



Dictum

The newsletter of the NJSBA Young Lawyers Division

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Is There A Place for Lawyers In Public Life?

By *Emily S. Kelchen*

Young lawyers have a strong desire to give back. We are quick to donate to charitable causes, and many of us take on pro bono cases. But over the years there has been a steady decline in the number of attorneys, and in particular young attorneys, serving on local boards and as government officials. The nature of modern practice is often blamed for driving this trend, but it is also true that finding and securing these positions is not something most young attorneys know how to do.

As someone who has worked in government affairs for the past decade, and been involved with politics since I was old enough to walk in a parade, this is a topic I care a lot about. It also dovetails with my overarching goal for my year as chair of the YLD — getting young lawyers plugged into our profession. So, I thought I would share some thoughts on this topic and invite anyone who has questions about getting involved in public life or the State Bar Association to reach out.

All Politics Is Local

New Jersey boasts an astounding 565 municipalities, all of which have various councils, boards, and commissions that carry out the day-to-day work of running our government. Getting hired as counsel is a highly competitive process, but getting elected or appointed to serve as a public official is often quite simple.

I currently serve as Secretary of the Flemington Historic Preservation Commission because I needed approval to put a new roof on my house. I was not thrilled with the process, so when the chair mentioned there were open seats on the commission, I applied. I had an interview with the commission, did a phone call with the mayor, and that was that. My reappointment by a mayor of the opposite party was just as straightforward.

My experience is not unique. Getting involved with local government is often as simple as raising your hand to volunteer even if there is a veneer of politics coating the process. All you really need is a willingness to serve, and interest in the topic at hand. Being affiliated



Credit: Photo courtesy Emily Kelchen.

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with the same political party as the mayor can be helpful, but it is not a must.

Don't know where to start? Go online. Most municipalities have a list of boards and commissions on their website with vacancies noted. Others provide the list of board and commission chairs and you will need to reach out and see if there are vacancies.

Once you get your foot in the door, it is likely you will get asked to serve on other boards, or even recruited to run for office.

Serving at the State Level

If you have expertise in a particular area, serving on a state board or commission may be a better fit for you. The governor appoints hundreds of people to governing bodies as varied as the Interior Design Examination and Evaluation Committee and the Shellfisheries Council.

To serve in some roles you must have a particular credential, but many have a slot for a general member of the public. Positions may also be allocated by party, county, or region, so do your homework to make sure you qualify before you spend time applying.

Some of these roles require senate confirmation, but many do not. Nevertheless, it does not hurt to reach out to your state legislators and let them know you are interested in a particular board or commission. They can help you get information about the role and may be willing to put in a good word for you with the governor's staff.

Political involvement and affiliation play a larger role at the state level, but a willingness to serve is still the most important criteria. And once again, service on one board or commission will often draw the attention of policymakers and politicians who have other slots to fill.

Non-Political, Non-Profit Boards

If you prefer to stay away from politics completely, there are still plenty of ways you can serve your community. Local non-profits are frequently looking for new board members.

Many of them are eager to have a lawyer on their board, which can open doors for you, but it is also something to be wary of. Don't get yourself in a position where you are giving out free legal advice or putting yourself at risk of a malpractice claim.

It is also important to recognize that many non-profits expect their board members to contribute financially or lead fundraising efforts. If this is not something you are comfortable with, make sure you ask about the organization's expectations before committing to serve.

Find Your Seat at the Table

If you have a desire to serve, don't hesitate to put yourself out there. The public needs hard-working problem solvers to address the many challenges facing society. Attorneys can and should fill those roles.

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Building the Plane as You Fly: Three Ways Mid-Level Attorneys Can Practice to Win

By James A. Lewis, V

As you take off the training wheels and are no longer properly described as a “new attorney,” the consideration of what comes next can be both exciting and overwhelming. As a sprightly first-year associate, there appears to be plenty of guidance abound. Work hard. Be adaptable. Be mindful of the billable hour. Volunteer and strengthen your relationships with clients, partners, and colleagues through producing timely, impeccable work.

As mid-level attorneys, there is any number of titles and hats that can be donned: lateral associate, senior associate, non-equity partner, equity partner, bar association leader, spouse, parent, just to name a few. For this group of practitioners, the tried-and-true rules for success as a new attorney still apply. Hard work, tenacity, and adaptability remain the hallmark of success for attorneys at any stage.

As you approach that mid-range of your career, though, new risks and uncertainties come into play. The interplay of the familiarity of producing quality work product, exceeding client and partner expectations are now coupled with the innovations and design theories of charting your best career path — whether that means creating or developing a book of business, casting your sights toward in-house roles, entering public service, or leaving the practice altogether.

The metaphor of building the plane while flying it captures the pressure of flying the plane — managing responsibilities that may include pressing deadlines, colleagues, familial obligations — while simultaneously building it — i.e., being cognizant of opportunities for growth, forging a brand in alignment with one’s professional goals, and becoming a trusted member of one’s organization(s) and professional community.

Unfortunately, as distinguished from building a plane, there is no blueprint for creating a successful career in the law. Nevertheless, as with everything in the law, much can be learned from past precedent. Here are three tips that may help mid-level attorneys arrive as their best selves as practitioners and people.

1. Be comfortable with the process.

You’ve survived! Attrition is highest for associates in their third to sixth year of practice. It is a source of discomfort for some within the profession. From the perspective of management, this range is when attorneys are able to take on more responsibility and have absorbed the time and cost associated with professional, legal training.

In many ways, attorney reputations have already been forged over the course of this time and there are some indicia of who is being groomed for leadership. As a mid-level, it is important that when looking at the current leadership of your respective organizations that there is a critical assessment as to whether it is a good “fit.” Recognize whether performance-wise the mid-level attorney is meeting the increasing expectations of the organization. It is also important to recognize whether there is any stagnation in the mid-level’s development. Are there opportunities for growth? Is the attorney being given (or creating) opportunities for innovation? Keep a healthy, pragmatic perspective of current positioning. After all, with four years of undergraduate education, and three years of law school, by the time you reach your seventh year of practice, you’ve now only just spent the same amount of time practicing law as it took you to become a lawyer in the first instance. A career path is a journey, and often the steps taken over the course of what can be a long journey are just as important as the desired destination.

2. Remember, Teams Accomplish More than Individuals

Who is on your team? Whether through support staff, utilizing vendors, or creating synergies through networking and relationships — are you adequately delegating to your teammates? Are you top of mind as a referral source? Are you stepping up as a leader in the spaces where you are most equipped to manage responsibilities? This profession is exceedingly more difficult if success is attempted by individuals who operate as an island.

There is a wealth of information and guidance that is primarily accessible through mentorship (as both a mentor and mentee). As a mid-level, you have (or should have) something to contribute substantively to your area of practice, to your leaders in supporting their vision of success, and to those newer to the practice by virtue of being an exemplary attorney (or, at a minimum, helping the newer teammates navigate avoidable pitfalls in the early stages of their careers).

3. Be (Radically) Honest with Yourself

As advocates for truth, being honest is our ethical obligation. That candor has to be turned inwardly and be the primary guide in setting the coordinates for the professional future. In the first years of practice, it can be so busy that the opportunity for self-reflection can seem non-existent. This is why it is critically important that at that mid-level stage self-assessment is an intentional part of your practice. Are you in a space where you can learn to develop a book of business? Are your positive efforts recognized? Is staying with (or leaving) your current employer in your best professional interest? In assessing a potential move, are you doing so at the optimal time? Is your practice area contracting or expanding?

Ask yourself the hard questions (and prepare yourself for some hard answers).

Finally, when it comes to building the plane of your career, buckle in, and soar high!

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Avoiding PotHoles: Navigating the Marijuana Landscape in New Jersey Employment Litigation

By James A. Lewis, V

New Jersey has entered a new era as it relates to the regulations surrounding the beneficial use of marijuana in treating medical conditions. This new era, however, has introduced a complex intersection at the rights of employers and employees. This brief article will discuss recent developments in the law for employment counsel to be aware of and to otherwise familiarize themselves with in order to make sure they are most effectively navigating what may sometimes feel like a labyrinth of legislation.

Under federal law, marijuana is a Schedule I controlled substance. The Controlled Substances Act was passed in 1970 and defined marijuana as a drug with a high potential for abuse, no currently accepted medical use for treatment and lacking acceptable safety uses even under supervision. Because of this classification as a Schedule I drug, possession of marijuana is a criminal offense and the production or distribution of marijuana is a felony under federal law.

The case law discussing the issue of medical marijuana use in the employment space has been varied. In the District Court of New Jersey, *Cotto v. Ardagh Glass Packing, Inc., et al.*, held that: “New Jersey law does not require private employers to waive drug tests for users of medical marijuana.” The *Cotto* court then dismissed the plaintiff’s complaint for failure to state a claim.

On March 27, 2019, in *Wild v. Carriage Funeral Homes*, the Appellate Division of New Jersey determined that the New Jersey Compassionate Use Medical Marijuana Act did not require employers accommodate use of medical marijuana, however, under the New Jersey Law Against Discrimination accommodation may be required.

On March 10, 2020, the New Jersey Supreme Court affirmed the Appellate Division and ultimately held that an employee can sue under the NJLAD.

On July 2, 2019, the Jake Honig Compassionate Use Medical Cannabis Act was signed into law. This law amended and changed the name of the New Jersey

Compassionate Use Medical Marijuana Act. The statute previously provided that nothing in the law required an employer to accommodate an employee’s use of medical marijuana. However, as amended, CUMCA prohibits an employer from taking an adverse employment action based solely on the employee’s status as a medical marijuana patient.

The result is quite a sticky situation. For example, federal regulations and state law may collide. Specifically, under federal law if there is a prohibition such as for licensure under the U.S. Department of Transportation, this may lead to complex compliance issues related to the maintenance of licensure, insurability, and safety issues for the employee, the workplace and the public. In apparent recognition of this tension, CUMCA permits for action to be taken when, for example, there is a federal contract with a mandate for a drug-free workplace.

As these issues work their way through the courts, there are increasing concerns, twists and turns about best practices in navigating this new territory. For example, an employer was recently held responsible for reimbursing the cost of medical marijuana prescribed to manage chronic pain by the New Jersey Appellate Division.

The policy considerations on both sides of the issue are lofty. From the perspective of an employee, there are particularly sympathetic situations that involve individuals suffering from all manner of ailments, chronic pain, or cancer for whom medical marijuana may be an urgent need. Additionally, there are individuals who will argue the nature of their work or the performance of their job duties will not be negatively impacted by the use of medical marijuana.

However, from an employer’s perspective, there is likely a sense of concern over acutely safety-sensitive positions. For example, an individual entrusted with lives or who regularly handles hazardous, chemical materials, or a lifeguard at a community pool. The concerns among employers around marijuana use partic-

ularly in this space are challenging. This concern is likely magnified by the absence of a test or metrics to measure the exact level of intoxication from marijuana use.

It is obvious that the questions related to medical marijuana will present difficult and intriguing new law. Practitioners in the employment litigation space should be aware of the fast moving lay of the land and be mindful to share risks and emerging patterns with their clients. This is particularly true given the changing attitudes around marijuana which resulted in a 2:1 vote in November to legalize marijuana, and recent legislation establishing rules and regulations for legal cannabis sales. Operating in this uncharted territory may feel daunting, but delving into new legislation, and ever-developing case law will give you the unique opportunity to sojourn this new frontier. Try to enjoy the ride, while steering clear of those potholes.

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Endnotes

1. Civil No. 18-1037 (RBK/AMD) (August 10, 2018).
2. 58 N.J. Super. 416, 421, 205 A.3d 1144, 1146 (App. Div. 2019), aff'd but criticized, 241 N.J. 285, 227 A.3d 1206 (2020) (holding “that because the Compassionate Use Act declared it should not be construed to “require” an accommodation does not mean such a requirement might not be imposed by other legislation.”).
3. *Hager v. M & K Constr.*, 462 N.J. Super. 146, 225 A.3d 137 (App. Div. 2020).

Guardians Ad Litem of the Galaxy: S.T. Provides Some Clarity

By Matthew M. Nicodemo

The “galaxy” of guardianships in New Jersey Superior Court is, at times, confusing. For example, there is some ambiguity regarding court-appointed roles, including those of “guardian” and “guardian ad litem.” Indeed, newly-minted attorneys, seasoned practitioners, and sometimes even judges have conflated these two roles. A contributor to this ambiguity may be the imprecise language contained in Rule 4:26-2, which describes representation by a guardian and appointment of a guardian ad litem. There is, however, good news for those searching for clarity. A recent New Jersey Supreme Court decision may help to illuminate the distinction between the roles of guardian and guardian ad litem and further shed light on the somewhat nebulous “galaxy” of court-appointed roles.

On March 9, 2020, the Court rendered a decision in *S.T. v. 1515 Broad Street, LLC*. The case concerned an individual, S.T., who was injured after a falling object struck her head.¹ Following the incident, S.T. brought a negligence action against, among others, the owner of the building where she was struck.² Due to the severity of the injuries, S.T.’s counsel believed S.T. suffered from diminished mental capacity and, based on this belief, requested that the court appoint a guardian ad litem (GAL).³ A GAL was appointed and the court specifically authorized the GAL to accept or reject settlement offers on S.T.’s behalf.⁴ The GAL, utilizing the power granted by the court, accepted a settlement offer over S.T.’s objection.⁵ An appeal followed, where the Appellate Division affirmed.⁶ The New Jersey Supreme Court granted S.T.’s petition for certification where the decision was then reversed.

Two of the issues presented before the New Jersey Supreme Court were: (1) whether the court had properly appointed the GAL under Rule 4:26-2 to investigate the mental capacity of S.T. and to accept a settlement offer on her behalf; and (2) whether the court appropriately delegated the GAL authority to make legal decisions on S.T.’s behalf without first holding a guardianship hearing

under Rule 4:86.⁷ On these issues, the Court, ultimately, held that the trial court did not follow the requisite procedures found under Rule 4:26-2 and Rule 4:86 *et seq.*⁸ The Court specifically found “[n]othing in our court rules, or case law suggests that a guardian ad litem appointed to investigate a client’s alleged mental incapacity has the power to make legal decisions for the client before a judicial determination of her mental capacity.”⁹

In reaching its holding, the Court examined Rule 4:26-2(a) and found that “a guardian for a ‘mentally incapacitated person’ is authorized to prosecute a legal action on her behalf.”¹⁰ In contrast, the Court found “the role of a guardian ad litem for an ‘alleged mentally incapacitated person’ under Rule 4:26-2(b) is more limited.”¹¹ In particular, the Court found that this limitation means that when a GAL is appointed to an individual who is “alleged” to be mentally incapacitated, the GAL’s “function is to inquire into the individual’s mental incapacity.”¹² In other words, the key distinction the Court drew between the roles is that a guardian may litigate and make decisions on behalf of a ward who has been legally adjudicated to lack sufficient capacity, whereas a GAL acts in service to the court as an independent investigator who reports findings to the court as to his or her client’s mental capacity.¹³

In its examination of Rule 4:26, the Court offered a possible explanation as to why the lower courts may have made “interpretive mistakes.”¹⁴ The Court specifically noted that Rule 4:26-2 “is not a model of clarity” and, as a result, requested that the Supreme Court Civil Practice Committee review Rule 4:26-2 in light of its decision in *S.T.*¹⁵ The Court further noted “[o]ur jurisprudence, at times, uses the terms guardian and guardian ad litem interchangeably.”¹⁶

The *S.T.* decision helps to remove some, if not all, of the ambiguity in interpreting the roles of guardians and guardians ad litem in the New Jersey Superior Court galaxy.¹⁷ Perhaps we will see a proposed amendment to

Rule 4:26-2 that will bring further clarity. For now, however, *S.T.* offers strong guidance in the area for those who are searching.

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Endnotes

1. See *S.T. v. 1515 Broad Street, LLC*, 241 N.J. 257, 261 (2020).
2. *Ibid.*
3. *Ibid.*
4. *Ibid.*
5. *Ibid.*
6. *Id.* at 262.
7. *Id.* at 273-74.
8. *Id.* at 276. It is noted that the Court’s reasoning also included findings regarding an individual’s protected right of self-determination. For example, the Court’s opinion opens as follows: “An individual’s right to determine how best to pursue her personal and financial affairs – and the fate of her lawsuit – is so fundamental that it is embedded in our State Constitution and our laws.” *S.T.*, 241 N.J. at 261 (citing *In re M.R.*, 135 N.J. 155, 166-67 (1994)).
9. *Id.* at 279.
10. *Id.* at 278.
11. *Ibid.*
12. *Ibid.*
13. See *Ibid.* (citing *M.R.* 135 N.J. at 173-74).
14. *S.T.*, 241 N.J. at 277 n.9.
15. *Ibid.*
16. *Id.* at 278 n.10.
17. To those reading the endnotes: This is an acknowledgment that I’ve somewhat gratuitously attempted to tie back into the title. But, with that said, I realize it’s a bit of a stretch.

Book Review:

The Likeability Trap: How to Break Free and Succeed as You Are

By Victoria G. Nilsson

“An employer who objects to aggressiveness in women but whose positions require this trait places women in an intolerable and impermissible catch 22: out of a job if they behave aggressively and out of a job if they don’t.”¹ Our highly technological society has not had much influence on our social norms — women are still expected to be warm and communal while leaders are still expected to be ambitious and self-reliant. Herein lies the conundrum: What is expected of women is diametrically opposed to what is expected of a leader.

This Catch-22 of expectations is the lodestar Alicia Menéndez uses in her thought-provoking book *The Likeability Trap: How to Break Free and Succeed as You Are*. Menéndez presents examples to illustrate how women are missing the mark by conforming to likeability norms. She continues by suggesting that likeability is only one aspect of a leadership profile and is not sufficient to reach the top echelons on its own. Menéndez urges her readers to reimagine what it takes to forge a path to become a successful leader.

The Challenge: Likeability

Meet Laura. Hardworking and strives to lead (even though this goal is only ever mentioned on her vision board). She builds and manages strong team relationships, resulting in increased morale and productivity. She possesses self- and social awareness and leads by example. Laura is viewed as friendly and nurturing. Warm, but lacking the strength expected of a leader.

Meet Michelle. Hardworking and strives to lead (which she advertises wildly). Michelle is transparent in her needs and is never afraid to ask for something she wants. She stands her ground when she disagrees with something and is willing to take charge and make the hard decisions. Michelle is viewed as assertive and tough. Strong, but lacking the warmth expected of a woman.

While the Lauras can take steps to become more direct and assertive and the Michelles can balance the sweet with the aggressive, either approach places them in the likeability trap — a place women should avoid. No matter how much a woman adjusts her warmth and strength, Menéndez contends that it is a lose-lose situation. Performing at a high level while wanting to be liked by everyone will hold you back. For the Lauras and Michelles of this world, the hard truth is that it is impossible to be liked by everyone.

The Solution: Reimagining Leadership

While the normalization of women in leadership positions is changing rapidly in a positive direction, Menéndez notes that an equally important element of the leadership discussion is the ability to imagine *anyone* as a leader.

We are a diverse country — that is our differentiator. We have a workforce with a rich source of perspectives and experiences. Menéndez highlights how it is time to challenge the status quo and take our rich diversity into consideration when defining leadership. We need to “create space for those who do not conform to society’s expectations of who a leader is.” Continuing on a path where there is a conflict between the expected behavior of women vis-à-vis leaders is simply unsustainable. And likeability should not make or break a woman’s career.

Menéndez concludes by stating that the successful reimagining of leadership cannot solely be driven by women. While the rules are still being written, every member (individual and organization) must actively commit to embracing and valuing the development and advancement of women in leadership positions by accepting that women can succeed as leaders just as they are — no more, no less.

By weaving research with real-world examples, Menéndez’s treatise provides fresh perspectives on the current reality for women in the workplace. Additionally,

Menéndez provides valuable solutions for women as they navigate their careers, suggesting that it is a societal obligation to reimagine leadership.

The Likeability Trap:



Victoria G. Nilsson is a Deputy Attorney General with the New Jersey Office of the Attorney General. Any views and opinions expressed in this review are her own and do not represent those of the New Jersey Office of the Attorney General.

Endnote

1. *Price Waterhouse v. Hopkins*, 490 U.S. 228, 251 (1989).

Embrace Your Creative Side – The Intersection Between Law and Art

By Megan Knowlton Balne

Stress impacts everyone. However, stress levels in the U.S., compared to globally, are significantly higher. Further, it can be argued that stress levels among lawyers are high compared to other professions. Add a pandemic to the mix, and life as a lawyer can seem too much to handle.

Finding the elusive work-life balance can seem impossible. However, having an outlet is important and can be the key to maintaining a successful practice and fulfilling career. The arts are an excellent way to provide a release from the pressure of a legal career, improve your skill set as an attorney and provide a means to express yourself emotionally and creatively.

The arts is proven to reduce stress and anxiety. A Drexel University study, subsequently published in the *Journal of the American Art Therapy Association*, found that 45 minutes of creative activity significantly lessens stress in the body, regardless of artistic talent.¹ Young people in particular benefited from engaging in a creative activity, showing a greater decrease in cortisol levels, the biological indicator of stress. Whether music, visual arts, painting, theater, or dance, continuing artistic expression can make reduce stress and give balance to your professional life.

As a young lawyer today, having activities outside the profession also gives you a chance to connect with other people and maintain a robust network for your practice. Success in private practice is not just billable hours, it also involves business generation. The best way to build your book is to expand your network and have a diverse group of colleagues for referral sources. The arts are a fantastic way to meet a new group of people, bond with fellow attorneys who are also art lovers, and maintain connections with clients. What better way to bond with a client than invite them to a show you are performing in or an art exhibition with one of your pieces? Being involved in the arts allows you to have a personality outside of the law, and often times, the best lawyers are the ones who are real people with real interests, not just billable hours.

Finally, involvement in the arts gives you an opportunity to fine-tune skills needed for your legal practice. As an attorney, effective public speaking, problem solving and outside-the-box thinking can make the difference between winning and losing a case. By exercising your mind in creative ways, you think differently about legal issues, are able to pull key facts together to tell a compelling story, and can look at a case from various perspectives. Involvement in the arts — in particular theater arts — allows you to exercise your public speaking skills and perfect your delivery while giving you strategies to calm your nerves when the stakes are high. Finally, regular interaction with a diverse group of people makes you more well-rounded as an individual and better able to relate to your clients and colleagues.

As a lawyer who embraces the arts and the practice, know you are not alone. Many lawyers have a background and love for the arts in addition to their practice, and the personal blend of arts and the law has a long and consistent history. A few famous examples include Henri Matisse, who studied law and became a law clerk. Matisse also found a love of painting, and did not let his law practice stop him from producing some of the world's greatest art. Andrea Bocelli began his professional career as a lawyer, and performed in local piano bars on the side, before becoming a world-famous singer. Actor and comedian Ben Stein graduated top of his class from Yale Law, and practiced law, and became a law professor, for more than two decades before pursuing his acting career. These are just a few of many examples of people who pursued both the law and the arts.

While the demand on lawyers is high, do not let that demand squash your inner artist. Embracing your artistic side will lower your stress, hone important skills for your practice, and make you a more balanced, interesting and relatable person. There is a long line of successful people who blended their love of the arts with their career as a lawyer. Embrace your inner Matisse and enjoy bringing your legal career to the next level by utilizing your artistic expression.

Megan Knowlton Balne is a partner at Hyland Levin Shapiro, LLP and concentrates her practice in employment and commercial litigation. In addition, she founded her own theater company, Masquerade Theatre, and is an active participant in theater arts.

Endnote

1. tandfonline.com/doi/full/10.1080/07421656.2016.1166832?journalCode=uart20#.V2GKm-Yrl6g

Movie Review: *The Trial of the Chicago 7* Tells a Story of the Pursuit of Justice

By Jonathan Amira

In August 1968, seven men – Abbie Hoffman, Jerry Rubin, David Dellinger, Tom Hayden, Rennie Davis, John Froines, and Lee Weiner – participate in anti-Vietnam War and counterculture protests at the Democratic National Convention in Chicago that eventually explode into violence. Five months later, they are charged by the federal government with conspiracy, inciting to riot, and other charges related to bedlam at the protests. Aaron Sorkin's *The Trial of the Chicago 7* is the latest courtroom drama to show the audience what happened during those proceedings, masterfully edited between flashbacks that tell the witnesses' sides of the story simultaneously with testimony. While Sorkin takes a rote, traditional approach to the story structure with some dramatic adaptation, it's the sum of its parts that make *Chicago 7* among the best films of 2020.

The film opens with archival footage of the events leading up to the case as a product of its environment: The Civil Rights Movement, the escalation of the Vietnam War, and the assassinations of Sen. Robert F. Kennedy and Dr. Martin Luther King, Jr. In the aftermath of these events, Hoffman (Sasha Baron Cohen, *Borat Subsequent Moviefilm* [2020]), Rubin (Jeremy Strong, "Succession"), Dellinger (John Carroll Lynch, "American Horror Story"), Hayden (Eddie Redmayne, *Fantastic Beasts*), Davis (Alex Sharp, Broadway's *The Curious Incident of the Dog in the Night-Time*), Froines (Daniel Flaherty, "Skins"), Weiner (Noah Robbins, "Unbreakable Kimmy Schmidt"), and national Black Panther Party chairman Bobby Seale (Yahya Abdul-Mateen II, "Watchmen") are charged with multiple crimes and accused of inciting violence at the DNC protests. Attorney General John N. Mitchell (John Doman, "The Wire") appoints federal attorneys Tom Foran (J.C. MacKenzie, *The Irishman* [2019]) and Richard Shultz (Joseph Gordon-Levitt, *7500* [2019]) as the prosecution; both under pressure to perform well, despite legal doubts.

The defendants, minus Seale, are represented by civil rights attorney William Kunstler (Mark Rylance, *Bridge of Spies* [2013]), who struggles to maintain simpatico with his

clients, including the mischievous Hoffman, whose courtroom antics raise ire and amusement. Presiding over the case is Judge Julius Hoffman (Frank Langella, "Kidding") whose limited patience with the case creates further tension between the parties. Through these colorful interactions, we the audience are essentially shown different manifestations of each individual's common goal: Justice.

Chicago 7 is a welcome entry in the courtroom drama genre, taking proportionate views at all sides of the case, which carried on for over 150 days. Both written and directed by Sorkin, a veteran to courtroom drama with his play and adapted screenplay to *A Few Good Men* (1992), he uses flashbacks with testimony as a unique storytelling device. For example, Hoffman recounts the standoff as part of a stand-up/spoken word routine for supporters whilst intercut with flashback footage as it happened. Sorkin is one of the rare maestros of naturalistic dialogue, recognizing that human conversation is often, messy, verbose, and more often than not lacks finesse and seamless wit found in such films by Wes Anderson to Quentin Tarantino. Partly why *Chicago 7* feels refreshingly authentic at times, because it does not shy away from depicting major sequences of the trial, from both the dryly-routine to the vibrantly-chaotic. In many ways, the film has the same, familiar, theatrical aura that *Good Men* did, but insightfully expands its storytelling scope a bit more into the outside world than the former.

Complementing Sorkin's storytelling is the flawless editing by Alan Baumgarten (*American Hustle* [2013]). A common technique used throughout the film is presentation of the events as we see them, interspersed with testimony or narrative "in-the-moment." For instance, the aforementioned juxtaposition of Hoffman's standup routine and the violence of the protest, or the opening montage, which also serves as exposition to the defendants and the prosecutors as they "lawyer-up." The audience, sees, hears, and experiences these events in tandem. However, the strongest example comes from Hoffman's stand-up, due to the vividness of film's depiction of police brutality and Baron Cohen's flamboyant

performance. Also of note is Seale's "last stand" when Judge Hoffman, irritated with Seale's repeated acts of contempt, orders him removed from the courtroom, where he's beaten, and returned to counsel table, gagged and chained. These events occur interspersed with pained closeups of the parties in silence, profoundly cognizant of the injustice that occurred – a powerful moment, depicted without words.

Admittedly, it's difficult to critique a film as entertaining as *Chicago 7* is, but those who are more familiar with the events may take issue with how Sorkin portrays or condenses key moments for the sake of artistic license. Nathan J. Robinson of *Current Affairs* wrote: "Bobby Seale, the Black Panther defendant who was infamously bound and gagged in the courtroom when he continuously spoke out about the violation of his right to counsel, actually managed to repeatedly wriggle out of the physical restraints the government put on him; the film portrays the government as effective in silencing him."¹ Similarly, Arionne Nettles of the *Chicago Reader* received the film positively, but noted "...The film shows Seale being gagged the day after [Black Panther Party IL Chapter Chairman Fred Hampton] was killed, when he was actually gagged on October 29 and severed from the case on November 6."²

Matthew Dessem at *Slate* offered a comparison of some of the film's events and characters to the actual history and suggests Sorkin "plays pretty freely with characters and events to ensure his clockwork screenplay hits exactly the right beats in exactly the right order."³ Those who've done their homework may understandably be slightly perturbed by these alterations, but the narratives otherwise reach the same conclusion without seriously impacting entertainment value.

While the truth is always more interesting than fiction, it's hard to ignore the parallels between the events of 1968 surrounding *Chicago 7*, and the 2020 racial protests ignited by the killing of George Floyd. John Wiener, author of *Conspiracy In The Streets: The Extraordinary Trial Of The Chicago Seven*, in a Nov. 18, 2020, interview with National Public Radio coinciding with the release of the film, remarked, "I think what happened this summer is much, much better, much bigger and stronger and smarter than anything that happened in the '60s, including the Chicago convention protests." Wiener also adds, "One of the most important things is there weren't these kinds of splits in the demonstrations of the past summer. They were

very focused and very coherent...The SDS split into two factions which kicked each other out. The Black Panthers had a bitter rivalry with Ron Karenga's U.S. organization. We haven't seen anything like that with Black Lives Matter." Sorkin reportedly completed the screenplay to *Chicago 7* in 2007, but shelved it to focus on 2010's *The Social Network* and other projects. The happenstance of the film's release in the current socio-political climate profoundly amplifies the power of art – to hold a mirror up to our society, invite conversation, reflect on our values, and of course, entertain.

Chicago 7 is a straightforward, yet riveting experience, presenting internal conflicts with those on trial, and legal sleuthing with the attorneys. Sorkin crafts the material commendably, albeit with some concessions for narrative flow, making his thesis about the soul of America; where the right to protest and question the government exists when justice seems out of reach. Solid performances are also present, from the dramatic with Rylance and Abdul-Mateen, to the outlandish with Cohen and Strong. Sorkin's dual approach as writer-director supports the ensemble in full. Combined with the energetic editing, the sum of all its parts gives *Chicago 7* the necessary emphasis it needs to become the crowd-pleaser it ultimately wants to be.

As of this writing, *Chicago 7* is available to stream on Netflix.

Jonathan Amira is a special deputy attorney general/acting assistant prosecutor with the Gloucester County Prosecutor's Office and an unapologetic film buff. He is a graduate of Drew University with a B.A. in Psychology and Spanish along with a minor in Theater Arts, and he earned his JD at Rutgers Law School in Camden. The views and opinions expressed in this work are entirely his own, and do not represent those of the Prosecutor's Office.

Endnotes

1. Robinson, Nathan J. (October 22, 2020). "The Real Abbie Hoffman: Why it's impossible to Sorkin-ize the great revolutionary clown." *Current Affairs*.
2. Nettles, Arionne (October 19, 2020). "*The Trial of the Chicago 7* asks: What is worth standing up for?" *Chicago Reader*.
3. Dessem, Matthew (October 15, 2020). "What's Fact and What's Fiction in *The Trial of the Chicago 7*." *Slate*.

Marriage Story (2019): A Movie Review From a Legal Perspective

By Jonathan Amira and Samuel J. Berse

In 2014, the Centers for Disease Control and Prevention reported the median length for a marriage in the United States was 11 years, with 90% of all divorces settling out of court.¹ The nature of millennial marriages has continued the downward trend in divorces, which in contrast with baby boomers, notoriously spiked throughout the 1970s and '80s.² From that time period, divorce became a novel subject in American cinema, with films gaining significant critical and commercial success, like *Kramer vs. Kramer* (1979), *Mrs. Doubtfire* (1993), and *The Squid and the Whale* (2005); the latter directed by American filmmaker Noah Baumbach. Baumbach again touches on the subject of divorce with the ironically-titled *Marriage Story* (2019), taking a holistic view from commensurate perspectives of a young, ill-fated couple in their personal lives, and their lawyers navigating the contentious California family courts. *Marriage Story* offers a rare, equivocal look at the breakdown of a marriage, with an intimate perspective into the legal proceedings and personal struggles.

The story opens with Nicole (Scarlett Johansson, Marvel Cinematic Universe), an actress, and Charlie (Adam Driver, *Star Wars: Episodes VII, VIII, and XI*), a theatre company manager and director, narrating respective praises about each other's good qualities as husband and wife set to a quirky montage of their family life in New York City. At the narration's conclusion, the montage immediately ceases, revealing the couple anxiously sitting in mediation, waiting to read these compliments as lists prepared in advance as part of conflict resolution. In an unfortunate missed opportunity to resolve their differences, and get divorced before the situation became more contentious, Nicole becomes uncomfortable reading her comments aloud, and abruptly ends the session as the mediator was completely ineffective at maintaining further discussions. En route home, the couple agree to separate amicably without the need for lawyers, but their resigned behavior projects pessimism toward the audience if that will happen.

Although Nicole has a starring role in Charlie's new Broadway-bound play, she accepts a leading role in a Los Angeles-based television pilot, leaves Charlie's theater company, moves in with her mother (Julie Hagerty, *Airplane!* [1980]) in Hollywood, and takes their young son, Henry (Azhy Robertson), with her. Charlie remains in New York to oversee the transition of his play. At the suggestion of a friend, and needing guidance on her separation, Nicole consults with "renowned" family attorney Nora Fanshaw (Laura Dern, *Jurassic Park* (1993)). During the consultation, Nicole hopelessly admits her feelings of neglect and rejection over her relationship and accepts Nora's representation. During a visit to LA, Nicole serves Charlie with divorce papers,³ in an admittedly comical scene involving Nicole's mother and sister (Merritt Wever, Showtime's "Nurse Jackie").

Back in New York for rehearsals, and without legal representation, Charlie is interrupted by a call from Nora, who urges him to get an attorney or risk losing custody of Henry. Nora's sense of intense urgency gives the audience the impression she is tailoring the case to her own personal interests, namely "blowing up" the issues and lining her own pockets. All Nicole needed to do was send Charlie a proposed agreement outlining the terms Charlie and Nicole seemed to have agreed to, which if Charlie accepted, could have brought about a swift resolution to the entire process. However, now fearing that he may lose Henry, Charlie immediately flies back to LA and hires Bert (Alan Alda, CBS's "M*A*S*H"), who, unlike Nora, wants to take the case toward a more equitable resolution, but lacks Nora's aggressive advocacy.

There is a frequently used adage by attorneys that mediation is successful when the parties reach an agreement but neither party is left particularly happy. Frankly, the focus should be on both parties being happy, which could definitely occur, as it did, in this case. The problems the couple faced were by-and-large atypical and laser-focused: they simply disagreed about where they would live following the divorce, and thus, at issue was

physical and legal custody of Henry. They did not have financial issues, psychological presentments, or other severe physical or emotional traumas that are commonly present in divorces.

Another popular adage is essentially distilled to “So what?” In the context of their divorce, assuming everything Nicole said was true and everything Charlie said was true, where does that get them? At the center of their fighting was the question of where the parties would live and with whom Henry would reside. Given the factual underpinnings, the answer to this question is actually simpler than it seems thanks to practicality and common sense. Of the unsavory options in front of him, Charlie needed to choose the one he felt was most palatable. Just as Nicole was not ready to come to terms in the beginning, Charlie was now the one not ready to decide his fate.

The parties again attempted settlement negotiations, this time with attorneys, but upon hitting another impasse, Charlie replaces Bert with the formidably zealous Jay (Ray Liotta, *Goodfellas* [1990]), and the case moves to court. At the first hearing, Nora and Jay use their respective clients’ flaws as unsavory behaviors to paint damning character assassinations. The couple is shell-shocked by these exaggerations; displayed vividly by the camera cutting dynamically between their subdued, pained faces, contrasted by their attorneys’ hostile expressions and animated gestures. In the first of the film’s two significant narrative climaxes, the couple realizes they have crossed a point of no return. With this sequence, *Marriage Story* takes an audacious shot at attorneys and the legal system for doing injustice and dragging out what should have been a simple divorce.

Marriage Story, although an objectively sad film, is not one without a gamut of emotions, handled beautifully by Noah Baumbach’s screenplay and direction. The main problem with depicting divorce on film is the narrative tendency to remain one-sided. In an accompanying featurette for Netflix, Baumbach, who also wrote the excellent screenplay, discusses the importance of his own empirical research, not just from his own marriage and divorce to actress Jennifer Jason Leigh (*The Hateful Eight* [2015]), but from friends, family, and through consultation with lawyers and judges. Here is where the film’s plausibility shines, as the depictions in the film feel so authentic and unforced.

As in *Marriage Story*, most divorces, though simple on their surface, entangle with tremendous emotions that are not easily resolved. The story does not demand

the audience pick a side, but gently observe and empathize with both parties. Refreshingly so, there are tender moments where Charlie and Nicole remain committed to one another, and yearn to remain civil, hence Baumbach’s terming of the film as “A love story through divorce.” These moments amid their legal mêlée; like Nicole offering and then giving Charlie a haircut after dropping off Henry, are where much of the film’s emotional resonance occurs for the audience, because after understanding and observing these characters, seeing them endure the painful parts of the divorce proceedings is objectively brutal and upsetting.

Regrettably, for those in our profession, the film shines the lawyers in an antagonistic light. Initially, a simple consultation between Nicole and Nora becomes a tearful, pseudo-therapy session, when Nicole makes a shocking revelation about Charlie. The unorthodox intimacy of the moment culminated in Nora taking off her shoes, cuddling up on the sofa next to her future client, embracing her, and exclaiming – “*What an asshole!*” Nora preyed upon Nicole’s vulnerability and became the first main antagonist in her phone call to Charlie.

On the other hand, Bert is mild-mannered, straightforward, and more professionally grounded, telling Charlie at consultation: “*Whether we win or lose, it will be the two of you having to figure this out together.*” Yet, Nicole’s charades impress upon Charlie a realization that he needs a greater-than-or-equal level of aggression in Jay, who at first consult, barely listened to what Charlie had to say, and proceeded to map out a road to fortune for his client, much to Charlie’s annoyance. The scene before court gives an interesting look at Nora and Jay’s cordial nature; common for many lawyers, but may reinforce the antagonistic perceptions for non-lawyers. The courtroom scene where Jay and Nora weaponize Charlie and Nicole’s flaws is both infuriating and upsetting and makes the audience realize simultaneously with the couple that neither of them wanted this.

In the film’s third act, a social worker comes into Charlie’s home to observe interactions between him and Henry, underscoring the awkwardness of the process for a divorcing couple. This scene served as a metaphor for the fact that every divorcing couple necessarily invites some number of total strangers into their lives, and it is these strangers who learn some of their most intimate personal details. Those strangers either help them make crucial decisions that may impact the rest of their lives, or in the case of the court, make those decisions for them.

Baumbach uses this awkwardness to great narrative advantage in one of the film's handful of comic moments.

New Jersey family law attorney, Maritza Rodriguez (Rodriguez Law Firm, LLC), believes *Marriage Story* can be appreciated on many levels, most notably, "The less-discussed personal aspects of divorce, such as how hard it is to go from sharing every holiday to having to split them up. [*Marriage Story*] also reminds us attorneys of how we must appear sometimes to clients when we're in our 'attorney mode' with our adversaries, whether it be in court, or in mediation."

Rodriguez specifically cited the Halloween sequence between Charlie, Nicole, and Henry as a "good example of how hard it is for parents to go from experiencing every holiday with their children to having to split them up. We take things like holidays a lot of times for granted, but in a divorce, they become a huge deal!" With respect to legal accuracy, Rodriguez mentioned, "it really depends" because every client in a divorce is always coming from different sets of circumstances. Nevertheless, because of this verisimilitude the film presents across the board, Rodriguez is currently using the film as a teaching tool about divorce, custody, and ethics, in her other profession as an adjunct family law professor.

Marriage Story while poignant, is also an insightful and, at times, humorous look at divorce from both the legal and the personal angles. It may be tough to watch for people who have experienced the nastiness of the divorce process, or some attorneys who may be irritated at the choices the filmmakers made portraying the legal aspects. Artistically-speaking, the film is masterfully acted, written, directed, a superb account of family drama, and one of the best films of 2019. In February 2020, the film earned six Academy Award nominations, including Best Picture, and won Best Supporting Actress for Dern's performance.

The 136 minute-length of the film is suitably paced and establishes a solid thesis that in the early stages of the divorce process, some people are not prepared to settle for a multitude of reasons. Every divorce is unique just as every person is unique. The process, despite not being perfect, worked for Nicole and Charlie – they were able to amicably resolve their differences and co-parent without needing to have their issues decided by a judge or arbitrator. As such, the lamentable fact it took long and expensive steps for both parties to reach a settlement, which included the sensible resolution of Nicole and Henry not returning to New York, is more reflective of human nature and emotion than it is of the family court system, which is by definition adversarial.

Marriage Story is available to stream on Netflix as an original production, and on DVD and Blu-ray from The Criterion Collection.

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Endnotes

1. Miller, Claire C. (December 2, 2014). "The Divorce Surge Is Over, but the Myth Lives On." *New York Times*.
2. *Id.*
3. In the State of New Jersey, Nicole could not personally serve Charlie. R. 4:4-3(a).

Why YLD

By *Diana-Marie Laventure*

I have been active with YLD for about three years. It's a great section of NJSBA because it has something for every young lawyer. If you're interested in speaking opportunities, then consider joining the YLD. The Seminar Committee is always looking for new topics and speakers. Since joining, I have organized and moderated a CLE presentation and a webinar and have spoken as a panelist. These speaking engagements allowed me to hone my presentation skills and to also network with other YLD members.

If speaking is not your thing, our newsletter publication *Dictum* welcomes contributions. There are also other ways to become involved, whether it's through one of our committees or by simply signing up to join one of our many events. Additionally, if you have an idea and/or want to see an event happen, the YLD appreciates new ideas. No matter what, there will be something here for you to enjoy and/or to assist with your career development.

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Legal Poetry

Wallace Stevens was not only a Pulitzer Prize winning poet, but he was a graduate of the New York Law School and a practicing attorney. Who says lawyers can't be creative? Check out some of these legally-themed haikus submitted to our *Dictum* staff. Do you have a legally-themed poem to share? Then send it in!

The Verdict

Breath held, tension high
Six faces stare, frozen still
Foreman answers – YES!

Zoom Argument

Camera up, waiting
Let in, connected, ready
Internet freezes