

THE MOTHER COURT

A NEWSLETTER OF THE SDNY CHAPTER OF THE
FEDERAL BAR ASSOCIATION

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**Ahn Le Kremer, President
Federal Bar Association**

ON THE RECORD WITH FBA NATIONAL PRESIDENT AHN LE KREMER

Diversity in the legal profession, the judiciary, and the membership of our association matters. We all know that we make better decisions when diverse voices from different backgrounds are part of the conversation. We foster public confidence in the legal profession and the judiciary when the American people see lawyers and judges who come from similar backgrounds in these roles.

FBA as a whole is taking steps to change the landscape of our leaders to ensure that our organization truly reflects the diversity of the American public and membership we serve. We have formed the D&I Standing Committee and created an [Action Plan](#) that the board of directors adopted in September 2020. As president, I am excited to work alongside the board of directors and the D&I Committee to continue to cultivate a diverse and inclusive federal legal community, and I implore you to join our mission and help build the future of the FBA.



On May 24, 2022, Wendy Stein, president-elect and Zara Watkins, vice president, represented the Federal Bar Association SDNY Chapter at the Network of Bar Leaders' Presidents' Dinner and Judge Harold Baer Jr. Award Reception.

Anh Le Kremer is the Chief Operating Officer and General Counsel at Nystrom & Associates, Ltd. She has been an active member of the FBA since the start of her legal career in 2001. Her involvement with the FBA began with the Minnesota Chapter, and she has served in numerous chapter and national leadership roles before being installed as National President in September 2021.

A MESSAGE FROM THE PRESIDENT

In Closing ...

Dear Colleagues:

As I enter the last few months of my presidency, I take note that our Chapter, and bar associations in general, have never been more relevant or important. In my October 2021 installation ceremony remarks, I stated, “As practitioners, jurists, and officers of the court we have an obligation to be at the forefront of the ongoing conversations about how the law in general, and federal law in particular, functions in our society.”

The Supreme Court’s seismic 2021-2022 Term—front and center of today’s political conversations and culture wars—is a great example. As officers of the court and students of jurisprudence, we are called upon to help our clients, neighbors, families and community at large navigate the increasingly complex legal landscapes. I am extremely proud of our Chapter’s successes in tackling some challenging issues, such as diversifying the SDNY magistrate judge bench or highlighting trailblazers in our profession. It was an honor to lead this association. Be on the lookout for our Fall issue coming in October!



**Nancy Morisseau, President
SDNY Chapter**



On May 23, 2022, the Federal Bar Association SDNY Chapter hosted two Bronx middle schools -- P.S. 71 Rose E. Scala and M.S. 45 Thomas C. Giordano – for a visit to the SDNY courthouse. Seventh and eighth grade students from the Rho Kappa National Social Studies Honor Society toured the courthouse; watched a portion of a bank fraud trial before Hon. John Cronan (USDJ); met with Hon. Ona T. Wang (USMJ) and Hon. Andrew Carter (USDJ); and had a pizza lunch with presentations from senior officers from the U.S. Probation Department.

AFTER Vaello Madero, THE FIGHT CONTINUES

BY: LÍA FIOL-MATTA



“[T]here is no rational basis for Congress to treat needy citizens living anywhere in the United States so differently from others” and the Court’s holding “is irrational and antithetical to the very nature of the SSI program and the equal protection of citizens guaranteed by the Constitution.”

On April 21, 2022, the Supreme Court delivered a strong blow to Puerto Rico by ruling that its neediest residents are not entitled to Supplemental Security Insurance (SSI). [U.S. v. Vaello Madero](#), 596 US ___ (2022), involved a challenge against the exclusion of otherwise eligible residents of Puerto Rico from receiving SSI, a national benefit for needy aged, blind, and disabled individuals. Vaello Madero, a disabled U.S. citizen, received SSI while living in New York and continued getting payments after relocating to Puerto Rico.

A few years later, the Social Security Administration revoked Vaello Madero’s benefits retroactively to the date he became a resident of Puerto Rico, because he was considered to be living outside of the United States. The government sued Vaello Madero seeking to recover \$28,000 in alleged overpayments. Vaello Madero disputed the liability, asserting that denying SSI to eligible citizens because they live in Puerto Rico violated the Equal Protection Clause of the Fifth Amendment.

AFTER VAELLO MADERO (Continued)

By an 8-1 majority, the U.S. Supreme Court reversed two lower court decisions which agreed, on an equal protection basis, that excluding otherwise eligible residents of Puerto Rico from SSI is “irrational and arbitrary.”

The Court rejected the view that Congress must extend SSI to residents of Puerto Rico as it does to residents of the States because the Territory Clause gives Congress the right to make that determination (“The Congress shall have the power to ... make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States...” Art. IV, §3, cl.2). In addition, the Court ruled, the government's argument that Puerto Rico pays insufficient federal taxes provides a rational basis for denying payments to otherwise qualified poor, disabled and elderly individuals.

Much of the disparate treatment of territories such as Puerto Rico stems from what are known as the *Insular Cases*, a series of Supreme Court decisions spanning from 1901 to 1922 that describe residents of the territories as “alien races” and “savage tribes” and in which the Court essentially invented the “territorial incorporation doctrine” under which the territories are only afforded “fundamental” rights. In *Vaello Madero*, Justices Neil Gorsuch and Sonia Sotomayor expressed hope that the Court will stop relying on the “misguided framework” of the *Insular Cases* when interpreting the Constitution and deciding what rights apply to the territories. Despite voting with the majority in *Vaello Madero*, Justice Gorsuch affirmed that, “[t]he *Insular Cases* have no foundation in the Constitution and rest instead on racial stereotypes. They deserve no place in our law.”

AFTER VAELO MADERO (Continued)

Justice Sotomayor, in a strong dissent, denounced the decision as “especially cruel” because Puerto Rico has a disproportionately large number of people who are elderly and/or disabled and 43.5% of residents live below the poverty line. In her words, “there is no rational basis for Congress to treat needy citizens living anywhere in the United States so differently from others” and the Court’s holding “is irrational and antithetical to the very nature of the SSI program and the equal protection of citizens guaranteed by the Constitution.”

While the effects of the *Vaello Madero* decision are devastating, civil rights advocates will continue fighting for the Insular Cases to be overruled and to ensure that the residents of Puerto Rico are treated as equal citizens, with the respect and dignity they deserve.

Lía Fiol-Matta is Senior Counsel for LatinoJustice PRLDEF. She is part of a team that filed an amicus brief in support of extending SSI to residents of Puerto Rico in the matter of *US v. Vaello Madero*. She also delivered the keynote address at a recent symposium held by the Columbia Human Rights Law Review on the “Future of the *Insular Cases*.”



CAPTION THIS: ETHICAL AND MORAL IMPLICATIONS IN NAMING PARTIES

BY: J. REMY GREEN (with Dr. Austin A. Baker)

Names of cases can be shorthand for legal principles. “*Brown v. Board of Education.*” “*Loving v. Virginia.*” “*Roe v. Wade.*”

Just hearing these names, a set of associations inevitably emerged. And some ink has been spilled on how, exactly, organizations pick their named plaintiffs for watershed cases.

That said, on a day-to-day level, many of us spend far less time thinking about how we name parties in our complaints. Ask a random lawyer and they’ll probably say “use a party’s legal name.” But, as Dr. Austin A. Baker and I have explained elsewhere, it turns out that the idea that people have a “legal name” is largely a myth — as some courts have put it, “there is no such thing as a legal name.” See Austin A. Baker & J. Remy Green, *There is No Such Thing as a Legal Name*, 53 Colum. Hum. Rts. L. Rev. 129 (2021).

So, what concerns ***should*** come into play when you craft a case caption? If you work linearly, it is the first thing you do in every document in litigation. Yet, it is poorly understood — and often bungled. Far too many times, we have seen advocates for transgender litigants, laboring under the legal name myth, deadname* their own clients in starting a case ***about discrimination***. But, it turns out there’s no reason to do that. As our own Judge John Keenan (SDNY) once explained, where a person routinely uses a particular name, for the purposes of a caption, that is enough to make that name their “true name.” *Rosasa v. Hudson River Club Rest.*, No. 96 Civ. 0993 (JFK), 1997 U.S. Dist. LEXIS 8115 (S.D.N.Y. June 10, 1997).

*Deadname[]—when used as a verb[]—refers to the use of the incorrect name [for a transgender person]. Courts addressing the issue have almost uniformly found the practice hostile, objectively offensive, and degrading.” *Stanley v. City of N.Y.*, 71 Misc. 3d 171, 184 n.5 (Sup. Ct., NY Cty. 2020) (cleaned up; collecting authority).

CAPTION THIS (Continued)

On the flip side, there are serious ethical implications to unnecessarily deadnaming parties (along with the obvious client-relation issues if they're your own client!). New York Rule of Professional Conduct 8.4 prohibits discrimination because of "gender identity or gender expression," and deadnaming is one of the offered examples of violation of New York City Human Rights Law § 8-102(23) in the [official guidance](#). In fact, judges *may* be required to take steps (up to sanctions and disciplinary referrals) to force lawyers to "refrain from manifesting, by words or conduct, bias or prejudice based upon ... sex ... gender identity, [and] gender expression." 22 N.Y.C.R.R. § 100.3(B)(5). Moreover, there is some meaningful ethical harm to using a name someone does not want. In fact, names don't just function as identifiers, names also allow us to communicate important social information to our communities (which can include our gender, race, religion, and familial relationships). Thus, when we deny clients agency in how we refer to them in captions, we deny them the opportunity to represent themselves authentically.

Bottom line: there is every reason to make sure your clients — and for that matter, your adversaries — are named in captions in the way that reflects how they hold themselves out to the world. And there is no reason not to.



J. Remy Green is a partner with Cohen & Green PLLC, specializing in civil rights, defamation, free speech, consumer rights, and voting rights litigation.



Dr. Austin A. Baker is a philosopher and cognitive scientist whose research addresses social prejudice through the interdisciplinary lenses of philosophy, psychology, neuroscience, and law.

**LIFETIME ACHIEVEMENT AWARD
PRESENTED TO
HON. DENISE COTE, SENIOR DISTRICT JUDGE (SDNY)**



On March 31, 2022, Federal Bar Association SDNY presented the Chapter's Lifetime Achievement Award to the Hon. Denise Cote, U.S. District Judge (SDNY) at the New York offices of Chiesa Shahinian & Giantomasi PC. Many distinguished guests including Second Circuit and current and former SDNY judges attended in person or appeared by zoom or video to pay tribute to Judge Cote.

CAPITOL HILL DAY 2022

On April 25 to April 28, 2022, the Federal Bar Association (FBA) held its annual “Capitol Hill Day” -- the FBA’s primary, non-partisan advocacy event. FBA leaders and members around the country met with members of Congress virtually and in-person to discuss, amongst other things, greater security for our federal judges and courthouses, additional federal judgeships, and establishing a specialized and independent Article I Immigration Court to serve as the principal adjudicatory forum under Title II of the Immigration and Nationality Act.



Top left: Virtual Meeting with Sam Schiller, Legislative Correspondent to Rep. Carolyn Maloney (D-NY-12).

Middle left: Virtual meeting with Arjun Ghosh, Legislative Aide to Kirsten Gillibrand, US Senator (NY).



Bottom left: Virtual Meeting with staff in Rep, Frank Pallone 's (NJ-6) office.

Bottom right: Virtual meeting with staff from the office of Cory Booker, U.S. Senator (NJ).





On March 21, 2022, the Federal Bar Association, SDNY and Washington State Chapters along with co-sponsors JAMS, National Alliance on Mental Illness (NYC), New York County Lawyers Association, Westchester County Bar Association, held a CLE program on how mental disabilities impact the prosecution, defense and disposition of cases, and how the federal courts can be more responsive.



On March 31, 2022, Jean Dassie, FBA SDNY Treasurer, represented the Chapter on a Network of Bar Leaders panel for law students providing insights and advice about the legal profession.

UPCOMING PROGRAMS

- **SEPTEMBER 7, 2022** - RULE OF LAW AWARD CEREMONY, ASSOCIATE JUSTICE SONIA SOTOMAYOR
- **SEPTEMBER 15-17, 2022** - FBA ANNUAL MEETING & CONVENTION (CHARLESTON, SC)
- **OCTOBER, 2022** - INSTALLATION OF FBA SDNY OFFICERS



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