



# FEDERAL BAR ASSOCIATION - MARYLAND CHAPTER NEWSLETTER

JANUARY 2021

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## Message from the President

COVID-19 has reminded us that our most vibrant institutions are able to innovate rather than abdicate when faced with adversity. The Maryland Chapter of the Federal Bar Association wants to help our legal community innovate at this difficult moment. We must all work together to face the challenges of doing most things—including court appearances—virtually. To that end, we are hosting a virtual seminar on January 15 from 1:30 – 3:30 p.m., at which Chief Judge James K. Bredar, Judge Paul W. Grimm, Judge Paula Xinis, and Chief Deputy Clerk Catherine M. Stavlas will present on courthouse operations and virtual proceedings.

While we have had to postpone longstanding in-person social networking events, like our annual golf outing and luncheon to celebrate transitions on the bench, the current need for social distancing has given us new ways of coming together. For example, we are excited to offer our Introduction to Federal Practice Program virtually. By offering the program virtually, we are hoping not only to expand our reach to a broader and more geographically diverse audience, but also to increase the content we are able to offer. Traditionally, our Introduction to Federal Practice Program would last one half-day. This year, the virtual program will include four half-day sessions on January 15, February 19, March 19 and April 23, allowing us to cover more topics and have one session devoted entirely to criminal practice.

We are invigorated by the broader audience virtual platforms allow us to reach because now, more than ever, strengthening the diversity of the federal bar is of paramount importance. The Maryland Chapter is dedicated to helping attract a diversity of attorneys to federal practice and helping all attorneys elevate their skills and knowledge base. To help us figure out how best to target our efforts, please take our survey about potential barriers to litigating in federal court, as well as ways to make the bar more inclusive and diverse. The survey is available online at <https://forms.gle/tcysPLk95FGXMMWqU7>. Aided by responses to the survey, we hope to offer programming geared toward overcoming barriers to federal practice through robust training opportunities, inclusive conversations and mentorship. While we must stay physically distant, with your help, we can still come together to continue our mission of making the federal bar more inclusive and elevating practice in federal court.

**Katherine Tang Newberger**  
**President, Maryland Chapter of the Federal Bar Association**

## Motions Practice in Employment Cases Seminar

By Joshua D. Elliott,  
The Employment Law Group

On October 1, 2020, The Federal Bar Association’s Maryland Chapter sponsored “Motions Practice in Employment Cases filed in Maryland’s Federal Courts.” The Metropolitan Washington Employment Lawyers Association co-sponsored the event. The Hon. Paula Xinis and the Hon. Benson Everett Legg chaired the event, and R. Scott Oswald of The Employment Law Group, P.C. moderated.

Over the course of several hours, more than 300 attendees learned practice tips on filing and opposing motions to dismiss, motions for summary judgment, and discovery motions. At the outset, Richard T.

Seymour and the Hon. Paula Xinis provided an update on recent, notable Supreme Court and Fourth Circuit employment decisions.

The Hon. Richard D Bennett, Kristen Sinisi of Bernabei & Kabat PLLC, and Kristy Eriksson of Miles & Stockbridge P.C. presented a panel on Motions to Dismiss. The Hon. Ellen L. Hollander, Michal Shinnar of Gilbert Employment Law PC, and Donald E. English, Jr. of Jackson Lewis presented a panel on Summary Judgment. The Hon. Timothy Sullivan, Donna Williams Rucker of Tully Rinckey PLLC, and Jay R. Fries of Ford & Harrison LLP presented a panel on Discovery Motions.

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## Qualified Immunity Panel Discussion

By Nichol  C. Gatewood, Chapter Vice President and Co-Chair

On October 14, 2020, the FBA Maryland Chapter’s Diversity and Inclusion committee virtually hosted a panel discussion entitled, “Qualified Immunity for Law Enforcement Officers – Abolishment vs. Preservation.” Qualified immunity, which was judicially created by the U.S. Supreme Court in 1967, has become one of the Court’s most controversial doctrines. In 2020, law enforcement officers were estimated to have killed more than 1,000 people resulting in national outcry.<sup>1</sup> The release of videos depicting the deaths of Americans too numerous to name, including George Floyd, Eric Garner, Breonna Taylor, and Elijah McClain, landed the doctrine at the forefront of discussions from the floor of the U.S. Congress to protests throughout the streets of our nation. Likewise, state and federal legislatures hotly debated the future of qualified immunity leading to the introduction of several bills impacting the future of how the courts might apply the doctrine.

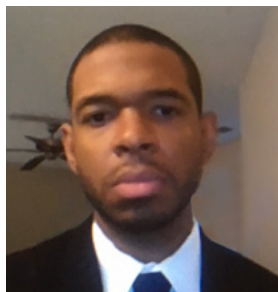
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Honorable Andre M. Davis



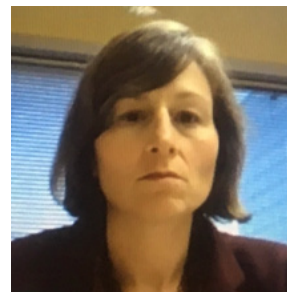
Thomas H. Barnard



Jason G. Downs



Thiru Vignarajah



Jean M. Zachariasiewicz

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<sup>1</sup> “Mapping Police Violence,” <https://mappingpoliceviolence.org>, (last visited January 2, 2021).

*Qualified Immunity Panel Discussion – from page 2*



Nicholé Gatewood



Lauren McLarney

Confronted with challenging questions, such as the role of qualified immunity on policing, law enforcement liability, its impact on the civil justice system, and whether to abolish or modify the doctrine, the FBA assembled a diverse panel of experts to explore these issues. The distinguished panel included Thomas H. Barnard, shareholder at Baker Donaldson; Jason G. Downs, Chief Deputy Attorney General for the District of Columbia; Jean M. Zachariasiewicz, partner at Brown, Goldstein & Levy; and Thiru Vignarajah, partner at DLA Piper. Collectively, the panelists had a rich and diverse background, from big law to boutique law firms, from state agencies to local politics. As moderator, the Honorable Andre M. Davis (Ret.) navigated panelists' consideration and scrutiny of topics such as the history and origin of the qualified immunity doctrine, the pros and cons of the doctrine, law enforcement brutality, and social justice reform, racial implications, and the examination of proposals for modification and reform. The audience was comprised of practitioners, law students, and community stakeholders seeking a safe space to delve deeper into this topic.

Demonstrating their mastery of the doctrine, extreme preparedness, and thoughtful introspection, the panelists captivated and educated the audience throughout the panel. The panel discussion kicked off with panelists masterfully investigating its historical underpinnings. Providing a comprehensive history lesson, Mr. Vignarajah outlined the doctrine's framework and subsequent inclusion of provisions for law enforcement officers in the 1980s.

Adding historical depth, Ms. Zachariasiewicz highlighted that 42 U.S.C. §1983 was originally passed in 1871 as the Klu Klux Klan Act. Clarifying the intent of the statute, which includes qualified immunity, she noted that its purpose is to "provide another avenue of relief...the law arose because state courts were not dealing with violations of constitutional rights."

Describing the roadmap of how the doctrine is used in actual practice, Mr. Downs, providing arguments from both the abolitionist and preservation perspectives, laid out the advantages and obstacles of various procedural strategies. Employing his experience and knowledge as both a plaintiff and defense counsel, he shared some tactical advantages and disadvantages of using the doctrine, including managing the interlocutory appeal process. Mr. Downs also delved into the doctrine's roots analyzing whether Congress intended to eliminate the expansive common law defenses available in 1871 through the formation of §1983. He concluded that it did not.

Addressing the perceived evils of the doctrine, Ms. Zachariasiewicz leaned toward abolishment of the doctrine, unpacking controversial issues such as why law enforcement officers should get more protection under the law than other defendants and the doctrine's intersection and intertwining with mass incarceration, demilitarization of the police, the racial implications on black and brown persons, and the significant accountability challenges for plaintiffs to prevail against the indemnification barriers.

Providing a statistical overview, Mr. Barnard, who advocated for complete preservation of the doctrine, detailed the disposal of cases on qualified immunity grounds. With laser focus, he questioned whether the abolishment of the doctrine will get rid of police violence given the data. Championing law enforcement, he challenged the implications of the immunities' removal for the personal livelihood of law enforcement families. Taking the position of a nuanced moderate, Mr. Vignarajah, expounding on an op-ed article<sup>2</sup> he wrote, advocated for a compromise to abolish qualified immunity in the context of excessive force claims.

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<sup>2</sup> Thiru Vignarajah, "Compromise on immunity: Why the law should not protect police who use excessive force," *USA TODAY*, (last accessed 1/2/2020, <https://www.google.com/amp/s/amp.usatoday.com/amp/5756103002>).

**Qualified Immunity Panel Discussion – from page 3**

Judge Davis, continuing with his robust questioning and noting that legal scholars, theorists, judges, and practitioners have uniformly noted problems with the doctrine, asked panelists whether the issue is the doctrine itself or its application. The panelists and Judge Davis' synergy throughout the discussion was fluid and content-rich, leaving the audience and legal community captivated and clamoring for more.

The Diversity and Inclusion seminar committee members include Nichol  C. Gatewood, Chapter Vice President and Co-Chair; Lauren McLarney, Young Lawyer's Division and Co-Chair; Katherine Tang Newberger, Chapter President; Anthony Ashton, Tamal Banton, Desiree Lassiter, and Michelle Lipkowitz. A special thank you to Ezra S. Gollogly, Paul Caiola, and Jennifer P. Williams for their assistance with marketing the event.

## D.C. and Maryland Chapters Host Panel on Inspector General Investigations

**By Thomas Barnard, Baker Donelson**

On Friday, November 20, the D.C. and Maryland Chapters of the Federal Bar Association hosted a virtual panel discussion on Inspector General Investigations. The panel was moderated by D.C. Chapter member Eric Nitz of MoloLamken and Maryland Chapter member Thomas Barnard of Baker Donelson. The panel was comprised of experienced insiders Sara Kropf, founding partner of Kropf Moseley, and Scott Sroka, Senior Investigative Attorney at the National Science Foundation Office of the Inspector General. Ms. Kropf routinely represents individuals and entities facing Inspector General investigations, including many government employees. Mr. Sroka, who was formerly an Assistant United States Attorney, regularly advises on and conducts unique investigations in support of the National Science Foundation OIG.

The panel initially discussed some foundational understandings of inspectors general, including their mission and authority, and how their work intersects with that of the various federal agencies. This discussion was aided by Mr. Sroka's

insights into the unique and independent nature of the offices, as well as the types of issues that are typically the focus of investigations. Ms. Kropf discussed some of the unique challenges faced when representing individual government employees who have become embroiled in an OIG investigation. The discussion focused next on the relationship between OIG offices and U.S. Attorney's offices. Mr. Sroka relied on his experience as a former AUSA to discuss how cases are presented and considered, highlighting

some of the differences between an OIG investigation and a DOJ investigation. Ms. Kropf provided expert guidance on her strategies for responding to investigative inquiries and critical inflection points in the process where she can best advocate and seize opportunities for her client.

Finally, the panel discussed some of the most recent developments with CARES Act and Payroll Protection Program (PPP) Loan enforcement, as well as some of the more recent enforcement actions involving foreign influence in, and the protection of, scientific and research information within the government and government sponsored research.

Please watch for additional panels on Government Enforcement and Investigation related topics sponsored by the D.C. and Maryland Chapters.



Sara Kropf



Scott Sroka

## Upcoming Events

January 15, 2021  
1:30 to 3:30 p.m.

### **Introduction to Federal Practice Program Webinar, Part I**

- Impact of the Pandemic on the District of Maryland, Restarting Jury Trials, and Virtual Evidentiary Hearings
- Featuring:  
**Chief Judge James K. Bredar, Judge Paul W. Grimm, and Judge Paula Xinis**

February 19, 2021  
1:30 to 4 p.m.

### **Introduction to Federal Practice Program Webinar, Part II**

- Becoming a Member of the Bar, A Courthouse Primer and Introduction to Electronic Filing, Historical Society and Bench Bar Committee, and Primer on Evidence
- Featuring:  
**Magistrate Judge J. Mark Coulson and Judge Benson Legg (Ret.)**

March 19, 2021  
1:30 to 4 p.m.

### **Introduction to Federal Practice Program Webinar, Part III**

- Civil Pleading, Venue and Jurisdiction, Local Rules for Discovery and ESI, Civil Mediation and Dispositive Motions
- Featuring:  
**Judge Theodore Chuang, Judge Richard Bennett, Magistrate Judge Gina Simms, and Magistrate Judge Charles Day**

April 23, 2021  
1:30 to 4 p.m.

### **Introduction to Federal Practice Program Webinar, Part IV**

- Initial Appearances and Detention Hearings, Discovery in Criminal Cases, Motions Pleas and PSRs, and Federal Sentencing Practice
- Featuring:  
**Judge Paula Xinis** and others TBD