TABLE OF CONTENTS

Articles »

“Making It” in Private Practice: An Interview with Justin B. Weiner
By Lauren M. Weinstein
The thoughts of an attorney who has been a judicial law clerk, an associate at a big firm, and a partner at a small firm.

Disparities in Student Loans: How Did We Get Here and What Can We Do?
By Valerie Fontenot
At over $1.5 trillion, student loan debt has now surpassed credit card debt.

How Can Millennials Thrive in the Workplace?
By Ashley J. Heilprin
Senior colleagues can help younger employees integrate by understanding the environment in which they were raised.

Communicating in a Multigenerational Workplace
By April Davenport
Understanding the uniqueness of each generation in our workforce is a step toward thriving in our careers.

Tips for Young Lawyers Dealing with Expert Witnesses
By Stephanie Francis Ward
It is the attorney’s responsibility to try to have his or her expert witness connect with the jury in a way that causes the jury to be engaged in the testimony and information the witness is providing.

Exploring Intergenerational Diversity in the Profession with Perspectives from the Bench and Bar
By Rachel Pereira
Demystifying the process for lawyers considering serving in the judiciary.

The Intersection of Race and Rape Viewed through the Prism of a Modern-Day Emmett Till
By Megan A. Haynes
Perspectives from lawyers and judges of different generations on the changes in the practice of law and working with the “new” generational lawyer.

Trick or Treatment?
By Hayden Carlos and Cameron Pontiff
Confronting the horrific intersection of race, mental health, poverty, and incarceration in Louisiana.
ARTICLES

“Making It” in Private Practice: An Interview with Justin B. Weiner

The thoughts of an attorney who has been a judicial law clerk, an associate at a big firm, and a partner at a small firm.

By Lauren M. Weinstein

Justin B. Weiner is a partner in MoloLamken’s Chicago office. His practice focuses on complex business litigation, with a particular emphasis on litigation concerning structured finance, corporate finance, and patent litigation. Mr. Weiner also has extensive experience in appellate litigation. Prior to joining MoloLamken, Mr. Weiner was an associate in the Chicago office of Sidley Austin LLP. He also served as a law clerk to Chief Judge Frank H. Easterbrook of the U.S. Court of Appeals for the Seventh Circuit and to Judge Milton I. Shadur of the U.S. District Court for the Northern District of Illinois.

Moving around as a relatively young lawyer seems to be becoming more the norm. You’ve been a judicial law clerk, an associate at a big firm, and a partner at a small firm. And you’re still under 40. What value do you see in changing organizations in your first decade or so of practice?

I actually think there should be less moving around in the first decade of practice. In the past, most lawyers would go to one firm and stick to it. I think that path is preferable if you can swing it.

To do that, we, as a profession, need to be better at matching people with mentors and being transparent about what life at a law firm is like. It is hard to know coming out of law school what you want from a firm and what you will be good at, unless you have good, thoughtful mentors. A good mentor can provide insight into the practice that only comes from experience and steer you to a place where you will succeed. But, in the practice of law, mentorship only really takes hold at your first job. By then, it’s too late; you are at a job in which you will either thrive or not, and whether you do is partially a matter of luck.

Transparency is also very important. When I was a summer associate, it was wining and dining all summer long. You heard talk of long hours, but there wasn’t enough of a preview of what real life is like as a lawyer. I don’t think there is maliciousness intended; it’s just hard to convey real experience in that environment. A realistic look at what law firm life is like would help young lawyers find better matches right out of the gate.

Why is staying at one place better in your view?

In the practice of law, particularly in litigation, projects are clunky and take a long time. It takes a long time to figure it out and learn the skills to master your craft. If you’re in the right place and you’ve found your niche, you will get to the point of mastery faster. With every move you
make, there is a bit of a learning curve, and it may delay mastery. It may delay your “making it”—finding happiness in this profession.

**What did you get out of each of your experiences practicing law (clerking, big firm, small firm)?**
Despite waxing poetic about staying in one place, I am very happy with all the moves I’ve made. I’m happy with where I wound up. I got a lot out of each experience.

Clerkships are uniquely valuable because you peek behind the curtain of what goes on in judicial decision making, and the key goal for a client is ultimately getting a successful outcome in front of a judge.

I wouldn’t have been as successful in a small firm without having first been a big firm associate. Small firms are inherently less structured and require more of a self-starter who knows what good work habits are and what good work product looks like. A big law firm helps you develop that knowledge because you work in a highly structured environment where every step along the way has many, many hands on it. That prepares you to go into a less structured environment where the onus is on you to accomplish all those small tasks.

**What did you think being a lawyer would be like in law school and how is that different than the reality?**
What you see in law school are the easily visible hard skills that often don’t make up a large part of the day-to-day of lawyering—for example, writing and courtroom skills. Those are obviously critical, but another huge component is soft skills. Making minute-by-minute judgments about how to build a case and prove your points on the plaintiff side, and how to anticipate and pick apart what the plaintiff will say on the defense side. Those soft skills are not visible when you’re in law school. They become apparent only with experience.

**Would you recommend the path you’ve taken in your career to attorneys fresh out of law school?**
Notwithstanding my statement that I think it’s important to find the right fit and do that quickly, it can take time to figure out whether you’re in the right place. It would be great if law students landed in a place that suits them. But once you’re at your first stop, you need to carefully evaluate how you’re doing and whether it’s the right place for you. I see people moving on to other jobs nine months to a year after starting at their first firm. That’s not enough time because cases take so long, particularly big cases. I’m glad I was at a big law firm for a number of years before moving on to a smaller place because it gave me a chance to fully experience the firm and develop skills.

**You mentioned mentorship. How can we improve?**
I would like to see more of an effort put toward matching practicing lawyers with law students, not just the occasional panel but actually getting law students out there in the real world practicing law more. Clinical programs are one way of doing that, and I am glad to see law schools taking those programs seriously now.
What do you think it means to “make it” in private practice, and do you think you have “made it”?

It depends on your goals, and it varies person to person. I like to think about it in terms of intrinsic goals (goals only I can observe) and extrinsic goals (goals others can observe). Intrinsic goals are mastering my craft: saying the right things in court, making the right judgments, writing the best briefs. Everything I’m doing is working toward getting the best result for my client.

Have I achieved that? The feeling of mastery develops the deeper I get into my career, but it’s not completely achievable. The law changes and practices change, so there will always be some new challenge and new adaptation.

My extrinsic goal is having clients who call me when they have a problem. Being a lawyer is a service business, and I feel like I’ve made it when I have someone on the phone asking me to help them solve a problem.

I don’t know if I will ever sit back and say “I’ve achieved everything I want to,” but I certainly feel like I am getting closer as time passes.

What are your goals for the next decade of your law practice?

More of the same. I’m at a point now where I don’t need that structure around me to succeed and reach those goals of mastering my craft and having clients who call on me when they have a problem. I just have to keep building on what I’ve been doing and building out my own practice.

What is the best career advice you’ve ever received?

“Run to trouble.” There will always be fires in litigation—problems, mistakes, unexpected twists and turns. The concept of the bystander effect in psychology teaches us that when people find themselves amongst a group, they are less likely to react to trouble. Hence, your natural instinct will be to dismiss trouble; let someone else deal with it. That’s especially true in litigation, where the negative impact of ignoring trouble may not be felt for a long time. That interrogatory response that is missing a key, later-discovered fact may not come back to bite you until months later at summary judgment or trial.

Good litigators are aware of that instinct and actively work to overcome it. They have a good antenna for trouble, and when they sense a problem, they dig deeper, resisting the impulse to ignore it.

What advice would you give other millennial attorneys in private practice?

Always value, cultivate, and appreciate your network. In the practice of law and the process of becoming a lawyer, you have repeated opportunities to develop a network, and, if you join private practice, that network will be the source of your business. Your friends will go in-house and need someone of your skill set at some point. But they won’t know they need you unless
you’ve kept in touch and they’re aware of how you can help them. I think it’s something anyone can start doing from the day they leave law school.

Keep in touch with people, and be there so that when they need help—you’ll get the call. That’s the ticket to having a bunch of clients, which, in turn, is the ticket to happiness in this profession: having people call you when they have an issue. Clients don’t hire you because of a shiny résumé and credentials. They hire you because they have a relationship with you and trust you.

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Disparities in Student Loans: How Did We Get Here and What Can We Do?

At over $1.5 trillion, student loan debt has now surpassed credit card debt.

By Valerie Fontenot

At over $1.5 trillion, student loan debt has now surpassed credit card debt. Zack Friedman, “Student Loan Debt Statistics in 2018: A $1.5 Trillion Crisis,” Forbes, June 13, 2018. With a drastic effect on the ability of the millennial generation to keep up, student loans have come to the forefront of many political, economic, and social discussions and studies in recent years. Hit with a crashing economy, millennials were unable to obtain jobs after graduation with wages to justify their education investment. In fact, many were waiting tables or working free internships in the hopes of obtaining full-time employment with benefits in the future. As a result, millennials are not following the typical path they may have dreamed of when they were younger. They are not buying homes. They are not saving for retirement. They are not having children. All of these factors will come to have a drastic effect on the economy in future years.

How Did We Get Here?

Disparity in age. The first and most obvious disparity in student loans is between generations. In 1985, the average cost of private law school tuition for schools approved by the American Bar Association was $7,526 in 1985 dollars, according to the Law School Transparency Data Dashboard. Adjusting for inflation, that cost would be $17,520 in 2018. While inflation has played a large role in the increasing cost of attending law school, the bigger culprit has been the increased tuition rate between 1985 and 2018. The average cost of private law school tuition in 2018 was $47,754 (i.e., 2.7 times more expensive than it was in 1985). Many scholars blame this drastic increase in debt on decreasing public funding and the ability of private schools to continuously raise their tuition with no repercussion and oftentimes no justification except to say that tuition increases every year by the same percentage no matter what.

To compensate for the significantly increased cost, millennials incurred drastically increasing amounts of student loans, which will take them considerably more time to pay. That extra time to pay often translates into less investment in retirement and home ownership. With the cost of education continuing to rise, the disparity in student loan debt among older and younger Americans will continue to increase, unless something drastic is done to control costs.

Disparity in gender. According to a report by the American Association of University Women (AAUW), Deeper in Debt, women who graduated in the 2007–2008 school year have only paid off an average of 33 percent of their student debt, while men have paid off an average of 44 percent of their debt during the same time frame. This is an 11 percent disparity among genders.
who were all employed full time. The numbers are even more extreme when considering the rate of debt repayment for black and Hispanic women.

There is no more important factor in the debt repayment disparity among genders beyond salary, which is creating an almost insurmountable wage gap for women. When women earn $0.77 for every dollar a man makes, it makes it much harder for women to meet their financial goals, particularly if they are single mothers. Financial concerns also make women more risk-averse causing them to perhaps take a safer job with lower pay.

Finally, despite composing almost 50 percent of law school classes, women law school graduates are not typically recruited or hired at large firms, and even if they are, they are not likely to remain long enough to make partner, which would increase their income to pay off their student debt.

**Disparity in race.** Disparities in student loan debt and repayment are extremely pronounced when controlling for race. An estimated 86.8 percent of black students take out federal student loans to attend a four-year public college, as opposed to 59.9 percent of white students, according to the National Center for Education Statistics. Rebecca Safier, “*Study: Student Loans Weigh Heaviest on Black and Hispanic Students,*” *Student Loan Hero*, Sept. 17, 2018. This is due to the lack of generational wealth in black and Hispanic families, which means they oftentimes have no college savings or parental help through school. Regarding debt repayment, another AAUW study, *Graduating to a Pay Gap*, found the gap even more pronounced for black and Hispanic women. Compared with the 37 percent of debt paid by white women, black and Hispanic women had only paid 9 percent and 3 percent respectively, even though they were fully employed. Catherin Hill, “*Pay Gap Especially Harmful for Black and Hispanic Women Struggling with Student Debt,*” *AAUW.org*, Feb. 8, 2016.

One might ask why is there such a large gap in student loan debt by race? One key reason is income. High student loan debt is often the result of low income. Low income may be due to working in the public sector compared with the private sector or even failure to negotiate a better salary for fear of jeopardizing the job offer. Black and Hispanic students are not typically recruited into the big law firm environment and often work in the public sector for little pay. Even if they receive a big firm offer, they often do not remain with large firms because they often feel isolated or unsupported. With lower incomes, black and Hispanic students frequently are able to afford only an income-based plan, which will more likely than not increase their total loan debt by almost two times the original amount borrowed thanks to compound interest. Further, student debt relief programs like the Public Service Loan Forgiveness Program have paid out less than 1,000 of the almost 100,000 loans available for forgiveness. Black and Hispanic lawyers, many of whom counted on these forgiveness programs, are now facing years of payments due to low income and compounded interest over the life of their loans.

**What Can We Do as a Society to Address the Student Loan Debt Crisis?**
1. **Provide opportunities to diverse candidates both women and minorities and have a set salary for every new hire according to his or her position rather than who negotiates the best deal.** As previously stated, high debt is often the result of low income. Paying all new employees a set rate according to position will likely lift many women, black, and Hispanic student borrowers to higher salaries that are equal to those of their white, male counterparts.

2. **Advocate for a reduction in interest rates.** Lobby Congress to reduce interest rates for student loans, which skyrocketed after the mortgage crisis. Prior to the 2008 crash, student loan interest rates were notoriously low, usually in the 2–4 percent range on government-backed student loans. After the 2008 crash, those numbers seemed to double for many students seeking to consolidate previous loans or take out new loans.

3. **Be open and honest, and help those who do not understand the student loan and repayment process.** No matter the age, there is always something new to be learned. I have had many discussions with baby boomers who did not realize the extent of the student loan crisis (e.g., how much costs increased, compound interest). Once it was explained, they heartily agreed that something should be done. I’ve also had discussions with high school and college students who had no idea that they would likely have to pay twice the amount of money they borrowed. Only by educating those around us can we prevent future generations from ending up with the same debt burden.

**What Can You Do Personally to Avoid the Student Loan Blues?**

Societal solutions are great, but let’s be honest—society moves at a snail’s pace and it is unlikely to address this crisis for the many borrowers who are already in it.

1. **Make a budget and stick to it.** You have to have extra money after living expenses in order to afford your student loans. You should sit down no less than once a month and assess your income and expenses for that month. Be honest with how much you are spending so you are not running out of money and using credit cards to make it until the end of the month. The last thing you need is more debt. Once you have your budget created, tracking your expenses is essential to see where your money is going. Once you know where your money is coming from and going to, you will be able to create strategies to save money and put extra toward your student loans.

2. **Make as many extra payments as you can.** I know, I know. We all still want to live and travel and do fun things. These are perfectly OK if they are within your plan and budget. Things go awry when we buy those $200 concert tickets or that nice pair of shoes. Somehow money disappears out of our budget during the month and we have no idea where it went. To put this into context, if you saved an extra $100 each month, over 20 years with a 5 percent interest rate, you would save $41,591, thanks to daily compound interest. Now imagine reducing your student loans by $41,591 just by putting an extra $100 a month toward the balance.

3. **Check your interest rates annually.** Many student loans are obtained when students do not have jobs or other sources of income, allowing banks to charge them a higher interest rate. For example, the interest rate for a friend’s bar loan was over 10 percent. However,
once she got a legal job and was able to show a steady source of income, she was able to refinance that loan to a 4.21 percent loan. An even better perk was that the loan was payable over 5 years rather than the 15–20 years of the original lender. That loan will be paid in a third of the time!

4. **Determine if you are eligible for an interest rate deduction through organizations in which you participate.** Examples are DRI and state bar associations. Many companies will offer a .25 percent interest rate deduction, which may not seem like a lot, but it quickly adds up when you have many thousands, if not hundreds of thousands, of debt from your undergraduate and law school studies.

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How Can Millennials Thrive in the Workplace?
Senior colleagues can help younger employees integrate by understanding the environment in which they were raised.

By Ashley J. Heilprin

As employers work to attract young lawyers, they must also examine how to retain millennials, foster their professional development, and empower their leadership. Given the generational differences between baby boomers, Generation X, and millennials, the integration of millennials into the workplace will undoubtedly alter the way business, training, and development are handled in the future.

You Raised Us—Now Work with Us: Millennials, Career Success, and Building Strong Workplace Teams, a 2014 book by Lauren Rikleen, published by the American Bar Association, aims to provide insight to all generations on overcoming generational differences and harnessing unique opportunities as millennials enter the workforce. In particular, female baby boomer and Generation X attorneys have made considerable strides over the past few decades in terms of the power, influence, and achievement of women in the profession, yet millennial women lawyers continue to face unique challenges in assimilating into the workplace. All generations must address these challenges in order to have a work environment where everyone can thrive.

Millennials differ considerably from prior generations. While baby boomers and Generation X value linear paths to success, working independently, and introspection, millennials by nature are more collaborative, circular, and seeking of external approval. In contrast to baby boomers and Generation X, millennials were raised in more protected environments, under heavier supervision. These inherent differences can lead to challenges in the workplace.

Rikleen’s research notes the particular disconnect women millennials face. Namely, women millennials reported a strong desire for senior female role models; yet, one study noted that only 14 percent of millennial women are working in an environment with a woman in a leadership role whose career they wish to emulate. Women millennials also struggle with rejection when seeking support from senior women in their work environments. While women millennials acknowledge the sacrifices that older generations of women have made in order to achieve success, these younger women find it discouraging to be told that to succeed, they must undergo the same sacrifices of family life and long work hours in order to move ahead. Thus, any plan to successfully integrate millennials into the workplace should take into consideration the gender gap within the generational divide.

Rikleen suggests that senior colleagues can help millennials integrate into the workplace by understanding the environment in which millennials were raised. Millennials were raised in more heavily monitored and protected environments than older generations and, consequently, expect coaching and feedback to continue into their professional lives and work environments.
Millennials were also raised with a lot of structured systems for review and look for transparency in assessments.

In understanding the environment in which millennials were raised, Rikleen recommends senior generations “can refrain from judging the Millennials because they ask too many questions (‘they don’t know how to do an assignment without hand-holding’) or request too much feedback (‘they always want to hear how they are doing.’)” Similarly, millennials expect clear and consistent measures for evaluation to continue in the workplace.

To create an optimal work environment for all generations, employers should minimize misconceptions between the generations and empower millennials to lead when baby boomers leave the workplace. Rikleen cites a survey conducted by the Center for Creative Leadership in identifying “clout as the source of most intergenerational conflict.” Replacing clout with mutual respect and developing initiatives that foster mutual support and understanding between the generations will develop a stronger sense of community within the organization. Tangibly, she suggests collaborative discussions that encourage intergenerational dialogue, fostering an appreciation of diversity within the workplace, and training programs for millennials on integrating the culture and adapting to the intergenerational dynamics.

All generations can benefit from a better understanding of the lens through which each generation views the world. While these suggestions are not exhaustive, a careful examination of the ways in which your workplace can better engage, support, integrate, and foster the development of millennials will undoubtedly prove to be fruitful.

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Communicating in a Multigenerational Workplace

Understanding the uniqueness of each generation in our workforce is a step toward thriving in our careers.

By April Davenport

In today’s workplace, there can be up to five different generations working together, with each generation having its own way of communicating. There are many factors that contribute to how we communicate with each other, and generational differences can be one of them. Although every individual will not fit perfectly into his or her generation’s broad characteristics, each generation does exhibit differentiating traits. It is critical to understand how people born into different generations communicate when it comes to getting the job done.

Traditionalists, born before 1946, make up about 3 percent of the workforce. This generation values duty, dedication, and sacrifice, and often identifies with the importance of honor and loyalty. Brought up in the age of the written word, this generation tends to communicate with a high level of formality when it comes to their written and oral communication.

Baby boomers were born between 1946 and 1964 and make up about 25 percent of the workforce. Like the generation ahead, they also value loyalty and hard work. Personal communication is important. Members of this generation would rather make a call than have a back-and-forth email chain or walk over to a coworkers’ office instead of emailing. The older generations are OK with email but prefer to leave other technology to the younger generations. (Baby boomers are more prone to still leaving voicemails and using fax machines!) Sometimes resistant to change, they value the personal connections they receive from the interactions with their coworkers or clients.

Generation X, born roughly between 1965 and 1980, makes up about 33 percent of the workforce. This generation grew up in the age of MTV and Nintendo. That being said, they did not grow up with the Internet but can easily adapt to technology quickly. They are independent and self-sufficient, and they value freedom and responsibility in the workplace. With that in mind, this generation prefers communicating by email. Quite often, they are the bridge between baby boomers and the millennials when it comes to communicating.

Millennials make up the largest working group, comprising about 35 percent of the workforce. Born between 1981 and 1996, this is the first generation to use the Internet at an early age. This generation loves and values technology. They also love and value efficiency and speed. Their communication tends to be short and sweet, and they strive to use their knowledge of technology to make their workload much more efficient. Growing up with information at their fingertips, they also expect the same instant response when it comes to communicating.

The newest members of the workforce, Generation Z, born after 1996, make up roughly 3 percent of the workforce. Members of this generation are currently finishing their university degrees and are looking to land their first real jobs. Generation Zers do not remember a time when the Internet did not exist. As a result, 40 percent admit to being addicted to their smartphones.
As lawyers, whether in a major law firm dealing with partners, in government agencies dealing with staffers, or as solo practitioners dealing with clients, we will all come across a blend of these generations in our professional careers as well as our personal lives. Understanding the uniqueness of each generation in our workforce is a step toward thriving in our careers and becoming leaders in our own multigenerational workplace. Instead of getting frustrated that your partner keeps leaving voicemail messages instead of emailing, or that your associate is always on the smartphone, let us learn from each other and appreciate what each generation can bring to the table. Whatever your generation or preferred communication style, what is important is to be flexible and adaptive in our modes of communicating, which will in turn create a more harmonious and productive work environment.

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Tips for Young Lawyers Dealing with Expert Witnesses

It is the attorney’s responsibility to try to have his or her expert witness connect with the jury in a way that causes the jury to be engaged in the testimony and information the witness is providing.

By Roula Allouch

In the world of litigation, young lawyers find themselves with new challenges and opportunities for growth as their practice and experience levels increase. One important step for young lawyers growing into seasoned litigators is dealing with expert witnesses and their deposition testimony. The subject matter requiring the use of expert witnesses can be medical, engineering, product liability, or a range of other issues, but the tips below can be used in any of those instances.

The first “big” case I was involved in had to do with injuries claimed as the result of a fall from an allegedly defective ladder. I quickly found myself learning more details about ladders than I ever thought I would. I still recall random details learned in that case, including my surprise at the length of time a thorough expert could take for a ladder inspection. In later cases, I learned details about the engineering components of other products and of medical conditions and treatment options. After dealing with a number of experts, I better understand that, regardless of the subject matter and how little I do or don’t think I know about it, my approach to the use of experts and their testimony should be the same.

First, selecting the right expert witness is critical. To select the proper expert, you must first be mindful of the facts of your case and the purpose for which the expert is needed. Before engaging an expert, I often ask myself what questions I need addressed or answered from my client’s perspective and proceed forward based on that need. I find it beneficial to think ahead to a potential trial and what facts and evidence I need established to support arguments or legal theories in the case.

Some experts are easier to locate than others. Putting in the effort early in the discovery phase of a case will be time well served for the client in obtaining an expert who can provide valuable insight during discovery and depositions of parties or other witnesses. Lawyers should feel comfortable reaching out to colleagues for recommendations of expert witnesses depending on the subject matter or geographic region of the case. I have found my involvement in the American Bar Association to be an added advantage in this regard. A number of times in past cases as I have been searching for an expert in a different part of the country, I have reached out to friends and colleagues I’ve connected with through the ABA for recommendations. Attorneys I was handling those cases with were impressed by my network and ability to locate people in other parts of the country so quickly.

Second, a lawyer would benefit from learning enough about subject areas outside of his or her comfort level to engage in discussions with or questioning of experts. Lawyers should not feel too intimidated to ask the expert to explain technical terms or theories. For example, in talking with medical experts, I may not understand certain terminology, which may also mean the jury will not understand it. If that is the case, the lawyer will do his or her client’s case a service by providing the jury with the additional explanation. The simplified explanation could also help the jury connect to or relate with the expert witness.

Third, it is critical for the lawyer to remember he or she is the one with the legal knowledge in a case and not to allow himself or herself to be intimidated by an expert or his or her expertise. The expert is being used for a specific purpose, but it is the attorney who has underlying responsibility to the client. Lawyers typically know details from the entirety of the case, not just the part for which the expert has been

© 2019 by the American Bar Association. Reproduced with permission. All rights reserved. This information or any portion thereof may not be copied or disseminated in any form or by any means or stored in an electronic database or retrieval system without the express written consent of the American Bar Association.
retained. Lawyers should not take for granted an expert’s knowledge of the facts of a case and make sure those facts are available to the expert. I learned the hard way that experts are like any other witness in that they need preparation, particularly for deposition and trial testimony. Rather than assume an expert has particular experience, the lawyer must ask the necessary questions and set aside the proper time to prepare the witness for his or her testimony. Even where an expert has significant experience and has testified previously, a refresher course is beneficial close in time to the testimony. Of course, the expert will testify to the subject matter within his or her expertise without assistance or interruption by counsel, but the attorney can prepare the witness for what to expect, the demeanor of counsel involved, and other relevant information to make the expert deposition go smoothly.

Finally, particularly in trial testimony, lawyers should be mindful not to bore the jury with details that will provide no benefit to the case. If a detail is unexciting but necessary to the case, it must be explored and properly expounded upon. A lawyer needs to ensure the evidence is admitted into evidence to be used in effective arguments to the jury. But in those instances where certain details are not necessary for a jury’s benefit, a lawyer should be mindful of how the expert is being received and perceived by the jury.

Expert witnesses are often at the top of their field and highly educated. It is the attorney’s responsibility to try to have his or her expert witness connect with the jury in a way that causes the jury to be engaged in the testimony and information the witness is providing with hopes the expert will ultimately shed clarity on the issues in the case in a way that benefits the client being represented and served.

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Exploring Intergenerational Diversity in the Profession with Perspectives from the Bench and Bar
Perspectives from lawyers and judges of different generations on the changes in the practice of law and working with the “new” generational lawyer.

By Megan A. Haynes

Honorable Fredericka H. Wicker: Judge Wicker is one of eight presiding judges at the Louisiana Fifth Circuit Court of Appeal. She is a graduate of Tulane University School of Law and was admitted to practice in 1977. Before Judge Wicker took the bench, her career crossed criminal and civil paths over a span of 20 years. She worked as an assistant district attorney and later as an assistant U.S. attorney prosecuting complex fraud and white-collar crimes before transitioning into civil private practice.

Honorable Kern Reese: Judge Reese is one of 14 presiding judges at the Orleans Parish Civil District Court, in New Orleans, Louisiana. He is a graduate of Loyola University New Orleans College of Law and was admitted to practice in 1977. Prior to taking the bench, Judge Reese was a notable litigator. His passion for litigation allowed him to have a prominent and distinguished personal injury practice.

City Attorney Sunni J. LeBeouf: Sunni LeBeouf is the city attorney for the City of New Orleans. She is a graduate of George Washington University Law School and was admitted to practice in 2003. Sunni has had an outstanding and inspiring legal career that has spanned more than 16 years in civil defense litigation. She was previously an associate with Phelps Dunbar, LLP, and later became the deputy chief of civil litigation at the U.S. Attorney’s Office for the Eastern District of Louisiana.

Senior Chief Deputy City Attorney Donesia D. Turner: Donesia Turner is the senior chief deputy city attorney at the New Orleans City Attorney’s Office. She is a graduate of Loyola University New Orleans College of Law and was admitted to practice in 1994. Donesia’s exceptional legal career has spanned 25 years in which she primarily practiced employment litigation. She began her career at the law firm of Bryan & Jupiter and later became partner at Koeppel Clark Turner, LLC.

How would you describe the legal practice when you first began practicing law?

Judge Wicker: When I first started, the legal practice was less integrated in terms of gender and race. Regarding gender, there was an absence of a female presence. Young female attorneys were required to show up first, leave last, and work the hardest. I thought that this was the norm at the start of my career. It was not until I began practicing at another firm when I started to realize that this was an issue in the legal practice.

Judge Reese: The legal profession was less diverse when I first began practicing law. In fact, there was only one female judge in New Orleans at that time, Judge Joan Armstrong. Former mayor and Judge Ernest “Dutch” Morial was seated on the Fourth Circuit Court of Appeal and Judge Israel Augustine was at Criminal Court, but that was it. Thinking back, there was a certain gentility to the profession. Practitioners were more courteous back then and less mean spirited.
Sunni LeBeouf: When I started my legal career, the practice seemingly was a male-dominated community of professionals. There was also a very close-knit group of young lawyers who specialized in various areas of practice.

Donesia Turner: When I first started, I found that the legal practice was male dominated. There were plenty of times when I would walk into a room and I was the only female present. The need for women was necessary to bring more stability to the practice.

What is your perspective on how the legal practice has evolved from the time you were a newly admitted lawyer?

Judge Wicker: In my generation, more traditional roles were reflected in the practice of law. In this new generation of law, there is a greater need to bridge the gap between having a full-time professional career while simultaneously achieving a work-life balance. Additionally, I feel that this generation is more willing to think outside of the box and attempt to take on the law in nontraditional ways. Lastly, this generation has embraced technological advances in their practice.

Judge Reese: In New Orleans, the legal profession has substantially evolved. The practice has become more diverse since when I first started. More women and minorities have joined the practice of law. I also feel that technology has enhanced the profession. Technological advances have allowed the profession to be more expedient. Yet, I feel that technology has simultaneously caused the profession to be much more impersonal.

Sunni LeBeouf: Historically, the legal profession has been a male-dominated industry. I do find that in recent years, however, the legal profession has embraced diversity and inclusion more within the workplace. I believe there are more women in leadership positions, but there is still room for improvement in the areas of diversity and inclusion within the legal profession.

Donesia Turner: The legal profession has embraced more women in the practice. I also feel that the practice has evolved with technology. There are more tools now to adequately represent your client. In addition, I find that the need to continue the legal education is much better satisfied than when I first started because CLEs are more geared toward the actual practice of law.

Are there any practices in the profession you experienced as a young lawyer that you would like to see more lawyers incorporate today?

Judge Wicker: One practice that I wish was incorporated into today’s practice is the ability to conduct research by flipping through the pages of actual books. Today’s research, unfortunately, is now all electronic. Although the advantages of electronic research are present, such as being able to get the job done more efficiently and also being able to adequately narrow the scope of the research, you used to be able to get the full concept of what you were researching when you were forced to look through the books.

Judge Reese: The era of technology has decreased the need and desire for oral advocacy. Courts in modern times have now completely incorporated the use of digital methods. All filings can be submitted online rather than walking it into the courtroom. I personally appreciate oral advocacy. I find that reading a particular motion strictly on paper or on a computer screen is somewhat cold. On the other hand, for me, listening to strong advocacy in open court can actually make the difference in the outcome of the case.
Sunni LeBeouf: An older practice that I feel should be more incorporated into modern legal practice is the concept of taking a more sophisticated approach. I believe there was more of a focus on professionalism generally when I first started. Even when there was a disagreement, attorneys still seemed to remain careful about communications with the intent of conveying accurate information.

Donesia Turner: I find that the attorneys of my generation had a stronger work ethic that I feel should be more intended by young lawyers today. When I first started, lawyers really put the time in in order to perfect their craft.

What advice or words of encouragement would you give to the “new” generational lawyer about the legal practice?

Judge Wicker: One practice that I feel should have a bigger presence today is mentoring. As a young attorney, I had the pleasure of having female mentors who helped guide me and were there for support when handling and approaching the legal profession. Thus, I would advise young attorneys to seek out mentors in order to develop skills and professionalism with the guidance of their mentors.

Judge Reese: Young lawyers need to be effective communicators. Thinking and speaking clearly is substantial. The ability to write is critical. I would encourage young lawyers to do everything that they can to improve and further develop their writing abilities. It is important to know that the first brush that the court has with a litigant is something that is written. Therefore, all written communications need to be efficient, coherent, understandable, and well done.

Sunni LeBeouf: Preparation and hard work result in opportunities. The practice of law is such an integral part of how our society operates. I would encourage young lawyers to continue to work hard because the need for lawyers is apparent. The opportunities for your practice to flourish are immeasurable when proper planning and dedication are at the forefront.

Donesia Turner: Hard work and dedication are the tools to success. I would encourage law students and young attorneys to continue to study and to always be prepared. It is very important to put in the work to get the results that you desire.

What do you think the future holds for the practice of law and the next generation of lawyers?

Judge Wicker: I think the future for the legal practice is promising. Law students and young practitioners are smart, interested, and aiming to please. The law degree now can be used in so many new and innovative ways, which embraces the concept of practicing law nontraditionally. I also think that the quality of someone’s work is more important now than it was when I first began. Employers are more willing to make accommodations because of the quality of that individual’s work and work ethic, which was not achievable in my generation. Nonetheless, I am concerned with the ratio between job opportunities and young practitioners who are eager for work. Student debt is steadily increasing. I hope that the future of this practice provides lawyers with opportunities to lessen the debt crisis.

Judge Reese: Young lawyers are the guardians of the gate. I am a little apprehensive about the future of our profession. Public officials bluntly announce the need to get rid of judges and speak disparagingly of lawyers. Society has developed alternative dispute resolution methods to avoid going to court. I feel
that young lawyers have a responsibility to guard the gate, to protect and defend the profession, and to uphold the rule of law, so that we do not lose the essence of the legal system that we hold so dear.

**Sunni LeBeouf:** The legal profession is healthy and will always be healthy simply because of how our judicial system works. There will always be a need for attorneys. I also believe that the future of our practice is moving in the right direction.

**Donesia Turner:** Laws evolve, but the practice stays the same. I find that the future is bright for the legal profession. Young attorneys seem to be very eager and more willing to learn and take direction. The desire to adequately represent and defend your client will always be evident in our profession. I am hopeful for the practice.

_Megan Haynes_ is an assistant city attorney with the city attorney’s office in New Orleans, Louisiana.
The Intersection of Race and Rape Viewed through the Prism of a Modern-Day Emmett Till

An exploration of the historical practice of exploiting and violating the bodies of African American women with impunity and how African American defendants accused of raping white women are treated differently under the law.

By Chelsea Hale and Meghan Matt

Emmett Till’s name sparks immediate emotion and often sends chills down the spine of any American with a beating heart. Fourteen-year-old Emmett was murdered in 1955, but his name and his story still conjure emotions today. Perhaps that’s because many of us are aware of the unspoken reality surrounding Emmett’s story—aspects and versions of it live on through the lives of many other African American men such as the one who inspired this article.

This modern Emmett Till was convicted as a teenager and is presently serving a 100-year sentence in Louisiana for the attempted rape of two white teenage girls in the 1970s. As Mammie Till changed the course of history with her decision to “let the world see” the brutalized body of her young son, we have similar ambitions. We wish to disrupt a disturbing narrative surrounding the intersection of race and rape—specifically, how African American defendants accused of raping white women and African American women raped by white men are treated differently under the law.

History

The chattel slavery system. The practice of exploiting and violating the bodies of African American women with impunity is an ancient one. During America’s chattel slavery system, white slave owners freely and legally raped the women whom they enslaved, often in front of their families. They used rape to assert their power and authority over their property without accountability. The offspring of enslaved women were then also considered their master’s property, giving these men more economic power and further stripping African American women of the rights to their own bodies and babies. The legal system enforced this by the sin of omission. No Louisiana law made the rape of a black woman, slave or free, a crime. Rape was specifically limited to white women under the state’s law. However, Louisiana’s provisions mandated capital punishment for both the rape and the attempted rape of a white female by a slave.

In 1845, James Marion Sims, the father of modern gynecology, began experimenting on enslaved women without consent and without any anesthesia, causing untold suffering. Operating under the mere racist notion that African American people did not feel pain, he asked his patients, who were completely naked, to perch on their knees and bend forward onto their elbows so their heads rested on their hands. After 30 operations and 4 years spent experimenting on a 17-year-old enslaved woman, he finally “perfected” his method. Only then did he begin to practice on white women, to whom he freely administered anesthesia. Sims’s heinous acts were legally permissible because enslaved women were considered no more than their master’s property and were allowed no autonomy over their own bodies.

The lynching era. This continued into the lynching era, when the most common reason for public lynching was the perception that white women needed to be protected from African American rapists and attempted rapists. Black men were painted as sexually deviant monsters. In fact, writer and politician
Rebecca Latimer Felton said, “If it needs lynching to protect woman’s dearest possession from the ravening human beasts, then I say lynch a thousand times a week if necessary.” Between 1880 and 1950, around 5,000 people were lynched, nearly 6 people every month for 70 years.

Jim Crow. During the Jim Crow era, white men used rape and rumors of rape not only to justify violence against African American men but also to remind African American women that their bodies were not their own. Here, once again, white men in positions of power over African American women, such as police officers and employers, used sexual assault and rape to dominate them. In early 1930 in New Orleans, a 14-year-old African American girl named Hattie McCray repeatedly fought off a police officer attempting to rape her. In response to her bravery, he shot and killed her. Patricia Hill Collins observed of this continuing practice, “No longer the property of a few white men, African American women [and girls] became sexually available to all white men.”

Legalized lynching. Next, America moved to the period of legalized lynching. It is during this time that we moved from extrajudicial execution—lynchings—to judicially enforced lynchings, also known as capital punishment. Here, courts applied what is best described as situational reasoning. If the accused was African American and the victim white, the jury was entitled to draw the inference, based on race alone, that he intended to rape her. This helps to explain very troubling sentencing patterns. According to the U.S. Department of Justice, between 1930 and 1972, 455 people were executed for rape, and 405 of those were African American. Moreover, according to the Wolfgang and Riedel study, African American defendants whose victims were white were sentenced to death about 18 times more frequently than defendants in any other racial combination of defendant and victim. Notably, no white man has ever been executed in the U.S. for the non-homicide rape of an African American woman or child.

A 1983 study concluded that African American men convicted of raping white women receive more serious sanctions than all other sexual assault defendants. Another study in Dallas found that the median sentence for an African American man who raped a white woman was 19 years, whereas a white man who raped an African American woman received a 10-year sentence. Furthermore, African American defendants are subjected to a disproportionate number of wrongful convictions for rape.

Statistically, African American women are much more likely to be victims of rape than are white women, and often they are subsequently re-victimized by the judicial system. If these facts don’t cause alarm, perhaps the truth will. In a 1971 study on judges’ attitudes toward African American rape victims, a judge was quoted as saying, “With the Negro community, you really have to redefine rape. You never know about them.”

The Imbalance of Justice

There is a heavy imbalance of justice between African American defendants accused of raping white women and white men accused of raping African American women. Despite changes being made to the current laws, the interpretation of the law or the law as it is applied has not changed. For instance, in Coker v. Georgia, the defendant was convicted of rape and sentenced to death. In 1977, the U.S. Supreme Court ruled that a “sentence of death for [the] crime of rape of adult woman was grossly disproportionate and excessive punishment forbidden by the Eighth Amendment as cruel and unusual punishment.”

Treatment of African American women victims of rape. Another imbalance of justice involves the trial experiences of rape victims. The case of Betty Jean Owens is a perfect illustration of this. Armed with
switchblades and shotguns, four white boys from Florida made a pact to “go out and get a nigger girl” and have an “all night party.” On May 3, 1959, four white males crept up to a car, pointed a shotgun at the driver, and forced the black students out of the car. After one fled and two were ordered to leave, Betty Jean Owens was left alone with the four white males and was forced into a car belonging to one of them. After the four males drove her to a different side of town, Betty Jean Owens was forcibly raped seven times. Later that evening, an officer found Owens bound and gagged, lying on the backseat floorboards. When he attempted to help Owens out of the car, she collapsed once her feet touched the ground.

Owens testified in front of an all-white jury, a prejudicial defense, and 400 witnesses who gathered in the courtroom. Not only was she violently raped seven times by her four attackers, she was also psychologically raped by the defense while testifying on the witness stand. Betty Jean Owens is a profound demonstration of an African American woman having a surplus of proof—confessions from her attackers, eyewitness testimony, and physical evidence—showing her white attackers’ guilt, but yet not receiving justice. Alternatively, in the case of the African American man serving a 100-year sentence, his accusers needed only the power of a white woman’s word to certify an African American man’s guilt.

Treatment of African American men accused of rape. Samuel Shepard, Walter Irvin, Charles Greenlee, and Ernest Thomas, known as the Groveland Four, were accused of raping a white woman in 1949. At the age of 17, Norma Padgett informed police she had been abducted and raped by four men. Greenlee, Irvin, and Shepard were charged, jailed, and beaten on the night of their arrest. Subsequently, an all-white jury sentenced 16-year-old Greenlee to life in prison, while Irvin and Shepard, both World War II veterans, received the death penalty. Unlike the other three men, Ernest Thomas was shot to death before he could be charged or tried for the alleged crime. Prior to his death, Thomas was “hunted for more than 30 hours . . . by an armed, deputized posse of approximately 1,000 men with bloodhounds.”

Irvin’s and Shepard’s appeals reached the U.S. Supreme Court, which upon review, ordered a retrial. Instead of following the judgment rendered by the Supreme Court, Sheriff Willis McCall handcuffed the two men, drove them to the countryside, and shot them. Although McCall would argue his actions were in self-defense, Irvin was wounded and Shepard died. When Irvin was retried, he was sentenced to death; however, that sentence was later converted to life in prison. Just one year after being released on parole, Irvin passed away in 1969. Greenlee was released in 1962 and lived until his death in 2012. Seventy years after the Groveland Four were wrongfully accused of raping a white woman, they received a pardon from Governor DeSantis, who labeled this tragedy a “miscarriage of justice.” Along with their posthumous pardon, the City of Groveland issued an apology to the men and their families.

In 2016, Malik St. Hilaire, along with another African American student from Sacred Heart University, was falsely accused of raping a white student, Nikki Yovino. Initially, Yovino claimed the two African American students raped her in a bathroom during an off-campus party. Investigators stated that they believed Yovino’s initial story and appeared to have witness statements to corroborate her claims. However, another student came forward to police and reported explicit text messages between Yovino and the two accused students. After being confronted by police, Yovino admitted to making up the story because she worried her “consensual encounter” with the two students would damage her relationship with a different student. Because of her lies, the two African American students were left to suffer the consequences of having been convicted in the court of public opinion. One of the male students lost his football scholarship after Yovino made the allegations, and both students withdrew from Sacred Heart University.
Even though a criminal trial was never held, the two young black males were given the excessive sentence of guilt before a thorough investigation was ever conducted. Even with Yovino’s lenient penalty for falsely reporting a crime, these two young men’s lives have been forever altered because the color of their skin was different from that of their wrongful accuser.

The “presumption of innocence.” These examples illustrate a legal shorting when it comes to the legal concepts of “presumption of innocence.” The “presumption of innocence,” not expressly enumerated in the U.S Constitution, comes from the Bill of Rights. The general theory is that every defendant charged with a crime is presumed innocent until proven guilty beyond a reasonable doubt. However, by preconceived notion, a man of color accused of rape, by a white woman, is presumed guilty beyond a reasonable doubt. In the case of a white man accused of raping an African American woman, the presumption of guilt shifts from the white defendant to the African American female victim. Here, there is a presumption that a woman is unchaste because the color of her skin is black. Alternatively, the standard applied to the white defendant is the presumption that he is innocent until the African American victim is proven pure, innocent, and deserving of the law beyond a white person’s reasonable doubt.

Inequity in application of the law. Research shows that laws and procedural mechanisms applied in cases involving African American men accused of raping white women void the presumption of innocence or apply a different standard of the law than in the case of a white man accused of raping an African American woman. In the case of Betty Jean Owens and others, the white attackers confessed to raping African American women. Even with the confessions of their white attackers and the detailed testimony of these African American victims, juries responded with leniency and mercy. The outcome in the cases of the Groveland Four, Gregory Counts, and VanDyke Perry, however, is that the word of their white accusers alone was sufficient to find them guilty of rape simply because they were African American men.

When it comes to rape, African Americans theoretically receive equal protection under the law but do not actually receive equity in the application of the law. Equality without equity provides a pathway for African Americans to continuously find themselves lynched and victimized by the justice system, time and time again. Although Emmett Till’s death was over 60 years ago, the physical slaughter and disregard for his body are emblematically carried out by the social and judicial nullification of African Americans’ lives today.

In 1955, the imbalance of justice prevented Till—whose eye was beaten from its socket, who was fatally shot, and whose body was weighed down by a 75-pound fan—from receiving justice. Today, the scales of justice continue to weigh down African American men; moreover, African American women are still beaten down by a judicial system that refuses to protect them under the law.

Conclusion

There are so many cases like that of our modern-day Emmett Till, who is serving a 100-year sentence for the rape of two white girls. Furthermore, there are also countless Betty Jean Owenses who have never come forward because of the presumption of guilt their race carries. Their stories, along with many others, represent the unchanged and recurring reinforcement of power and ownership when it comes to the bodies of African American women, accompanied by the presumption of guilt when it comes to African American men. When a woman comes forward with an accusation of rape against any man, the issue shouldn’t be the law treating her as it did when she was property because of her race. By altering the
application of the law, all women—especially African American women—should be seen as a human and therefore deserving of protection under the law.

A legal scholar once commented, “While white women have been spared at all costs, African-American women’s bodies have always been like a buffet for white men to have, and take, and come back as often as they wanted.” Both history and our present legal system prove this to be true.

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Trick or Treatment?
Confronting the horrific intersection of race, mental health, poverty, and incarceration in Louisiana.

By Hayden Carlos and Cameron Pontiff

Often, there is no clear line of demarcation between mental health care and incarceration. When race and poverty are added to the equation, matters are exacerbated. The authors posit that Louisiana’s treatment, or lack thereof, of the mentally ill and those made vulnerable by poverty or disability perpetuates a system of mass detention. As a solution, the authors advocate for (1) the bifurcated treatment of the mentally ill and those detained for crimes, (2) partnerships between state and community stakeholders who specialize in mental health advocacy and best practices, and (3) greater ethical and constitutional protections for these vulnerable Louisiana citizens. The ambitious goals of this piece will be accomplished by examining the tragic story of the late Lemon Howard as the backdrop for the larger discussion.

For many, the involuntary commitment process is the first “trick” leading to the purgatory of forced care that awaits the poor and mentally ill in Louisiana. In Louisiana, anyone, including the state, may institute judicial proceedings to involuntarily commit another person to a mental health facility. See La. Rev. Stat. § 28:54(A) (“The department or any person of legal age may file...a petition which asserts his belief that a person[, the respondent,] is suffering from a mental illness or substance related or addictive disorder and to be dangerous to himself or others, or to be gravely disabled because of the mental illness or substance related or addictive disorder”). The person against whom the involuntary commitment proceedings have been instituted (the respondent) must fight against the unfettered power of the state to retain his or her freedom. The state’s burden of proof to detain the respondent is lower in these civil proceedings than in a criminal proceeding. See State v. Golston, 67 So. 3d 452, 464 (La. 2011) (quoting Addington v. Texas, 441 U.S. 418, 431–32 (1979), and Foucha v. Louisiana, 504 U.S. 71 (1992), in holding that the “clear and convincing evidence” burden of proof for involuntary civil commitment to a mental institution is sufficient, whereas the standard in criminal proceedings is proof beyond a reasonable doubt). Because of the lower burden, the state may easily commit the respondent to a secure facility. See La. Rev. Stat. § 28:54(C)(2) (although the respondent has the right to be present at the hearing, to have counsel, and to cross-examine witnesses against him or her, the civil nature of the statute guarantees the respondent none of the due process rights constitutionally guaranteed to a defendant in a criminal proceeding); see Holmes v. King, 709 F.2d 965, 968 (5th Cir. 1983) (“The Fifth Amendment privilege against self-incrimination does not prohibit examination of an accused for the purposes of a routine competency determination.”). An example of a secure facility is the East Louisiana State Mental Hospital (ELSH), which looks and feels no different than a penal institution.

After the respondent is subject to the initial involuntary commitment proceedings and subsequently committed, the nightmare does not end—he or she is substantially likely to remain committed indefinitely. Although involuntary civil commitments are limited to 180-day intervals, extensions may be filed at any time before the expiration of the 180 days without limitation, which can result in an indefinite confinement (and often does). See La. Rev. Stat. § 28:56. In both the initial and extension proceedings, the state must prove by clear and convincing evidence that the respondent is mentally ill and dangerous to himself or herself or to others to comport with due process. See La. Rev. Stat. § 28:54(A). Disturbingly, the dangerousness component is generally met when the respondent has any criminal history. See Jones v. United States, 463 U.S. 354, 364 (1983) (holding that a finding, “beyond a reasonable doubt, [that a person] committed a criminal act certainly indicates dangerousness”); c.f. La. Rev. Stat. § 28:2(6)
(“Dangerousness to others’ means the condition of a person whose behavior or significant threats support a reasonable expectation that there is a substantial risk that he will inflict physical harm upon another person in the near future.”); La. Rev. Stat. § 28:2(7) (“Dangerousness to self” means the condition of a person whose behavior, significant threats or inaction supports a reasonable expectation that there is a substantial risk that he will inflict physical or severe emotional harm upon his own person.”). This deprivation of liberty is further compounded by physicians’ biases against the mentally ill. This arises when doctors analyze patient activity and identify seemingly innocuous activity as some evidence of a mental illness. Thus, the onus is on the respondent to prove that he or she is no longer suffering from a mental illness, which, for some, is an insurmountable barrier.

For the mentally ill who do not enter the maze through involuntary commitment, their “life sentence” awaits through arrest and incarceration. Louisiana courts have adopted and expanded the U.S. Supreme Court’s constitutional interpretations requiring mental health care in prisons. The Eighth Amendment of the U.S. Constitution has been interpreted to require medical care (see Woodall v. Foti, 648 F. 3d 268, 272 (5th Cir. 1981) (“[T]he Eighth Amendment imposes an obligation on prison and jail administrators to provide reasonable medical care for those who are incarcerated.”)), including mental health treatment, for incarcerated persons (see Gates v. Cook, 376 F. 3d 323, 343 (5th Cir. 2004) (explaining that “mental health needs are no less serious than physical needs”)). Nevertheless, many estimate that Louisiana penal institutions fail to provide adequate treatment to mentally ill persons in their care. This failure arises when prisons outsource mental health care of their incarcerated population to private companies. In other instances, it arises when no care is provided at all, when the mentally ill are solitarily confined until they are driven to commit suicide, inflict self-harm, or become incapacitated enough for prison officials to feel “safe” again. In a third scenario, this failure caused by unlicensed physicians who obtain a temporary or institutional permit, which allows them to practice medicine in prisons and state hospitals. See La. Admin. Code tit. 46, ch. 3. subch. H, §§ 397–402 (the Louisiana Board of Medical Examiners permits physicians who do not meet the requirements to be licensed to practice medicine in Louisiana—because of criminal history and the like—to obtain a temporary or institutional permit to practice medicine). African Americans are disproportionately and adversely affected by these shortfalls. See James M. Leblanc, Secretary, La. Dep’t of Pub. Safety & Corrections, Correction Servs., Fact Sheet (Dec. 31, 2018) (while African Americans make up nearly 33 percent of Louisiana’s overall population, they account for nearly 43 percent of Louisiana’s mental health patients and nearly 67 percent of the adult population in Louisiana’s Department of Corrections, including those incarcerated and in transitional programs). Implicit biases by both doctors and law enforcement lead to over-policing of the African American communities. Instead of treating the mentally ill and protecting the poor in these communities, law enforcement herd this unwanted population into detention centers to be exiled and abused.

This hamster-wheel “treatment” creates mass detention of the mentally ill by allowing some to be forced into the purgatory of ineffective treatment and solitary confinement—forgotten about for most of their lives. Indeed, that is exactly what seems to have happened to a young, African American man named Lemon Howard in the 1960s and continues today through stories relating similar facts but bearing different names—Cadarius Johnson, a 16-year-old, mentally disabled African American, accused of attempting to kill a police officer and charged as an adult for attempted first-degree murder of a police officer, despite his mental illness and youthful age; Anthony Tellis and Bruce Charles, two prisoners who suffer from mental illnesses and who brought a lawsuit against Davide Wade Correction Center in Homer, Louisiana, outlining the lack of mental health treatment, frequent unaddressed suicide attempts, and inhumane treatment (one claim is that “mentally ill prisoners were forced to kneel or bend down and bark like dogs to get food”); and Louis Fano, who was diagnosed with bipolar disorder, had a history of self-

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harm, was sent to solitary confinement, was ordered to stop taking antipsychotic medication, and was found hanged in East Baton Rouge Parish Prison. And there are countless others. See Raven Rakia, “New Orleans Wants to Make Its Notorious Jail Bigger,” Appeal, Apr. 15, 2019 (noting the untenable conditions at Orleans Parish Prison, where at least “28 suicide attempts” were made in January and February 2019).

These men’s stories are eerily similar, but Mr. Howard’s story—a tale of racial profiling, wrongful accusations, indistinguishable treatment from both mental health facilities and the penal system, and “treatment” rendered without informed consent first being obtained—demonstrates how horrific Louisiana’s “tricks” and “treatment” can be. Mr. Howard was born in Frierson, Louisiana, to a family of sharecroppers in 1940. Around the time Mr. Howard would have been in fifth grade, he quit school to assist his father on their farm. Mr. Howard’s prospects dwindled from there on, not only because he was an impoverished, African American man in the Jim Crow South, but also because he would be diagnosed with schizophrenia and mild to moderate “mental retardation.” The earliest documentation of Mr. Howard’s life is his involuntary civil commitment, initiated by his father, to ELSH in 1962. This commitment began shortly after Mr. Howard had been stabbed and left for dead and, thereafter, began experiencing night terrors and hallucinations. While at ELSH, Mr. Howard was subject to electroconvulsive therapy and, purportedly, admitted to nightmares and hallucinations about a woman. Investigators and doctors treating Mr. Howard believed that woman to be a wealthy, white female from Shreveport—Mary Booth. (Electroconvulsive therapy (ECT) “often works when other treatments are unsuccessful and can benefit pregnant and lactating women, seniors, people with limited tolerance to psychiatric medications and those who are at high risk of suicide. . . . During treatment, electric currents are passed through the brain, deliberately triggering a brief seizure that can reverse the symptoms of certain mental illnesses.” Baton Rouge General, Electroconvulsive Therapy.)

Mrs. Booth was murdered in December of 1960. The case went unsolved for two years. In the view of those involved in the case, officers in Shreveport needed to close the highly publicized case before a 1962 election. Some suggest that, to achieve this end, the Shreveport officers coerced Mr. Howard to confess to murdering Mrs. Booth. Based on his confession, Mr. Howard, a man with the mental capacity of an adolescent child and having the writing skills of a fifth grader, was indicted by an all-white grand jury and sent to jail to await trial. However, he was not prosecuted for Mrs. Booth’s murder. There is reason to believe that neither Mr. Howard nor his family received notice of the 1962 nolo contendere disposition, which means he and his family were of the belief that he was in custody because of a crime and not to receive mental health treatment.

Ostensibly, patients’ mental health and conduct should improve while receiving treatment at a mental health facility. However, in 1966, Mr. Howard was indicted for the murder of Edward Bergoyne, another patient at ELSH, while at ELSH. Consequently, Mr. Howard was sentenced to serve 12 years at Louisiana State Penitentiary (Angola) for Mr. Bergoyne’s murder. It is probable that Lemon may also have been wrongly accused of this second murder. Mr. Howard’s lack of improvement during his four years of detention at ELSH is concerning and speaks to what awaits too many of those under involuntary commitment.

Since his initial commitment at ELSH and while at Angola, Mr. Howard received treatment from Dr. Alfred Tucker Butterworth, chief psychiatrist at ELSH and clinical director at Angola, for his schizophrenia. Seemingly, Dr. Butterworth’s story is one of science fiction and horror; the tale of a man preying on the weak and vulnerable for his experimental pleasures—most notably, his fascination with
LSD experimentation on his nonconsenting patients. Despite his unethical and unorthodox practices, Dr. Butterworth maintained a positive reputation in the psychiatric community for his forward-thinking approach to psychiatry, which one columnist described as “good biases.” Gena Corea, “More Women Than Men Reside in Mental Hospitals,” Guardian (Wright State Univ.), Oct. 19, 1973, at 5. Indeed, Dr. Butterworth is quoted as recognizing a problem in mental health care that persists today: “Mental hospitals are often dumping grounds for society’s rejects . . . not because they have problems, but because society does.” Id.

Although the psychiatric community praised Dr. Butterworth for his progressive ideas, many of his former patients, specifically at Angola, described him as a “maniac.” Telephone interviews by Cameron Pontiff with former inmates of Louisiana State Penitentiary (Feb. 8, 2019, Feb. 14, 2019, and Feb. 18, 2019) (former inmates alleging that Dr. Butterworth inflicted inhumane treatment, including the use of antipsychotic medication and LSD on unsuspecting and non-psychotic inmates, as well as trading illicit drugs for sexual favors from inmates); see also A.T. Butterworth, “Some Aspects of an Office Practice Utilizing LSD-25,” 36 Psychiatric Q. 734 (1962) (describing Dr. Butterworth’s use of LSD 25 in psychotherapy); A.T. Butterworth, M.D., “Depression Associated with Alcohol Withdrawal,” 32 Q. J. Stud. on Alcohol 343–48 (1971) (documenting Dr. Butterworth’s use of Imipramine—an antidepressant known to cause possible nightmares, changes in urination, and excitement or anxiety—on unsuspecting alcohol detoxication patients at ELSH); see also A.T. Butterworth, M.D. & Robert D. Watts, M.A., “Treatment of Hospitalized Alcoholics with Doxepin and Diazepam,” 37 Q. J. Stud. on Alcohol 78–71 (1971) (documenting Dr. Butterworth’s use of unsuspecting patients in ELSH’s Alcoholism Treatment Service to study the effects of antidepressants in treating anxious-depressive symptoms); Alfred T. Butterworth, M.D., “Acceptance in the Therapeutic Situation,” 26 Psychiatric Q. 433 (1952) (suggesting that physician and psychopathic patients ought to create a bond bordering on a “conspiratorial alliance” to adapt the patient’s personality vis-à-vis how the patient’s disorder affects his or her ability to function in society).

Many of this “maniac’s” purported derogations from common psychiatric practices are best evidenced by Mr. Howard’s mental regression while under the unorthodox care of Dr. Butterworth. Seemingly, Mr. Howard’s mental regression while committed and incarcerated were caused by Dr. Butterworth’s mistreatment of patients and prisoners. Dr. Butterworth’s fascination with illicit drugs led to the suspension of his medical license in 1979—after he pled guilty to possession of marijuana and cocaine. See In the Matter of Alfred Tucker Butterworth, M.D. (La. State Bd. Med. Examiners Dec. 11, 1985) (consent order), https://apps.lsbme.la.gov/disciplinary/DocViewer.aspx?decision=true&fID=70783. According to former inmates familiar with Dr. Butterworth, this fascination was not merely personal. As learned in interviews with former inmates (noted above), Dr. Butterworth is known to have traded illicit drugs for sexual favors from inmates and used anti-psychotic medication and LSD on unsuspecting and non-psychotic inmates without first obtaining informed consent. Disturbingly, Mr. Howard exhibited long-term side effects of LSD usage while incarcerated at Angola—hallucinations and psychotic episodes—as well as side effects of Imipramine, which include possible nightmares, changes in urination, and excitement or anxiety. MedlinePlus, Imipramine. One is left to wonder whether Mr. Howard’s mental regression led to Mr. Bergoyne’s murder, which was committed while Mr. Howard was under the “care” of Dr. Butterworth.

After serving a criminal sentence, a formerly incarcerated person’s personal freedoms ought to be restored; however, Mr. Howard never had those freedoms restored. He was released from Angola for good time served in 1977 and returned to ELSH through civil commitment instituted by none other than
Dr. Butterworth. It is unclear whether Mr. Howard’s family was notified of this release, nor is it clear whether Mr. Howard was informed of a process to petition for his release from ELSH. The recommitment of Mr. Howard, nevertheless, constituted the end of any prospects of release. Mr. Howard remained at ELSH until 2003 and passed away a year later at the age of 64—after spending 41 years involuntarily isolated from his family and the rest of society. While Ms. Booth’s husband has a Masonic Lodge in his name in Shreveport, Mr. Howard has no legacy to be left behind—because of his status as a poor, mentally ill, African American man burdened with the stigma applied to those labels during his life. It is unclear why Mr. Howard was not released until a year before his death or why his family had minimal, if any, contact with him; but one thing is clear: Mr. Howard became a victim of Louisiana’s “trick or treatment”—a failed comingling of the mental health and penal systems in Louisiana.

Mr. Howard’s story is much more than the tale of an unfortunate individual tricked into the purgatory of forced care and mistreatment; rather, it speaks of all those subjected to Louisiana’s mental health and penal systems today. It speaks of physicians like Dr. Butterworth—who may have their license suspended or may practice medicine with a temporary or institutional permit. It speaks of no accountability for these violations. Mr. Howard is Louis Fano, who was diagnosed with schizophrenia, sent to solitary confinement without antipsychotic medication, and found hanged in solitary confinement. (See Melissa Fares & Charles Levinson, “Special Report: In Louisiana Jail, Deaths Mount as Mental Health Pleas Unheeded,” Reuters, May 31, 2018 (detailing the treatment of Louis Fano, who was diagnosed with bipolar disorder, had a history of self-harm, was sent to solitary confinement, was ordered to stop taking antipsychotic medication, and was found hanged in East Baton Rouge Parish Prison.) He is the more than two dozen suicide attempts documented at Orleans Parish Prison this year. (See Michael Kunzelman, “Law suit: Louisiana Prison Chains Suicidal Inmates to Chairs, Takes Away Their Clothes as Brutal Punishment,” Advocate, Feb. 20, 2018 (documenting a lawsuit against David Wade Correction Center in Homer, Louisiana, brought by prisoners Anthony Tellis and Bruce Charles, who suffer from mental illnesses, outlining, in their suit, lack of mental health treatment, frequent unaddressed suicide attempts, and inhumane treatment—one claim is that “mentally ill prisoners were forced to kneel or bend down and bark like dogs to get food.”).) He is Cadarius Johnson, who, according to prosecutors, will only receive the care he needs in a prison. (See Katherine Sayre, “A Louisiana Teen with Disabilities Needed Help, Why Was He Accused of Trying to Kill a Cop?,” NOLA.com, Mar. 12, 2019 (documenting the treatment of Cadarius Johnson, a 16-year-old, mentally disabled African American, accused of attempting to kill a police officer and charged as an adult for attempted first-degree murder of a police officer, despite his mental illness and youthful age.).)

But not all hope is lost. Louisiana is at the genesis of what can become progress. However, progression is not inherently tenable. See generally Open Letter from the Committee to Support Equitable Healthcare for All, Right Goal, Wrong Delivery: An Evaluation of a Proposal to Continue a Two-Tier Health Care System in East Baton Rouge Parish (Jan. 2019) (criticizing the proposal to privatize some mental health care in Baton Rouge through the Bridge Center). A systemic overhaul will trivialize problems if the systems remain indistinguishable. Without effective oversight during reconstruction of Louisiana’s mental health and penal systems, Louisiana’s trickery—disguising banishment of the mentally ill as treatment—will endure.

To guarantee effective change to the treatment of the mentally ill in Louisiana, three principles must guide decision makers: (1) Louisiana’s mental health system and penal system must be bifurcated; (2) greater ethical and constitutional protections must be implemented for these vulnerable Louisiana
citizens; and (3) to ensure these first two principles, partnerships between state and community stakeholders who specialize in mental health advocacy and best practices must be forged and nurtured. Instead of maintaining detention of the mentally ill and seeking “treatment” in a penal setting, Louisiana must take people out of the punitive environment and properly address the origin of their mental affliction. Evidently, a system of simultaneous punishment and “treatment” is merely a trick—a farce meant to mask unethical and horrific treatment of the poor and mentally ill. The mentally ill should not be placed with an incarcerated population. Due to “overcrowding . . . violence, enforced solitude . . . lack of privacy . . . and meaningful activity . . . and inadequate health services,” prisons encourage poor mental health. World Health Organization, Information Sheet: Mental Health and Prisons (2005). Responding to severe mental illness emergencies with incarceration only serves to perpetuate mental illness and violence. Justice will only be achieved for these vulnerable classes of persons when Louisiana separates its “treatment” from its “trick”—incarceration.

Whether Louisiana separates its “trick” from its “treatment,” current ethical and constitutional safeguards must be adjusted. Although civil respondents and criminal defendants are afforded different protections, the outcome for each is the same—possible indefinite detention. While criminal defendants must be proved guilty beyond a reasonable doubt before conviction, civil commitment respondents are subject to a less stringent standard—clear and convincing evidence that they suffer from a mental illness and are dangerous. This inequity is compounded by a difference in mental health treatment requirements. While the civil commitment defendant is guaranteed no effective treatment, the incarcerated person is guaranteed mental health treatment. Despite these guarantees, the mentally ill continue to be subject to cruel and unjust treatment in prisons and state hospitals. These failures are even more concerning considering Louisiana allows persons to treat the mentally ill without a medical license. The current “protections” for the civilly committed and incarcerated have been leaky stopgaps to the constitutional crises facing these populations. If Louisiana had adequate protections, Louis Fano would not have been found hanged in solitary confinement, Cadarius Johnson would not be waiting to be sentenced to prison to get life’s necessities, and Lemon Howard would not have been detained for over 41 years of his life without just cause.

The meaningful involvement of stakeholders who can ensure the use of best practices must be welcomed to ensure both effective bifurcation as well as constitutional and ethical protections. A current example exists: Baton Rouge has voted to allow a nonprofit to provide mental health services to persons with mental illness or addiction. Although this program’s board of directors is a diverse group of community leaders, the program should not, and does not, escape criticism. The partnership between the Bridge Center and the City of Baton Rouge seeks to address overwhelming concerns for incarcerated mentally ill persons and the lack of effective treatment for those involuntarily committed. However, before delegating its responsibilities to a private group, Baton Rouge must assure the community that this change is not a mirror image of the attempted and unprevailing past solutions and will effectuate the desired goal of constructive mental health care. Currently, neither Baton Rouge nor the Bridge Center has provided this assurance to the community, as it should, in specifically defined regulations and limitations for the Bridge Center.

The constitutional requirements for mental health care in state hospitals and prisons vary, providing hurdles to a clear understanding of the problems facing the mentally ill. To ensure effective and quality care, the community must be educated on these matters such that they may hold the partnership accountable when the government fails to do so itself. In 1998, the World Health Organization set out a target for improving mental health, stating: “By the year 2020, people’s psychosocial wellbeing should be
improved and better comprehensive services should be available to and accessible by people with mental health problems.” World Health Organization, Mental Health Promotion in Prisons (Nov. 1998). Contrary to these findings, in 2019, Louisiana’s “treatment” of the mentally ill in its prisons and state hospitals has not suitably improved. Furthermore, Louisiana fails to accurately account for its “treatment” of the mentally ill, causing difficulty in determining precisely how and where Louisiana’s “treatment” is merely a “trick.” See Substance Abuse & Mental Health Servs. Admin., 2017 SAMHSA Uniform Reporting System (URS) Output Tables for Louisiana (reporting that Louisiana claimed to serve 586 mentally ill persons in jails and 227 in an institutional setting); contra La. Dep’t of Pub. Safety & Corrections Div. of Med. & Mental Health, Briefing Book 149 (June 30, 2018) (reporting Louisiana’s claim to have over 1,700 persons suffering from a serious mental illness in its correctional population in 2017). Although Louisiana’s mentally ill population has grown exponentially, the availability of mental health services has declined. Worse, the services provided do not remotely satisfy national best practices. See Substance Abuse & Mental Health Servs. Admin., 2017 SAMHSA Uniform Reporting System (URS) Output Tables for Louisiana (reporting that Louisiana fails to meet even 1 percent of national best practices).

The time is upon us for lawmakers, stakeholders, and advocates to ensure that race, poverty, and mental illness are no longer prerequisites for Louisiana’s abusive trickery.

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