

# THE MOTHER COURT

A NEWSLETTER OF THE SDNY CHAPTER OF THE  
FEDERAL BAR ASSOCIATION

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Hon. Sarah Netburn  
Chief Magistrate Judge, SDNY

## A FULLY STAFFED MAGISTRATE COURT AND THE PRETRIAL PROGRAM FOR NON- VIOLENT YOUTH OFFENDERS

BY: HON. SARAH NETBURN  
CHIEF MAGISTRATE JUDGE, SDNY

The Southern District of New York's Magistrate Judge bench is at full strength! With newly appointed Judges Robyn Tarnofsky and Gary Stein, and longtime Judge Gabriel Gorenstein serving on recall status, the Court now boasts 17 Magistrate Judges.

This year also marks the 9th year that District Judge Ronnie Abrams and I have run the Young Adult Opportunity Program (YAOP). YAOP is an intensive judicially supervised pretrial program for defendants who are ages 18-25 and are charged with non-violent offenses. Participants in the program are provided resources and support to help them make better decisions in the future. Most participants are in school or working, and often both; many participants receive drug and mental health counseling. I am particularly proud of this program and the success that our graduates have witnessed: nearly 90% of participants who successfully complete the program have had their charges dismissed, and our recidivism rates are meaningfully below averages for comparable groups. If you'd like to learn more about the Young Adult Opportunity Program, I encourage you to visit our Court's website at <https://nysd.uscourts.gov/programs/young-adult-opportunity-program>.



Hon. Sarah Netburn and the December 2023 Young Adult Opportunity Program (YAOP) session participants and graduates.



The New York Chapters of the Federal Bar Association met with Rep. Jerry Nadler (D-NY 12th District) during Capitol Hill Day.

# A MESSAGE FROM THE PRESIDENT



Dear Colleagues,

As the flowers bloom and the days get longer, I'm thrilled to welcome you to our Spring newsletter! Our first quarter of 2024 was packed with action! From learning how Artificial Intelligence is impacting our clients' businesses to learning how to serve the underserved; from getting inspired by phenomenal trailblazers to creating opportunities for law students, our programs have been geared towards more engagement and inclusion!

One of the highlights of the quarter was our annual Capitol Hill Day – an exhilarating experience of meeting with our respective members of Congress and the Senate to personally advocate on behalf of the FBA for non-partisan legislation impacting federal practice and the judiciary. After successfully advocating for the passage of the Daniel Aderl Judicial Security & Privacy Act passed last year, the FBA this year lobbied for funding for the Act, argued for increasing the number of federal judges in our courts, and for creating an independent Article I immigration court! Being part of this democracy in action is my favorite part of being an FBA member!

The quarter was capped off by an invigorating leadership summit and meeting of FBA leaders and a beautiful ceremony installing Associate Justice of the US Supreme Court Ketanji Brown Jackson as an Honorary Life Fellow of the FBA Foundation!

The next quarter is packed with equally exciting programs and opportunities! If you haven't come to our events yet, this vibrant weather is the perfect time to do so! I would love to meet you!

Best Wishes,  
Padmaja Chinta

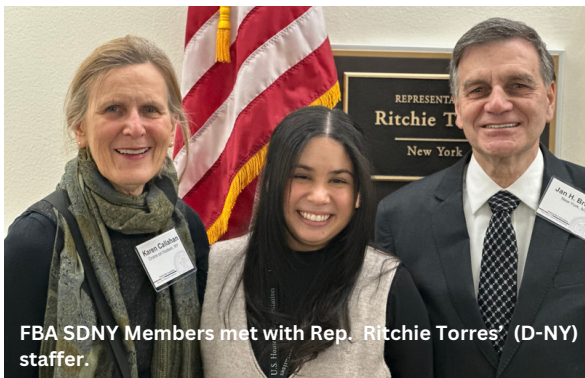
**SCENES FROM THE FBA'S CAPITOL HILL DAY, SUPREME COURT RECEPTION WITH ASSOCIATE JUSTICE KETANJI BROWN JACKSON AND THE LEADERSHIP SUMMIT**



FBA members met with Rep. Mikie Sherrill's (D-NJ) office.



SDNY and EDNY Chapters of the FBA at the Leadership Summit in Washington DC.



FBA SDNY Members met with Rep. Ritchie Torres' (D-NY) staffer.



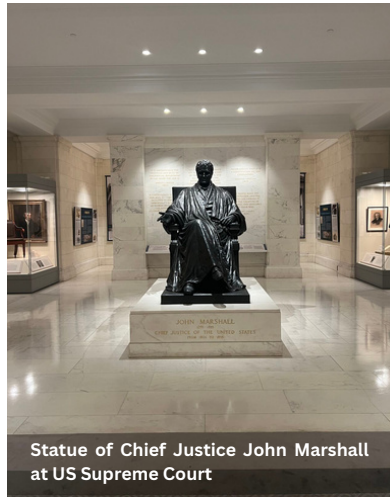
Reception for Hon. Ketanji Brown Jackson at US Supreme Court



FBA SDNY past presidents Nancy Morisseau and Olivera Medenica at the US Supreme Court



IP Law Section enjoy the Cherry Blossoms while in Washington DC



Statue of Chief Justice John Marshall at US Supreme Court



Rep. Darrell Issa (R-CA) was keynote speaker at the kickoff breakfast for Capitol Hill Day

# ACCESSING MENTAL HEALTH TREATMENT IN THE BUREAU OF PRISONS

BY: JACK DONSON & ELIZABETH KELLEY



Most federal practitioners are aware of the Bureau of Prisons (BOP) medical care level classification system. While there are several formal policy directives on physical and mental health issues, an aspect often overlooked are the various non-policy, clinical treatment guides on the BOP website such as Care Level Classifications for Medical and mental Health Care Conditions or Disabilities , Depression, Management of Bi-polar Disorder, Schizophrenia and Opioid Disorder. [BOP: Health Management Resources](#)

*It is extremely important that the pre-sentence report (PSR) contain current DSM diagnoses, medication and dosage unit for a particular diagnosis, so designation officials can assess the individual's correctional treatment needs.*

All federal inmates have both a physical and mental health care level which is a consideration in the designation process. Federal judges should be aware that while the court can make a recommendation for a federal medical center placement, such placement is highly unlikely unless the person meets the criteria as defined in the clinical treatment guide. Additionally, individual clinical counseling is often an unrealistic expectation unless the psychological care level dictates frequent contact.

## **Accessing Mental Health (Continued)**

The BOP is mostly staffed to deliver specialized psychological services to the masses in what are referred to as residential therapeutic communities. While crisis intervention is a given based on the specific situation, individual, weekly clinical counseling would only ordinarily be afforded to a person assigned to Care level 3 as indicated in the BOP policy 5310.16, titled Treatment and Care of Inmates with Mental Illness, page 8, paragraph 5.

It is extremely important that the pre-sentence report (PSR) contain current Diagnostic and Statistical Manual of Mental Disorders (DSM) diagnoses, medication and dosage unit for a particular diagnosis, so designation officials can assess the individual's correctional treatment needs. Too often, PSR histories are a medical hodge-podge of historical and self-reported conditions with extensive lists of medications which may or may not be the current medication regimen.

The BOP gives little weight to self-reported conditions so formal and current medical data is necessary especially when the conditions are of a more serious nature. When it comes to medication, the BOP formulary should be reviewed to determine if the BOP can continue the specific medication regimen, keeping in mind, BOP doctors are not bound by the prescription recommendation of the community treatment provider. [2022\\_winter\\_formulary\\_part\\_2.pdf \(bop.gov\)](#).

BOP clinicians may substitute for medications not on the formulary so it is important to note within the PSR if a person was previously prescribed a likely formulary substitute which was ineffective or caused adverse reactions. While there is a process for non-formulary medication requests, it is our experience that they often denied.

## Accessing Mental Health (Continued)

To prevent a delay in the designation of a client with a serious physical or mental disability, it is practical to forward medical records to the BOP's Office of Medical Designations and Transportation referred to as "OMDT" in Grand Prairie, Texas.

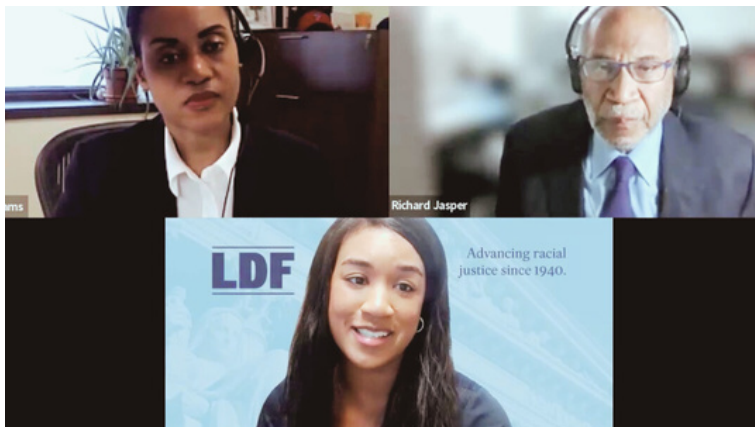
Prior to sentencing, it is equally important for counsel to be mindful of the various mental health treatment programs listed in the First Step Act Approved Programs Guide. [fsa-approved-program-guide.pdf \(bop.gov\)](https://www.bop.gov/fsa-approved-program-guide.pdf). Residential mental health treatment programs such as Challenge, Stages, and Skills are staffed with clinicians within the unit which is referred to as a therapeutic community.

**Jack Donson** is the Executive Director of the Federal Prison and Education and Reform Alliance and is retired from the BOP where he worked for 23 years.

**Elizabeth Kelley** is a criminal defense lawyer with a focus on representing people with mental disabilities and the editor of numerous books published by the ABA.



Executives from five not-for-profit organizations shared the various kinds of pro bono work they do and how FBA members can get involved during a panel discussion about pro bono opportunities held on January 25, 2024 with the Irish American Bar Association of NY.



On March 27, 2024, a Women's History Month webinar was held in collaboration with FBA where former law clerks to Hon. Constance Baker Motley (SDNY) and Assistant Counsel to NAACP LDF discussed Judge Motley's legacy on the law and courts.



On March 28, 2024, FBA SDNY held its second Talking with Trailblazer event for the year featuring Yvette Ostolaza, Chair, Sidley Austin LLP.



## **FROM JUDGE TO JUDGE: EDUCATIONAL OUTREACH IS NOT LOBBYING**

**BY: HON. BETH BLOOM, U.S. DISTRICT JUDGE,  
SOUTHERN DISTRICT OF FLORIDA**

As a judge for almost 30 years – over 19 years as a state court judge and nearly 10 years as a U.S. District Judge (appointed June 2014) – my advocacy days related to campaigns and partisan issues are well behind me. I am certain that is true for many Judges. At the same time, I have learned that we, as judges, have unique perspectives and our personal experiences and insights are relevant and informative for legislators. Educational outreach to members of the legislative and executive branches is not lobbying.

To the extent that a judge's time permits, and impartiality is not compromised, judges are actively encouraged to contribute to the law, the legal system, and the administration of justice, including revising substantive and procedural law and improving criminal and juvenile justice, either independently or through a bar association, judicial conference, or other organization dedicated to the law. See Code of Conduct for United States Judges, Commentary to Canon 4.

I serve as Chair of the Judiciary Division of the Federal Bar Association. The Judiciary Division seeks to improve the administration of justice by representing the interests of our members, involving others in our work through educational programs and activities, and assisting in the work of the Federal Bar Association. For those Judges who are not yet members, I invite you to take full advantage of your honorary membership, available to all active, senior, and retired judges of the federal bench. You may accept your honorary membership by completing a quick form at [fedbar.org](https://www.fedbar.org).

The FBA maintains an active presence in our nation's capital, monitoring and participating in policy-making processes in Congress and the Executive branch. The FBA's nonpartisanship and its emphasis on issues addressing federal jurisprudence and legal practice contribute to the FBA's respect and credibility in Washington. On January 10, 2024, to encourage federal judges to actively participate in educating members of the legislative and executive branches, the Judiciary Division adopted and published, *The Educational Outreach Guidelines for Federal Judges and Nonjudicial Court Employees* to advise what is and is not permitted by the governing codes of conduct. The Guidelines specifically

## From Judge to Judge (Continued)

refer to the applicable Canon of the Code of Conduct for United States Judges. The Guidelines can be found on the Judiciary Division webpage at <https://www.fedbar.org/judiciary-division/>

Last month, the Judiciary Division hosted a webinar, Educational Outreach for Federal Judges, to demystify judges' concerns about communicating directly with legislators and to encourage active involvement by members of the judiciary and nonjudicial court employees. Our panel included U.S. District Judge Esther Salas, Chief United States Bankruptcy Judge Paul Black, Immigration Judge Mimi Tsankov, President of the National Association of Immigration Judges, and Cissy Jackson, outside counsel to the FBA's Government Relations Committee. You may watch the webinar through the link on our Judiciary Division webpage (above).

In mid-March, I had the pleasure of accompanying other FBA leaders – attorneys from all sectors, judges from all courts, and clerks of court in several districts – in meetings with members of the U.S. Senate and Congress as part of FBA's Capitol Hill Day. The well-organized event included 110 participants and 176 meetings were held with members of Congress and the U.S. Senate. We made a difference, and I learned that legislators genuinely want to hear from us. And not just on one day but throughout the year. As public servants and those on the front lines of administering justice, I hope more judges will consider joining our efforts to educate others about the needs and unique concerns of the judiciary based on your experiences and insights. We certainly welcome their active involvement in the Judiciary Division and they should feel free to contact me directly with any thoughts or concerns.

**Hon. Beth Bloom**, (SDFL) in addition to chairing the Judiciary Division of the Federal Bar Association, she also chairs the Southern District of Florida's Local Rules Committee and is an active member of the Southern District of Florida's Ad Hoc Committee on Rules and Procedure.



The SDNY and EDNY Chapters of the Federal Bar Association participated in the March 20, 2024, Capitol Hill Day.

## CROSS-AISLE CLERKSHIPS

BY: RAKIM H.D. BROOKS & REBECCA BUCKWALTER-POZA

Justice demands persistence. It also requires humility.

As students at Yale Law School more than a decade ago, neither of us had reason to believe, as we began applying for clerkships, that we could look forward to a Supreme Court aligned with (or even receptive to) our shared vision of the role of law in the United States. Fellow gate-crashers—a gay Black man who grew up in East Harlem and a second-generation Latina lesbian from North Carolina, products of public schools both—we see the law and especially our courts as forward-facing, dynamic forces essential to a vibrant democracy, mechanisms for protecting and perfecting our union in the face of evolving challenges.



By contrast, the jurists on the nation's highest court proclaimed loyalty to originalism, the notion that judges must look backward, not forward, when interpreting the Constitution and applying our laws. Under this view, a judge should not so much as acknowledge any right or issue that did not yet exist, nor unjust condition or concern not-yet-named, when an amendment, statute, or provision was conceived. At its extreme, this outlook erases the complex histories of race, ethnicity, and immigration in the United States—and that's just one example.

It was, in short, difficult for us to imagine intellectual compatibility with the progenitors of these schools of thought or their adherents.

## **Cross-Aisle Clerkships (Continued)**

But becoming an effective legal advocate at the federal level requires acquaintance with the federal judiciary in full, full stop. And there is no better means of gaining that experience than clerking for a federal judge. So, we both found conservative ascendance no reason to balk from an opportunity critical to us as young lawyers, set on gaining the skills we would need to fight for the communities we care about. To the contrary, the bleak judicial outlook—from our perspective, that is—made seeking access to and learning from those in power, especially those with whom we disagreed, more important than ever.

Rakim brandished his advocacy by clerking for Ninth Circuit now-senior Judge William Fletcher, a leading progressive Clinton appointee, and then for now-Justice Brett Kavanaugh while he was on the D.C. Circuit, an appointee of President George W. Bush.

For her part, Rebecca clerked for President Ronald Reagan appointee late Judge Juan Rafael Torruella on the First Circuit and George W. Bush appointee Judge Margaret Ryan on the Court of Appeals for the Armed Forces—a former clerk of Justice Clarence Thomas whom former President Donald Trump considered appointing to the Supreme Court. We both benefited. We have gone on to draw on these experiences to shape progressive strategic litigation and lead policy advocacy to protect the rights and liberties of our communities and all Americans.

Today, we educate and advocate around the need to restore the integrity, impartiality, and vitality of the federal judiciary. It bears noting, in conclusion, that clerking for and learning from a judge with whom a young attorney differs ideologically for a year or two, while bracing, is hardly the challenge that being plunged into arguing before that judge would be.

## Cross-Aisle Clerkships (Continued)

But it's great, inimitable preparation for exactly that very likely scenario given the makeup of today's judiciary—and that's exactly why law students of all ideologies should keep seeking out ideological diversity as they consider clerking.

Whatever moments of discord may ensue while clerking pale by comparison to the adversity faced by champions past from the communities to which we belong, many of whom—and not so long ago—never had the opportunity to clerk. Thurgood Marshall litigated before and against white supremacists; Ruth Bader Ginsburg, in front of all-male juries. Both lived and practiced under and in defiance of the majority's unending racist and patriarchal gaze. They, and countless other attorneys, have benefited greatly from making the effort to engage in the exchange of ideas and know their adversaries—ours is an adversarial system, after all.

Seeking a mixed-party clerkship is just one small step toward the important work of overcoming ideological divides in the greater pursuit of justice—one more attorneys would do well to encourage in the generations of counsels to come.

**Rakim H.D. Brooks**, President, Alliance for Justice, is a public interest appellate lawyer committed to a judiciary that reflects America's diversity and the Constitution's promise of a more perfect union.

**Rebecca Buckwalter-Poza**, Senior Fellow and Aron Senior Justice Counsel, is an activist, advocate, and attorney best known for successfully suing former president Donald Trump under the First Amendment.



On February 29, 2024, SDNY Chapter was honored to host Damian Williams, US Attorney for Southern District of NY as part of its ongoing Talking with Trailblazers series.

## THE HON. CONSTANCE BAKER MOTLEY DEI YOUNG PROFESSIONAL ESSAY WRITING COMPETITION

The FBA's Hon. Constance Baker Motley Diversity, Equity, and Inclusion Young Member Essay Competition, created to celebrate the life of Hon. Constance Baker Motley, is open to all law students and young federal practitioners and professionals, whether current members of the Federal Bar Association or prospective, who are either under the age of 40 or have been practicing ten years or less. **Deadline is May 10, 2024.** [CBMEssayCompetition](#)



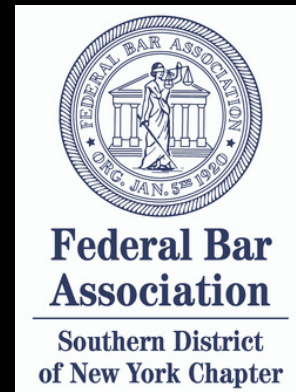
On February 15, 2024, an excellent panel of experts presented on Artificial Intelligence, risks and using common sense held at Saul Ewing LLP.



On February 16, 2024, SDNY Chapter co-sponsored the FBA IP Section's Art and Fashion Law Conference held at Dunnington, Bartholow & Miller LLP.

### UPCOMING PROGRAMS

- **APRIL 25, 2024** - CORPORATE TRANSPARENCY ACT CLE
- **MAY 8, 2024** - LUNCH & LEARN WITH SDNY JUDGES
- **MAY 9 & 31, 2024** - HIGH SCHOOL STUDENTS VISIT SDNY/2D CIR.
- **MAY 16, 2024** - BUSINESS DEVELOPMENT, BASEBALL & ETHICS CLE
- **SEPTEMBER 5-7, 2024** - FBA ANNUAL MEETING & CONVENTION (KANSAS CITY, MO)



### Editorial Board

Padmaja Chinta  
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Nancy Morisseau

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