago's well-known Rockefeller Chapel, all of which became famous for his inspiring messages and brought him to the attention of the public.

**Resources for learning more:** If you wish to read more about Dr. Martin Luther King Jr. and his legacy, check out the University of Chicago's website at <http://mlk.uchicago.edu/> which offers significant material about the subject, what the University is doing to pay tribute to Dr. King this year, and how to pursue 'civic engagement' toward increasing diversity and inclusion. Much historic detail is available on the website for the National

Park Service's Martin Luther King, Jr. Memorial located in Washington, D.C. That site, though unable to provide continuing updates due to the current 'shutdown' of the Federal Government that is severely affection the NPS's ability to take care of its various sites, is nevertheless at least accessible at: <https://www.nps.gov/mlkm>. Teachers will also find many resources for observing the Holiday at [www.MLKDay.gov](http://www.MLKDay.gov). For the young and older, participating in a 'Day of Service' as part of the MLK, Jr. Holiday is a way to help preserve Dr. King's legacy and keep the torch of equality burning

One additional reference is The Martin Luther King, Jr. Center for Nonviolent Social

Change in Atlanta, Georgia, which Mrs. Coretta Scott King established in tribute to her husband, not as a 'dead monument' but as a living testimonial that would engage and empower visitors. The King Center, a 23-Acre National Historic Site that invites and enables visitors to embark on a self-guided tour, includes a Library and an Archive and, as of last year, it had initiated a project for an "innovative digital strategy and conference series". Check it all out at <http://thekingcenter.org>. ■

1. **Constance Motley**, widely known as an early civil rights activist, was born in 1921, the ninth of twelve children, to parents who emigrated from the West Indies. At the age of 15, having been inspired by reading about civil rights heroes, Motley decided she wanted to be a

lawyer—and ultimately became the second black woman to graduate from Columbia Law School where she met Thurgood Marshall, chief counsel for the NAACP Legal Defense Fund where Motley worked while a law student. She later clerked for Supreme Court Justice Marshall, became chief counsel herself of the NAACP Legal Defense Fund, and wrote the draft complaint for *Brown v. Board of Education*. As a practicing attorney, Motley argued before the Supreme Court, winning nine out of her ten cases. As lead counsel, Motley was also successful in defending protestors arrested in the early sixties for taking part in the Freedom Rides, and for helping James Meredith gain admission to the University of Mississippi in 1962. Ultimately turning to the political arena, Motley became the first black woman to serve in the New York State Senate. In another first for an African American woman, Motley became a federal judge when President Lyndon Johnson appointed her to the Manhattan Federal District Court in 1966. After a very full and productive life, Constance Motley died in 2005 at the age of 84.

# Altered Criminal Court Proceedings in an Unprecedented Era: What Is New, How it Is Working, & Practices We May Keep in the Post-Pandemic World

BY HON. JOHN O'GARA JR.

Throughout the state of Illinois, courts have made dramatic changes in response to the COVID-19 epidemic. The St. Clair County courts' adaptations were difficult, but on the whole the response was quick, and, as I am sure many are finding out, some of the changes will benefit the courts after the Pandemic has passed. I am assigned to a busy felony courtroom in St. Clair County. In March 2020, the immediate realization was dramatically clear: that we had to severely curtail in-person appearances. The chance for innovation soon followed.

The crisis and its associated need to keep everyone safe created the opportunity for a new Twentieth Circuit Court order allowing for the waiver of preliminary hearings and arraignments by closed circuit television, consistent with the statute. The process is more secure and has also allowed the trial court judges a new opportunity to conduct an additional review of bond for pre-trial

detainees, giving us enough time to truly reflect on the statutory factors necessary to set a fairer bail in each matter we hear.

We still conduct some in-person hearings, but they are very limited. To accommodate this substantial change, our Public Building Commission and its employees, in consultation with the St. Clair County Health Department, has worked with us by installing barriers which, in addition to masks and frequent sanitation, makes the process as safe as possible. The plexiglass



barriers certainly make it feel as if we are sitting in a hockey penalty box, but it is a comfort knowing that such protocol may prevent or substantially reduce the chances of spreading this awful virus.

We have been equipped for a number of years with a closed-circuit television feed from one of the felony courtrooms and one of the misdemeanor courtrooms to the county jail. This access option was used for first appearances during weekdays. We still had a judge and a clerk appear in person at the county jail's chapel every Saturday and additional holiday dates for first appearance arraignments and bond hearings. We have changed this decades old practice and are now conducting the weekend and holiday appearances remotely from the courthouse. This change is safer, allows the judges and clerks to have computer access and, hopefully, makes the process fairer for each defendant.

For some time before the crisis, I had hoped to improve the ability to use technology in streamlining routine court appearances. I often worried that requiring the accused to appear at numerous status conferences may harm that person's ability to earn a living or otherwise affect the accused negatively, thus creating a needless, vexatious burden for victims who wish to attend, and that, in general, repetitive hearings helped no one in the process of achieving justice for anyone. The crisis we face has accelerated our efforts to finally have improved computer access throughout our courthouse. We can better use Zoom as well as other platforms for remote participation for routing matters

which will save attorneys, their clients, victims and interested parties time and resources.

The most dramatic change-and, unfortunately not for the better- is our inability to safely conduct jury trials. The number of trials has been declining for many years, but nevertheless, not having regularly scheduled jury trials is a major concern. The effect of postponing perhaps the most important right a person has in our legal system is profound. The looming eventuality of trial often precipitates the resolution of a case, and its absence has no doubt caused a great number of cases to remain pending.

Of utmost concern, the continued high positivity rate for COVID-19 deprives detained individuals of their right to a safe, effective and speedy jury trial. This has led to an increase in the jail population in our county. The crisis has focused our courts on searching for and creating alternatives to pre-trial detention on an accelerated basis, and this has provided the glimmer of hope for addressing this dire situation. As a result of our efforts to confront the pandemic, we now have a better ability to rely on new methods: GPS, Zoom, and other communication technology, to incorporate modern pre-trial practices. ■

# Livestreaming Court Cases

BY KELLEN J. DYKSTRA

## Introduction

COVID-19 has led to court proceedings being done online rather than in person. Many court proceedings are now being livestreamed to the public through mediums such as YouTube and Facebook Live. For the circuit court of the Twenty-Judicial Circuit of the State of Illinois, some judges are allowing livestreaming through YouTube, while others are concerned that livestreaming might detract from courtroom decorum and proper security of their court. In a recent press release regarding livestreaming from the circuit court, the court declared:

In addition to video appearance, members of the public may be able to view court proceedings that will be live streamed to the internet to ensure public access to proceedings. Cases which are closed to the public will not be live streamed, and judges do have the judicial discretion to not live stream a proceeding.

Press Release, *Illinois Supreme Court Modifies Order to Allow Circuit Courts to Resume*, 22<sup>nd</sup> Judicial Circuit, McHenry County, Illinois (May 21, 2020) (<https://www.mchenrycountyil.gov/home/showdocument?id=98427>) [hereinafter Press Release].

This press release seems to indicate that whether a judge's court cases are

livestreamed will be left to the judge's discretion. However, under the Public Access heading of the court's Reestablishment Plan, the court has also stated:

If the public's ability to physically access to the courthouse is restricted to emergency or essential matters only, then the public will not be allowed to enter the courthouse for the purpose of viewing proceedings. If proceedings are conducted during this time period in a Virtual Courtroom, the proceedings must be livestreamed to ensure public access to the proceeding.

*Reestablishment Plan*, 22<sup>nd</sup> Judicial Circuit, McHenry County, Illinois, Continuity of Operations (<https://www.mchenrycountyil.gov/home/showdocument?id=98429>) [hereinafter Plan].

This quotation from the Reestablishment Plan suggests that judges are not given a choice as to whether their court proceedings are to be livestreamed. Yet the Plan also gives some deference to judges under the Conduct & Decorum heading, stating, "The Judge shall make every effort to maintain the same level of decorum as if participants were physically present in the courtroom." *Id.* Further, in the Public Access heading in the Reestablishment Plan, the court states, "In order to reduce the number of people coming into the courthouse at any one time,

the Judge shall consider live streaming all virtual proceedings regardless of who is physically present in the courtroom at the time of the hearing." *Id.*

The court has further set out limitations for what the public can do regarding the livestreams: "Video or audio recording, of any live-streamed proceeding, by any party, attorney, or any member of the public, through any device or format is strictly prohibited. Failure to comply with this admonishment may result in the imposition of sanctions or in a finding of contempt." See Press Release. In order to ensure this happens, the court deletes YouTube content immediately after it airs and puts a watermark on the livestream feed reading "COPYING IS PROHIBITED," "DO NOT COPY," or other words to that effect. See Plan.

## Legal Analysis

### Right for Public to Have Courtroom Access

Having courtroom access is derived from two sources. The first source is the common law presumption giving the public a right of access to court proceedings. *Nixon v. Warner Communications*, 435 U.S. 589, 599 (1978). Courts that have ruled on this have agreed

that the decision on whether to access is best left to the discretion of the trial court, which should make its decision in light of the relevant facts and circumstances of the particular case. *Id.*

The second source is the First Amendment right to freedom of speech, which carries with it some freedom to listen and the right of access to places traditionally open to the public, as criminal trials have long been. *Richmond Newspapers v. Virginia*, 448 U.S. 555, 576 (1980). The public has access not only to criminal cases, but civil cases also. This can be supported by the common law, with evidence such as the 1677 Concessions and Agreements of West New Jersey, which provided, “That in all publick courts of justice for tryals of causes, civil or criminal, any person or persons, inhabitants of the said Province may freely come into, and attend the said courts, and hear and be present, at all or any such tryals as shall be there had or passed, that justice may not be done in a corner nor in any covert manner.” *Id.* at 567. In addition, there are policy reasons that support the public being allowed access to court proceedings in civil cases: education of the public on legal proceedings and ensuring accurate fact-finding and court decisions. *Id.* at 572, 595-96.

There are limitations on how much access the public can have to courtrooms. The Supreme Court has declared, “[T]he right to inspect and copy judicial records is not absolute . . . Every court has supervisory power over its own records and files, and access has been denied where court files might have become a vehicle for improper purposes.” *Warner Communications*, 435 U.S. at 598. There can be instances in which the right of access is superseded by a defendant’s constitutional right to a fair trial but this can only be “on the basis of articulable facts known to the court, not on the basis of unsupported hypothesis or conjecture.” *U.S. v. Edwards*, 672 F.2d 1289, 1294 (7th Cir. 1982). However, there can be times where there is “such a probability that prejudice will result that [the procedure used by the court (in this case, televising a well-known case)] is deemed inherently lacking in due process.” *Estes v. Texas*, 381 U.S. 532, 542-43 (1965). It is also important to note that within the courthouse, a reporter’s constitutional

rights are no greater than those of any other member of the public. *Id.* at 589. Thus, members of the media and members of the public are treated the same by the court.

### **Courts’ Obligation to Livestream**

Although the public has a right to access court proceedings to some degree, it is a different matter to prove that courts must be obligated to provide a livestream when courts are not open to the general public. The Supreme Court has concluded that “expression by means of motion pictures is included within the free speech and free press guarantee of the First [Amendment].” *Joseph Burstyn v. Wilson*, 343 U.S. 495, 502 (1952). From this, it can be concluded that livestreaming is protected free speech, but that does not necessarily mean that courts are to be required to conduct it themselves in order to uphold the public’s right of access. In *Warner Communications*, the most important case regarding court access, the court determined there to be a “presumption in favor of public access,” but failed to clarify the strength of this presumption, leaving it up to the courts of appeal to decide for themselves. *Edwards*, 672 F.2d at 1293; see also *Warner Communications*, 435 U.S. at 599. In *Warner Communications*, the court also declared, “[T]he decision as to access is one best left to the sound discretion of the trial court, a discretion to be exercised in light of the relevant facts and circumstances of the particular case.” *Warner Communications*, 435 U.S. at 599. Therefore, courts are given significant leeway in how they wish to allow public access to courtrooms.

### **Livestreaming in Illinois Courts**

The Supreme Court of Illinois affirmed that “the court has supervisory authority over its own records and files and may deny access at its discretion.” *People v. Zimmerman*, 120 N.E.3d 918, 921 (Ill. 2018). In Illinois, there is a common law right for public access to court records, which states:

“Such other books of record and entry as are provided by law, or may be required in the proper performance of their duties. All records, dockets and books required by law to be kept by such clerks shall be deemed public records, and shall at all times be open to inspection without fee or reward, and all

persons shall have free access for inspection and examination to such records, docket and books, and also to all papers on file in the different clerks’ offices and shall have the right to take memoranda and abstracts thereto.”

705 ILCS 105/16(6).

This statute “does not, however, abrogate the trial court’s inherent power to control its files and to impound any part of a file in a particular case.” *In re Marriage of Johnson* 598 N.E.2d 406, 409 (Ill. App. Ct. 1992); see also *Deere & Co. v. Finley*, 431 N.E.2d 1201, 1203 (Ill. App. Ct. 1981). The Supreme Court of Illinois has also “deemed public access to court records ‘essential to the proper functioning of a democracy’ because ‘citizens rely on information about our judicial system in order to form an educated and knowledgeable opinion of its functioning.’” *United Conveyor Corp. v. Allstate Ins. Co.*, 92 N.E.3d 561, 566 (Ill. App. Ct. 2017); see also *Coy v. Wash. Cty. Hosp. Dist.*, 866 N.E.2d 651, 653 (Ill. App. Ct. 2007). There is a presumption that the public has access to court records under the First Amendment, which gives the public the right to inspect court records which have “historically been open to the public” and disclosure of which would further the court proceeding at issue. *Skolnick v. Alzheimer & Gray*, 730 N.E.2d 4, 16 (Ill. 2000); see also *United States v. Corbitt*, 879 F.2d 224, 228 (7th Cir. 1989). “To overcome presumption, the party opposing public access bears the burden of establishing: (1) a compelling interest that favors a closed file, and (2) that the protective order is drafted in the least restrictive manner possible.” *Skolnick* 730 N.E.2d at 16. Livestreaming is a very recent development, so it cannot be argued that it falls within the category of being “historically open to the public.” It is important to note that most courts prohibit the recording of court proceedings and having all court proceedings livestreamed would make this rule very difficult to enforce. The public have historically had access to in-person, live court proceedings, and documents upon request, but not to video footage of proceedings, which is what could potentially be available if livestreaming were obligated for all courts.

## Courtroom Decorum

Another important consideration is how livestreaming might affect courtroom decorum. “It is essential to the proper administration of criminal justice that dignity, order, and decorum be the hallmarks of all court proceedings in our country.” *Illinois v. Allen*, 397 U.S. 337, 343 (1970). In *Illinois v. Allen and Deck v. Missouri*, the Supreme Court considered the constitutionality of shackling a defendant in court in a criminal trial. “The concern for courtroom decorum is not a concern about defendants, let alone their right to due process. It is a concern about society’s need for courts to operate effectively.” *Deck v. Missouri*, 544 U.S. 622, 656 (2005). These cases are more than about shackling; they are about how courts should and may control decorum. In *Deck*, the Supreme Court overruled the trial court, which had rejected the defendant’s objection to the appearance of the defendant in court with shackles on. Appearing in court like this had a possibility of influencing the jury. *Id.* at 658. However, the Court did recognize the possibility for judges to take account of special circumstances, including security concerns, which could call for shackling defendants. *Id.*

These cases show that the Supreme Court recognizes a right for courts to exercise discretion regarding matters of decorum. This is a right which extends back many years: “[C]ourts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect and decorum in their presence, and submission to their lawful mandates.” *Ex parte Terry*, 128 U.S. 289, 303 (1888). The court of appeals also recognizes this: “Such matters of courtroom decorum rest in the sound discretion of the trial court.” *U.S. v. Roustio*, 455 F.2d 366, 371 (7<sup>th</sup> Cir. 1972). In addition, Illinois courts recognize this deference to judges: “It would be utterly impossible for the law of the land to be properly administered if judges do not have the power to prevent instances of indecorum from occurring in their own presence.” *People v. Bell*, 658 N.E.2d 1372, 1379 (Ill. App. Ct. 1995).

Advocates of livestreaming court cases will argue that livestreaming has no detrimental effect on matters of justice:

During the last thirty years, studies conducted by state and federal jurisdictions to evaluate the effect on the judicial process of the presence of cameras in courtrooms have demonstrated that televised coverage of trial court proceedings does not impede the fair administration of justice, does not compromise the dignity of the court, and does not impair the orderly conduct of proceedings . . . The results of studies of these experiments, conducted between 1979 and 1994, establish that a silent, unobtrusive in-court camera can increase public access to the courtroom without interfering with the fair administration of justice.

*Katzman v. Victoria’s Secret Catalogue*, 923 F. Supp. 580, 586 (S.D.N.Y. 1996)

It is important to note that livestreaming court cases has never been done to the extent that it has been done since COVID-19 began, so updated studies should be more readily available. In addition, it is better to allow judges to decide on whether to livestream their cases, since case law favors giving them discretion in court decorum.

## Conclusion

With a nationwide pandemic, courts must make adjustments in order to continue carrying out justice. It is undeniable that video must be used for lawyers, witnesses, defendants, and plaintiffs to be required to appear before judges in court. However, judges should not be obligated to livestream. In *Warner Communications*, the Supreme Court emphasized the importance of courts deciding for themselves how best to exercise proceedings. *Warner Communications*, 435 U.S. at 599. Judges should consider facts and circumstances themselves to determine whether livestreaming should be allowed. A valid concern of judges is that a member of the public can record court proceedings (which is not allowed by many courts) and use recordings as a political weapon, which can be worrisome for a judge who is elected. *Estes v. Texas*, 381 U.S. at 548. We are in the early stages of livestreaming court cases, and it is best to proceed cautiously and allow discretion rather than to mandate certain methods of proceedings of the judges. It is important to be aware of the risk of livestreaming being used by unknown parties as a “vehicle of improper purposes.”

*Warner Communications*, 435 U.S. at 598.

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# ISBA Launches Rural Practice Fellowship Program as Component of Rural Practice Institute

BY DANIEL R. THIES & LOIS J. WOOD

In an effort to address the ongoing shortage of attorneys practicing in rural Illinois, the ISBA has launched the Rural Practice Institute and the Fellowship Program that is a part of that Institute. The Fellowship Program aims to connect rural and small-town law firms interested in hiring law clerks and associates with law students and newer attorneys desirous of practicing law in rural areas of Illinois. Attorneys and law students admitted into the Program will receive a stipend of \$10,000 or \$5,000, respectively, to encourage their establishment of a practice in rural areas of our State.

Data shows that more than half of Illinois counties have fewer than 0.7 lawyers in private practice per 1,000 residents. Thirty-four Illinois counties have ten or fewer attorneys total in private practice, and 13 counties have a total of five or fewer attorneys in private practice. Worse, many attorneys in rural areas are nearing retirement (for which step we wish them well) and are not being replaced in significant enough numbers to avoid a growing crisis in access to justice.

The ISBA Special Committee on the Rural Practice Initiative created two complementary fellowship programs to address the issue:

- a clearinghouse to connect law students (summer fellows) with rural practitioners for an 8-10 week summer clerkship; and
- a clearinghouse to connect young lawyers (associate fellows) with experienced practitioners searching for a permanent associate to whom they might eventually transfer their practice.

As an extra incentive, both summer fellows and associate fellows accepted into these programs will be eligible to receive

a stipend. Summer fellows will receive a \$5,000 relocation and expense stipend from the ISBA, plus any amount that the experienced practitioner agrees to pay them. This arrangement will allow fellows to earn \$8,000-\$10,000 per summer, which is extremely competitive for summer opportunities for law students. Associate fellows will receive the same \$5,000 relocation stipend planned for the summer fellows, but in addition, the associate fellows will also receive a \$5,000 stipend upon the completion of their first year as a rural practitioner. This second stipend will serve as an additional inducement for young and new lawyers to relocate permanently to rural areas.

“I look at this as part of succession planning,” ISBA President Dennis Orsey said. “We know in a number of the counties in the state of Illinois we have an aging lawyer population. A number of these practicing attorneys have good, viable practices with a built-in client base. What they’re looking for are younger attorneys who are willing to settle in that rural community and eventually take over their practices.”

Applications from both potential summer fellows and from law firms or experienced practitioners seeking to employ a fellow will be due by February 12, 2021.

Additional information about the RPI program, as well as the application, can be found at <https://www.isba.org/ruralpractice>.

The RPI Special Committee will inform applicants if they are accepted into the program by March 1, 2021 and, to facilitate the scheduling of interviews, will provide both summer fellows and experienced practitioners with each other’s contact information at that time. The deadline for summer fellows to accept an offer of employment and for experienced

practitioners to secure a summer clerk fellow will be March 14, 2021. ■

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*Daniel R. Thies and Lois J. Wood are co-chairs of ISBA’s Special Committee on the Rural Practice Initiative.*

# Using Social Media Wisely

BY KELLY LEEK

## The First Amendment

“They can’t fire you for posting that!” “Free speech, buddy!” “We can say whatever we want.” “We’re protected by the First Amendment!” These statements often appear, separately or in a group, in the comments section of news articles about social media users being punished for unpopular speech. But are any of these statements true? What does the First Amendment actually say about what we post on Facebook, Twitter, Instagram, and all the other apps we use to stay connected? [The full text is as follows:](#)

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

If you look closely at the text, you will see that private individuals and companies are not mentioned. The Supreme Court has said that the amendment applies to both federal and state actors. In other words, [the government](#), both federal and state, as well as public entities of the state, has to avoid passing laws and acting in other ways that impermissibly restrict speech. However, this restriction on the government’s power does not protect speakers from social consequences of their speech. The following examples illustrate the far-reaching effects of using social media unwisely.

## Education & Funding

In 2015, a nursing student posted troubling comments about other students on Facebook. The nursing program determined that the student’s posts violated the Nursing Association Code of Ethics. The student insisted that the off-campus speech was covered by the First Amendment, and that he could not be punished by being ejected from the program. However, the court determined that the unethical and unprofessional behavior could be punished by the nursing

program: they had the right to take away his funding and remove him from the program. The First Amendment did not protect that particular speech. See *Keefe v. Adams*, U.S. Court of Appeals for the Eighth Circuit, 2016.

## Hiring & Firing

### Job Offer Rescinded

In 2009, a recent graduate, Connor Riley, aged 22, suddenly found herself without a job offer when Cisco, her soon-to-be employer, was notified of this tweet: “Cisco just offered me a job! Now I have to weigh the utility of a fatty paycheck against the daily commute to San Jose and hating the work.”

After Twitter dubbed her the “Cisco Fatty,” Riley’s internship was quickly revoked by her offended hiring manager. See <https://www.nbcnews.com/id/wbna29901380>.

### Veteran Employee Removed

In 2010, Octavia Nasr, CNN’s senior Middle East editor, was fired for this tweet: “Sad to hear of the passing of Sayyed Mohammad Hussein Fadlallah. One of Hezbollah’s giants I respect a lot.”

Although Nasr quickly apologized and removed the tweet, the damage was done. The tweet had circulated widely and drew quick criticism from the United States and Israel. Although Nasr’s tweet was an expression of her own political opinion and not intended to be a statement of her employer’s position, CNN fired Nasr shortly afterwards. See <https://www.theguardian.com/media/2010/jul/08/octavia-nasr-cnn-tweet-fired>.

## Is Social Media SAFE to Use?

The consequences of using social media unwisely can be both far-reaching and devastating. What is “out there” on the internet stays on the internet. Even if users delete their posts, websites may continue to store the data. Also, other users might already have saved or shared the content.

A single post can be seen by hundreds if not thousands of viewers a day, reaching far beyond the original poster’s intended audience.

As described above, people have lost their scholarships, admission to universities, job offers, and life-long careers by posting poorly-worded comments on social media. Even a picture can cost a Facebook user his or her job. Consider Ashley Payne: in 2011, the teacher lost her battle in court after the school fired her for posting pictures of alcoholic beverages while she was on vacation in Europe. See [https://www.abajournal.com/news/article/judge\\_rules\\_against\\_teacher\\_who\\_says\\_she\\_was\\_fired\\_over\\_facebook\\_photos/](https://www.abajournal.com/news/article/judge_rules_against_teacher_who_says_she_was_fired_over_facebook_photos/).

At this point, some might ask: why should I use social media? How can I use it safely? Here are [three simple guidelines for using social media wisely](#):

- Use Facebook, Twitter, Instagram, etc. to connect with friends and family in positive, uplifting ways. Post that cute photo of the new baby, the family pet, or Grandma’s cookie recipe. Use this space as an opportunity to stay in touch with loved ones who do not live nearby. Having your support system at the tips of your fingers can be a breath of fresh air while you are working a competitive job or pursuing a challenging degree.
- Use professional networking sites such as LinkedIn to establish a professional image. Post your job qualifications, what sort of position you are looking for, and samples of your work and/or writing. Show professionals in your field of interest that you are someone they should “keep in the loop” when it comes to job and academic opportunities.
- Use sites like Instagram and Tumblr to express your creativity. Show us a picture you painted, a photo you took, or a poem that you wrote.

However, the old adage still applies: you probably would not want to post anything you would not want your grandmother to find.

In other words, exercise both common

sense and an abundance of caution while using social media. Pause before posting. Ask yourself, “Would I be embarrassed if everyone saw this? Is it all right if this comment or photo is out there forever?”

With a bit of planning and forethought, using social media can be both an enjoyable pastime and a useful tool, including for connections, for young and old alike. ■

# New and Not-So-New January Holidays

BY SANDRA SWEENEY

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2020-WOW! A year everyone would like to forget! To assist with that goal and add some humor to your lives, HERE are ‘suggestions’ from the internet for new/not so new January holidays we might wish to observe.

## JANUARY

Jan. 1: New Year’s Day, National Hangover Day (enough said)

Jan. 2: National Science Fiction Day (Star Trek marathon anyone?)

Jan. 3: J.R.R. Tolkien Day (I had to look this one up.) Celebrate if you are a fan of “The Hobbit” or “Lord of the Rings”

Jan. 4: Trivia Day, National Spaghetti Day (Exercise your brain and get completely filled up on tasty carbs day.)

Jan. 6: Sherlock Holmes’ Birthday, Cuddle Up Day (Sherlock Holmes movie marathon while wrapped in your favorite blanket?)

Jan. 7: Old Rock Day (The unofficial holiday encourages people to acknowledge, celebrate, and learn more about old rocks and fossils. Geology and dust, anyone?)

Jan. 8: Bubble Bath Day (My kind of day)

Jan. 9: National Static Electricity Day, National Word Nerd Day: (Watch your sister’s or mother’s or wife’s hair stand on end after you drag your feet across the carpet and touch her!)

Jan 10: Peculiar People Day, Houseplant Appreciation Day, National Bittersweet Chocolate Day (I hate to say I may resemble this day! )

Jan. 11: Learn Your Name in Morse Code Day: (Mine is: ... - - - - ... ) You want to try yours? Go to [morsecodetranslator.com](http://morsecodetranslator.com). You can even listen to what it sounds like. Pretty neat!)

Jan.12: National Pharmacist Day, National Hot Tea Day (I’ll take mine Green)

Jan. 13: Make Your Dream Come True

Day, National Rubber Ducky Day (My Duck is green, what is yours?)

Jan. 14: Dress Up Your Pet Day (He hates his sweater; I don’t think this will work)

Jan. 15: National Hat Day, National Bagel Day: (YES-make mine a sesame seed with a ton of cream cheese! And you should wear a hat while eating yours!)

Jan. 16: Appreciate a Dragon Day (if you can find one), National Nothing Day (nothing to say)

Jan. 17: Benjamin Franklin Day, Ditch New Year’s Resolution Day (Never can stick by those resolutions)

Jan. 18: Thesaurus Day, Winnie the Pooh Day, Martin Luther King Jr. Day (third Monday of January). Let us always remember the sacrifices Dr. King made to bring all humanity together peacefully! We could really use him NOW.

Jan. 19: National Popcorn Day, National Tin Can Day (Love that cheese popcorn--it is truly addictive!)

Jan. 20: National Cheese Lovers Day and Penguin Awareness Day! (Do you think Penguins like Cheese?)

Jan. 21: National Hugging Day, Squirrel Appreciation Day (This day fits me perfectly. I was always a hugger, now I have an excuse.)

Jan. 22: National Blonde Brownie Day (I do not care what color--they are all delicious.)

Jan. 23: National Handwriting Day, National Pie Day (Some could use this day to improve their skills, both for pie consumption and handwriting.)

Jan. 24: Compliment Day, Belly Laugh Day (Make many people’s day by handing out those compliments because it takes only one minute of your time to make someone else’s day!)

Jan. 25: Opposite Day (This one always

frustrates me, because I’m just not quick enough to turn it around.)

Jan. 26: Spouse’s Day (Do something special for your special someone and that someone will, in turn, do something special for you! Now that is a win-win situation.)

Jan. 27: National Chocolate Cake Day, Punch the Clock Day (Oh yea, love that chocolate cake.)

Jan. 28: National Kazoo Day, Data Privacy Day (Just hum into the kazoo and the tune will be stuck in your head and the heads of everyone else who hears it--making for harmless fun all day long.)

Jan. 29: National Puzzle Day, National Corn Chip Day (Make sure the puzzle is not too hard or this day could turn into National Puzzle Month and cause consumption of ‘mucho’ Corn Chips!)

Jan. 30: Draw a Dinosaur Day (Nope, my drawing is just BAD but maybe you will do better!)

Jan. 31: Backward Day, Inspire Your Heart With Art Day (Take a look at some art on-line and allow yourself to just fill your heart, brain, and emotions! Then grab some markers, crayons or paint and brush and try your hand at a colorful piece of your own.)

THAT’S IT for the month! While this accumulation may not be earthmoving or educational per se, we hope it stirred your imagination and also gave you something just to chuckle about during your reading of the daily observances. We all need more of that in our lives right now since, understandably, WE HAVE A LITTLE TOO MUCH SERIOUSNESS, RIGHT? BTW, the parenthetical comments are just my personal take on each of the days. What’s yours!

As Thomas Mann stated, “Laughter Is a Sunbeam of the Soul.”