



LEX BREVIS
WNE School of Law Newspaper

October 2020 Volume 48 Issue 2

3 **Brave New World: A Law Student's Perspective on Remote Lawyering**

Alex Cerbo

6 **How it works: Supreme Court Appointments**

Rachel Ferreira

8 **When In Doubt, Relax It Out!**

Marisa Marturano

9 **In the Legal Spotlight: Judge Amy Coney Barrett**

Julia Napolitano

11 **The Supreme Court's Rightward Shift**

Adam Caldwell

14 **Who Bears the Burden of the Eviction Moratorium?**

Jennifer Fields

Brave New World: A Law Student's Perspective on Remote Lawyering

by Alex Cerbo, Editor-in-Chief

There is no question that the Coronavirus Pandemic has changed the world, forever. In particular, the professional disciplines have had to adjust their way of operating on the fly. In March, when the stay at home order took effect, mostly all professional settings had to create an entire new mode of operation, serving client's needs remotely. Licenses for Zoom, Adobe, and other tele-networking programs were purchased by everyone as socially distanced, online meetings became the new normal.



This past summer I interned as a certified student practitioner with Rhode Island Legal Services. Most of my days were spent conducting client intakes, to determine eligibility for services, or, to follow up with clients over the phone to address specific concerns regarding the client's legal dispute. Although mainly administrative work, these phone calls have greatly improved my client interaction skills. However, with the courts closing down for the entirety of the summer, I was unable to represent clients in any in-person legal proceedings, which greatly frustrated me.

The experiences I've had with zoom counseling have taught me a few things: it's important to stay patient; technology is by no means perfect and can cause a lot of frustration; it's important not to let the technical glitches phase you; remain professional at all times; displaying frustration or any improper emotional response puts you in a negative light; remain patient with other people as we all have to adjust to this new way of lawyering and some are better adjusting to it than others; it is important that we not get frustrated with others who may not be as adept working remotely and help them where we can; even something as small as pointing out to them that they are muted when they are speaking goes a long way and is much appreciated by them; try to prepare ahead of time as best you can; make sure before you are about to log on to the zoom meeting that you are in a quiet, well-lit area and that you are professionally dressed; when speaking, do not interrupt and speak in a loud, clear voice so that everyone can hear you; make appropriate eye contact through the camera, and if you do not want others to see you, make sure your screen is either black, or, there is a professional photo of yourself.

If you keep these pointers in mind, I promise you working remotely will not be as painful as you feel it is. Finally, patience, in a world of instant gratification and convenience, is the key.



Upcoming Events at WNE School of Law

Federalist Society - General Interest Meeting
Tuesday, November 3 12:30 PM
Law Room 2 & Zoom

Federalist Society - General Interest Meeting
Wednesday, November 4 12:00 Noon
Law Room 1 & Zoom

Debriefing the Election—a conversation with faculty
Friday, November 6 12:00 Noon
Zoom

Retirement celebration for Professor Bruce Miller
Friday, November 13 TBT
Zoom

How it works: Supreme Court Appointments

by Rachel Ferreira

Staff Writer

Over the last few days, media outlets have been extensively covering the confirmation hearings of Amy Coney Barrett. As the process for appointing a new Supreme Court Justice is underway, we look to understand how exactly a United States Supreme Court Justice is appointed.

The United States Constitution, under Article II, Section 2 lays the groundwork for the process by stating that the President “shall nominate, and by and with the Advice and Consent of the Senate, shall appoint... Judges of the Supreme Court...” . When there is a vacancy in the court, the president, usually with the counsel of the Senate, nominates a candidate. When making a nomination there are various factors that the President considers such as the individuals political leanings, their professional qualifications, and their character, specifically their ability to remain impartial.

After the nomination is made, it is sent to the Senate Judiciary Committee. This committee holds hearings for various purposes including considering proposals, approving pending business, and judicial nominations. Prior to the hearing, the Senate Judiciary Committee typically collects records about the nominee and their background from multiple sources including the FBI. These records are the result of extensive background investigations which look into the nominee’s public and private affairs.

Once the hearings commence, witnesses are brought in to share their perspective. These witnesses are a mix of those who support and who oppose the nomination.

Throughout the course of the hearings, senators ask questions of the nominee to better assess his or her ability to dutifully perform the role of Supreme Court Justice.

The questioning of the nominee typically alternates between majority and minority members of the committee, which each member having equal time. At the conclusion of the hearings, which have historically taken a few months, the Judiciary Committee votes on the nomination.

This vote takes place, a few days after the conclusion of the hearings. The Judiciary Committee meets to determine their recommendation to be presented to the full Senate. The members vote and the result is a recommendation to affirm, reject the confirmation, or sometimes no recommendation at all.





The Federalist Society at
Western New England University School of Law

STUDENT CHAPTER
GENERAL INTEREST MEETING

Open to ALL Students at Western New England University
(Undergraduate and Graduate Students are also Welcomed to Join.)

TUESDAY - 3 NOVEMBER 2020 – BLAKE LAW CENTER

ROOM 2 @ 12:30 (Zoom ID: 243 209 7596)
ZOOM @ 5:00 (Zoom ID: 243 209 7596)

WEDNESDAY – 4 NOVEMBER 2020 – BLAKE LAW CENTER

ROOM 1 @ 12:30 (Zoom ID: 243 209 7596)
ZOOM @ 5:00 (Zoom ID: 243 209 7596)



by **Marisa Marturano**

Staff Writer

As the semester progresses, occasionally we might be focusing on a variety of issues that may run through our heads, such as: Did I finish reading for classes tomorrow? Are my notes organized? Is there a deadline for an assignment this week? During law school or even in a career, we can find ourselves overwhelmed, distracted and overly exhausted. As law students and attorneys, our minds are always racing due to constantly being busy and not having enough time. It is important that in our law studies and in the legal profession, we need to make time to enjoy life, no matter what the circumstances are.

There is a higher chance that studies and work can be efficiently completed by staying positive. The pandemic 's constant tension often puts hobbies on the back burner. The priority moves to completing tasks versus focusing on other aspects of life that make us happy. Being happy isn't a luxury in life, but it is a necessity for mental health. Keeping stress to a lower level aids in mindfulness, which in turn helps in remaining calm in stressful situations.

The American Bar Association is diligent in showcasing well-being and mindfulness posts. Maintaining a balanced mind and integrating everyday wellness is an important part of a professional career. We also need to reflect on ourselves in order to support clients and offer proper advice. It's a good idea to aim for a strong mental health and a positive attitude as remaining optimistic will also help you excel in the future. Your relationships with others will benefit from optimism as well as your focus will improve to complete deadlines in a timely manner. Although we can be overwhelmed in our lives by worrying about the next week, and the weeks beyond that, we need to do the work that's in the moment.

Take a break, step away from the material and restart when you're ready if you're feeling exhausted in the middle of the day. Receiving fresh air can also help jumpstart your mind. Life can be quite challenging at times, especially with the way the year has progressed. Also, with the pandemic, there are many ways in your spare time to remain mentally healthy. Virtually attending one of the various organizations at WNEU Law via Zoom can help you interact with other law students in areas of law with common interests.

At the end of the week, there should be an outlet to look forward to whether this is a hobby or extra free time. On the weekend, utilize time for reading for the following week. Spend time with family over a cup of tea or coffee talking about interesting topics in your classes this semester. Download a new app on your phone, whether it is the news or a fun game! Find another hobby you've always wanted to try.

Find an exciting new television program that will be something to look forward to when you have time. Depending on the day, several feelings can be felt by law students and lawyers, one of them being stress. If you feel stressed, bear in mind that it's a temporary feeling. In the long run, remaining optimistic can benefit any career-driven person. Relax and enjoy life overall when in doubt!



INTERESTED IN TRIAL WORK/LITIGATION?

*JOIN THE AAJ MOCK TRIAL
TEAM!*

Competition in March, 2021!

Tryouts:

When: November 5th-7th (individual timeslots will be selected on each of those days)

Where: Mock Courtroom

Why: Get comfortable in the courtroom and gain additional trial experience!

Contact: stephanie.busto@wne.edu

Email for more information and try-out case materials!

by **Julia Napolitano**
Staff Writer

Discussing President Trump's recent Supreme Court nominee, Amy Coney Barrett, with the presidential election right around the corner, everyone has a similar question: Who is Judge Amy Coney Barrett?

Amy Coney Barrett was born January 28, 1972. Judge Barrett serves as a judge on the U.S. Court of Appeals for the Seventh Circuit. She has been serving as a judge on the U.S. Court of Appeals for the Seventh Circuit since 2017. In addition, Judge Barrett worked as a professor of law at Notre Dame Law School, where she was recognized as "Distinguished Professor of the Year." Judge Barrett taught classes including civil procedure, constitutional law, and statutory interpretation. In September 2020, Judge Barrett was nominated to succeed Justice Ginsburg on the United States Supreme Court.

Judge Barrett was born in the state of Louisiana and is the oldest of seven children. Judge Barrett grew up in a practicing Catholic family, with her father serving as a deacon since the year 1982. Having a passion for leadership from a young age, Judge Barrett was nominated as student body vice-president in high school. After graduating high school, Judge Barrett pursued her Bachelor of Arts, majoring in English literature and minoring in French. After graduating, Judge Barrett went on to study law at the Notre Dame Law School, serving as executive editor of the Notre Dame Law Review, and graduating first in her class in 1997. Judge Barrett then began her legal career by serving as a judicial law clerk. She was a clerk first for Judge Laurence Silberman, and then for Justice Antonin Scalia of the U.S. Supreme Court.

Some of Judge Barrett's most popular action including co-signing a letter in 2015 that affirmed to the beliefs of the Catholic Church, stating that marriage and family are founded on the in dissoluble commitment of a man and a woman. Judge Barrett identifies as a textualist and an originalist, forming her opinion on the original public meaning rather the original intent of the law and cases she is responsible for.

Also brought to the spotlight during her confirmation hearings is a 1998 law review article she co-wrote about Catholic judges. The article expanded on the divergence of the legal system, and the Catholic church's moral teachings.

If Judge Barrett is confirmed to serve for the U.S. Supreme Court, she will be the fifth woman to serve on the court and the youngest justice confirmed since Clarence Thomas, in 1991. Judge Barrett was sure to articulate during her 2017 confirmation hearings, "I would never impose my own personal convictions upon the law."

Supreme Court justices are nominated by the President and confirmed by the Senate of the United States, as stated in the Constitution. The average number of days from nomination to final Senate vote (since 1975) is 67 days, while the median is 71 days. The Senate Judiciary Committee has scheduled a vote to approve Judge Amy Coney Barrett's nomination to the Supreme Court at 9 a.m. on Thursday, October 15th. It is predicted that the nomination will then be delayed for a week, per committee rules. If it happens as expected, the final confirmation vote for approval of her nomination will be the week of October 26th.



Photo by Rachel Malehorn - smugmug.com, CC BY 3.0



Dear Members of the University Community,
As members of a democratic society, we have the right and the freedom to vote. In my [video message](#), I encourage all of us to exercise that right and make our voices heard.



I add a special thank you to all who are volunteering in so many ways to encourage voter participation and facilitate the process of democracy in action.

With gratitude,
Robert E. Johnson
President

P.S. On November 6, at 12:00 noon our School of Law will host a presentation titled “Debriefing the Election—a conversation with faculty.” The event will feature Associate Dean Erin Buzuvis, Professor Harris Freeman, Professor Robert Statchen, and Professor Julie Steiner. Please visit our [University events calendar](#) to RSVP.

by Adam Caldwell
Staff Writer

Following Justice Ruth Bader Ginsburg's death on September 18, the Supreme Court subject immediately shot to the forefront of the campaigns for the upcoming elections. Up and down the ballot, from coast to coast, and across the ideological spectrum, candidates for office have pivoted to include the federal judiciary's composition into their campaign messaging.

Republican candidates have heralded the nomination of Judge Amy Coney Barrett as a culmination of their decades-long crusade to firmly shift American jurisprudence to the right on issues including abortion, healthcare, LGBT rights, guns, and all forms of regulations on businesses.

Meanwhile, Democrats have raised unfathomable sums of money from grassroots donors, telling supporters that the nomination and confirmation of Judge Barrett has dire implications for the future of civil rights, labor laws, and the environment. With the tragic death of Justice Ginsburg, the most fraught election season in memory was suddenly ratcheted up to a new fever pitch.

In the face of Judge Barrett's appointment to the Supreme Court, which many left-leaning voters consider a Republican power grab, liberal and progressive activists have begun to urge Democratic Senators and candidates to commit trying to add Justices to the Supreme Court. Faced with repeated questions on this issue, former Vice President Joe Biden has refused to take one position or the other. President Donald Trump and his surrogates have seized on this issue, telling their supporters that electing Democrats will lead to the installation of federal judges who will skew the judiciary far to the left.

How did the judiciary become such a volatile political football?

Since President Richard Nixon took office in 1969, Republican presidents have successfully appointed 14 Justices to the Supreme Court in their 32 years in the White House. Judge Barrett will likely become the 15th. In contrast, Democrats have held the White House for 20 years since 1969, and they have successfully appointed only four Justices.

This discrepancy has been the root of a significant rightward shift in the Court's majority opinions over the last five decades. Prior to 1969, the Supreme Court was helmed by Chief Justice Earl Warren. The Warren Court largely took an expansive view of the Constitution and the rights it grants to citizens. During this period, the Supreme Court ruled in *Brown v. Board of Education of Topeka, Kan.* to disallow segregation in public schools. It ruled that the Constitution guaranteed legal representation to defendants in criminal trials in *Miranda v. Arizona*. It ruled to disallow bans on interracial marriage in *Loving v. Texas*, and it ruled that a right to privacy is inherent to the 14th Amendment in *Griswold v. Connecticut*. The end of the Warren Court began the rightward shift that will culminate with Judge Barrett's probable confirmation.

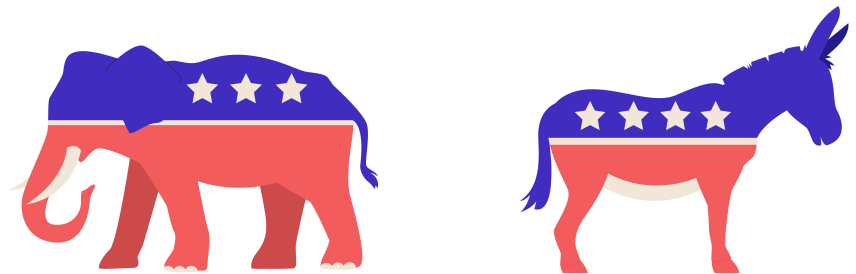
In recent years, the politicization of the judicial branch has increased. Ten years ago, the Court under Chief Justice John Roberts ruled in *Citizens United v. Federal Election Commission* that campaign contributions constituted free speech as protected by the First Amendment. This ruling set off a torrent of money being pumped into our elections on all levels of government.

In 2013, the Court's decision in *Shelby County v. Holder* invalidated a crucial part of the 1965 Voting Rights Act that required jurisdictions with history of voter suppression to get approval from the federal government before changing election laws. This opinion set off the spate of Voter ID laws and other policies that effectively suppress the votes of the groups of people the Voting Rights Act was written to protect. On the flipside, the Court has delivered opinions that have upheld the Affordable Care Act, granted a national right to marriage equality, and extended protections from discrimination to the LGBT community. These issues are all examples of the influence the Supreme Court has on all aspects of American life, and they have all worked their way into prominent places in the political discourse.

Judge Barrett's nomination has been so contentious because Democrats largely see it as an unfair power grab and a symbol of Republican hypocrisy. The history of Supreme Court seats over the last four years is well-known and well-documented. President Obama nominated Judge Merrick Garland to the Supreme Court about eight months before the 2016 presidential election. The Republican-controlled Senate refused to give Judge Garland a hearing, and many Senators refused to even meet with him. For almost a year, the Supreme Court operated with eight justices. President Trump was able to appoint Justice Neil Gorsuch to the Court, and he replaced the retiring Justice Anthony Kennedy with Justice Brett Kavanaugh. Even before the death of Justice Ginsburg, the perceived theft of the Scalia-Gorsuch seat and the installation of Justice Kavanaugh, who famously shouted about his love of beer in response to Senators' questions about sexual assault allegations, have angered liberals and progressives across the country.

Now, as the Republicans rush to confirm Judge Barrett before the election, politicians and voters on the left are worried that the Court's coming conservative lurch will institute new originalist readings of the laws that will run counter to the wants of a majority of Americans. Perhaps the leading concern is that a Justice Barrett will enable the Court to overturn *Roe v. Wade*, the 1973 ruling that guaranteed the right to abortion. A vast majority of the public favors *Roe* and does not want to see it overturned. *Roe* being in peril is but one example of anti-majority rulings a Supreme Court with a six-member conservative could hand down.

The confirmation of Judge Barrett represents a clash in ideology. As Republicans celebrate their potential new abilities to protect big business and strike down socially progressive rulings handed down by the Court, Democrats fear that the Court will bring about rapid erosion of civil rights and environmental protections that an increasing majority of the population favors. It is therefore obvious and expected that this confirmation process has been so intense on both sides of the political divide.



Bar Prep Course Features Checklist.

ABA
AMERICAN BAR ASSOCIATION™
Themis Bar Review was chosen by the ABA
as an official bar prep provider.

Get MORE with Themis Bar Review.

Themis Course Features	
Themis Students Pass the Bar Pass rates published every year.	✓
Straightforward Pricing Model No hidden costs. No cancellation fees. No binding contracts.	✓
Keep Your Study Schedule on Track with the Adaptive Calendar™ and Study Pacer™.	✓
The Science of Learning Only Themis includes principles of segmentation and retrieval for improved outcomes.	✓
Customize Your Studying Online flashcards that you can create by subject or subtopic, with premade flashcards included.	✓
Practice with “Real” Questions We offer NCBE-licensed questions from past bar exams.	✓
Gain Confidence with Unlimited Essay Grading from the same Dedicated Essay Grader throughout the course, featuring twice the number of assigned essays as other providers.	✓
Get the Support You Need from your Attorney Advisor, who monitors your performance and reaches out to you during bar prep with tailored test-taking tips and strategies.	✓
Start Studying Early with full course access up to four months in advance.	✓
Pay Over Time with an interest-free payment plan.	✓
100% Free Pass Guarantee Free repeat of next scheduled exam for first-time Themis takers.	✓

by Jennifer Fields

Staff Writer

Customarily a tenant has a legal obligation to pay rent to their landlord, but in March 2020, when COVID began spreading in the United States, that obligation was placed on hold. Charlie Baker, the governor of Massachusetts signed an executive order creating an eviction moratorium. This meant that landlords could not evict tenants who were unable to pay, this order has helped many people struggling to make ends meet after losing their jobs or facing other financial hardships due to the pandemic. The order was originally meant to end on August 18th, 2020; however, as the pandemic has continued, Baker has extended this order. It is now set to expire on October 19th, 2020 and Baker has no intention of renewing it. While there is still a federal moratorium in effect, this refusal to renew is a sign of hope for many landlords.

Although many tenants were relieved of a financial burden, the burden was placed on landlords who are now suing the state of Massachusetts. While tenants have been strongly encouraged to continue to pay rent if they can, some have chosen to take advantage of this as the act does not require proof of inability to pay. Marie Baptiste is one such small town landlord who has been adversely affected by this moratorium. Baptiste owns one rental property, and her tenants owe her more than \$20,000, but because of the moratorium she is unable to file eviction proceedings, so instead she is suing the state along with several other landlords.

Baptiste is a nurse and does not generate a lot of income on her own, so she relies on the money from her tenants to be able to afford her own bills. She is claiming that her tenants also stopped paying rent prior to the order; however, the case holds a more unique issue of to what extent can legislature that ordinarily would be held to violate the U.S. Constitution be deemed permissible in an emergency.

Baptiste alleges that this order is a violation of her 5th amendment rights under the takings clause. The takings clause of the 5th amendment states that no property shall be taken without compensation. Baptiste argues that removing the duty of tenants to pay was a taking for which landlords are not being compensated. The lawsuit also argues that this executive order violates the first amendment because it prevents landlords from sending certain notices, which they would usually send tenants who fail to pay.

This case brings up important questions of who is versus perhaps who should bear the cost of an emergency. The landlords are seeking injunctive relief from the moratorium, which has provided relief for so many struggling families, but they are struggling because of this moratorium. The landlords are not corporations but an immigrant nurse and a disabled Iraq War veteran, who are now unsure of what else to do after missing out on months of rental income. The Supreme Court held that an emergency does not give officials the right to ignore the constitution for the entirety of the emergency and this emergency has been going on for several months now. The plaintiff's Motion Preliminary Injunction was denied, and the parties now have until October 2nd to decide if the defendants will modify the order. This decision could affect how other cases regarding COVID related emergencies are dealt with, and it could change the relief the government is allowed to offer its citizens so as not to burden another group of citizens in its wake.



We want **YOU!**

Lex Brevis is always looking for new talent!

Submissions are welcome from day and night students, professors, administrators, alumni, the dean of the law school, you get the idea!

If you are interested in becoming a staff writer, have a great idea for the newspaper, or have captured awesome pictures of your law school community,

Email us at **LexBrevis@gmail.com**