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NEARING THE END OF THE END TIMES: LITIGATING IN A NEARLY POST-COVID WORLD IN THE CENTRAL DISTRICT OF CALIFORNIA

By Robert E. Dugdale, Esq. and Michael McCarthy, Esq.

> "I've seen way too many lawyers' unmade beds." Magistrate Judge Michael Wilner (reminiscing about Zoom video court appearances during the pandemic)

During a "60 Minutes" interview aired on September 18th, President Joseph Biden declared that the COVID-19 pandemic is a thing of the past, boldly pronouncing that "[t]he pandemic is over." While the possibility of a winter surge featuring a new strain of the virus may put that "mission accomplished" statement to the test, the federal courts, including those within the Central District of California, are starting to adapt to a post-pandemic way of doing business. For many judges, this will include a return to "normal" pre-2020 operations, and for others, charting a new course that will continue to rely on some of the conveniences and efficiencies the courts were required to employ during the pandemic when in-person gatherings were not possible due to concerns about spreading a deadly virus.

While the question of what the "new normal" will look like when it comes to litigating in federal court will largely be a function of the preferences of the individual judges, as well as what the future threat of the virus dictates, there are several practices adopted during COVID times which many judges have indicated are likely to persist, depending upon whether the case being heard is a criminal case or a civil case.

CRIMINAL CASES

Section 15002 of Title V of the Coronavirus Aid, Relief, and Economic Security Act (or the "CARES Act"), enacted during the early days of the pandemic in March 2020, authorized district court chief judges to avail the courts of video or audio teleconferencing for criminal proceedings, including detention hearings, initial appearances, arraignments, changes of plea, and even sentencings. In light of the dangers posed by the COVID-19 virus in general, and the specific risk it posed to inmates confined in close quarters in jails and prisons, the Central District of California immediately permitted judges to utilize the video and audio teleconferencing options allowed under the CARES Act

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PRESIDENT'S FAREWELL MESSAGE

Yuri Mikulka
OUTGOING FBA-LA CHAPTER PRESIDENT

It has been a pleasure to serve as President of Federal Bar Association of Los Angeles (FBA-LA) during the 2021-2022 year. I write to provide a short recap as I pass the baton to our friend Sandhya Ramadas Kogge, the new President of FBA-LA.

Since 1937, the FBA-LA has provided a forum for all in the federal legal community – federal judges, civil practitioners, prosecutors, criminal defense attorneys, transactional lawyers, administrative agency lawyers, federal court administrators, and academics – to join together to advance the shared mission of strengthening the federal legal system and promoting the administration of justice. The FBA LA Chapter is one of the largest chapters in the country.

As I was reading through our award-winning newsletters to prepare this message and reflecting on my recently-ended term as FBA President, I was reminded of past in-person FBA-LA luncheons and dinner events, memorialized in photographs splashed across our newsletters. That seems like a lifetime ago.

While this Chapter started during the Great Depression and on the verge of WWII, the confluence of events the past two and a half years presented entirely new challenges: the global Pandemic, the Great Resignation, the Capitol Hill siege, hate crimes, gun violence, the conflict in Ukraine, and an economic roller coaster. On a day-to-day level, workload and responsibilities at home increased at unsustainable levels for many. Yet, being lawyers, we showed up, learning to quickly adjust, handling hearings and depositions, as well as helping our clients and colleagues, remotely out of make-shift home offices, all the while trying to stay healthy physically and mentally. These trying times proved how resilient we are as lawyers.

Adapting to the times, the FBA-LA also reflected on our practices and made some noteworthy changes. For instance, in addition to our core substantive CLE programs, FBA-LA added programs that address the unique issues that we are facing during these unusual times. Our Program Committee Co-Chairs Amy Longo and Lana Choi, former Chair Patricia Kinaga, and the Committee members and volunteers worked tirelessly to provide excellent programming which include:

> "The legal community's efforts to assist Ukraine: how the legal community has mobilized to help Ukraine and its citizens in the midst of Ukraine's conflict with Russia." Panelists included Kateryna Gupalo of Arzinger (Ukraine), Julianne Hughes-Jannett of Quinn Emanuel Urquhart & Sullivan, LLP (London), Amanda N. Raad of Ropes & Gray LLP (London), Prof. Jean Lantz Reisz, Co-Director USC Gould School of Law Immigration Clinic, Lauren Worsek, Director, Pro Bono Initiatives, Lawyers for Good Government, and moderator by Diane Butler, Chair of FBA Washington State Chapter.

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"Anti-Asian Hate Crimes and Incidents: The Federal Response," featuring Ronald Cheng, Assistant U.S. Attorney, Chief, Criminal Division, U.S. Attorney's Office for the District of Nevada, Jay Greenberg, Deputy Assistant Director, Criminal Investigation Division, FBI, Washington, D.C., and Professor Margaret Woo, J.D., L.L.M., Northeastern University School of Law.

"Vanishing Women Litigators: A Roundtable Discussion on the Unique Challenges Faced by Women Litigators and Tips and Strategies for Disrupting the Status Quo," with panelists the Honorable Margaret McKeown, United States Circuit Judge of the United States Court of Appeals for the Ninth Circuit, Shannon Alexander, Senior Vice President, Litigation at NBCUniversal Media, LLC, Natalie Naugle, Associate General Counsel, Litigation at Facebook/Meta, and Dawn Sestito, Managing Partner of the LA Office or O'Melveny & Myers.

"The Challenges and Opportunities of Litigating During COVID, and Where We Go From Here: A Judicial Perspective," featuring Judges Andre Birotte, Jr. and Christina Snyder, United States District Court for the Central District of California, Judge Alka Sagar, United States Magistrate Judge for the Central District of California, Kiry Gray, Clerk of the Court for the Central District of California, and Cristina Squieri Bullock, Chief Deputy of Administration.

Remote attendance at these programs has been record-breaking.

The makeup of the FBA-LA Board of Directors has also changed. Just as the world was closing down due to COVID-19, our Past Presidents Judge Michael Fitzgerald and Jeff Westerman opened up the virtual doors of our Board meetings and began the tradition of inviting Liaisons from various affinity bar organizations in Southern California to join our Board meetings. This has been a tremendous benefit to the FBA-LA Chapter as our Liaisons share and contribute valuable ideas that help us meet our goal of offering programs and member benefits that reflect our diverse and culturally rich legal community. It has already been a path to the Board for one of the Liaisons. I am pleased to see that the FBA-LA Board meetings look nothing like the first Board meeting I attended at the downtown California Club some dozen years ago.

FBA-LA also launched its inaugural Judicial Clerkship Mentorship Pilot Program in January 2022. The Program seeks to support diverse candidates seeking federal clerkships via the OSCAR selection process by providing selected students mentors and other support via FBA-LA coordinated plenary sessions. Twenty students applied for the program, with 12 ultimately selected and paired with mentors. This was the brainchild of several FBA-LA board members including Marisa Hernandez-Stern, Moez Kaba, and Martin Estrada, who was recently sworn-in to serve as the next United States Attorney for the Central District of California.

The judiciary of the Central District of California has also transformed during the Pandemic. After many years of unfilled judicial vacancies, since December 2021, four new judges have been confirmed to serve on the Central District of California: Judge Ewusi-Mensah Frimpong (LA), Judge Sherilyn Peace Garnett (LA), Judge Sunshine Suzanne Sykes (Riverside), and Judge Fred W. Slaughter (Santa Ana). The Central District also welcomed three new Magistrate Judges the past last two years: Magistrate Judges Pedro V. Castillo, Patricia Donahue, and Margo A. Rocconi. Continuing our tradition of providing opportunities to learn about the judges in Central District of California, in May, FBA-LA Young Lawyers leaders presented a Brown Bag lunch with Judge Frimpong.

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PRESIDENT'S FAREWELL MESSAGE

Yuri Mikulka
OUTGOING FBA-LA CHAPTER PRESIDENT

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We congratulate the new Judges and hope this will relieve some of the heavy work burden that the judges and clerks of the Central District of California endure. To be sure, judges in our District do more than attend FBA-LA events. Often, they are the driving force behind some of our programs and several judges serve on the FBA-LA Board. Judge Barry Russell, a former National FBA President, organizes our signature event each year – the Annual United States Supreme Court Review. Judge Michael Fitzgerald, former FBA-LA President, is active in organizing many of our programs including our annual Reception Honoring the Federal Judiciary. Judge Sandra Klein serves as our Civics Co-Liaison. Magistrate Judge Karen Stevenson is an integral part of our Judicial Clerkship Mentorship Program. Our judicial Board members speak at our events and play an essential role in generating enthusiasm for attendance at our events. For instance, former Board member Chief Magistrate Judge Paul Abrams and current Board members, Magistrate Judges Karen Stevenson, Michael Wilner, and Alexander MacKinnon, along with Chief Judge Philip Gutierrez and practitioners Hasmik Badalian Collins and Sepehr Daghighian, spoke on the program, "Top Ten Reasons to Consent to Trial Before a Magistrate Judge." The FBA truly is the preeminent bar association bringing together the bench and the bar in Los Angeles.

As we emerge from the pandemic, this is the perfect time to reengage, reconnect with, and get inspired with other practitioners and judges. We recently did so, when the FBA-LA presented its Annual Supreme Court Review Luncheon featuring Dean Erwin Chemerinsky, which was our very first in person (and hybrid) annual event since 2019. It was a record turnout and it was wonderful to see you there.

The FBA-LA has many new exciting programs and events coming up. Please mark your calendar for the Judicial Reception at the Courthouse on October 27, and the Meet the New Judges Webinar on November 16. Please also check the FBA-LA website for updates and events. http://www.fbala.org/. If you are not already a member of the LA Chapter of FBA, please join here and indicate the Los Angeles Chapter when doing so. http://www.fedbar.org/Membership.aspx.

Farewell for now but I look forward to seeing you at upcoming FBA-LA events and to having our newsletters again include photographs of our members learning, inspiring and making a difference together as lawyers in this important time in history.

Warmest regards,

Yuri Mikulka
Outgoing President, FBA-Los Angeles

Federal Bar Association

Message from the Clerk's Office

By Kiry Gray

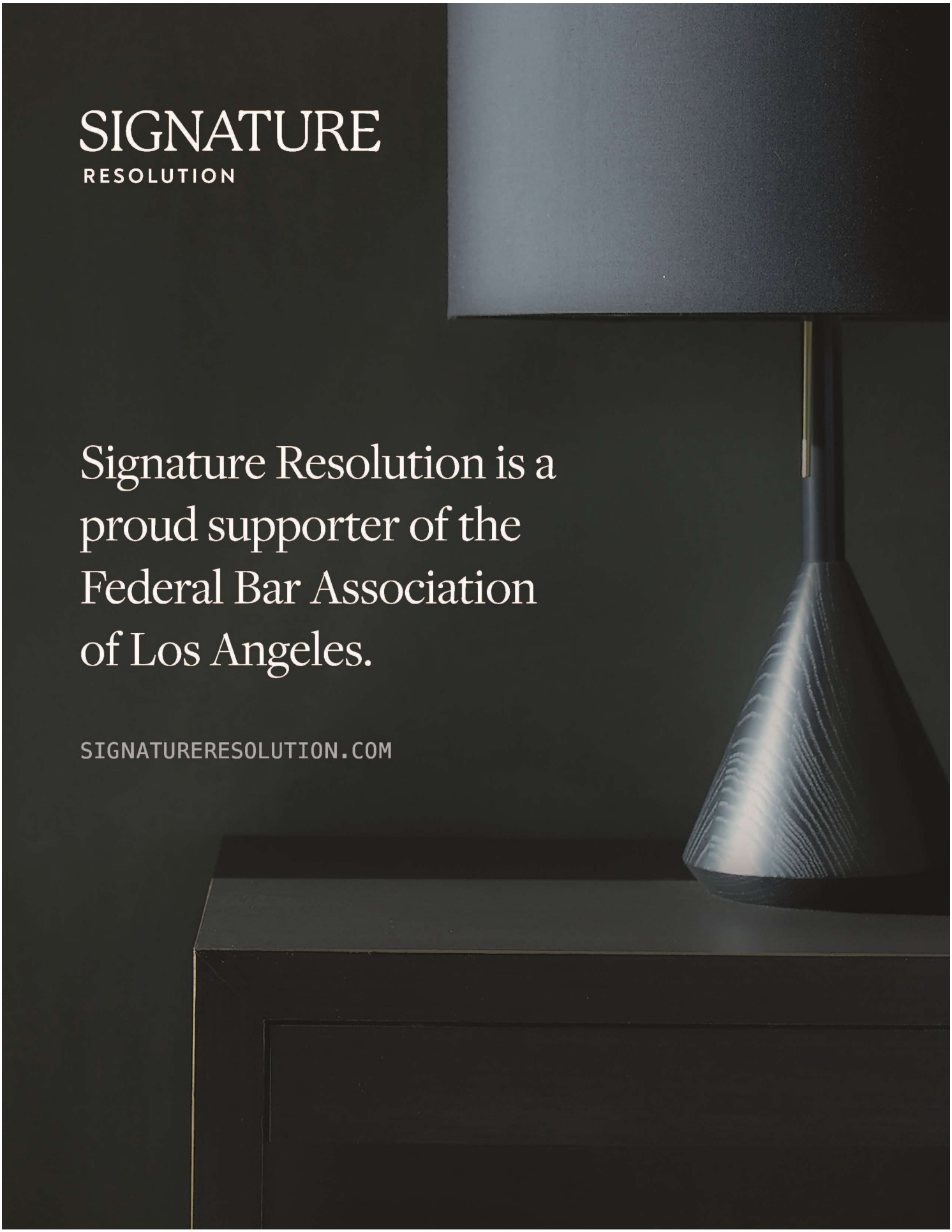
I'm delighted to submit an article on behalf of the Court. When I'm approached to contribute to the newsletter, I always ask myself, "What do the readers really want to hear about that is newsworthy?" I started thinking about my colleagues across the country and I realized over the past few years, 32 clerks of court have retired. Of course, the past two years have been brutal for many of us and now the war in Ukraine does not help those of us who carry the world on our shoulders. I think it is important for all of us to be mindful of our stress levels and to check in with a friend when the load gets too heavy.

On a brighter note, I'm excited to report that we have four new judges that have joined the bench, Judges Maame Ewusi-Mensah Frimpong, Fred W. Slaughter, Sherilyn Peace Garnett, and Sunshine Suzanne Sykes. Judges Frimpong and Peace Garnett sit in the Western Division at the First Street Courthouse, Judge Sykes sits in the Eastern Division at the Riverside Courthouse, and Judge Slaughter will be working in the Southern Division at the Santa Ana Courthouse. Their arrival will certainly help with the high caseload that the judges have been carrying for many years due to the number of vacancies in the Central District of California. In addition, I would like to congratulate our very own Virginia A. Phillips who took senior status on February 14, 2022, and Judge John A. Kronstadt who took senior status on April 1, 2022. The Court also appointed Natasha Alexander-Mingo as Chief United States Probation and Pretrial Services Officer for the Central District of California on February 28, 2022.

One question that I am often asked is whether or not the Court is open for business. I'm intrigued by this question because we never closed the Court. We merely found innovative ways to conduct business through technology while continuing to ensure the fair administration of justice for all. We also had jury trials resume in the Southern Division in late May 2021 and for the Western and Eastern Divisions in June 2021 after being suspended for nearly fourteen months. Adjustments in scheduling trials, changes in courtroom layout to accommodate physical distancing, and the installation of plexiglass in courtrooms were among many of the changes made to ensure the safety of all participants.

Our Probation and Pretrial Services Office continued to provide superior service to not only our Court, but all of our stakeholders during the pandemic. They adjusted their means of communication with their supervisees using various mediums while maintaining the integrity of our networks. The bail and presentence units adapted quickly to conducting interviews while teleworking. Officers continued to provide risk-based supervision throughout the pandemic as well as enforce the conditions of the Court, which provided unique opportunities to use virtual technology in the areas of treatment, location monitoring, and field contacts.

My goal as the clerk of court is to be transparent and to ensure that I am communicating effectively and keeping the public informed with up-to-date information about the Court. Please remember the Court is open 24 hours a day, 7 days a week with access to electronic filing, and we will continue to provide extraordinary customer service to all of our stakeholders.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following its passage; and, for the past 30 months, all manner of proceedings in criminal cases have been conducted remotely pursuant to "CARES Act Waivers" executed by federal prosecutors and defense counsel.

That practice has now come to an end, with Chief Judge Philip Gutierrez announcing that, as of September 26, 2022, "[t]he use of video or telephone conferencing under the CARES Act will no longer be authorized," and further announcing that all criminal duty matters in the Western division of the Central District will be held in-person in the Edward R. Roybal Federal Building and Courthouse, while such matters in the Southern and Eastern Divisions in Santa Ana and Riverside, will be held in the relevant duty magistrate judge's courtroom.

Citing to the fact that many judges had already started to resume holding in-person hearings, and, more specifically, hearings involving changes of pleas and sentencings, as well as the sense that in-person hearings could be held safely at this juncture of the pandemic, Chief Judge Gutierrez touted the unique benefits of holding criminal proceedings in-person rather than remotely. As he noted in a recent interview with the Los Angeles Daily Journal, "I think [an in-person hearing] benefits the defendant; it benefits the victims that want to give a victim statement; and it benefits the government." Accordingly, the Chief Judge "found we reached the point where it was safe."

Civil Cases

While the unique nature of criminal proceedings -- which pose a threat to a litigant's liberty – recently caused the federal bench in the Central District of California to conclude that hearings in criminal cases should generally be held in person, judges will still be allowed to conduct video and telephonic hearings in civil cases, with each judge permitted to exercise his or her discretion as to when remote hearings are appropriate.

In a pre-COVID world, video appearances in the Central District of California were virtually non-existent, absent hearings before certain judges who had the ability and inclination to embrace Skype-type hearings. As District Court Judge André Birotte noted, "Culturally speaking, federal courts were not inclined to conduct video hearings prior to the pandemic," as he and many judges came from a generation where "teleworking was looked down upon."

Robert Dugdale is a partner at Kendall Brill & Kelly. A former federal prosecutor, Mr. Dugdale specializes in white collar criminal defense litigation, conducting internal investigations, defending False Claims Act cases, managing crises on behalf of high-profile clients, and representing companies spanning a wide variety of industries in civil litigation.

Michael McCarthy is an associate at Kendall Brill & Kelly. A former Assistant District Attorney at the Manhattan District Attorney's Office, Mr. McCarthy is a member of KBK's skilled team of trial attorneys and specializes in white collar criminal defense litigation.

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However, federal judges, like Judge Birotte, have seen a shift in that culture as a result of the pandemic, as many judge became more familiar and comfortable with the technology involved in remote appearances and have seen the benefits of utilizing technology that has now become ubiquitous, like Zoom, to conduct court proceedings in a more cost-effective and efficient manner.

As a result, a number of judges have stated that, even in a post-COVID world, they will continue to give civil litigants the option to appear remotely, particularly in cases where litigants and their attorneys are scattered throughout the country and would have to travel to Southern California to make a live appearance in court. As Magistrate Judge Patricia Donahue – who has thus far spent the entirety of her career as a federal judge serving during the pandemic – noted, "Zoom is really convenient, especially for attorneys who can pop in and out of virtual proceedings in a manner that saves them and their clients significant money and time, stemming from such inconveniences as traveling to court, clearing security, and waiting for an appearance." Accordingly, although Judge Donahue and others noted how they have been conditioned throughout their careers to conduct court appearances in-person and miss aspects of what in-person appearances offer, it should be expected that many judges will continue to allow civil litigants to make remote appearances once the pandemic truly ends because of the cost-savings and convenience remote appearances offer without sacrificing, in most cases, the benefits a live court appearance provides.

That said, it is also clear that the tolerance for individual judges to allow civil litigants to appear remotely will be linked to a large extent on the ability of litigants to take advantage of that privilege, which appears to means two things to many judges:

First, as noted by Judge Birotte, "It is incumbent on lawyers to be nimble enough to use technology to their advantage," and "if that means upgrading equipment needed to execute a remote appearance, then that is certainly worth considering." As several judges observed, Kiry Gray, the Clerk of the Court in the Central District of California, as well as the Central District's IT Department, "rose to the occasion" during the pandemic and "seamlessly transitioned" the court to an environment where remote appearances became the norm, rather than the exception, as a result of an "unanticipated emergency." Echoing Judge Birotte's comments, judges similarly expect lawyers with cases in federal court to "rise to the occasion," and to possess both the equipment and the limited technological savvy required to execute a remote appearance that is not interrupted or terminated due to glitches, if they wish to take advantage of the cost and time savings remote appearances offer.

Second, litigants must remember that they must still exercise proper courtroom etiquette when making a remote appearance in federal court by videoconference or telephone. As Judge Birotte stressed, "You are still making an appearance in federal court," and the professionalism that must accompany such an appearance should not waver just because you are speaking into a screen or a telephone. Indeed, as noted by several judges, the process of having a close-up of your face and your background, virtual or real, beamed on a high-definition, large screen television in a courtroom should cause attorneys to be on their best behavior because they may be under even more scrutiny than if they were making an appearance, wearing a mask, and standing 20 feet away from the bench at a court lectern. As Judge Donahue explained, instances when litigants interrupt the Court or opposing counsel "stand out more on Zoom," as do instances when litigants "roll eyes, grimace, laugh, or make faces." All of this could lead to issues that litigants do not face when they appear in court in person and are more cognizant of their surroundings. As Judge Donahue remarked, "This is not a high school play. You're not getting points for emoting."

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And, as another judge, Magistrate Judge Michael Wilner noted, the whole concept of allowing certain proceedings to be conducted remotely for the convenience of the parties is a courtesy that can be taken away if extending that courtesy results in misbehavior. "It is a courtesy, and if the lawyers act antagonistically or misbehave, that courtesy will be gone," Judge Wilner emphasized, while also noting that while presiding over hundreds of remote proceedings over Zoom in the past 30 months he has "seen way too many lawyers' unmade beds."

Jury Trials (Both Criminal and Civil)

Since the resumption of in-person proceedings in February 2022, the Central District of California has seen a corresponding resumption of both criminal and civil jury trials. However, because concerns remain about the danger of having large groups congregate indoors, no more than four jury trials are conducted at any given time in the Western Division's First Street U.S. Courthouse, as any greater number could result in too large a group of potential jurors being clustered together. To make this process run as efficiently as possible, Chief Judge Gutierrez serves as what one judge referred to as the district's "air traffic controller," who receives each court's trial docket in advance and determines the order when trials occur. As another judge observed, "Chief Judge Gutierrez has done a magnificent job navigating the difficulties posed by COVID," and this is just one of many administrative challenges to the courts that many hope will be a remnant of the past if President Biden's declaration that "the pandemic is over" proves more prescient than wishful thinking.

NEW FBA-LA PROGRAM PROVIDES MUCH-NEEDED SUPPORT TO ASPIRING JUDICIAL CLERKS

By Robert E. Dugdale, Esq.

> "I sincerely believe that without the assistance of the FBA-LA Judicial Clerkship Mentoring Program, this door would never have opened up for me." (Kimberly Macias, UC-Berkley Law Student and Participant in the FBA-LA Judicial Clerkship Mentorship Program)

In 2001, as Martin Estrada entered his third year at Stanford Law School, he knew that the next step that he wanted to take in his legal career was to work as a law clerk for a federal judge. There was just one problem. Even with the resources and prestige of Stanford at his disposal, Estrada found the process of obtaining a judicial clerkship, and learning what the day-to-day business of serving as a law clerk entailed, to be a daunting and lonely adventure, particularly for someone, like himself, who was the first member of his family to attend law school.

The process was largely a "do-it-yourself exercise" for which he found very little support from his law school, recounts Estrada, now the United States Attorney for the Central District of California. And when it came to the actual work that Estrada would be called upon to do when he embarked on the two federal clerkships he tackled straight out of law school -- a year-long clerkship with the Honorable Robert J. Timlin, a United States District Court Judge in the Central District of California, and a second year-long stint with the Honorable Arthur L. Alarcón, a United States Circuit Court Judge with the Ninth Circuit Court of Appeals -- Estrada faced a "steep learning curve" because, prior to taking on these clerkships, he had received little in the way of guidance about what judges expect of their law clerks or how to handle the myriad roles a law clerk may need take on to assist his or her judge.

Estrada's experience is not unique, and it inspired him and fellow FBA-LA Board members Moez Kaba, Marisa Hernandez-Stern, and Magistrate Judge Karen L. Stevenson to found and launch the FBA-LA Judicial Clerkship Mentorship Pilot Program in January 2022. During its first year of existence, through outreach conducted at law schools in Southern California and to law students with connections to Southern California, the program paired a dozen second and third-year law students from Loyola, Pepperdine, Southwestern Law School, UC Berkley, UC Irvine, and UCLA with mentors who formerly served as law clerks. In addition to this mentoring aspect of the program, it also provided these students with direct access to a number of former law clerks and current judicial officers -- including Ninth Circuit Judge Kenneth K. Lee, Chief District Judge Philip S. Gutierrez, District Court Judge Michael W. Fitzgerald, and Magistrate Judge Jean P. Rosenbluth -- who provided training in multiple plenary sessions covering a wide variety of topics, including navigating the application process, handling the day-to-day responsibilities of law clerks, and perfecting the legal research and writing skills law clerks are expected to have in their toolbox.

The FBA-LA Judicial Clerkship Mentorship Program was created with two fundamental goals in mind: First, it was designed to help participants obtain their desired clerkships, not only through the guidance they receive on the ins-and-outs of applying and interviewing, but also by affiliating them with a training program that is likely to be viewed favorably by judges looking to hire their next law clerks. Second, the program was structured to provide participants with the tools to succeed by giving them a healthy head start on understanding, through the program's teaching and mentoring aspects, how to perform the functions that judges expect of their law clerks.

An additional key component that inspired the creation of the FBA-LA Judicial Clerkship Mentorship Program was the opportunity to provide diverse law students with designs on clerking visibility into an area of the legal profession where they have long been underrepresented.

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NEW FBA-LA PROGRAM PROVIDES MUCH-NEEDED SUPPORT TO ASPIRING JUDICIAL CLERKS

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As Estrada took note of when he was clerking, there were very few African-American or Latino law clerks in judges' chambers at either the federal district court or circuit court level. That situation has not changed significantly in the past 20 years. According to the National Association for Law Placement, which tracks career development and salaries in the legal industry, of the more than 3,100 graduates from the class of 2019 who said they earned judicial clerkships, 77 percent were white and only 23 percent were non-white. More stunning still, Latino law school graduates claimed only 7.5 percentage of all judicial clerkships and African-American law school graduates proved the least likely to be hired, making up only 4 percent of all 2019 grads who obtained a federal judicial clerkship.

In an effort to do its part to reverse this decades-long trend by helping to make applicant pools for judicial clerkships more diverse, the FBA-LA Judicial Clerkship Mentoring Program has placed a particular focus on recruiting and assisting participants who come from diverse backgrounds and who may lack the connections and know-how to navigate the process of finding a clerkship on their own. The hope is also that the program will provide judges with an ability to connect with clerkship applicants who they may not normally reach and find within the program's diverse pool of applicants recent law school graduates who are poised to succeed as law clerks as a result of the training and mentorship they have received.

Within its very first year of existence, the program is already proving to be a difference-maker in the lives of the prospective law clerks the program was designed to assist. Kimberly Macias, a Southern California native, participated in the program during her second year at UC Berkley law school. Like Estrada's parents, Macias' parents immigrated to the United States when she was young, and she, like Estrada, was the first in her family to attend law school. With no family connections to anyone in the legal profession, let alone someone who could meaningfully assist her in obtaining a federal clerkship, Macias was thankful for the mentoring and training aspects that the FBA-LA Judicial Clerkship Mentoring Program provided.

Macias was paired with FBA-LA incoming President Sandhya Ramadas Kogge as a mentor, and Macias credits Kogge with walking her through every step of the process when it came to earning a federal clerkship, from discussing potential fits with judges, to how Macias should go about obtaining letters of recommendation, to navigating the "OSCAR" (Online System for Clerkship Application and Review) system that is used to pair clerkship applicants with federal judges. "I never expected to have anyone who would advocate on my behalf like this," Macias gushed, when describing her mentor.

In the end, through the training, mentorship, and connections Macias gained through the FBA-LA Judicial Clerkship Mentoring Program, she was able to obtain a federal clerkship that will bring her home to her Southern California roots when she begins a clerkship with a Central District of California District Court Judge in the Fall of 2024. Macias is grateful for both this opportunity and the role that the FBA-LA played in helping her secure her clerkship. "I sincerely believe that without the assistance of the FBA-LA Judicial Clerkship Mentoring Program, this door would never have opened up for me," a thankful Macias said.

With others in the program's first "class" of participants continuing to interview for clerkship positions, the successes the FBA-LA Judicial Clerkship Mentoring Program envisions for its participants, like Macias, appear to be right around the corner. With these successes, the FBA's Los Angeles Chapter anticipates that the program will expand and become a permanent fixture that further cements the Chapter's long-standing relationship with the judiciary and its commitment to providing assistance to the Chapter's diverse legal community.

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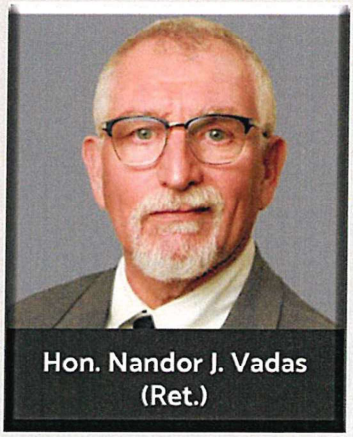
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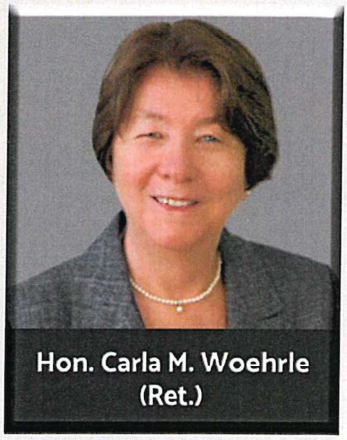
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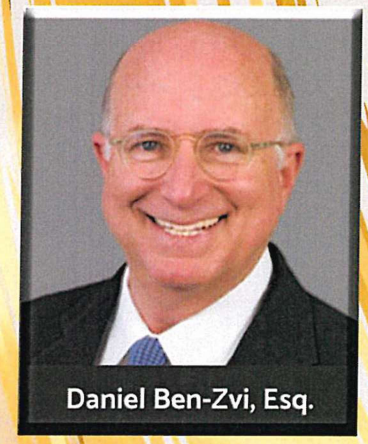
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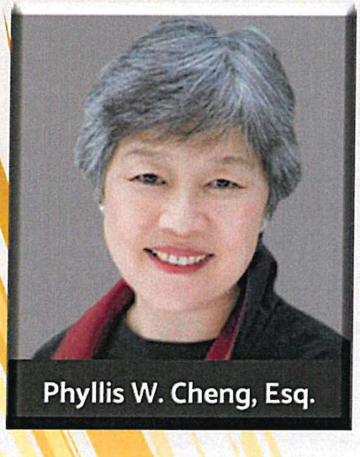
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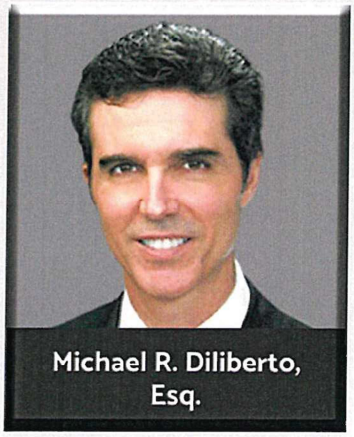
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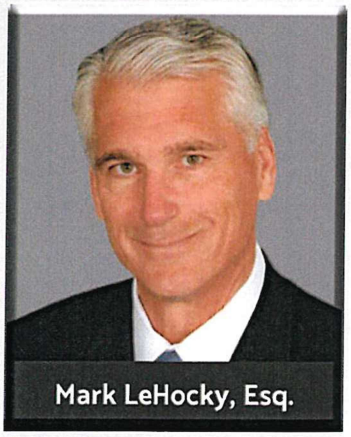
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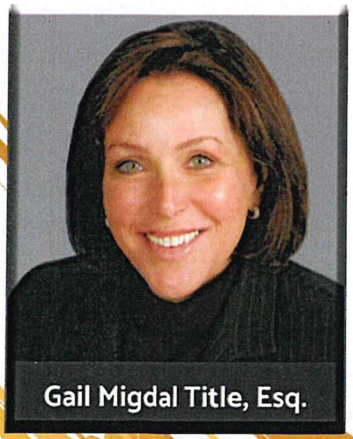
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The Central District of California Celebrates Its 2022 Civics Contest Winners

By Brenda Martinez-Jaurrieta and Elen Sayamyan, Externs to the Hon. Sandra R. Klein

Each year, as part of a circuit-wide essay and video contest (Civics Contest) sponsored by the Ninth Circuit's Public Information and Community Outreach Committee, the United States District Court and United States Bankruptcy Court for the Central District of California host a civics contest (Local Contest) for high school students. The Civics Contest provides students an opportunity to express themselves in writing or through a video recording, while learning about the Constitution, landmark Supreme Court rulings, history and the federal courts.

The theme of the 2022 Civics Contest was "The First Amendment and the Schoolhouse Gate: Students' Free Speech Rights." Students were challenged to address the question: "What are students' free speech rights – and responsibilities – on and off campus?" This year's contest was very competitive, with the Central District of California receiving more than 144 essay and 26 video submissions.

On June 30, 2022, Bankruptcy Judge Sandra Klein hosted a virtual reception honoring the Local Contest winners. Approximately 50 people participated in the reception, including many of the students who submitted winning essays and videos as well as the following judges: Chief District Judge Philip S. Gutierrez, and District Judges Maame Ewusi-Mensah Frimpong, and Ronald S.W. Lew, Chief Magistrate Judge Paul Abrams, and Magistrate Judges Jean P. Rosenbluth and Alka Sagar; and Bankruptcy Judges Sheri Bluebond, Ronald Clifford, and Robert N. Kwan.

Chief District Judge Gutierrez began the reception by welcoming everyone and commending the students for their participation in the Local Contest. Students whose essays and videos placed in the top three received cash prizes and were automatically entered in the Ninth Circuit Civic Contest, to compete with winners from the other 15 districts in the circuit. All winners and honorable mentions received certificates signed by the Chief District and Bankruptcy Judge of the Central District of California. Students who participated in the reception also received beautiful red-white-and-blue balloon bouquets, which provided festive backgrounds for the students!

The following students submitted the top essays in the Local Contest and all attend Arcadia High School in Arcadia: Mary Leung won $1,000 for her first-place essay, Keshwanth Puligulla won $750 for her second-place essay, and Ella Yee won $500 for her third-place essay. Rachel Wang and Annalise Xiao received honorable mentions.

(*Continued on page 16*)

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The Central District of California Celebrates Its 2022 Civics Contest Winners

(Continued from page 14)

Jesus Montes from Rubidoux High School in Jurupa Valley won $1,000 for his first-place video. Mr. Montes's video was so impressive, it was selected as the second-place video in the Ninth Circuit Civics Contest, winning him an additional $2,000! Grace Yue from Oxford Academy in Cypress, received $750 for her second-place video and Amber Gregory along with teammates Makaela Valdez and Angela Vargas from Pacific High School in San Bernardino, received $500 for their third-place video. Viren Mehta of Oxford Academy and Lesley Perez along with teammate Esmeralda Morales of La Puente High School, in La Puente, received honorable mentions for their videos.

After everyone enthusiastically congratulated the Local Contest winners, Judge Klein invited Ms. Leung to read her winning essay. Ms. Leung began by referencing the landmark Supreme Court decision Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969), which involved students who were suspended for protesting the Vietnam War by wearing black armbands. In Tinker, the district court held that the suspension was appropriate because the school district feared disruption from the protest. The Supreme Court reversed, writing the iconic phrase that students do not shed their free speech rights "at the schoolhouse gate." The Court cautioned that for expression to be regulated, it must substantially interfere with a school's operations. Ms. Leung emphasized how, in the age of social media, the "schoolhouse gate" has become a vague boundary.

Ms. Leung noted that Tinker's "substantial interference" test was applied in Board of Education of Westside Community Schools v. Mergens, 496 U.S. 226 (1990). In Mergens, the Supreme Court held that the Westside School District violated the Equal Access Act when it denied a student's request to form a Christian student club. The Court reasoned that the club did not substantially interfere with school activities because attendance was voluntary and meetings were held outside of the classroom. Ms. Leung highlighted that while the government should aim to protect students from bullying, granting the government unfettered power to regulate speech may lead to the government exercising arbitrary power. Ms. Leung's insightful and thought-provoking essay reminded us of the importance of using our free speech rights to responsibly express ourselves and to not take that fundamental right, or any of the other constitutional rights, for granted.

In his winning video, Mr. Montes provided a unique depiction of the evolution of First Amendment law as it applies to students' free speech rights both inside and outside of school. Mr. Montes was the sole editor, illustrator and creative director of the winning video, which was both entertaining and educational. His video began with a discussion of the landmark Tinker case. As Mr. Montes highlighted, in the years since Tinker was decided, the Supreme Court has been confronted with a number of cases involving students' speech. Mr. Montes expressed his concern regarding the extent of school censorship beyond school boundaries.

Today, schools cannot censor students outside of campus unless their speech is harassing or bullying. As technology advances and social media becomes more prevalent, it is difficult to draw a line between

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Central District Annual Bar Membership Renewal Fee

On May 28, 2020, the United States District Court for the Central District of California issued General Order No. 20-07, which instituted an annual renewal fee of $25 for all members of this Court's Bar. See General Order No. 20-07, available at www.cacd.uscourts.gov/court-procedures/general-orders. You can pay your fee online at: https://apps.cacd.uscourts.gov/registration/Home/BarRenewal

The Central District of California Celebrates Its 2022 Civics Contest Winners

(Continued from page 16)

students' free speech that is and is not acceptable outside of school. Mr. Montes discussed the breadth and limits of free speech: it can be used to express opinions and further justice but it can also be used to harass, intimidate, or cause harm to others. Mr. Montes concluded by stating that students should use their First Amendment rights to better themselves, to advocate for positive change in their communities, and to combat the injustices in the world.

After the winning essay and video were shared, Judge Klein recognized the high school teachers for their support of the Local Contest and noted that the Central District of California provides two categories of teacher prizes: one for teachers whose students' essays and videos were selected as first, second or third place winners; and a random drawing of all teachers whose students submitted essays and videos. Meghan Leahy, a teacher from Arcadia High School, was recognized for having students from her school submit the top five essays! Brett Robles, a teacher from Rubidoux High School, was recognized because his student, Jesus Montes, submitted the first-place video.

The reception concluded with Judge Klein thanking the following individuals and organizations who made the Local Contest and reception possible: Padriac Keohane and Jessica Garibay from the Bankruptcy Court for their technical and administrative support during the reception; the Central District of California Lawyer Representatives for providing funding for teacher prizes; the Attorney Admission Fund for funding the prizes for the contest winners; and the Semi-Finalist and Finalist Selection Committees for reviewing all student submissions.

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FBA-LA PROGRAM: TOP 10 REASONS TO CONSENT TO A TRIAL BEFORE A MAGISTRATE JUDGE IN THE CENTRAL DISTRICT OF CALIFORNIA

By Arnold F. Lee, Esq.

On March 22, 2022, the Los Angeles Chapter hosted a webinar event, "Top 10 Reasons to Consent to Trial Before a Magistrate Judge," featuring Chief Judge Philip S. Gutierrez, Chief Magistrate Judge Paul L. Abrams, Magistrate Judge Alexander F. MacKinnon, Magistrate Judge Karen L. Stevenson, Magistrate Judge Michael R. Wilner, Deputy City Attorney Hasmik Badalian Collins of the Los Angeles City Attorney's Office, and Sepehr Daghighian of California Consumer Attorneys P.C. The program was moderated by Los Angeles Chapter President Yuri Mikulka of Alston & Bird LLP.

In the Central District of California, civil litigators are at the mercy of the court's incredibly busy schedule. Covering seven counties and serving more than 18 million residents, the Central District of California is by far the most populous federal judicial district. Due to increasing caseloads for each district court judge, civil case litigants and their attorneys have the option to consent to trial before a magistrate judge, pursuant to General Order No. 18-11. Here are the top 10 reasons to consent to trial before a magistrate judge:

1. Definite and Timely Trial Date

Criminal trials take priority over civil trials. If a criminal case does not resolve, a district court judge may continue the civil trial to a later date to accommodate the criminal case. Consenting to trial before a magistrate judge may alleviate the uncertainty of the trial date, as magistrate judges have greater scheduling flexibility and a less rigorous criminal docket.

2. Excellence and Dedication of the Magistrate Judge Panel

Selection of magistrate judges are merit-based. Prior to appointment, magistrate judge candidates undergo a lengthy and thorough selection process. In addition to their wealth of experience and expertise, magistrate judges are dedicated to working with the attorneys and litigants to ensure the just, speedy, and inexpensive determination of every action and proceeding.

3. Choose a Magistrate Judge with Subject Matter Expertise

The magistrate judges available for consent cases have extensive experience in various fields, including employment law, intellectual property, complex commercial matters, securities litigation, and unfair competition disputes, among other specialties. Litigants and their attorneys have the option to consent to a magistrate judge with their desired subject matter experience and expertise.

4. Choose a Magistrate Judge Who Fits Your Schedule

District court judges generally have impacted schedules and limited availability for trial dates. Magistrate judges can be more accommodating in setting trials and deadlines that fit your schedule.

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FBA-LA PROGRAM: TOP 10 REASONS TO CONSENT TO A TRIAL BEFORE A MAGISTRATE JUDGE IN THE CENTRAL DISTRICT OF CALIFORNIA

(Continued from page 19)

5. You Can Still Have a Settlement Judge

Consenting to trial before a magistrate judge does not prohibit attorneys or litigants from consenting to a separate magistrate judge to conduct settlement conferences.

6. Accessibility/Flexibility

Attorneys and litigants have greater accessibility to magistrate judges in resolving discovery or other disputes. Magistrate judges are generally more flexible in allowing more time, if warranted, to conduct jury trials.

7. One-Stop-Shop Trial Management and Engagement with the Parties and the Case

When parties consent to trial before a magistrate judge, the need for motion practice before the district court judge to extend discovery cut-off or request for other relief is eliminated. Simply put, parties need not litigate in two separate courts but instead, consenting to a magistrate judge streamlines the process to resolve any procedural or substantive issue.

8. Efficient Trial Scheduling

Magistrate judges have fewer trials set in comparison to district court judges. This means that magistrate judges will likely be able to accommodate trial date preferences without concern of other matters taking priority.

9. Cost-Effectiveness

Due to fewer matters on their docket, magistrate judges can be more engaged and be able to afford greater attention to each case. Consenting to trial before a magistrate judge streamlines the parties' issues and potentially eliminates avoidable motion practice. A trial date that is definitive and timely allows the parties to avoid unnecessary trial preparation expenses that may come before a district court judge when a criminal matter takes priority.

10. Great Experiences of Attorneys Who Have Consented to Trial Before a Magistrate Judge

Flexibility, tailoring deadlines to your schedule, and thoughtful attention to your case were just some of the positive experiences attorneys who have consented to trial before a magistrate judge shared. Please visit the Court's website to learn more about the process to consent to trial before a magistrate judge.

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FBA-LA PROGRAM: TOP 10 REASONS TO CONSENT TO A TRIAL BEFORE A MAGISTRATE JUDGE IN THE CENTRAL DISTRICT OF CALIFORNIA

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Below is the list of magistrate judges currently available for consent cases.

Consent List Magistrate Judges	Courtroom Deputy / Telephone Number
Paul L. Abrams (PLA)	Christianna Howard / 213-894-7103
Maria A. Audero (MAA)	James Munoz / 213-894-1831
John D. Early (JDE)	Maria Barr / 714-338-4756
Shashi H. Kewalramani (SHK)	Danalyn Castellanos Cisneros / 951-328-4466
Steve Kim (SK)	Connie Chung / 213-894-4436
Alexander F. MacKinnon (AFM)	Ilene Bernal / 213-894-4583
Douglas F. McCormick (DFM)	Nancy Boehme / 714-338-4755
John E. McDermott (JEM)	ShaRon Lorenzo / 213-894-0216
Rozella Oliver (RAO)	Donnamarie Luengo / 213-894-0381
Sheri Pym (SP)	Kimberly I. Carter / 951-328-4467
Alka Sagar (AS)	Alma Felix / 213-894-1587
Karen E. Scott (KES)	Jazmin Dorado / 714-338-3960
Autumn D. Spaeth (ADS)	Kristee Hopkins / 714-338-4776
Karen L. Stevenson (KS)	Gay Roberson / 213-894-3922
Michael R. Wilner (MRW)	Veronica Piper / 213-894-0902

DEAN ERWIN CHEMERINSKY RECAPS THE SUPREME COURT'S MOMENTOUS 2021-22 TERM AT ANNUAL FBA-LA SUPREME COURT REVIEW

By Robert E. Dugdale, Esq.

On September 29, 2022, esteemed educator, litigator, and legal scholar Erwin Chemerinsky, who currently serves as the Dean of the Berkeley School of Law, shared his insights into cases decided during the Supreme Court's October 2021 Term before a packed crowd assembled at the Biltmore Hotel for the FBA-LA's first in-person event in almost two years. As Dean Chemerinsky observed, the October 2021 term was one of the most momentous in the institution's history and saw the Court break sharply to the right on key issues that have long been the focus of those with a conservative vision of the Constitution.

Dean Chemerinsky noted that, prior to the start of the October 2021 term, he had made two predictions regarding the cases the Supreme Court would decide that term: First, he predicted that people should expect a large number of 6-3 decisions with a conservative majority, and second, that people should expect to see very few of the kind of 5-4 decisions with a liberal majority that had been a hallmark of the Court for the past several decades. With a reconstituted Court featuring three relatively-new Trump appointees, both of these predictions proved prescient. Of the 60 cases that were fully-briefed and argued before the Supreme Court, nineteen -- or nearly one-third of those cases -- resulted in 6-3 decisions with a conservative majority, and nine were 5-4 decisions with a conservative majority. More telling, however, was the fact that the conservative position prevailed in almost every major case that was decided by the Court during the term, and, when it came to the decisions rendered on some of the most divisive issues in American society, the Court divided itself solely on ideological grounds with the conservative justices moving the law sharply to the right in these areas.

During his nearly 40-minute presentation, Dean Chemerinsky, characteristically shunning any need for notes, walked the audience through the landmark decisions delivered by the Court during the October 2021 Term in four particular areas: abortion rights, gun rights, the free exercise of religion, and the limits of administrative agency power; and he provided a brief preview of what is likely to come when the Court, and its solidified conservative majority, reconvenes this October for its next term, which will be first for newly-appointed Justice Ketanji Brown Jackson.

Abortion Rights: In a case that dominated the headlines like no other in recent memory, the Supreme Court's last term ended with the Court overruling *Roe v. Wade* and *Planned Parenthood v. Casey* with its June 24th ruling in *Dobbs v. Jackson Women's Health Organization*, 142 S.Ct. 2228 (2022). In that case, the Court held that a Mississippi law prohibiting abortions after the fifteenth week of pregnancy is Constitutional and that the Constitution does not protect a woman's right to an abortion prior to viability.

Dean Erwin Chemerinsky

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DEAN ERWIN CHEMERINSKY RECAPS THE SUPREME COURT'S MOMENTOUS 2021-22 TERM AT ANNUAL FBA-LA SUPREME COURT REVIEW

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Justice Samuel Alito wrote the opinion for the Court, which was joined by Justices Clarence Thomas, Neil Gorsuch, Brett Kavanaugh, and Amy Coney Barrett. The Court said that *Roe* was "egregiously wrong from the start" and a decision whose reasoning was "exceedingly weak." And Justice Alito's majority opinion held that a right should be protected under the Constitution only if it is in the Constitution's text or part of its original meaning, or if there is a clear, unbroken historical tradition that protects the activity as a right. Abortion, according to the majority, does not meet any of these criteria, and, per the majority's decision, laws relating to restrictions on abortions are only subject to a rational basis review, meaning that such laws will be upheld so long as they are rationally related to a legitimate government purpose. This will severely inhibit any future challenges to restrictions placed on a woman's access to an abortion. As Dean Chemerinsky remarked, "I can count on one hand the number of instances the Supreme Court has found since 1937 that any law violates the rational basis test."

Dean Erwin Chemerinsky, Outgoing FBA-LA President Yuri Mikulka, FBA-LA Secretary Erin Murphy, FBA-LA President Sandhya Ramadas Kogge, and Chief U.S. District Court Judge Philip Gutierrez at the FBA-LA Annual Supreme Court Review

Chief Justice Roberts concurred in the judgment, ruling that he would have upheld Mississippi's restrictions on abortions after 15 weeks of pregnancy and would have done so without reaching the question as to whether the Court should overrule *Roe* and *Casey*. The dissenting judges -- Justices Stephen Breyer, Elena Kagan, and Sonia Sotomayor -- lamented the Court's disregard for its precedents and stressed the dire impact the Court's decision will have on the "millions of American women who have . . . lost a fundamental constitutional protection."

As Dean Chemerinsky observed, the *Dobbs* decision not only broke with the conclusions reached by the Supreme Court in *Roe* and *Casey*, but also with how those decisions were reached. Dean Chemerinsky noted that both *Roe* and *Casey* were "bi-partisan decisions." *Roe*, a 7-2 decision, was authored by Justice Harry Blackman, a Nixon appointee, and was joined by Justices William Berger and Lewis Powell, who had also been appointed by President Nixon. Even more dramatically, in the *Casey* decision, all five justices in that 5-4 decision who voted to affirm *Roe* were appointed by Republican Presidents. Reflecting the current polarization that currently defines American politics, no such crossing of ideological lines occurred in the *Dobbs* case, or, for that matter, many of the 6-3 decisions that defined the 2021-22 term of the Court. All six of the justices who constituted the majority were appointed by Republican Presidents; and all three of the justices who constituted the dissent were appointed by Democratic Presidents.

The immediate, stated impact of *Dobbs* is that the issue of abortion has now been left to the political process, with each state able to decide for itself whether to allow abortions or to prohibit some or all abortions, or for Congress to act by enacting a federal law permitting or banning abortions, and to what extent. In assessing what the *Dobbs* decision will mean "for the legal system and for people's lives," Dean Chemerinsky predicted that the impact of *Dobbs* will likely not only prove far-reaching in the context of abortion rights, but in other areas as well.

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DEAN ERWIN CHEMERINSKY RECAPS THE SUPREME COURT'S MOMENTOUS 2021-22 TERM AT ANNUAL FBA-LA SUPREME COURT REVIEW

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When it comes to abortion rights, Dean Chemerinsky explained that half of the states are likely to severely restrict or altogether end access to abortions, and, with the exception of those with means to travel to locations where abortions are legal, women will be forced into a choice of an unwanted pregnancy or an unsafe, illegal, back-alley abortion. Dean Chemerinsky further predicted that there will be "a flurry of legislation" at the state level with regard to abortion, including the passage of laws that will make it a crime to cross state lines to obtain an abortion; that limit the importation of medications which induce an abortion into a state; that will prohibit or restrict access to the "morning after pill" and birth control methods, such as IUDs; and that will impact in vitro fertilization and how that process results in discarding embryos. And all these new laws, in turn, will spark "tremendous amounts of litigation" on the questions they raise, including whether new abortion laws must include an exception that protects the life of the mother, how new abortion restrictions will impact federal laws that require that emergency rooms provide treatment to pregnant women, and if it is Constitutional to prohibit women from crossing state lines to obtain access to an abortion.

Furthermore, citing to Justice Thomas' concurring opinion in *Dobbs*, Dean Chemerinsky observed that the reasoning of the majority opinion places into question how the Supreme Court will view challenges to other rights, which like *Roe*, are rooted in the right to privacy previously recognized by the Supreme Court as part of the Fourteenth Amendment. This puts in doubt prior rulings of the Court recognizing a right to access to contraception; the right to engage in consensual, same-sex sexual activity; and the right to marry a person of the same sex. Furthermore, although Justice Alito stated in his majority opinion that none of these rights are in danger because none involve "potential life," Dean Chemerinsky observed that this statement not only seems at odds with Justice Alito's prior positions on these issues but also overlooks the very basis for his opinion in *Dobbs*. As none of these rights are included in the text of the Constitution or its original meaning, and none are rights supported by a clear, unbroken historical tradition, Dean Chemerinsky concluded that all of these activities previously recognized as Constitutionally-protected rights by the Supreme Court are currently at risk of losing their Constitutional protection.

Newly sworn-in FBA-LA President Sandhya Ramadas Kogge Addresses the Crowd at the Chapter's First In-Person Event Since 2019

<u>Limiting the Power of Administrative Agencies</u>: Another case profiled by Dean Chemerinsky, due to "the profound effect it is likely to have on . . . lawyers and judges," was *West Virginia v. Environment Protection Agency*, 142 S.Ct. 2587 (2022), a case in which West Virginia coal companies challenged the ability of the EPA to regulate greenhouse gas emissions from power plants, a known, major contributor to climate change. In a 6-3 decision authored by Chief Justice John Roberts, the conservative majority of the Court held that the EPA lacked the authority to regulate greenhouse gases under the statute outlining the EPA's responsibilities and authority. In so ruling, Chief Justice Roberts held that, when there is a "major question," Congress must provide clear statutory direction giving the federal agency the power to act.

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DEAN ERWIN CHEMERINSKY RECAPS THE SUPREME COURT'S MOMENTOUS 2021-22 TERM AT ANNUAL FBA-LA SUPREME COURT REVIEW

(Continued from page 24)

As the Chief Justice explained, "something more than a mere plausible textual basis for agency action is necessary" to activate an agency's decision-making powers, and "[t]he agency instead must point to 'clear congressional authorization' for the power it claims."

As Dean Chemerinsky explained, this decision was not only significant in the manner in which it limited the ability of the EPA to deal with the urgent problem of climate change; it also presents "an open invitation to lawyers" to bring challenges to a plethora of administrative actions and countless federal laws that empower federal agencies to deal with critical issues, including issues concerning public health and safety. Moreover, the decision is certain to lead to a significant amount of litigation as to how it should be applied, because while the majority held that Congress must be specific in authorizing agency action when there is a "major question," it has never defined what a "major question" is or what is sufficiently specific to meet this requirement.

The Separation of Church and State: In two other 6-3 decisions discussed by Dean Chemerinsky, *Carson v. Makin*, 142 S. Ct. 1987 (2022), and *Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2022), the Supreme Court swung sharply to the right on the issue of religious freedom and strongly protected the free exercise of religion, while providing little, if any, of the weight the Court has traditionally provided to the Establishment Clause of the First Amendment.

In *Carson*, the Court considered a Maine law that applies in areas of that state which are too rural to support public school systems. In those areas, school administrative units provide funds for parents to send their children to private schools. In furtherance of its stated goal to provide a free, secular education for every student in the state, Maine required that these funds could only be used to send children to "secular," rather than "sectarian," schools. The Supreme Court, in another decision along ideological lines, concluded that Maine violated the free exercise of religion by not subsidizing parochial school education as part of its program to subsidize secular schools; and, in writing the majority opinion for the Court, Chief Justice Roberts held that, whenever the government financially supports secular private schools, it is constitutionally required to subsidize religious education.

In the *Kennedy* decision, the Supreme Court reviewed a high school football coach's challenge to a suspension he received after he openly defied the public school where he worked by engaging in Christian inspirational prayers at the 50-yard line following the conclusion of the games he coached. Breaking with decades of precedent in which the Supreme Court held that prayer, even voluntary prayer, in public school violates the Establishment Clause, the Court concluded that the coach's Constitutional rights to free exercise of religion and freedom of speech were violated when his school sanctioned him for activity that he engaged in at the conclusion of the school-sponsored football games in which he coached.

Both of these cases mark a decidedly sharp turn away from decades of cases in which the Supreme Court has robustly defended and given meaning to the Establishment Clause of the Constitution and the wall that separates church and state, and given a minimalist view to the Free Exercise Clause of the Constitution giving voice to religious freedom. In essence, as Dean Chemerinsky observed, the script has now been flipped. On the issue presented in *Carson,* for many decades, the relevant question the Supreme Court had been asking was "when can the government provide aide to religious schools without violating the Establishment Clause;" while it is now asking "when must the government provide aid to religious schools so as to not violate the Free Exercise Clause." And on the issue presented in *Kennedy*, as Dean Chemerinsky noted,

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DEAN ERWIN CHEMERINSKY RECAPS THE SUPREME COURT'S MOMENTOUS 2021-22 TERM AT ANNUAL FBA-LA SUPREME COURT REVIEW

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"We have gone from the Establishment Clause prohibiting prayer to now there being a First Amendment right for teachers to practice their religion by engaging in prayer."

Dean Chemerinsky expects that the ramifications of these decisions will be significant. *Carson* will impact states like California, where the state provides significant public assistance to charter schools, which under California law, must be secular, and it could impact numerous other government programs as well where the government provides financial assistance to secular, but not faith-based, programming. And the decision in *Kennedy* would seem to open up the floodgates for more claims asserting violations of the Free Exercise Clause whenever free speech rights and claims of religious freedom overlap. Indeed, as Dean Chemerinsky noted, since every restriction on prayer in schools automatically restricts one's ability to freely practice one's religion, it is difficult to see where a line is drawn after *Kennedy*.

Gun Rights: In *New York Rifle and Pistol Association v. Bruen*, 142 S.Ct. 2111 (2022), the Supreme Court held that a 115-year-old New York law requiring a showing of "cause" to obtain a permit to possess a concealed weapon in public violated the Second Amendment. In so ruling, the Supreme Court found that "[t]o justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." And "[o]nly if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's unqualified command."

As Dean Chemerinsky observed, the protection that the Court has provided to the Second Amendment under *Bruen* is now beyond the protections provided to rights and laws subject to strict scrutiny, and the protections afforded to free speech rights and under the Equal Protection Clause of the Constitution. On this front, Dean Chemerinsky remarked, "The Court has provided more protection now for Second Amendment rights than for any other in the Constitution" and the question now for judges ruling on Second Amendment challenges to firearms restrictions will be whether the law in question is consistent with a "historical tradition," a standard that will be considerably difficult for a firearms restriction to meet.

What's Next in the October 2022 Term: After a term which saw the Supreme Court overrule *Roe v. Wade*, drastically limit the power of administrative agencies, forcefully part ways with decades of precedent concerning the separation of church and state, and dramatically expand gun rights, Dean Chemerinsky warned that those hoping the Court's upcoming term will be more "sleepy" and less likely to embrace controversial subjects are likely going to be disappointed. He predicts the country should expect to again see the enormous effect of having a 6-3 conservative majority on the Supreme Court in the October 2022 term, with an overwhelming likelihood the Court will issue more blockbuster decisions that continue to move the law sharply to the right.

On the Court's docket this term are two cases the Supreme Court will hear on October 31st about whether to end affirmative action by colleges and universities, *Students for Fair Admission v. University of North Carolina* and *Students for Fair Admissions v. Harvard College*, and Dean Chemerinsky believes the Court is likely to overrule 40 years of settled law in which the Court has held that colleges and universities have a compelling interest in having a diverse student body and may permissibly use race as one factor in their admissions decisions.

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DEAN ERWIN CHEMERINSKY RECAPS THE SUPREME COURT'S MOMENTOUS 2021-22 TERM AT ANNUAL FBA-LA SUPREME COURT REVIEW

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In addition, the Court is set to hear *Moore v. Harper*, a voting rights case of potentially enormous significance in which the Court has been called upon to consider an argument made by the GOP challengers in that case that, under the United States Constitution, only a state legislature can decide matters concerning congressional elections. Were the Court to adopt this argument -- known as the "independent state legislature" theory -- it would eliminate any form of state judicial review of voting rights claims. Moreover, if the Court accepts this theory in a case relevant to how congressional elections take place in accordance with the Constitution, its reasoning could very well apply to a future court decision concerning the role state legislatures play in the selection of Presidential electors. And this, in turn, could lead to a decision that state legislatures have the power to award presidential electors to the candidate who lost the popular vote in a state, even if such a decision violated state law, and change the outcome of a presidential election.

In short, at a time when the country is experiencing severe political polarization, the Supreme Court proved during the 2021-22 term that it is coming down firmly on one side of this divide, and, in light of the relative youth of the six-member conservative block on the Supreme Court, Dean Chemerinsky projects that the Court's decisions will have a deeply conservative bent, not only in the current term, but, quite likely, for decades to come.

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