ILLINOIS STATE BAR ASSOCIATION

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Senior Lawyers

The newsletter of the Illinois State Bar Association's Senior Lawyers Section

Chair's Column

BY MARYLOU LOWDER KENT

Part of the mission of the Senior Lawyers Section Council is to provide service to the members of the ISBA as they move toward the end of their careers. To that end, I wish to highlight a couple of the projects which our Section Council has recently developed to help in that regard.

Last December our CLE committee produced an hour long video entitled "Social Security and Medicare 101: The Basics." These federal programs are very important to all of us as we age but can seem confusing and complicated to many of us. The presentation on Social Security discusses such issues as eligibility for collecting benefits, factors to consider in deciding when to start collecting benefits and restrictions on outside earnings. The Medicaid portion covers original Medicare, supplemental Medigap and prescription drug policies and Medicare Advantage Plans. This video will soon be posted to the

Continued on next page

The United States Supreme Court Stability: A History

BY LEONARD F. AMARI

Introduction

After the contentious Trump appointments and Senate confirmations of Justices Gorsuch, Kavanaugh, and Coney Barret, in April of 2021, Congressional Democrats (Markey/Nadler) introduced legislation to expand the Supreme Court from nine to thirteen justices, joining progressive activists pushing to change the ideology of the court.

However, House Speaker Nancy Pelosi told reporters she has "no plans to bring it to the floor." "I don't know that that's a good idea or bad idea. I think it's an idea that should be considered," she said of the court expansion plan.

With the House now being controlled by 218 Republicans after the recent 2022 mid-term elections, the issue would seem to now become moot, at least for the next several years.

Historical Perspective

The Constitution neither enumerated the specific powers and prerogatives of the Supreme Court nor the organization of the Judicial Branch as a whole. It was, therefore, left for Congress and to the Justices of the Court, through their

Continued on next page

Chair's Column

CONTINUED FROM PAGE 1

IBBA website and I encourage all to check it out for some valuable information.

In addition, the SLSC has formed a new Committee to address issues facing senior lawyers who choose to continue to practice. This Committee intends to promote issues relating to equity and inclusion for senior lawyers who are practicing either full or parttime and will consider issues surrounding transitioning to retirement or semi-retirement. David Chroust, Chair of the Issues Facing Practicing Senior Lawyers Committee, has written an informational article which will appear in a future issue of this newsletter further explaining the purpose of this Committee and seeking input from fellow senior lawyers.

As always, the Council is interested in hearing about any issues of concern to our Senior Lawyers Section membership. Feel free to contact me at any time at mlkent51@gmail.com.■

The United States Supreme Court Stability: A History

CONTINUED FROM PAGE 1

decisions, to develop the federal judiciary and a body of federal law.

The establishment of a federal judiciary was a high priority for the members of the Constitutional Convention. The first bill introduced in the United States Senate became the Judiciary Act of 1789.

The earliest sessions of the Court were devoted to organizational proceedings. The first cases reached the Supreme Court during its second year, and the Justices handed down their first opinion on August 3, 1791, in the case of West v. Barnes.

Members of the Supreme Court are appointed by the President subject to the approval of the Senate. To ensure an independent judiciary and to protect judges from partisan pressures, the Constitution provides that judges serve during "good behavior," which has generally meant for life.

The number of Justices on the Supreme Court changed six times before settling at the present total of nine in 1869.

Since the formation of the Court in 1790, there have been only 17 Chief Justices and 104 Associate Justices, with Justices serving for an average of 16 years. Despite this important institutional continuity, history has shown, on average, that a new Justice joins the Court almost every two years.

President Washington appointed the six original Justices and before the end of his second term had appointed four other Justices. During his long tenure, President Franklin D. Roosevelt came close to this record by appointing eight Justices and elevating Justice Harlan Fiske Stone to be Chief Justice.

Of course, it is Congress, not the Constitution, that decides the size of the Supreme Court, which it did for the first time under the Judiciary Act of 1789. George Washington set the number of Supreme Court justices at six. Six was the number because in those days they were also appointed to sit on federal circuit courts, of which there were 13 in 1789. Each circuit court would be presided over by three judges: one district court judge from the state and two Supreme Court justices.

The justices had to spend almost the entire year traveling. And, so as to limit the geographical area traveled by the justices, the Judiciary Act of 1789 divided the circuit courts into three regions: Eastern, Middle and Southern. Therefore, the reason that the first Supreme Court had six justices was simple—so that two of them could preside in each of the three regions.

The very first political controversy over Supreme Court nominations occurred in 1800, when incumbent John Adams, a Federalist, lost the presidential election to Thomas Jefferson and the Democratic-

Senior Lawyers

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Republicans.

In those days, the post-election "lame duck" session of Congress lasted until the following March, and Adams and his Federalists in Congress wanted to do everything in their power to deny new-President Jefferson a Supreme Court pick.

As we have seen over the last several years, there is a lot of controversy today around replacing a Supreme Court justice in an election year. Adams had no such qualms. In 1800, a month before the presidential election, Chief Justice Oliver Ellsworth resigned from the Court because of illness. Adams nominated and Congress confirmed Ellsworth's successor, John Marshall, on February 4, 1801, during the lame duck session of Congress. Marshall, arguably, and in my opinion, was the greatest Chief Justice ever (and the namesake of my wonderful Chicago law school).

Adams and the Federalists then went a step further. They passed the Judiciary Act of 1801 which decreased the number of Supreme Court justices from six to five, further attempting to prohibit Jefferson from appointing a new justice during his term in office.

In response, Jefferson and his new Congress quickly repealed the Judiciary Act of 1801, bringing the number of justices officially back to six. And, since no justice had died in the interim, the number of seated justices never actually dropped to five.

By the start of the Civil War, the number of Supreme Court justices had increased to nine in order to cover additional circuit courts in the expanding American West. But Abraham Lincoln, upset over the Supreme Court's 1857 decision in Dred Scott and wanting to cement an anti-slavery majority on the Court, influenced the House, and added a 10th justice in 1863.

After the Civil War and Lincoln's assassination, a congress, hostile to his successor Andrew Johnson, who was rapidly undoing the "Radical Republicans'" plan for Reconstruction and wanting to limit Johnson's power, passed legislation in 1866 that cut the number of Supreme Court justices back to seven, all but assuring that Johnson would not have the opportunity to fill a vacant seat.

The last time Congress changed the number of Supreme Court justices was in 1869, again for political reasons. Ulysses S. Grant was elected president in 1868 with the backing of the congressional Republicans who were, as indicated above, antagonistic toward Johnson. Congress increased the number of justices from seven back to nine, and Grant exercised his authority and made those picks.

At that time, the Supreme Court had just ruled that paper money was unconstitutional, putting in jeopardy the U.S. Treasury. However, Grant and Congress quickly confirmed two new justices who reversed the Court's decision, saving the Republicans from having to undo the nation's entire monetary system.

In the 1930s, the Supreme Court issued a series of rulings that undercut some of Franklin D. Roosevelt's progressive New Deal legislation. FDR and his Justice Department responded with a proposed bill that would have allowed him to name six new Supreme Court justices to reach a grand total of 15. Under this proposed legislation, all sitting justices older than 70 would be asked to resign. If any of them refused, FDR would be allowed to nominate an additional justice to the bench. Since six of the nine justices at the time were older than 70, that created the possibility of six new seats on the Supreme Court.

FDR's plan, decried as "packing the court", was shot down in the Senate by a vote of 70-20.

Have we heard the last about changing the number of Justices? Who knows? Two 2022 national surveys noted that about 2 in 3 Americans say they favor term limits or a mandatory retirement age for Supreme Court justices, and, according to one of the polls, finds a sharp increase in the percentage of Americans saying they have "hardly any" confidence in the court.

The poll from The Associated Press-NORC Center for Public Affairs Research finds 67 percent of Americans support a proposal for term limits of justices rather than of life terms, including 82 percent of Democrats and 57 percent of Republicans. Views are similar about a requirement that justices retire by a specific age.

The poll was conducted just weeks after the high court issued the overruling of R*oe v. Wade*, stripping away women's constitutional protection for abortion and the expansion of gun rights.

But, with the present makeup of the House in Washington, stability of the court remains vouchsafed – at least for the next two years.■

From My Perspective: Why a Bar Exam?

BY JUSTICE LLOYD A. KARMEIER (RET.)

The legal profession has come a long way in Illinois since the days of Abraham Lincoln and "reading the law" in a law office as a means to obtain a license to practice law. The number of individuals entering the legal profession each year has grown exponentially since Lincoln practiced law across rural Illinois, due to the new roles and responsibilities attorneys fulfill in all facets of modern society. Today, in order to regulate the legal profession and to ensure that clients are adequately represented and protected, the Illinois Supreme Court requires a new Illinois lawyer to have acquired a law degree from an ABA-accredited law school (with exceptions for graduates of foreign law schools, who must comply with other eligibility requirements), to pass a character and fitness screening, and to receive a qualifying score on the Uniform Bar Examination (UBE).

During the COVID-19 pandemic, as restrictions on mass gatherings and local health and safety guidelines jeopardized the ability to conduct an in-person exam, many jurisdictions adopted emergency measures to ensure that candidates would not be delayed in their path to admission. Some of these measures included emergency adoption or expansion of rules allowing recent graduates to practice under supervision until they were able to take the bar exam or, in a few cases, emergency diploma privilege allowing qualified candidates to be admitted without taking the bar exam.

During this time, some questioned the need to require any bar exam at all. In lieu of a bar exam, alternative suggestions have included (1) admission based solely on receipt of a degree from an accredited law school, (2) requiring a period of apprenticeship in a law office under the tutelage of a qualified practitioner who could certify the person's fitness and ability to practice law, or (3) employing a combination of the two. While historically these options have existed in some jurisdictions, the majority of jurisdictions have relinquished these options in favor of requiring passage of the bar exam.

Aside from the usual arguments that we require doctors, certified public accountants, veterinarians, and barbers—to name but a few—to be certified to ply their trade, which involves passing a standardized test, here are a few observations about the desirability of requiring aspiring lawyers to pass the bar exam, in particular because of the great public trust that is required of the legal profession.

The bar exam is the Illinois Supreme Court's measure of minimum competence to practice law in Illinois. The components of the Illinois bar exam have evolved over the years, and Illinois now administers the UBE—which has, at the time of this writing, been adopted by 40 jurisdictions. The Illinois bar exam has remained a consistent test of basic lawyering skills, reading comprehension, knowledge of basic legal principles, and writing ability. Passing the bar exam serves an important gatekeeping function in ensuring public protection.

If Illinois abandoned the bar exam in favor of one of the suggestions mentioned above, the Illinois Supreme Court—the traditional gatekeeper for determining who should be accorded the privilege of practicing law in Illinois—would be ceding the gatekeeper role to either a law school or a licensed attorney. Needless to say, standards for admission would undoubtedly vary from school to school or from lawyer to lawyer.

The Illinois Supreme Court is already limited in the oversight of the education law students receive, because prospective Illinois attorneys are graduates from law schools located across the country and even outside the United States. Although the Illinois Supreme Court requires graduation from an ABA-approved law school (aside from the foreign law school graduate option mentioned above), it does not set standards for admission to law school or for a law school's curriculum. These matters are determined by each individual law school, which may have many rationales and goals when setting admission and graduation standards, although the rate of success on the bar exam is an important factor that the ABA uses to assess the success of a law school's legal education.

The bar exam holds all examinees who wish to practice law in Illinois to exactly the same standard year after year, no matter what law school they graduated from, in that they must achieve the same minimum passing score. The minimum passing score is set by the Illinois Supreme Court in consultation with the Illinois Board of Admissions to the Bar, and while passing the bar exam may not ensure that a person will be successful in practicing law, it does ensure to the Court that everyone who passes has at least a minimum level of competency.

Similarly, while the need to be approved as morally and ethically fit to act as the legal representative of others may not be guaranteed by the approval of a committee on character and fitness, this process certainly helps to prevent entry into the profession by those who should not be entrusted to handle the confidential legal affairs of others—whether because their morals or ethics are suspect, or because they have a record of violating standards of accepted conduct.

As noted above, the Uniform Bar Examination given in Illinois holds all who would be lawyers to pass the exact same exam given to all. The standards and the content of every exam are substantially the same me

The Uniform Bar Exam which Illinois now gives is not substantially different from the prior exams Illinois gave. The UBE has three exam components. First, the MultiState Bar Exam (MBE) consists of 200 practice-centered, multiple choice questions in seven core areas of law. The multiple-choice format permits objective grading and sampling of a

broad array of content contributing to high reliability of the score.

Second, the Multistate Essay Exam (MEE) is a six-question essay exam that also covers core law practice areas and provides an assessment of a candidate's ability to identify and analyze legal issues while also showing their ability to convey that analysis in writing. The Illinois Supreme Court has been made aware of the fact that many individuals sitting for the bar do not have any degree of writing proficiency, a major shortcoming for any prospective lawyer.

Finally, the Multistate Performance Test (MPT) consists of two 90-minute case simulations that require the examinee to create a written product for a supervising attorney using a case file and a closed universe of legal resources.

The essay and writing portions of the exam challenge the examinee to think critically and express their thoughts and analyses under the stress of time constraints. Although practicing attorneys may not always face the same type of time constraints when practicing law, similar time and stress constraints may well occur when appearing in court before a judge and opposing counsel where the need to think and formulate an intelligent and effective argument or response is critical to a client's best interests.

In sum, a bar exam provides a level playing field to test the skills and abilities of all would be lawyers. The UBE and review by a character and fitness committee provide assurance that a person is in fact at least minimally qualified to practice law in Illinois. The decision of who should be allowed to practice is not left to the uncertain and varying standards a law school uses in accepting and graduating students. Nor is it left to the whim of any individual attorney whose standards and methods can vary from attorney to attorney and as applied to each prospective lawyer. And the Illinois Supreme Court retains its role as gatekeeper for admission to the practice of law in Illinois. ■

Hon. Lloyd A. Karmeier served on the Illinois Supreme Court from 2004 until his retirement in 2020, serving as chief justice from 2016 to 2019.

Be a Pro Bono Volunteer: It's the Right Thing to Do

BY EUGENIA C. HUNTER & LEONARD F. AMARI

By: *Pro Bono* Week (the last week of October) has recently passed as we write this article for the ISBA Senior Lawyers' Section Council newsletter. We are reminded that few things are more suited to the unique skills of senior lawyers, working or retired, than volunteering to provide legal services to low income or senior persons in need of them.

The need for *pro bono* involvement of skilled attorneys is enormous. It is estimated that 80 percent of the legal needs of low-income persons go unmet. Senior lawyers, with their years of experience, are in the perfect position to help meet the need.

For those retired senior lawyers who think there are barriers to volunteering (licensing, malpractice insurance, office space, secretarial help, CLE requirements, etc.), let us point out that the Illinois Supreme Court has removed these barriers by approving Rule 756(k). This rule allows attorneys who are inactive, retired or admitted in another state to do *pro bono* work for persons of limited means under the auspices of a sponsoring entity such as a not-for-profit legal services organization, "delivery" services, a governmental entity, or law school clinical program. The sponsoring agency need merely apply and provide appropriate training, support and malpractice insurance for the volunteers.

THE ENABLING PROVISION is Supreme Court Rule 756(k):

(k) *Pro Bono* Authorization for Inactive and Retired Status

Attorneys and Attorneys Admitted in Othr States.

Authorization to Provide Pro Bono Services. An attorney who is registered as inactive or retired under Rule 756(a)(5) or (a)(6), or an attorney who is admitted in another state and is not disbarred or otherwise suspended from practice in any jurisdiction shall be authorized to provide pro bono legal services under the following circumstances: without charge or an expectation of a fee by the attorney;to persons of limited means or to organizations, as defined in paragraph (f) of this rule; and under the auspices of a sponsoring entity, which must be a not-for-profit legal services organization, governmental entity, law school clinical program, or bar association providing pro bono legal services as defined in paragraph (f)(1) of this rule.

Duties of Sponsoring Entities. In order to qualify as a sponsoring entity, an organization must submit to the Administrator an application identifying the nature of the organization as one described in section (k)(1)(c) of this rule and describing any program for providing pro bono services which the entity sponsors and in which attorneys covered under paragraph (k) may participate. In the application, a responsible attorney shall verify that the program will provide appropriate training and support and malpractice insurance for volunteers and that the sponsoring entity will notify the Administrator as soon as any attorney

authorized to provide services under this rule has ended his or her participation in the program. The organization is required to provide malpractice insurance coverage for any attorneys participating in the program and must inform the Administrator if the organization ceases to be a sponsoring entity under this rule. (Emphasis added)

Are there MCLE requirements?

A question that comes to mind is whether these *pro bono* volunteers are required to meet the usual mandatory continuing legal education requirements as when they were licensed and practicing? The answer is no.

(6) *MCLE Exemption*. The provisions of Rule 791 exempting attorneys from MCLE requirements by reason of being registered as inactive or retired shall apply to inactive or retired status attorneys authorized to provide *pro bono* services under this rule, except that such attorneys shall participate in training to the extent required by the sponsoring entity.

Another important question is what the impact is, if any, on the retired lawyer's "tail policy" with his or her malpractice insurance carrier. Remember the term "tail", simply put, is a synonymous term for the concept of an extended reporting period. A retiring lawyer buying tail coverage adds an extended reporting endorsement (ERE) to an existing policy that extends the time in which a claim may be reported to the insurance carrier. In short, the purchased endorsement (tail coverage) provides an attorney the right to report claims to the insurer after a policy has expired or has been cancelled. Under most insurance industry lawyer malpractice policy ERE provisions, the purchase of the endorsement is not one of additional coverage nor of a separate and distinct policy. This means to the retired attorney that no coverage will be available for a wrongful act that takes place after the retirement, during the time the ERE tail is in effect.

Doing post retirement *pro bono* work as described here has no impact on the tail coverage. All acts prior to the retirement remain "covered" under the tail.

But no acts of omission or commission during these *pro bono* efforts are covered, leaving the lawyer "bare." So be sure the sponsoring entity provides sufficient malpractice coverage.

While the volunteering attorney must register each year, there is no fee and, as noted above, no MCLE requirement except that of the sponsoring entity.

What a deal! So, no excuse. Read the rule, call your local legal services corporation or other qualified "delivery" entity, and check out the opportunities. There are many opportunities in many areas such as drafting powers of attorney, simple wills, simple guardianship proceedings, divorce and expungement and sealing.

We all know that staying active is good for your body and your mind. Being around younger attorneys will keep you young and energized. And remember, you're doing the Lord's work. ■

Update on the ISBA's Diversity, Equity, Inclusion, and Accessibility Initiatives Regarding Disability and Disabled People

BY PATTI CHANG

The Illinois State Bar Association (ISBA) strives to increase diversity, equity, inclusion, and accessibility (DEIA) in many ways and is making DEIA a top priority going forward. This article provides an update on the ISBA's DEIA initiatives with respect to disability and disabled people. But before moving on, a quick note regarding the verbiage used in this article is in order. We use identity first language intentionally because the author of this article prefers it, while at the same time, we acknowledge that not all people with disabilities have the same preference. So, we speak in terms of "disabled people" as opposed to "a person who is disabled."

We at the ISBA also believe that efforts around DEIA are helpful to all. Take curb cuts as an example; though originally developed to increase accessibility for people using wheelchairs, they are also helpful to those pushing baby strollers or pulling rolling suitcases too. Scanners and optical character recognition are also widely used technologies that were originally invented to aid the blind in reading printed materials which could then be translated from text to speech. The key takeaway here is that making changes to our world to make it more accessible to disabled people yields dividends for everyone.

The ISBA's Disability Law Committee

There is an axiom in the disability community—"nothing about us without us." As the ISBA is no exception, our DEIA efforts around disability begin with our Disability Law Committee. The Committee's charges include promoting fair and equal treatment of disabled people and providing a forum for education and advocacy as it relates to disabled people generally; as well as to further the professional development and inclusion of attorneys and law students with disabilities, and practitioners who serve disabled clients, by creating programming

and other resources to support their professional needs. Additionally, the Disability Law Committee actively supports inclusivity within the ISBA through outreach to various stakeholders in the legal community.

The Committee also brings accessibility barriers to the attention of ISBA leadership and staff. For example, the Committee presses the ISBA to commit to using only accessible event venues that are welcoming to people using wheelchairs (see more on this below). The Committee also points out issues within the ISBA's web presence that would be inaccessible to blind people using screen reader software.

Another important role of the Committee is to provide perspective and feedback about problematic language to ISBA staff. A good example was when the Committee was helping to shape the ISBA Accessibility Statement, which originally stated that we "encourage the visually impaired to bring along an additional individual [to events] at no additional charge to take notes or assist." This suggestion, though well-intentioned, sounds custodial and has since been replaced by simply asking members if there are reasonable accommodations that would allow them to participate more fully.

More recently, the Committee has begun to engage with ISBA staff through regular meetings on DEIA within the Association. Meetings take place every couple of months and create an ongoing dialogue which is helpful in keeping the idea that disability is part of diversity at the forefront.

This journey has not always been smooth, but for the most part it has been moving forward and has led to positive change. The ISBA has come a long way from the author's first Midyear Meeting where she was unfortunately asked, "honey this is a meeting for lawyers. Where are you trying to go?"

Working Together in Many Areas

Through our regular meetings with ISBA staff, we are now sharing ideas and solutions. Because every disability is different and every disabled person is unique, DEIA around disability is especially complex. That said, we have been working on some key areas that I will touch upon below.

Meeting and Event Venues, Location, and Accessibility

The accessibility-related challenges inherent in meeting and event venues is best exemplified by considering the Abbey Resort in Wisconsin, where the ISBA Annual Meeting has been held many times in the past. Most attendees would attest that this venue is an accessibility nightmare with several different levels that are not easily accessed via elevators. While the ISBA did continue to return to the Abbey after accessibility barriers were pointed out by the Disability Law Committee, staff has assured us that it will no longer be a future venue for the ISBA.

As the above demonstrates, meeting venues typically pose significant challenges in relation to accessibility. Not only do we want facilities that can be easily maneuvered by all, but we also need venues that are accessible via public transit. Not everyone drives a car, and not everyone can afford to drive a car to a venue. When selecting venues, we should be asking whether the venue has proper signage and if it is friendly to those with mental health issues. Accessibility-related issues should be top of mind when venues are sought out for ISBA meetings and events.

One way to be inclusive for disabled members and guests is to make clear that reasonable accommodations are possible and clearly state where such requests should be directed. This has been included in the ISBA Accessibility Statement, but the committee urges the ISBA to include a similar statement on all communications about virtual and in-person events that informs potential participants about the reasonable accommodation process.

Continuing Legal Education

The ISBA is thankfully encouraging CLE planners to seek out diverse speakers including disabled people. If lawyers do not see their disabled colleagues as experts in their own right, they will be less likely to have high expectations for disabled people, which impacts everything from socialization to hiring decisions. Moreover, CLE materials that are distributed to attendees should be readable by all. As such, speakers are discouraged from simply handing in scans of their materials that are images, and are encouraged to submit materials in text-based formats like Word, RTF, and text-based PDFs that allow blind people using screen readers to access those materials easily. By the way, text-based materials are searchable by all, which is a great example of how accessibility benefits everyone.

ISBA Website

The ISBA has worked hard to improve our accessibility on the web. Our accessibility statement page says it well in listing the following measures being taken to improve accessibility:

- Regular review of design and coding of website for accessibility improvements;
- Providing accessibility training for ISBA staff;
- Integrating accessibility into our procurement practices;
- Automated closed captioning available for all On-Demand CLE programs created after September 2021;
- All live CLE webcasts now offer closed captioning and transcripts via Zoom; and
- Reviewing PDFs, Word documents, and other files to prioritize documents to make accessible and to develop accessible templates for future documents.

One recent improvement the ISBA can be especially proud of is providing its judicial evaluations on the web in a more accessible format than the PDFs that had been previously used. Those statewide evaluations are available to the public and are used by almost a hundred thousand people in the November 2022 election. One grateful voter said "This is the first time I have found enough accessible information on the web in Illinois to make informed decisions in judicial races. I used to just not vote for them at all." This change also made the judicial evaluations mobile friendly and more user friendly generally, as another example of how making something accessible benefits everyone.

Future Efforts

Is there more to do? Of course, there is more to do. Twenty to twenty-five percent of the population has a disability, yet the ISBA membership includes few disabled people and is lacking disabled people in leadership positions. ISBA staff members with disabilities are also few. Sometimes it seems that our DEIA efforts leave out those with disabilities entirely, and staff and members likely exhibit hidden, implicit biases that unintentionally exclude people.

So, the ISBA should work on future DEIA initiatives, which might include:

- Actively recruiting law students, lawyers, and employees with disabilities and creating a pipeline to leadership through networking and mentorship;
- Hiring someone on ISBA staff who has expertise in diversity, equity, inclusion, and accessibility;
- Adopting a robust plan to ensure accessibility of future venues; and
- Providing more helpful information around the law in accessible formats to the general public.

If you want to help with these efforts or know someone we should recruit to help with these initiatives and others, please reach out to the author (PChang@nfb.org) and she'll relay the information to our Disability Law Committee.■

Book Review: 'Fatal February' by Barbara Levenson

BY JUDGE BARB CROWDER (RET)

It was not totally surprising that friends gave me this book. The protagonist is a woman lawyer–although specializing in criminal defense law, so a new area to me. The author is a woman lawyer who later became a judge and is now happily retired. And it is the first book in a series of four (so far) so you get to plan to know the heroine and her family and friends. I don't always like novels set in court as I get annoyed at legal errors. But this book (and the rest–I am currently reading the fourth one) was entertaining, quick-paced and developed the heroine's story well.

Mary Magruder Katz (and her dog Sam) opens a new law firm, breaks up with the lawyer she previously worked for and was engaged to, and obtains new clients and a new man to date. She lives and works in the Miami area and the descriptions of the neighborhoods and courtroom scenes are lively and transport the reader to the hot, humid world of Florida drugs and immigration.

In fact, one of the new clients has been accused of drug smuggling and is spirited away into Federal custody. Trying to locate him in the myriad of federal regulations and facilities proves quite the challenge.

One of the strengths of this book and the series is the short, quick chapters and the descriptions of court scenes. Ms. Katz does a fair amount of investigating of her clients' cases, which is unrealistic, at least for the criminal defense lawyers I know. But her adventures make for a good read.

Since it is February, I think this book and the series by Barbara Levenson are worthy of a read. Fast-paced, fun and warm Florida weather should help tide everyone over until spring. It was a great present for this woman lawyer-now retired judge! ■

Book or Movie, Round Two

BY JUDGE ROBERT ANDERSON (RET)

Last year, I wrote an article for the Senior Lawyer Section Council

newsletter on the topic of whether I preferred original books or movies based on those books. I am back with round two on that same topic. I received some feedback last year on my choices and would welcome any feedback this year. I certainly don't expect everyone to agree with all my choices. I would encourage you to watch and/or read these titles.

Sherlock Holmes by Sir Arthur Conan Doyle

Arthur Conan Doyle actually wrote 4 novels and 56 short stories about his character, Sherlock Holmes. I have had the pleasure of reading them all. The movie, Sherlock Holmes, directed by Guy Ritchie, came out in 2009. There was a sequel, Sherlock Holmes, A Game of Shadows, which came out in 2011. In both movies, Robert Downey Jr. played Sherlock and Jude Law played his friend and biographer, Dr. Watson. Both movies were somewhat of a compilation of several of Doyle's works. I thought both movies were fun and entertaining; but I prefer the books and short stories. Sherlock Holmes is (according to the Guinness World Records from 2012) the most portrayed literary human character in films and on

TV. I also liked and enjoyed the Benedict Cumberbatch versions on TV and the

Johnny Lee Miller version on the TV show Elementary where Lucy Liu portrayed Dr. Joan Watson. Clearly, I am a Sherlock geek. Still, in my opinion, the written versions are the best.

The Silence of the Lambs by Thomas Harris

This is an excellent and very tense novel about an FBI trainee, Clarice

Starling, and her relationship with an incarcerated serial killer, Dr. Hannibal Lector. This is the second novel of four that Harris wrote that included the character of Lector. It was also the second film of five that included this character. The first novel was Red Dragon, and the first film was Manhunter. While the novel is excellent, Anthony Hopkins is so compelling/frightening as Hannibal that I give this one to the film.

Dune by Frank Herbert

This is one of the best science fiction novels ever. There have been several different adaptations – two films and one miniseries for television. The first movie, from 1984 was terrible. The second, from 2021, was much better; but the filmmakers decided to make this a two-part adaptation. While the first part, the 2021 issued film, was good, the book is much better. If you haven't read it, you should.

The Good Shepherd by C. S. Forester

I only recently learned that there was a film adaptation of this book. The movie was Greyhound, released in 2020 and starring one of my favorite actors, Tom Hanks. This is the story of an Allied convoy crossing the Atlantic in 1942 at the height of the German U-boat attacks. C. S. Forester is probably best known for the Horatio Hornblower novels. Several of those novels were used as the basis for a movie called Captain Horatio Hornblower starring Gregory Peck, released in 1951. There was also a series of movies about Hornblower released by A&E starring Ioan Gruffudd that are much better than the Peck movie. If you haven't seen them, I would recommend them. Forester also wrote The African Queen, made into a movie starring Humphrey Bogart and Katharine Hepburn. The Good Shepherd is an excellent story. It is a close call, but thanks to Tom Hanks, I am going with the movie.

The Shining by Stephen King

I am not a big fan of horror movies or books, but I read the book and saw the movie based on it. I actually did so because I had the pleasure of staying at the Stanley Hotel in Estes Park, Colorado on a vacation with my wife. This hotel was the inspiration for the original story. Stanley Kubrick, the film's director, did not film the movie there, to Stephen King's disappointment. King actually was involved in a later television adaptation, also called The Shining, that was filmed there. Between the book and the original movie, I prefer the movie. Jack Nicholson's creepy performance was the difference maker for me.

The Stand by Stephen King

Staying with Stephen King, The Stand was an excellent novel about a virus that was released accidentally on the world with disastrous consequences. While there wasn't a movie made from it, there were two television miniseries made from it. The first of the two was released in 1994 and is a favorite of mine. Gary Sinise plays the lead role and is terrific. Jamey Sheridan plays the villain and is also terrific. The original novel was published in 1978. In 1990 an unabridged version of over a thousand pages was released. I have read both versions of the novel and prefer the shorter one. I loved the 1994 miniseries and actually prefer it to the novels. I still haven't watched the 2020 miniseries. It is on my "to do list" but with covid, I just could not bring myself to watch it right now. I hope to see it someday.

The Girl with the Dragon Tattoo by Stieg Larsson

This is an excellent novel that was part of a trilogy of books by this Swedish author with the same main character, Lisbeth Salander. There were two films made from the novel, one released in 2009 by a Swedish film company and the other in 2011 by a Hollywood company. The Swedish version stars Michael Nyqvist and Naomi Rapace as the two leads; while the Hollywood version stars Daniel Craig and Rooney Mara. I may be biased because I saw the Swedish version first, but I prefer that version of the film.

Having said that, I prefer the book to both movies. I have read all three of the original books and though they are all good I think this one is the best. It is an interesting read if you haven't already done so.

Patriot Games by Tom Clancy

This is my favorite of Clancy's Jack Ryan novels and of all the movies made from his novels. It is a book that I did not want to put down as I was reading it. The movie, starring Harrison Ford as Ryan with Sean Bean as the villain is excellent. Tom Clancy did not like the movie for some reason, but I actually preferred the movie to the book. Again, I liked them both, but the movie was, in my opinion, better than the book. I admit that I am a giant Harrison Ford fan and Sean Bean plays one of my favorite characters in some other films, as you will learn in a moment.

Sharpe's Rifles by Bernard Cornwell

Bernard Cornwell is one of my favorite authors. I have read every book that he has written. He writes primarily historical fiction. His series on Richard Sharpe focuses mostly on the Duke of Wellington's campaign during the Napoleonic wars. The first one on that conflict is Sharpe's Rifles. There are also a series of movies made for British television starring Sean Bean as Sharpe. The movies are very good, but the books are the best. So, I prefer the book to the movie. If you haven't read the books on this character, I highly recommend them. The movies are also worth your time. Cornwell has written several other series of novels on other historical times. The Last Kingdom, a Netflix series, is based on his work. I am a fan but, again, I prefer the books.

How the Grinch Stole Christmas by Dr. Seuss

I am writing this article just before Christmas, so I thought I should include a Christmas movie. This is a great book by one of the best children's authors. There have been several adaptations for film and television. The book was published in 1957. In 1966 a television version featured Boris Karloff as the Grinch. In 2000, a film version with Jim Carrey as the Grinch was released. Finally, in 2018 another version, computer animated, was released with Benedict Cumberbatch (see, everything comes around! He was one of our Sherlocks!) as the Grinch. Per Wikipedia, this is the highest grossing Christmas movie of all time. Still, I prefer the book!

So, to wrap up: I picked five books and five movies of the ten mentioned. Last year, I picked five books, three movies, and had two ties. Writing this brought back some nice memories. Stay safe and enjoy! ■

Book Review: 'Servants of the Damned (Giant Law Firms, Donald Trump and the Corruption of Justice)'

BY GARY T. RAFOOL

The above book chosen for this review is a 2022 book by David Enrich, who is a New York Times business investigation editor. It has 312 hardcover pages, including an epilogue plus notes and an index.

While the author mentions several large law firms, such as Baker McKenzie, Kirkland & Ellis, Skadden Arps, Gibson Dunn and Paul Weiss, he focuses primarily on the Jones Day law firm.

According to Google, Jones Day is a global law firm with more than 2,400 attorneys, which earned over $2 Billion in gross revenue in 2021. It has 40 offices world wide, including one in Chicago. In 2021, according to Google, it was the eighth largest law firm in the United States, and the 13th highest grossing law firm in the world.

The author traces the rise of Jones Day from its start in Cleveland in 1893 as Blandin & Rice. In its beginning years, according to Wikipedia, the firm represented major industries in the Cleveland area.

After several mergers and new partners joining the firm, the Managing Partner, Thomas Jones, led a merger in 1938 with the litigation firm of Day, Young, Veach & LeFever, and the firm ultimately became known simply as Jones Day.

When World War II ended, Jones Day became the first and only law firm to have a presence in two cities - Cleveland and Washington, D.C.

To become an elite law firm, Jones Day later began to scout Ivy League law schools. One such recruit from Harvard Law was Antonin Scalia, who came to the Jones Day Cleveland office in 1961. Scalia remained with them for seven years after which he left to take several jobs, including one at the University of Chicago. In 1986, President Reagan nominated him for the United States Supreme Court.

According to the author, the United States Supreme Court's decisions in "Goldfarb vs. The Virginia State Bar Association" 421 US 773 (1975), and in "Bates vs. The State Bar of Arizona" 433 US 350 (1977) opened the door for Jones Day to start marketing its services nationwide, and at fees that were not limited to certain previously required schedules or

restrictions as to the amount of fees charged but based on billable hours at all levels of hourly rates. Starting in the late 1990s, associates in the firm were expected to bill between 2,000 and 2,500 hours per year.

With quickening expansion, including globalization by several large law firms, the author points out that many of these firms stopped thinking as law firms, and became more like investment bankers. They hired well connected former U. S. Senators and regulatory officials to influence events in Washington.

They also gained a reputation for zealous representation of their clients, who they claimed were entitled to undivided loyalty. The author appears to be treating this as an evil philosophy when he goes into great detail about several of the firm's high profile clients and cases they defended.

Some of the clients named in the book were Firestone (exploding tires), RJ Reynolds (some 30 years of tobacco suits), Charles Keating and Lincoln Savings and Loan (the savings and loan collapses in the late 1980s and early 1990s), GM (Corvair defense), Abbott Laboratories (powdered baby formula), various Catholic Dioceses and institutions (sex scandals and opposition to The Affordable Care Act's contraceptive provisions), Walmart and Purdue Pharma (opioids and Oxy Contin), and Johnson & Johnson (baby powder).

The author also observed that it was intimidating for many plaintiffs' attorneys from smaller firms, and even government attorneys, to come up against powerful law firms like Jones Day with an army of lawyers and clients with unlimited funds to defend suits brought against them. In addition, the author related certain situations where underfunded plaintiffs were buried in paper and suffered through lengthy depositions during discovery, all of which caused some of them to give up their suits. This, according to the author, skews the legal system in favor of the richest companies and individuals at the expense of everyone else.

The author spends a great deal of time discussing how Jones Day made concerted efforts after 1990 to hire U.S. Supreme Court clerks by offering some six figure signing bonuses, with about 70 percent of these clerks coming from conservative Justices. Some of these clerks in their first years with Jones Day were earning almost twice what their Justices earned.

In the spring of 2014, Jones Day hired a number of conservative attorneys, including Don McGahn, to create a new political and election law practice focusing on advising Republicans. This, in the author's opinion, proved to be one of the most consequential decisions in the firm's 121 year history.

The last almost 100 pages of the book deal primarily with Donald Trump, starting with the 2016 Republican National Convention, held in Cleveland, with Jones Day pledging $1.5 million to become a leading sponsor of the event and co-chair of the Convention's host committee.

Thereafter, Don McGahn visited Donald Trump in New York and they hit it off immediately. Trump ended up hiring Jones Day, and he promised to provide Jones Day with a list of conservative justices for the Supreme Court, including the filling of the vacancy created by Justice Scalia's death. Don McGahn was appointed as Trump's White House counsel after the 2016 election. McGahn told Trump that he would be happy to accept this appointment on the condition that he would have complete control over the process of selecting federal judges.

The author goes through the various appointments of Jones Day's attorneys, including several of its associates, in the Trump administration. These appointments were to the White House Counsel's Office, to the Justice Department, as special advisors in the Commerce Department, and as special assistant to the Agriculture Department. More than a dozen Jones Day lawyers joined the Trump administration, with several of these departing Jones Day partners and associates going into the Trump administration receiving sizable departing bonuses - some in six figures - to presumably defray the salary cuts they would sustain doing government work.

Finally, the author points out that, with McGahn in charge, Trump succeeded in appointing some 150 federal judges, whose judicial influence will continue long past Trump and his administration's memory.

Personal Comment: In the almost 10 years that I have been writing book reviews for our Senior Lawyers' newsletters, I have rarely, if ever, offered a personal opinion about a book or its contents. However, I feel compelled to render my opinion on this book based on my experience of practicing law for 50 years in the Central District of Illinois. The book will more than likely be a New York Times bestseller for many weeks, and will be influential upon the general reading public.

It almost metaphorically retells the story of the Philistine Goliath, with his armor, weapons and hundreds of soldiers backing him up, which not only allows him to pulverize David, but he does it publicly as an example to all others not to mess with the big guys.

As an attorney who primarily practiced in the bankruptcy field, including bankruptcy adversarial litigation, business bankruptcies, Chapter 11s and various workouts with creditors and their attorneys, as well as serving as a panel Chapter 7 Trustee for 19 of those 50 years, I have worked with and against many attorneys from what we in Central Illinois consider large law firms from Chicago, St. Louis, Boston, New York, Pittsburg, Dallas, Los Angeles, Orlando and others (not Jones Day that I recall). I can say without reservation or exception that these attorneys were very professional in our dealings and respectful in demeanor. I never felt that my clients were being intimidated, mistreated or inundated with needless discovery and motions.

Unfortunately, unless we can make this other side of the story known publicly, our reputation as lawyers and officers of the courts will be overshadowed by tell-all best-selling books, shock TV and scandal seeking newspapers.

I welcome the thoughts and experiences of other ISBA attorneys in this regard, either in comments after this article or in the Senior Lawyer Community.■