Federal Bar Association
Northern District of Ohio Chapter

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Inside This Issue:

President's Podium - Derek Diaz

Ensuring Access to Justice: The Court's Pro Bono Program

If you've never participated in the pro bono program for the Northern District of Ohio, you should consider doing so. It offers lawyers an easy and structured way to help indigent persons in pending civil matters. The rewards are manifold, benefitting disadvantaged litigants, our legal system, and you.

The program operates in a straightforward fashion. Interested attorneys submit to the clerk a form, found on the court's website, identifying their preferred practice areas and their recent appearances in federal court. That information is then entered into a list of volunteers that the clerk's office maintains. When a pro bono appointment has been approved in an existing case, attorneys on that list may be contacted and asked whether they would agree to accept the appointment. This solicitation typically occurs after a pro se litigant in a civil case has successfully moved for appointment of pro bono counsel or the court has directed that relief on its own. Judges tend to appoint pro bono lawyers only in cases that appear to have some merit and would otherwise benefit from counsel participation. If a lawyer accepts the appointment, the court permits reimbursement of up to $1,500 in costs and expenses. (That limit can be increased, with judicial consent, in individual cases.) The attorney then represents the client for the remainder of the trial-court proceedings.

When I was in private practice, my own experience with the court's pro bono program was hugely rewarding. I handled several civil-rights cases, a medical-malpractice complaint, and an employment suit. Two of the cases went to trial, one by jury and one by judge alone. Without exception, the presiding jurists thanked me for serving as pro bono counsel and for ensuring that an underprivileged litigant received the benefit of legal advice.

I also recruited some of my firm's junior attorneys to aid in these efforts. Those lawyers, who normally spent much of their time researching and writing, were often hungry for live court experience. One of my former colleagues, Dan Pesciotta, viewed pro bono work as a highlight of his early legal career. He wrote:

> As a young associate, I participated in the Northern District's pro bono program, representing an inmate pursuing claims for civil rights violations against two prison guards. I drafted summary judgment briefs and motions in limine, participated in court conferences and calls with opposing counsel, met with my client, and was second chair at a three-day jury trial where I conducted voir dire, gave the opening statement, examined witnesses, and argued jury instructions. It would have been years before I gained such experience for paying clients at my law firm. To this day, I look back on my participation in the court's pro bono program as one of the best experiences of my legal career and continue to seek out pro bono opportunities to this day. The experience is invaluable, as is the satisfaction of knowing that I have helped individuals who otherwise would have been without legal counsel.

Many volunteers echo those same sentiments. So if you are looking for a rewarding way to use your legal skills and to ensure access to justice for the less privileged, I encourage you to take a look at the court's pro bono program.

Information about the court's pro bono program can be found at https://www.ohnd.uscourts.gov/pro-bono-program.

FBA Members in the News

The United States District Court for the Northern District of Ohio

FOR IMMEDIATE RELEASE October 1, 2021

Judge Patricia A. Gaughan, Chief Judge of the United States District Court for the Northern District of Ohio, announced that Amanda M. Knapp, Esq. was sworn in today to serve an eight-year term as a United States Magistrate Judge in Akron, Ohio. She succeeds Magistrate Judge Kathleen B. Burke, who retired effective September 30, 2021.

Magistrate Judge Knapp recently served as an Administrative Law Judge in the Akron Office of Hearings Operations for the Social Security Administration, where she has presided over Social Security disability matters since October 2017. Prior to that appointment, she practiced as a litigator in state and federal courts. For nearly a decade Magistrate Judge Knapp worked in the business litigation group of Roetzel & Andress, LPA, with a focus in complex civil, criminal, and regulatory matters. Before joining Roetzel, she handled civil litigation for the City of Cleveland Heights, served as a law clerk to two District Court Judges (in California), and worked as Counsel to the California State Senate Judiciary Committee.

Magistrate Judge Knapp has been a member of the Federal Bar Association, Northern District of Ohio Chapter, since 2008, and has served on its Board of Directors since 2013. In 2011-13, she served as Co-Chair of the Younger Lawyers Committee; in 2013-16, she served as Chair of the Membership Committee; in 2016-17, she served as Treasurer; in 2017-18, she served as Secretary; and in 2018-19 and 2020-21 she served as Vice-President.

Magistrate Judge Knapp was a member of the Antitrust Section Council of the Ohio State Bar Association in 2012-17 and served on its Board of Directors in 2013-17. In 2013, she served as Chair of the OSBA Convention Seminar Planning Committee; in 2015-16, she served as Treasurer; and in 2016-17, she served as Vice-Chair.

Magistrate Judge Knapp received her B.A. from the University of Pennsylvania, *summa cum laude*, in 1999 with English Honors, and her J.D. from Harvard Law School in 2002.

Chief Judge Gaughan said, “We are very excited to have Amanda Knapp join the Court as a Magistrate Judge. We know she will be an invaluable asset to our Bench.”

The United States District Court for the Northern District of Ohio has court locations in Cleveland, Akron, Toledo, and Youngstown and serves 6 million citizens in the 40 northern most counties in Ohio.

CONTACT: Sandy Opacich, Clerk of Court

(216) 357-7068

FBA Members in the News

FBA Lifetime Service Award
Aaron Bulloff
October 1, 2021

When I received the 2015 Federal Bar Association's Earl Kintner Award at the FBA's National Convention in Salt Lake City, I got two standing ovations—one for being called to the podium and one for giving the shortest remarks of the entire evening. So I am well aware that brevity equals approval.

I am especially appreciative of receiving this recognition today because I am retired almost seven years now. When I retired, I withdrew from all legal associations except the FBA. So why would I maintain my membership in this particular organization when I am done practicing? There are two reasons.

First, the FBA is an organization that allows one to make not only professional relationships, but close lifetime friendships with attorneys from all parts of the country, all types of practices, and all walks of life. Just last week at the FBA National Convention in Miami, I received a colossal hug and kiss on the cheek from an Oklahoma City federal judge on the Tenth Circuit Court of Appeals whom I had not seen for a few years. His name is Bob Bacharach. Now that's an FBA friendship, and no, I am not looking for the same from our bench who are present here today.

Second, the FBA is an organization which immediately, and I emphasize immediately, allows for one to serve the profession and through that service to become as much a leader as one wishes to be. Look at our own Kip Bollin, who became the President of our Northern District of Ohio Chapter, and then, to wonderful acclaim, became the National President of the FBA just a few years ago when his hair was still, well, gray.

I have stayed active in the FBA both at the Chapter level and by holding a number of positions at the National level. Retirement does not mean that one cannot continue to serve. What I have endeavored to do is offer my FBA knowledge and experience to our prior Chapter President Deneen Lamonica, who by the way deserves a very large thank-you for putting together our luncheon program today, and to our outgoing Chapter President Erin Brown, to provide them whatever assistance I could in their becoming FBA leaders. What I determined to do last week in Miami was to introduce them to as many leaders and friends in attendance at the National Convention as I could. It was personally quite gratifying to then step back and watch the two of them engage with strangers to them with ease and with knowledge and to emerge from these exchanges ever further down their own paths of future national leadership and with nascent friendships.

And that second thought—how service can beget leadership—brings me to my conclusion. For those of you who subscribe to the Philosopher of the Month Club, you know that this month's philosopher is that ancient Greek, Epictetus, one of my personal favorites.

He said: "We all carry the seeds of greatness within us, but we need an image as a point of focus in order that they may sprout." Every one of us in this room can serve as a mentor to someone who may be less experienced or less connected, but whose careers only need that point of focus our mentoring can provide to help them sprout. Our judges who are here today provide that mentoring every time we appear before them—we just may not recognize it—but they do, and perhaps someday we tell them that.

That's my FBA plug and my request that we act upon Epictetus' statement however we are able. We don't serve for recognition, but I thank you once again for this wonderful personal honor, and I wish you a wonderful afternoon and weekend.

FBA Events

DIVERSITY COMMITTEE HOSTS DISTINGUISHED HISTORIAN

Talia Sukol Karas and Julia Shagovac

The FBA Diversity Committee was honored to host Dr. Kate Masur, Professor of History at Northwestern University, and Judge Solomon Oliver, Jr., of the U.S. District Court for the Northern District of Ohio, for an afternoon of engaging, enlightening and challenging conversation. Dr. Masur visited Cleveland to discuss her new best-selling book, *Until Justice Be Done* (New York: W.W. Norton & Co., 2021). She shared her unique perspective as a historian on an understudied period of America's history: post-Civil War Reconstruction. Dr. Masur's book explores the origination of the "Black Laws" during that period, an early form of post-slavery legalized segregation (preceding the Jim Crow laws).

Dr. Kate Masur & Judge Solomon Oliver, Jr.

At the FBA members-only lunch, Dr. Masur led a roundtable discussion on the history of the Black Laws and their context in the post-Civil War period. One shocking impact of these laws was the imprisonment of Black shipping workers who traveled from the freed Northern States to recently liberated Southern states for work, but who were held—sometimes indefinitely—in Southern prisons unless shipmasters could vouch for the men's freedom. Dr. Masur explained how these laws sharply conflicted with the abolitionist movements at the time, notably pointing out the tension that existed between white allies who wanted to (1) advocate for freedom for enslaved people, and (2) keep people who they believed would require public assistance out of their communities. The Black Laws also intersected with similarly prejudicial "Poor Laws" that explicitly discriminated against single mothers, children, individuals with disabilities, Black and Indigenous people, and other people of color. Attendees learned about this under-discussed history of America, and about how these explicitly racist laws are connected to the implicit and unwritten racism that still exists in America's legal and societal structures.

After lunch, Dr. Masur and Judge Oliver spoke in the Moot Courtroom at Cleveland-Marshall College of Law. Judge Oliver discussed his own experience growing up in Alabama and attending still-segregated schools. Dr. Masur and Judge Oliver analyzed lessons from our nation's past, emphasizing that the work of combatting racist laws and institutions extends back to the nation's founding and that there is yet more work to do to ensure equality in law and practice. Dr. Masur and Judge Oliver talked about the status of race conversations today, including those that arose following the murder of George Floyd on May 25, 2020. Dr. Masur also discussed the introduction of legislation to bar the teaching of critical race theory in schools. Dr. Masur cautioned those in attendance to be aware of the unspoken impact that institutionalized racism could have on our country's legislation—as well as the enforcement of those laws. The presentation was well-attended by attorneys and FBA members, including CSU students, as well as members of the general public. The NDOH FBA Diversity Committee appreciates Dr. Masur's enthusiasm at visiting Cleveland to share her book and research with us, and we look forward to continuing these important conversations within our community through the next programming year. By engaging with the United States' legal evolution, we can increase our sensitivity and help ensure that past wrongs are not repeated.

FBA Events

AEDPA-PLRA Symposium

Jonathan L. Entin
Case Western Reserve University School of Law

The Northern District of Ohio chapter co-sponsored a daylong symposium on "AEDPA and the PLRA After 25 Years" that was held at the Case Western Reserve University School of Law on November 12. The Federal Litigation Section of the national FBA also co-sponsored the event.

Judge Philip Calabrese

The opening session focused on the impact of the COVID-19 pandemic on prisoners. Prof. Nancy King of the Vanderbilt Law School provided an overview of the equitable powers of the federal courts as background to the Antiterrorism and Effective Death Penalty Act. Prof. Margo Schlanger of the University of Michigan Law School explained how the Prison Litigation Reform Act undermines the rights of incarcerated persons. And Prof. Hadar Aviram of Hastings College of the Law discussed the limits of litigation on behalf of prisoners during the pandemic with particular reference to litigation involving California correctional institutions.

The second session offered practitioners' perspectives on both AEDPA and the PLRA. Former Federal Defender (and former chapter president) Dennis Terez spoke from a defense perspective, and Assistant U.S. Attorney Duncan Brown gave a government perspective.

The third session offered a variety of perspectives. Prof. William Carter of the University of Pittsburgh School of Law examined restrictions on inmate litigation as reflecting hostility to outsider speech. Prof. Lee Kovarsky of the University of Texas School of Law analyzed the issues in *Shinn v. Ramirez*, an AEDPA case that was to have been argued in early November but got rescheduled and which Prof. Kovarsky described as a potential "blockbuster" case. Paul Larkin of the Heritage Foundation offered a historical perspective on AEDPA and suggested that the statute offered a corrective to what he regarded as overly aggressive federal habeas corpus jurisprudence in the decades before its passage. And Judge Philip Calabrese of the U.S. District Court for the Northern District of Ohio offered a modest proposal for improving AEDPA based on his experience as a lawyer before his appointment to the bench.

The symposium concluded with a panel of federal judges offering their perspectives on both statutes. Magistrate Judge Michael Merz of the U.S. District Court for the Southern District of Ohio focused mainly on AEDPA, Judge Solomon Oliver of the U.S. District Court for the Northern District of Ohio focused mainly on the PLRA, and Judge Karen Nelson Moore of the U.S. Court of Appeals for the Sixth Circuit addressed a range of questions involving both statutes.

Aviram-Schlanger-King & Entin

Many of the presentations will appear in a special issue of the Case Western Reserve Law Review in mid-2022. A video of the entire program is available now at https://case.edu/law/our-school/events-lectures/aedpa-and-plra-after-25-years-case-western-reserve-law-review-symposium.

Brown-Terez-Benza

FBA Events

Chapter Holds Second Trial Academy

Alexandra Dattilo

Like the county music classic "How Can I Miss You if You Won't Go Away?," Trial Academy is back!! Two years later, the FBA presented its second Trial Academy Seminar.

This year's seminar focused on Opening Statements and Closing Arguments and was held on September 30 and October 1. It was a very successful program that could not have happened without the incredible support from the Northern District of Ohio judges, court staff, practitioners, law students, and of course the FBA. A special thank you to the national Federal Litigation section, whose generous contributions allowed the program to award several scholarships to participants who practice in the public sector and who have small or solo practices. We had a total of 16 participants from both the private and public sectors who had varying levels of experience. Joining the participants were four federal judges, 20 experienced practitioners who acted as coaches and presenters, and about 25 law students.

Judge Jonathan Greenberg kicked off the program with a welcome speech followed by Judge Philip Calabrese, who spoke on a View From the Bench. Judge Calabrese was informative and practical with clear direction on what the rules are and how to follow them. Next were demonstrations by experienced practitioners with a focus on both criminal and civil case fact patterns. The demonstrations were dissected by the instructors, the students, and other members of the Trial Academy faculty. Judge Carmen Henderson also provided a captivating presentation on ethics using film clips as demonstrative evidence and quizzed everyone on what was right or wrong with the Hollywood version of various trials, and made us all back up opinions with the rules.

This year the Trial Academy was held in conjunction with the annual State of the Court Luncheon and Swearing-in Ceremony on the final day of the program, which all of the participants, coaches, and presenters were invited to attend. The program culminated in the participants presenting both an opening statement and closing argument in the federal courthouse in front of Judge Oliver, Judge Calabrese, and Judge Greenberg, with experienced participants and law students providing valuable feedback and wrapped up with a reception.

Special thanks to Marisa Darden, Rick Hamilton, and Kerri Keller, who worked with me on the Trial Academy and did incredible work to make this event happen. And extra special thanks (and congrats for his FBA lifetime service award) to Aaron Bulloff for being there at the beginning of this program and for his continued help and support.

Stay tuned for more information on next year's Trial Academy program, which is once again scheduled to be held in conjunction with the State of the Court Luncheon and Swearing-in Ceremony. Please consider being a part of this program. It's fulfilling to the students and to the faculty. Contact Kerri Keller (kkeller@brouse.com) or Rick Hamilton (rhamilton@ulmer.com) for more information.

FBA Events

2021 State of the Court Luncheon and Installment of Board Officers
October 1, 2021

CIVICS LITERACY QUIZ

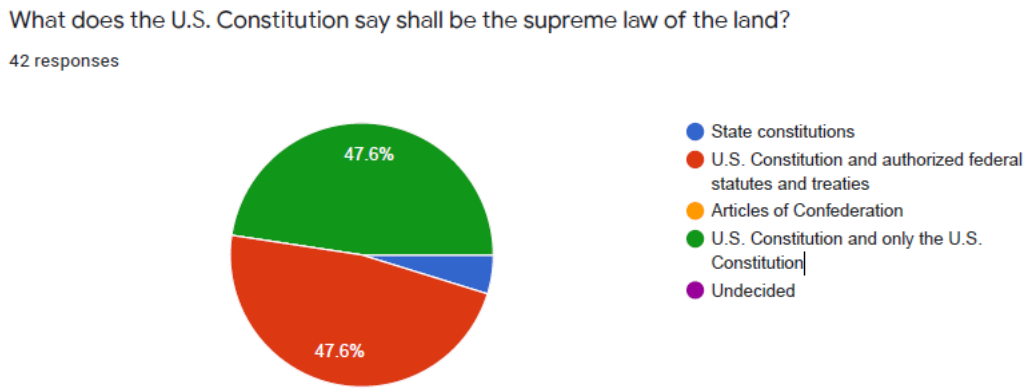
Sarah Cleves

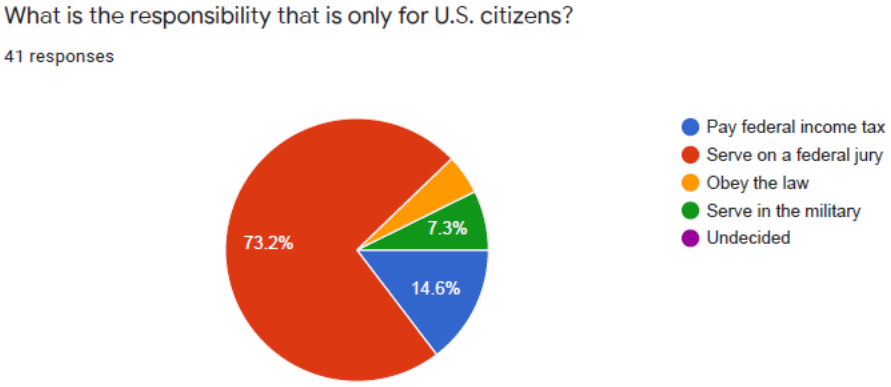
The Civics Committee hosted a Civics Literacy Survey in June, consisting of thirteen questions based on the current U.S. Naturalization Test. The questions related to the Constitution, Bill of Rights, and the three branches of government. Forty-three individuals responded to the questions. Below are the questions and the correct answers:

- What does the U.S. Constitution say shall be the supreme law of the land?
  U.S. Constitution and authorized federal statutes and treaties
- The idea of self-government is in the first three words of the U.S. Constitution. What are these words?
  We the People
- What are the first 10 amendments to the U.S. Constitution called?
  Bill of Rights
- Which one right/freedom is not in the First Amendment to the Constitution?
  Right to Vote
- What did the Declaration of Independence do?
  Declared our nation's independence from Great Britain
- What is meant by the term "rule of law"?
  No one is above the law
- If both the President and Vice President can no longer serve, who is next in line to become President?
  Speaker of the U.S. House of Representatives
- Under the U.S. Constitution, who is the commander in chief to the military?
  President of the United States
- What duties are assigned to the Supreme Court?
  Acts as the ultimate authority in interpreting the U.S. Constitution
- What is the responsibility that is only for U.S. citizens?
  Serve on a federal jury
- What is the right that is only for U.S. citizens?
  Hold a federal elective office
- Who is the current Chief Justice of the United States?
  John Roberts
- What is the separation of powers?
  Each of the three branches of government (executive, legislative, judicial) can check the powers of the other two branches

FBA News

Every respondent correctly answered "What did the Declaration of Independence do?" and "Who is the current Chief Justice of the United States?". The most commonly missed question was the first, with 20 responses each for the correct answer of "U.S. Constitution and authorized federal statutes and treaties" and the incorrect answer of "U.S. Constitution and only the U.S. Constitution." Only two respondents chose "State constitutions." (See Fig. 1) Only 73.2% of respondents correctly answered "What is the responsibility that is only for U.S. citizens?" (See Fig. 2.) Over 90% of respondents correctly answered each of the remaining questions. We hope you enjoyed the civics literacy survey. If you are interested in getting involved with the Northern District of Ohio Chapter's civics initiatives, please contact Co-Chairs Sarah Cleves (scleves@abais.com) and Joe Muska (jmuska@mcdonaldhopkins.com).





FBA News

Greater Cleveland Food Bank

Dear chapter members:

The holiday season is once again upon us and there are many in our community who need our help to put food on the table for their families. The Newer Lawyers Committee for the NDOH Federal Bar Association Chapter has once again organized a virtual food drive to support families in need here in Northeast Ohio. Last year we raised well over $3,000 for families in need and we are hoping to exceed that contribution this year. This is a difficult time for many families in our community and it is only exacerbated by the ongoing pandemic and supply chain difficulties we are all experiencing. If you are able, please consider making a contribution to our virtual food drive organized in cooperation with the Greater Cleveland Food Bank by January 15, 2022. Even a small contribution can go a long way towards helping our friends and neighbors experiencing food insecurity. You can also support the virtual food drive by sharing this link (www.GreaterClevelandFoodBank.org/FBANewerLawyers) on social media or spreading the word to your friends and family. Thank you and happy holidays from the Newer Lawyers Committee.

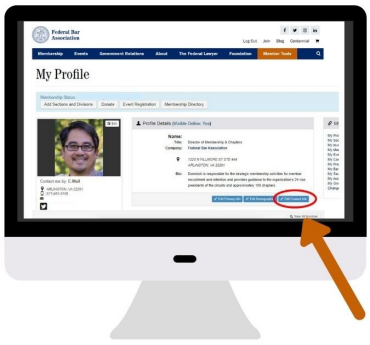
Best,

Maya Lugasy and PJ Sullivan
Co-Chairs, FBA-NDOH Newer Lawyers Committee

Membership Information

Here's How to Renew your membership:

1) Log in to www.fedbar.org with your email and password.
2) Confirm your contact information in "My Profile."
3) Click **PAY NOW** next to your national membership invoice (located mid-page in My Profile). During checkout, please consider a donation to the FBA Foundation.



Log in at fedbar.org to update your profile

FBA Articles

Why Social Media Companies Cannot Violate the First Amendment

Nathan P. Nasrallah
Associate at Tucker Ellis, LLP, Cleveland

The First Amendment has long played a pivotal role in "preserving an uninhibited marketplace of ideas in which truth will ultimately prevail" and protecting democracy from "monopolization of that market." *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 390 (1969). For the better part of a century, the First Amendment has safeguarded the right to free speech against primarily the government's abridgement of that right in public forums such as streets, parks, and places that "have immemorially been held in trust for the use of the public." *Hague v. Committee for Industrial Organization*, 307 U.S. 496, 515 (1939).

But technological advancements have digitized the town square and transformed the way people communicate. Now, social media and tech companies provide instant access to the marketplace of ideas, and, with just a few clicks, "any person . . . can become a town crier with a voice that resonates farther than it could from any soapbox." *Reno v. American Civil Liberties Union*, 521 U.S. 844, 870 (1997).

Because of this transformation, social media companies have been confronted with an unprecedented amount of speech, some of which can damage the marketplace of ideas, including hate speech, harassment, revenge pornography, and misinformation campaigns. For that reason, companies use a variety of mechanisms and content-regulation policies to filter the speech on their platforms. *See* Mathew P. Hooker, *Censorship, Free Speech & Facebook: Applying the First Amendment to Social Media Platforms via the Public Function Exception*, 15 Wash. J.L. Tech. & Arts 36, 41 (2019).

Recently, social media companies have faced a number of lawsuits (as well as significant public scrutiny) challenging their content-regulation policies and decisions, including several high-profile cases. Plaintiffs in these lawsuits claim that social media companies are infringing on free speech rights, committing viewpoint discrimination, and abusing their gate-keeping power by suspending, locking, or censoring accounts containing political speech. *See, e.g.*, Compl., *Trump v. Twitter, Inc.*, 3:21-CV-08378-JD (N.D. Cal. Oct. 28, 2021) (putative class action alleging First Amendment violations).

Although any such decisions that censor political speech on social media platforms might harm the spirit of the First Amendment, existing precedent tells us that those actions likely do not violate the First Amendment itself. Plaintiffs in the social media lawsuits can point to some limited support for their theory of liability, but the stronger view is that social media companies are not state actors and, thus, cannot be held liable for violating the Constitution.

The State Action Doctrine

The biggest hurdle facing these lawsuits is that the First Amendment proscribes only "Congress and other government entities and actors from 'abridging the freedom of speech.'" *Matal v. Tam*, 137 S. Ct. 1744, 1757 (2017) (quoting *Pleasant Grove City v. Summum*, 555 U.S. 460, 467 (2009)). Thus, under this state action doctrine, the Constitution does not prohibit private, nongovernmental actors from engaging in censorship, "however discriminatory or wrongful." *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 349 (1974). In other words, not all actions that chill free speech are unconstitutional.

However, in certain limited cases, courts have subjected private actors to constitutional scrutiny. *See, e.g., Brentwood Academy v. Tennessee Secondary School Athletic Ass'n*, 531 U.S. 288, 296 (2001) (describing the cases in which private action counted as state action for purposes of 42 U.S.C. § 1983). Proponents of the lawsuits against

social media companies argue that they have a right of action under the First Amendment because two exceptions to the state action doctrine apply here: (1) the public function exception, and (2) the entwinement exception. *See* Michael Patty, *Social Media and Censorship: Rethinking State Action Once Again*, 40 Mitchell Hamline L.J. Pub. Pol'y & Prac. 99, 116–17, 121–22 (2019).

The Public Function Exception

The seminal public function case is *Marsh v. Alabama*, 326 U.S. 501 (1946). There, the Supreme Court held that a private, company-owned town was a state actor, after the town arrested and punished a Jehovah's Witness for distributing religious literature. *Id.* at 503–04. The Court explained that, like "any other town," this privately owned town was "built and operated primarily to benefit the public," and its "operation [was] essentially a public function." *Id.* at 506–07.

Similarly, in *Terry v. Adams*, 345 U.S. 461 (1953), the Supreme Court held that a private political organization served a public function in running county elections and could be held liable for violating the Fifteenth Amendment. *Id.* at 469–70.

In *Evans v. Newton*, 382 U.S. 296 (1966), the Supreme Court held that a privately owned park performed a public function because the park "traditionally served the community" and had "public characteristics." *Id.* at 301–02. Further, a "tradition of municipal control had become firmly established" in part because the city maintained the park and had previously acted as the park's trustee. *Id.* at 301.

Proponents of the social media lawsuits argue that social media companies perform an integral public function because their "primary purpose" is to provide digital public squares, "a service that was previously 'exclusively' provided by the State." Benjamin F. Jackson, *Censorship and Freedom of Expression in the Age of Facebook*, 44 N.M. L. Rev. 121, 127 (2014). As the Supreme Court recently noted, cyberspace, and "social media in particular," has become "the most important place[] . . . for the exchange of views." *Packingham v. North Carolina*, 137 S. Ct. 1730, 1735 (2017).

Entwinement Exception

The so-called entwinement exception has much less support in the case law. This exception may apply when: (a) private conduct "become[s] so entwined with governmental policies or so impregnated with a governmental character as to become subject to the constitutional limitations placed on state action," *Evans*, 382 U.S. at 299; or (b) the government compels a private entity to take a particular action, *cf. Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982) (explaining that courts may find state action "when [a state] has exercised coercive power" over a private actor, but reversing the lower court's finding of sate action).

In *Lugar v. Edmonson Oil Co.*, 457 U.S. 922 (1982), the Supreme Court held that the petitioner sufficiently stated a 42 U.S.C. § 1983 claim against an oil company by alleging that the company "acted jointly with the State to deprive him of his property." *Id.* at 922, 942. The Court explained that private companies may become state actors when they "act[] together with or [] obtain[] significant aid from state officials, or because [their] conduct is otherwise chargeable to the State." *Id.* at 937.

The plaintiffs in the social media lawsuits argue that social media companies are entwined with government action because the government was involved in the creation of the internet and provides certain liability protections under Section 230(c) of the Communications Decency Act, 47 U.S.C. § 230(c). *See, e.g.*, Compl. ¶¶ 48–61, *Trump v. Twitter, Inc.*, 3:21-CV-08378-JD (alleging that Congress "coerced" and "threatened" Twitter and other platforms to convince them to ban Mr. Trump).

Social Media Companies Are Not State Actors under Existing Precedent

Existing Supreme Court precedent and lower court case law strongly suggest that neither exception to the

state action doctrine applies here.

After *Marsh*, *Terry*, and *Evans*, the Supreme Court narrowed its exceptions to the state action doctrine through a series of cases. In the first of these cases, *Lloyd Corp. v. Tanner*, 407 U.S. 551 (1972), the Court rejected the argument that a privately owned shopping center operated like a municipality's "business district," and it explained that the shopping center did not "lose its private character merely because the public is generally invited to use it for designated purposes." *Id.* at 569. The Court also explained that, unlike *Marsh*, the shopping mall did not exercise "the full spectrum of municipal powers and [stand] in the shoes of the State." *Id.*; *see also Hudgens v. NLRB*, 424 U.S. 507, 520-21 (1976) (rejecting free speech claim against private mall).

Shortly after *Lloyd Corp.*, the Supreme Court further clarified that the public function exception applies only when private entities exercise "powers traditionally exclusively reserved to the State." *Jackson*, 419 U.S. at 352–53 ("supplying of a utility service is not traditionally the exclusive prerogative of the State"). The Court has stressed that "very few [functions] have been exclusively reserved to the State." *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 158 (1978) (internal quotations omitted).

Applying this more rigid test, the Supreme Court recently held in *Manhattan Community Access Corp. v. Halleck*, 139 S. Ct. 1921 (2019), that "operation of public access channels on a cable system is not a traditional, exclusive public function." *Id.* at 1926. Like the plaintiffs in the social media cases, television show producers argued in *Halleck* that public access channels are public forums and "operation of a public forum for speech is a traditional, exclusive public function." *Id.* at 1930. The Court rejected this argument, explaining that "merely hosting speech by others is not a traditional, exclusive public function and does not alone transform private entities into state actors subject to First Amendment constraints." *Id.*

Further, the Supreme Court has limited the entwinement exception by consistently holding that the government's "[m]ere approval of or acquiescence in" actions taken by private entities does not count as state action. *Blum*, 457 U.S. at 1004–05 (nursing home's decisions to discharge or transfer Medicaid patients were not state actions). As such, government licensing, regulation, and financial support are not enough to convert private activity into state action. *See, e.g., American Manufacturers Mutual Insurance Co. v. Sullivan*, 526 U.S. 40, 52 (1999) (private insurer's workers' compensation decisions were not state actions); *Rendell-Baker v. Kohn*, 457 U.S. 830, 832, 841–42 (1982) (private high school was not a state actor despite receiving public funds).

Taking the hint, the federal courts of appeals and district courts have "uniformly concluded that digital internet platforms that open their property to user-generated content do not become state actors." *Prager University v. Google LLC*, 951 F.3d 991, 997 (9th Cir. 2020) (collecting cases). Thus far, plaintiffs who have been censored by Twitter, Facebook, YouTube, or other social media platforms have failed to convince courts that social media platforms can violate the First Amendment. *See, e.g., Nyabwa v. Facebook*, No. 2:17-CV-24, 2018 WL 585467, at *1 (S.D. Tex. Jan. 26, 2018) (dismissing the case as frivolous "[b]ecause the First Amendment governs only governmental restrictions on speech").

Indeed, just as in *Halleck*, "hosting speech" has never been an exclusive public function, and plaintiffs likely cannot rely on the entwinement exception to rescue their theory of liability.

Conclusion

While social media companies share features of the "paradigmatic public square," they are not tantamount to traditional public for a for purposes of the First Amendment without government action. *Prager*, 951 F.3d at 997. In excluding even offensive or disagreeable political speech, those social media companies may damage both the health of the democracy and the "freedom to think as you will and speak as you think." *Whitney v. California*, 274 U.S. 357, 375 (1927) (Brandeis, J., concurring). Nonetheless, not every act that violates the spirit of the First Amendment is unconstitutional, and proponents of the social media lawsuits likely cannot sidestep the long-established state action doctrine.

The Singular They/Them and Effective Written Advocacy

Michael Meuti

Language evolves. Skilled writers know this. Most lawyers know it, too. And one of the most-significant recent changes is an increasing acceptance of using *they/them* as singular pronouns.

The American Psychological Association's style manual pronounces that using *they/them* as singular pronouns is acceptable.[1] So does the MLA's.[2] Attentive readers will notice more appearances of the singular *they* in mainstream newspapers and magazines.

This is not a new development. Examples of *they/them* as singular pronouns can be found in the works of prior generations' literary giants, from C.S. Lewis and Virginia Woolf,[3] back to Shakespeare.[4]

The recent trend is often invoked as a form of solidarity with the trans community and a recognition that gender ought not be viewed as binary. To many, using a singular *they/them* is a form of activism, expressing that solidarity.

Yet, some authorities still reflect that in some professional contexts, the singular *they/them* is frowned upon.[5] *The Chicago Manual of Style* notes that the singular *they* when used as a general pronoun "is gaining acceptance in formal writing" but the *Manual* "still advises avoiding it if possible—for example, by rewriting to use the plural."[6]

So what's a litigator to do?

This issue arose in my Appellate Practice course last year. By way of context, I was born on the fuzzy boundary of Gen-Xers and Millennials. (I'm more the former than the latter.) My teachers taught me to use *them* and *they* as plural pronouns, and plural pronouns only. The Gen-Z students I taught used *they/them* as general singular pronouns routinely and viewed any suggestion otherwise as the equivalent of encouraging them to travel to class by horse and buggy.

The text we used in our class advocated restructuring sentences to avoid the issue. For example, instead of phrasing the sentence, "A suspect in custody cannot be denied [his? his/her? their?] right to speak with a lawyer," rework it as, "Suspects in custody cannot be denied their right to speak with a lawyer."

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[1] https://apastyle.apa.org/style-grammar-guidelines/grammar/singular-they#:~:text=The%20singular%20%E2%80%9Cthey%E2%80%9D%20is%20a,avoid%20making%20assumptions%20about%20gender.&text=Do%20not%20use%20%E2%80%9Che%E2%80%9D%20or,generic%20third%2Dperson%20singular%20pronouns (last visited Oct. 21, 2021).

[2] https://style.mla.org/using-singular-they/#:~:text=Specific%20Use,of%20individuals%20they%20write%20about.&text=Jules%20is%20writing%20their%20research,singular%20they%20is%20widely%20accepted (last visited Oct. 21, 2021).

[3] https://www.thoughtco.com/singular-they-grammar-1691963#:~:text=1%20Examples.%20%22When%20a%20person%20talks%20too%20much%2C,convention%20of%20using%20he%2C%20him%20and%20his%20 (last visited Oct. 21 2021).

[4] http://itre.cis.upenn.edu/~myl/languagelog/archives/002748.html (last visited Oct. 21, 2021).

[5] *See, e.g.*, Bryan A. Garner, *The Chicago Guide to Grammar, Usage, and Punctuation* (2016 ed.) secs. 70, 436, 439, 442.

[6] https://www.chicagomanualofstyle.org/qanda/data/faq/topics/Pronouns.html (last visited Oct. 21, 2021).

Yet there are times when a sentence cannot be so reworked. And some legal writers embrace the role of activism through use of language. How should a skilled legal writer address these scenarios? I offer some suggestions below:

Guiding Principle #1: Focus on context, not correctness

Again, language changes. The propriety of a particular word or construction is a function of context, as opposed to a set of absolute rules. (E.g., "Ain't" is perfectly appropriate when I'm shooting the breeze with friends, butit generally ain't appropriate in a brief.) So it's not entirely accurate to say that using *they/them* as general singular pronouns is either "correct" or "incorrect."

This column thus doesn't seek to offer guidance for all purposes. Instead, it seeks to answer the question of whether litigators should use the singular *they/them* in submissions to courts and similar tribunals.

Guiding Principle #2: Focus on your audience

When litigators talk about a case they're working on, one of the first questions they get is, "Who's your judge?" That reflexive question reflects that knowing your audience is key.

Most lawyers openly recognize that our profession—hide-bound and steeped in precedent as it is—is not the most forward-leaning when it comes to use of language. That is especially true when you think about the audience of a legal brief. Judges tend to be older and less on the cutting edge of many issues, especially linguistic ones, than the profession as a whole, and especially in comparison to early-career lawyers.

To help gain a better understanding of our audience, I contacted six sitting federal judges to ask about their view of using *they/them* as general singular pronouns. I gave the following example sentence: "ERPA [the fictional statute in my class's moot-court problem] infringes upon the Second Amendment's core by allowing the court to seize a defendant's firearm even if **they** are mentally sound and have never been convicted of a crime." In the email, I noted that our primary text encourages rewriting the sentence as "ERPA infringes upon the Second Amendment's core by allowing the court to seize **defendants'** firearms even if **they** are mentally sound . . ." All six judges responded. Five of the six said that they avoid using *they/them* as singular pronouns. One judge noted that her practice is shifting toward a greater embrace of the singular *they/them*, but that few of her colleagues appear to do the same. One judge stated, "A writer who makes that mistake (deliberately or not) would frankly lose credibility with me, in part because I'd think they might not know better, and otherwise because this would be a particularly bad example of what Bryan Garner calls 'vogue' writing. (See his *Elements of Legal Style*.)" [7]

Guiding Principle #3: The client's interests and preferences control

Admittedly, this is a small sample. So it's possible that lawyers may be able to use the singular *they/them* and not invoke a furrowed judicial brow. But remember, as practicing lawyers, we do not write primarily for ourselves; we write for our clients. Our duty is to put each client's best foot forward, which requires weighing costs and benefits.

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[7] The careful reader may note that the judge actually used a singular *they* in that email. Some may view that as rich irony. But I think it's actually the exception that proves the rule: That judge may use *they* as a singular pronoun in casual conversation (spoken or written), but would never use it in a carefully edited opinion. Again, context reigns supreme.

The judges' responses suggest that using *they/them* as singular pronouns could cause you (and your client) to incur a price—specifically a credibility hit from a judge who will think that you either don't know the longtime standard convention or are performatively flouting it. Rephrasing sentences to dodge the issue, however, should accommodate all readers. The linguistically conservative readers will not confront any perceived disconnect between pronoun and antecedent. And linguistically progressive readers have nothing to object to, either. (As far as I know, none object to using *they/them* as plural pronouns.)

One important point of qualification: **All of the above applies to using the singular *they/them* as general pronouns, not a specific pronouns. Thus, it does not apply to using the singular *they/them* to refer to a specific person who chooses that pronoun.** If you are representing someone who prefers *they* to a gendered singular pronoun, you should refer to that person as *they*. In that case, consider counseling that client that judges may look askance at that practice. Consider also adding a footnote or a parenthetical to explain to the reader that your client's chosen singular pronoun is *they*. But you should respect your client's choices, consonant with your duties to that client. And if you know that a third-party witness or your adversary uses *they/them* pronouns, you should respect their choice as well. If professionalism doesn't demand as much, decency certainly does.

Concluding Thoughts

Fast-forward 20 years. If someone stumbles upon this column, it will likely seem silly, in the vein of "How was this ever even a debate?" By that point, the bench will likely have caught up to the trend of using *they/them* as singular pronouns that mass-market publications have already adopted. Until that shift occurs, consider the principles above to resolve pesky pronoun problems.

Sixth Circuit Confirms Doctors' Association Suit Cannot Survive Standing Ailments

Ethan W. Weber*

In early September, the Sixth Circuit issued a published opinion—*Association of American Physicians & Surgeons v. United States Food and Drug Administration*, 13 F.4th 531 (6th Cir. 2021)—that takes aim at the lurking issues related to associational standing and the propriety of nationwide injunctions in light of recent Supreme Court opinions that address those issues more broadly.

The Association challenged an FDA authorization curtailing the distribution of hydroxychloroquine from the federal stockpile, which limited prescribing the drug only to a specific subset of patients hospitalized with Covid-19. The Association argued the harm suffered was that the authorization (1) required it to consider cancelling a conference, (2) prevented its members from prescribing the drug, and (3) precluded its members' patients from receiving the benefits of taking the drug as a preemptive treatment for Covid-19.

Suffering a harm is one component of standing, a broad concept that must exist before a party has the ability to sue in federal court. This is because Article III of the U.S. Constitution limits a court's power to deciding only "Cases" or "Controversies" between litigants. To have a "case," a plaintiff must (1) have suffered an injury (2) that was likely caused by the defendant's conduct, and (3) for which relief can be fashioned to redress that injury.

That first component—injury—is what the court discussed first. Because the Association abandoned its argument that considering cancelling a conference was injury, it was left to argue the injury it suffered was not its own, but that of its members and its members' patients. The Association maintained that it could continue pursuing the lawsuit on those theories of injury based on two related concepts: associational standing and third-party standing.

Associational standing "sometimes permits an entity to sue over injuries suffered by its members" despite the organization itself alleging "no personal injury." To do so, an organization must show that: (1) its members would have standing to sue "in their own right," (2) the "interests that the suit seeks to protect are germane to the organizations purpose"; and (3) "neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." The Sixth Circuit opined that because the Supreme Court has yet to "reconcile" this test for associational standing "with its more recent guidance" on standing more generally, associational standing is on shaky legal ground.

First, the court attempted to reconcile associational standing with the irreducible fact that the Supreme Court has not clearly authorized an organization that suffered no injury to sue on behalf of its members, some of whom may have an injury. Instead, the Sixth Circuit was skeptical that the progeny of the associational standing doctrine is truly rooted in any "historical practice," and that recent decision have overturned any notion that prior precedent permits suing in this way.

Second, the Sixth Circuit posited that a court's limited ability to provide redress to remedy a specific injury does not comport with associational standing. This is because "standing requires a plaintiff's requested relief to redress the plaintiff's injury." The court summarized that issue with a hypothetical in context: "How can any relief in this case satisfy this element if the Association has not been injured by the FDA's authorization and if its allegedly injured members are not parties?" One possibility where relief can satisfy this element, the Supreme Court has said, is where an organization requests an injunction.

* Ethan W. Weber is an associate in the trial department of Tucker Ellis. He previously clerked for Judge J. Philip Calabrese of the U.S. District Court for the Northern District of Ohio and Judge Douglas R. Cole of the U.S. District Court for the Southern District of Ohio.

This strikes at the core of another issue percolating in the federal courts—the propriety of the nationwide injunction. Some courts, including some members of the Sixth Circuit, have been skeptical of nationwide injunctions, particularly because under Article III a "valid … remedy must operate with respect to specific parties, not with respect to a law or regulation in the abstract." This "creates an inherent mismatch between the plaintiff and the remedy" in the associational standing context. Put differently, an injunction that prohibits the FDA from enforcing the authorization against the Association "does not satisfy Article III because will not redress an injury" *because the Association itself suffered no injury*. Its members have. And those members were not plaintiffs.

Consider the alternative. The Association is able to get an injunction preventing enforcement of the authorization. This creates a host of other issues that the Sixth Circuit identified. To whom does the injunction apply? Just the Association's members who suffered an injury, or does it extend to all members wherever they may be, regardless of whether they were impacted or even aware of the authorization. Does it extend to members in the future, or just those who were members at the time of the suit? Issues abound.

Third, even setting these thorny concerns aside, the court also took aim at how to determine whether an organization's purpose could be "germane" enough to confer standing to sue. Thissecond prong of associational standing often requires courts to determine if the organization suing has the "adversarial vigor" to "litigate the legal issues well." The court theorized, "If Article III otherwise permits associations to seek redress for their members' injuries, what legal source gives a court the power to decline jurisdiction on the ground that an association lacks sufficient 'vigor'?" Likely, there is no such source.

Nevertheless, the Sixth Circuit noted it was required to "stick to" precedent, "even if the logic from other cases has called that precedent into doubt." To that end, the court undertook the associational standing analysis and determined the Association did not have standing because its members did not adequately allege standing in their own right. It was not plausible that any member had suffered an injury, the court said, because there was no allegation that any member suffered a direct harm because of the authorization. No member was sanctioned or disciplined for prescribing hydroxychloroquine. None received a threat of discipline from a state medical board. That is, the Association's members lacked standing because what they feared was that a mere "possibility" of injury might "arise in the future," which is insufficient under Article III.

Turning last to third-party standing—that the Association's members' patients suffered harm because they could not take hydroxychloroquine—the court disposed of that issue in short order. It stated that it "need not decide . . . whether we could have allowed this double 'stacking' of the standing exceptions" because the complaint failed to allege any of the Association's members "had Article III standing" on their own. The notion of, and implied disdain for, "double staking" of standing poses an additional set of problems that could have spanned many more pages.

While arguably dicta—as Judge Siler noted, and somewhat esoteric in terms of the legal issues of Article III, standing, and injury—the opinion is just one that calls into question some long-standing legal doctrines. Other recent examples that come to mind are the various property owner and landlord associations that sued to enjoin the CDC's eviction moratorium.

The Sixth Circuit's opinion hones in on several legal issues that the Supreme Court intimated it might soon face, including the propriety of nationwide injunctions. How these questions are ultimately resolved remains to be seen. The scope of what the justices take up may have wide-ranging results for standing doctrine more broadly and provide new alternatives for the government or private defendants to defend against suits from organizations that sue on behalf of their membership.

A First: Hot-Tubbing in a Jury Trial

By: Senior Judge Jack Zouhary
Rachel Hovenden*

Hot-tubbing, or, concurrent expert evidence, made a "splash" several years ago when its use started to bubble up in proceedings around the United States, but it has largely reverted back to the proverbial bookshelf of theoretical trial reform ideas. To refresh, and for those hearing about this concept for the first time, hot-tubbing refers to throwing multiple experts in the "hot-tub" at once; swearing them in together at a hearing or trial, and allowing some level of discourse to occur concurrently between the opposing experts. In the right setting, it promises greater clarity and efficiency in understanding conflicting opinions.

The procedure is now commonplace in other common law countries such as Australia, where it originated.[3] Singapore and the United Kingdom have also embraced it, even changing their procedural rules to align with its use.[4] The last decade has seen a handful of articles discussing its use in the United States, but as with much legal innovation, there remains considerable resistance.[5]

This article suggests that we give it a fair go, not for the sake of change, but because the current trial procedure has real problems which the hot-tub may solve. The benefit of bench trials, where procedure is streamlined and flexible, is that the judge can participate in questioning (to an extent) to supplement questioning by counsel. A jury setting is more difficult to hot-tub.

In a standard civil jury trial, events typically unfold as follows. First, the plaintiff presents its case, during which expert testimony is presented and defense counsel may then cross examine, and plaintiff may follow up on redirect. Hours, or more likely day(s) later, the defense will call its own expert witness, and the same customary procedure repeats.

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*Rachel Hovenden is a 3L at the University of Toledo College of Law and an intern in Senior Judge Jack Zouhary chambers this semester.

[1] See, e.g., *In re Domestic Drywall Antitrust Litig.,* 2018 WL 2184391, at *2 (E.D. Pa. 2018) ("The Court had extensive hearings, including the testimony of the competing experts, and a so-called 'hot tub' where both experts sat in the jury box and were examined by counsel and the Court."); *In re Polyurethane Foam Antitrust Litigation*, 152 F. Supp. 3d 968 (N.D. Ohio 2015); *Green Gas Del. Statutory Tr. v. Comm'r of Internal Revenue*, 147 T.C. 1 (2016); *Rovakat, LLC v. CIR*, 102 T.C.M. (CCH) 264 (T.C. 2011), aff'd, 529 F. App'x 124 (3d Cir. 2013); Ryan Thompson, *Concurrent Expert Evidence: Hot Tubbing in America? Experts Jump In*, 6 Nat'l L. Rev. 244 (Aug. 31, 2016) https://www.natlawreview.com/article/concurrent-expert-evidence-hot-tubbing-america-experts-jump; Damian D. Capozzola, *Expert Witness "Hot Tub" Hearings § 6:4*, Expert Witnesses in Civil Trials (October 2021).
Use in the arbitration and construction context in the U.S. is much more common. *See, e.g.*, Kim Rosenberg, *Practical and Innovative Use of Experts*, 13 Constr. L. Int'l 20 (Jan. 2019); Richard P. Flake, *Hot-Tubbing Makes a Splash in Construction Cases*, 26 Disp. Resol. 12 (2020); Sena Gbedemah & Toshi Dezaki, *How Hot-Tubbing is Shifting the Paradigm*, 26 Disp. Resol. 18 (2020).

[2] Carla L. MacLean, et al., *Experts on Trial: Unearthing Bias in Scientific Evidence*, 53 U.B.C. L. Rev. 101, 137 (2020); Adam Elliott Butt, *Concurrent Expert Evidence in the U.S. Toxic Harms Cases and Civil Cases More Generally: Is There a Proper Role for "Hot Tubbing"?* 40 Hous. J. Intl. L. 1, 4 (2017).

[3] NSW Law Reform Commission, *Expert Witnesses*, Report No. 109 (2005) 95; Butt, *supra* note 2, at 10.

[4] Civil Justice Council, *Concurrent Expert Evidence and 'Hot-Tubbing' In English Litigation Since the 'Jackson Reforms': A Legal and Empirical Study* (Jul. 25, 2016) https://www.judiciary.uk/wp-content/uploads/2011/03/cjc-civil-litigation-review-hot-tubbing-report-20160801.pdf; UK Practice Direction CPR Part 35, Para. 11.1

[5] https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part35/pd_part35#11.1; Supreme Court of Judicature Act, Rules of Court (Singapore, cap. 322, rev. ed. 2014) O. 40A, R. 6.
Alvarez & Marsal, *Experts in a Hot Tub – Testifying Concurrently as an Expert Witness*, Insights (October 24, 2019) https://www.alvarezandmarsal.com/insights/experts-hot-tub-testifying-concurrently-expert-witness#_ftnref4; Jones Day, Room in American Courts for an Australian Hot Tub?, Commentaries (April 2013) https://www.jonesday.com/en/insights/2013/04/room-in-american-courts-for-an-australian-hot-tub#_edn1.

But this procedure, not written in the Civil Rules, has faults. Jurors must compare the credibility of experts without real-time evaluation. Experts, by definition, often opine on complex issues, and jurors must decide who to believe by comparing testimony with a set of notes, or vague memories, from hours or days earlier. It is too often an unsatisfactory comparison of apples to oranges. Concurrent evidence can more easily allow simultaneous comparison of expert credibility, reliability and accuracy. If the judge believes in jurors asking questions, then additional questions from the jury box (after judicial review) can further test the expert opinions.

Just how will this work in a jury trial? Plaintiff will present its case in chief. At the end of its case, both plaintiff and defense expert witnesses will be sworn in together. Presumably expert reports have been exchanged before trial. Plaintiff's expert will briefly summarize his position in narrative form; the defense expert will then do the same. Each expert may then briefly clarify or explain points of disagreement. The judge may then allow the experts to offer up a question or two for the opponent. Next, the lawyers get their turn to wrap up (not repeat) with their own expert, and cross the opposing expert.

It bears highlighting that this procedure is not an overhaul of standard practice, but rather a small variation. Further, Rule 611 provides trial judges with wide discretion to limit time-wasting, and to implement procedures best suited to assist the jury.[6] The order of trial can be permissibly altered as long as there is no denial of some right to present evidence. *See U.S. v. Vinson*, 606 F.2d 149, 152 (6th Cir. 1979) ("A trial judge must have considerable discretion in controlling the mode and order of proof at trial and his rulings should not cause reversal . . . unless they 'affect substantial rights.'"). Courts have long used this discretion in permitting a range of alterations, for example, by allowing a witness to testify in three segments with separate cross-examination each time, *U.S. v. DeLuna*, 763 F.2d 897 (8th Cir. 1985); allowing a presentation to go in chronological order even where that meant recalling witnesses, *United States v. Edelin*, 128 F. Supp. 2d 23, 47 (D.D.C. 2001); and allowing a defense expert to testify during the plaintiff's case in chief, in front of a jury, for scheduling reasons. *Berroyer v. Hertz*, 672 F.2d 334, 339 (3d Cir. 1982).

The goal is to assist the jury in reaching a fair and just verdict. Hot-tubbing, applied in the right context, affirms that goal. Two civil cases set for jury trial early next year on my docket seem well suited to experiment. The courtroom will be waterproofed. Stay tuned.

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[6] Rule 611 advisory committee notes. The Advisory Committee's Notes indicate that trial courts are empowered to decide "whether testimony shall be in the form of a free narrative or responses to specific questions," "the order of calling witnesses and presenting evidence," and "the many other questions arising during the course of a trial."

Federal Bar Association

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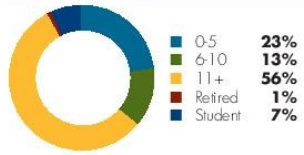

Note: Chart only includes practicing attorney members of the Association.

Gender

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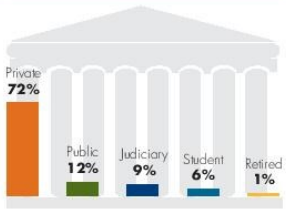

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Federal Bar Association

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January 19, 2022 *FBA-NDOH Board Meeting*

February 16, 2022 *FBA-NDOH Board Meeting*

March 15, 2022 *FBA-NDOH Board Meeting*

We add events to our calendar often so please check our website for upcoming events that may not be listed here.

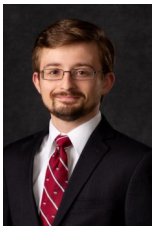
Federal Bar Association
Northern District of Ohio Chapter

Co-Editors for the Winter 2021 Newsletter:

Stephen H. Jett
Co- Chair, Newsletter Committee
Buckingham, Doolittle & Burroughs, LLC
216-736-4241
sjett@bdblaw.com

Prof. Jonathan Entin
Co-Chair, Newsletter Committee
Case Western Reserve University
216-368-3321
jonathan.entin@case.edu

James J. Walsh Jr.
Newsletter Committee
Benesch, Friedlander,
Coplan & Aronoff LLP
216-363-4441
jwalsh@beneschlaw.com



Benjamin Reese
Newsletter Committee
Flannery | Georgalis LLC
216-230-9041
breese@flannerygeorgalis.com

Federal Bar Association

STATEMENT OF THE FEDERAL BAR ASSOCIATION BOARD OF DIRECTORS ON JUDICIAL INDEPENDENCE

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If you are a FBA member and are interested in submitting content for our next publication please contact Stephen H. Jett, Prof. Jonathan Entin or James Walsh Jr. no later then February 28, 2022

Next publication is scheduled for Winter 2022.

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Our Chapter supports the FBA's SOLACE program, which provides a way for the FBA legal community to reach out in small, but meaningful and compassionate ways, to FBA members and those related to them in the legal community who experience a death, or some catastrophic event, illness, sickness, injury, or other personal crisis. For more I nformation, please follow this link: http://www.fedbar.org/Outreach/SOLACE.aspx, or contact our Chapter Liaison Robert Chudakoff at rchudakoff@ulmer.com

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