

Remarks on Becoming the President of the New York City Bar Association

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Introduction

I must begin by thanking Susan Kohlmann for her leadership over the last two years. Two years ago, when Susan took over as president of the New York City Bar Association, she issued a call to action to confront the many crises facing our city, country, and world.¹ And over the last two years, Susan used the imprimatur of her position to respond loudly and clearly to these challenges.² At times, Susan presciently drew parallels between what has been happening in our world to her parents' experience in Nazi Germany.³ Those parallels remind us that we cannot become normalized to the attacks on our civic institutions and rights. Susan has left some big shoes to fill.

My bond to this association goes back twenty years to when I was a first-year law student. I came here to interview for the position of student research assistant with Steve Greenwald, the then-chair of the capital punishment committee. At that time, I was driving a livery cab in the evenings. I recall the anxiety I felt when I realized that I might be late for the meeting, but I couldn't find a free parking spot for the cab. Rather than dismiss me for being late, Steve waited for me. He interviewed me, and he hired me. If Steve had not been patient that day, perhaps, I would not be standing in front of you today.

It is here at this bar association that I had the privilege of working on committees with Norman Greene, Ron Tabak, Jeff Kirchmeier, Greg Camp, Jason Gould, Kate McMahon, Steve Buchman, and many other generous lawyers to whom I am indebted. They reminded me, through example, of the special obligation that lawyers have to practice law in service of the public good. In a lecture in this Great Hall in 2007, Judge Jack B. Weinstein—for whom I had the honor of clerking—emphasized that, in the practice of law, we cannot lose sight of empathy: the appreciation for the welfare of those affected by the law.⁴ He said: “[w]e must try to open a dialogue between the heart of the law and the hearts of those who seek justice....”⁵

¹ Minutes of the Annual Meeting, New York City Bar Association, at 16, May 17, 2022.

² See, e.g., Susan J. Kohlmann, “On the Humanitarian Crisis in Gaza,” March 29, 2024, <https://www.nycbar.org/press-releases/on-the-humanitarian-crisis-in-gaza-statement-by-new-york-city-bar-association-president-susan-j-kohlmann/?back=1&ref=media>; Susan J. Kohlmann, “The Attacks in Israel,” Oct. 12, 2023, <https://www.nycbar.org/press-releases/the-attacks-in-israel-statement-by-new-york-city-bar-association-president-susan-j-kohlmann/?back=1&ref=media>.

³ Susan J. Kohlmann, “On Lawyer Silence and Authoritarianism,” Dec. 12, 2022, <https://www.nycbar.org/blogs/on-lawyer-silence-and-authoritarianism-by-susan-j-kohlmann-president/>.

⁴ Jack B. Weinstein, “Notes for the 58th Benjamin N. Cardozo Lecture,” at 315, *The Record* (Vol. 63, No. 2) (2008).

⁵ *Id.* at 347.

I am grateful to the many family members, friends, and colleagues from my firm, Patterson Belknap, here tonight. I am honored by your presence.

My wife Leila, who is here, is a model of patience, empathy, and kindness. While juggling her own career and raising our three wonderful children (Zafr, Salma, and Kareem), Leila somehow finds the energy to help kids in foster care. And mothers struggling to get their lives together after being re-united with their children. And refugees who recently escaped brutality in Afghanistan. I can go on. She receives her inspiration from her parents Claire and Barry Nelson who are also here tonight.

Perhaps no one has been looking forward to tonight's event more so than my parents, Munir Fatima Faridi and Ashraf Faridi. I am humbled by their struggles in coming to this country to make a better life for their children. I admire their bravery and fortitude in leaving behind their home country, family, and friends to build a new life in a country far and very different from home. My father so badly wanted all of his friends in Pakistan to see me tonight that he asked half of our ancestral village to apply for visas at the U.S. Consulate.

My sister Aisha and my brother Salman and my sisters- and brothers-in-law have given Leila and me steadfast support, and they are excellent role models to our children and their cousins, many of whom are here tonight—Imaan, Ali, Parker, Lilly, and the newest addition to the list of cousins, Safa.

Priorities as President

We live in a challenging and troubling era. There is global conflict and upheaval in our own country; the rise of nationalism and white supremacy; the assault on the rule of law, democracy, reproductive rights, and voting rights; and the attacks on our brothers and sisters in the LGBTQ+ community. With so much happening in our world, it has been difficult for me to identify my priorities as this association's president for the next two years. The list of barriers to equal justice and due process is long, and our time and resources are limited. Luckily, as a result of the association's illustrious history, the position of presidency offers a bully pulpit.

Over the next two years, I will continue to support the work that my predecessors started, support the work of our committees and task forces, and continue to advance the association's mission. In doing so, there are three areas that I believe warrant special attention tonight and where I think we can together make a meaningful difference in the next two years.

The First Priority—A New York State Court System for the Future

The first area is to deal with the shortage in the number of Supreme Court justices in our state's court system. The shortage stems largely from the constitutionally prescribed method that limits the number of justices in each judicial district. To address the backlog at the Supreme Court level, our court system ends up "robbing Peter to pay Paul"—placing criminal, family, and civil court judges into the Supreme Court on an "acting" basis, which further depletes the much-

needed resources at the lower courts.⁶ We need to develop a modern, evidence-based method for assessing judicial needs throughout the state.

Although complicated and controversial, we also need to reevaluate the need for the eleven separate trial courts that we have in our state. This maze of courts often causes a single dispute to be litigated across multiple tribunals.⁷ In my view, the process delays the administration of justice and drains our state's resources.

The fragmentation and backlogs erode the public's confidence in our judiciary and, with that, in the rule of law.⁸ The people of our state and the businesses that litigate their disputes here deserve a modern court system. For too long, ideas to meaningfully reform our courts have arrived with great fanfare then quietly fizzled before any changes can be made. The association's Council on Judicial Administration has already begun to do the hard work. We need to stay the course until real change is made.

The Second Priority—A More Diverse Profession for the Future

The second priority is a more diverse profession for the future. The list of people who have stood in this Great Hall to implore the profession to do more on this front is long. It includes Conrad Harper, whose efforts in the late 1980s led to the issuance of the precedent-shattering Statement of Diversity Principles in 1991;⁹ Ruth Bader Ginsburg in her 1999 lecture on affirmative action;¹⁰ and Eric Holder in his 2001 lecture titled “The Importance of Diversity in the Legal Profession.”¹¹

⁶ New York City Bar Association, *Repeal the Cap and Do the Math: Why We Need a Modern, Flexible, and Evidence-Based Method of Assessing New York's Judicial Needs* (Sept. 2023), <https://s3.amazonaws.com/documents.nycbar.org/files/NYCBARReportRepealTheConstCapOnJudges.pdf>.

⁷ As the Fund for Modern Courts points out, the “burden of this fragmented treatment of related cases is often borne by families, which might have to appear in Family Court for a custody or support proceeding, in Criminal Court in a domestic violence case, in Housing Court if the family falls behind in paying its rent, and in Supreme Court if one of the spouses seeks a divorce. All of these matters might stem from the same basic core of problems, yet, because of the jurisdictional limitations on the authority of the various trial courts, the matters are heard in a disjointed manner, by multiple judges in multiple courts.” The Committee for Modern Courts, *Court Simplification in New York State: Budgetary Savings and Economic Efficiencies* (2013), <https://moderncourts.org/wpcontent/uploads/2013/10/CourtSimplificationinNewYorkState73112.pdf>.

⁸ As Judge Raymond J. Lohier recently explained, “[a]ny loss in confidence in what we do ... makes the rule of law somewhat more vulnerable and detracts from the legitimacy of what we do.... And part of the problem is that when you have that loss of confidence in the court system, people resort to other means to resolve those matters that are properly or historically within the realm of the judiciary.” David F. Levi, Raymond J. Lohier Jr., Diane P. Wood, and Jeffrey S. Sutton, “Losing Faith: Why Public Trust in the Judiciary Matters,” 106 *Judicature* 2 (2022).

⁹ New York City Bar Association, Statement of Diversity Principles (1991), <https://www.nycbar.org/serving-the-community/office-for-diversity-and-inclusion/statement-of-diversity-principles/>.

¹⁰ Ruth Bader Ginsburg, “Affirmative Action: An International Human Rights Dialogue, The Benjamin Cardozo Memorial Lecture (1999),” in 21 *Cardozo L. Rev.* 253 (1999).

¹¹ Eric Holder, Jr., “The Importance of Diversity in the Legal Profession, The Benjamin Cardozo Memorial Lecture (2001),” in 23 *Cardozo L. Rev.* 2241 (2002).

Progress has been made over the last few decades, with much thanks to the efforts of the various pipeline and fellowship programs of this and other associations, private law firms, and in-house law departments. Our association’s Office for Diversity, Equity, Inclusion and Belonging, which was set up twenty years ago, has helped with the strides we have made in fostering more diverse and inclusive environments.¹²

Notwithstanding the extraordinary efforts, diversity in the legal profession still falls far behind in comparison to other professions. Only 19% of the attorneys in our country are considered minorities. In comparison, minorities make up 36% of physicians and 30% of dentists.¹³ The numbers are even more striking in law firm partnerships. Only 12% of law firm partners are minorities, and just 28% are women.¹⁴ These numbers confirm that we have a lot of work to do. If we want the public to have confidence in our system of justice, then the faces that represent the profession have to better reflect the diversity of our society.

Unfortunately, the efforts for a more diverse and inclusive society are under attack.¹⁵ The backlash is predicated on the false belief that people succeed or fail on their own merits and that past inequities and biases do not have any impact on the outcome. But now is not the time to retreat. It is time to re-affirm our commitment to diversity, inclusivity, and equity.

On the front-end of the process, law schools need to continue to improve their outreach to diverse candidates. And they need to reevaluate admissions criteria—such as standardized testing and legacy preferences.¹⁶ Law firms need to recruit from a wider array of law schools, and question elitist tendencies, as the data show that “the advantage of higher [LSAT] and academic pedigree diminishes rather than compounds over time.”¹⁷

As Conrad recently observed, “it is easier to recruit than to retain and easier to retain than to advance.”¹⁸ Employers need to train and nurture diverse lawyers with the tools to advance in

¹² New York City Bar Association, “Who We Are,” <https://www.nycbar.org/diversity/>.

¹³ See Katharine W. Fogarty and Alexandra Lynch, “A Push for More Progress: Increased Diversity in the Legal Profession,” *Legal Intelligencer*, Oct. 7, 2023. Consider also the data showing that while Black Americans comprise of 13.6% of the U.S. population, they comprise only 5% of the legal profession. Latinos make up 19% of the population, but comprise only 6% of the profession. And women comprise 50.4% of the population, but comprise 39% of the profession. See United States Census Bureau, *Quick Facts* (July 1, 2023), <https://www.census.gov/quickfacts/fact/table/US/PST045223>; American Bar Association, *ABA Profile of the Legal Profession 2023* (November 2023), at 22–24, <https://www.americanbar.org/content/dam/aba/administrative/news/2023/potlp-2023.pdf>.

¹⁴ National Association for Law Placement, 2023 Report on Diversity in U.S. Law Firms, at 8 (2024), <https://www.nalp.org/uploads/Research/2023NALPReportonDiversityFinal.pdf>.

¹⁵ See, e.g., *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 143 S. Ct. 2141 (2023).

¹⁶ See New York State Bar Association, *Report and Recommendation of the New York State Bar Association: Task Force on Advancing Diversity*, at 86 (Sept. 2003), <https://nysba.org/app/uploads/2023/09/NYSBA-Report-on-Advancing-Diversity-9.20.23-FINAL-with-cover.pdf>.

¹⁷ Michelle Weyenberg & Jack Crittenden, “How Elitism Is Killing Us,” *Nat’l Jurist*, Sept. 12, 2023, <https://nationaljurist.com/national-jurist-magazine/elitism-part-2-why-do-law-firms-focus-on-elite-schools/>.

¹⁸ Simpson Thacher, “A Conversation with Conrad Harper,” June 2021, <https://www.stblaw.com/docs/default-source/related-link-pdfs/a-conversation-with-conrad-harper-june-2021.pdf>.

the profession. Law firms need to actively look to promote diverse lawyers into partnerships, help them develop business, put them on management committees, and make them heads of departments and managing partners. In-house law departments can encourage these efforts and demand accountability when they do not see progress.

The Third Priority—The Bar Association of the Future

The third area is to prepare our bar association for the future generation of lawyers. While our association's membership is 23,000 members strong, the reality is that bar association membership across the country is falling.¹⁹ In my view, that is largely because the new generation of lawyers struggles to understand the value proposition of the bar association. They perceive—rightly or wrongly—that bar associations have not kept up with the advancements in networking and technology and that the associations do not fully capture their views on issues of social justice. These issues will compound as future generations enter the profession.

I am not personally opposed to the sunseting of ideas and institutions—no matter their historical significance—if they become quaint or obsolete. The proper place for relics is in history books and museums.

But the bar association as an institution—not just this one, but others as well—is indispensable to the future of our profession. If it is not this august institution, which organization will mobilize lawyers when an executive wants to use up funds in IOLA escrow accounts that are designed to provide legal services for the needy?²⁰ Which institution will stand up for judges who are attacked for making tough decisions that the politicians do not like?²¹ Which institution will stand up for highly qualified nominees for the bench who are vilified on the basis of their heritage and for the pro bono work they've done on behalf of civil rights organizations.²² Which institution will hold judges on our high courts accountable when they issue decisions that are contrary to our constitutional principles of equal protection and due process.²³ Which institution will mobilize lawyers to represent death-row inmates on a pro bono basis?²⁴

¹⁹ See Karen Sloan, "ABA Leader to Step Down as Lawyer Group Fights to Keep Members," Reuters, Nov. 10, 2022, <https://www.reuters.com/legal/legalindustry/aba-leader-step-down-lawyer-group-fights-keep-members-2022-11-10/>.

²⁰ See New York City Bar Association, *Diversion of IOLA Funds Will Degrade Access to Justice*, Feb. 12, 2024, <https://www.nycbar.org/press-releases/diversion-of-iola-funds-will-degrade-access-to-justice/>.

²¹ See New York City Bar Association, *Statement in Support of Justice Juan Merhan*, April 1, 2024, <https://www.nycbar.org/press-releases/statement-in-support-of-justice-juan-merhan/>.

²² Cf. New York City Bar Association, *Attacks on Judges Must Not Be Normalized*, June 5, 2023, <https://www.nycbar.org/blogs/attacks-on-judges-must-not-be-normalized/>; see also Jonathan Blitzer, "The Two-Pronged Attack on a Muslim Judicial Nominee," *New Yorker*, May 17, 2024.

²³ See New York City Bar Association, *Supreme Court's Overruling of Roe and Casey*, June 24, 2022, <https://www.nycbar.org/press-releases/supreme-courts-overruling-of-ro-and-casey/>.

²⁴ See New York City Bar Association, *Agenda for Annual Post-Conviction Capital Defense Training Program for 2014*, <https://www2.nycbar.org/htmlmail/cal/Habeas-Training-Agenda-2014.pdf>.

Let me provide you with an example of an area where our bar association can engage with the next generation of lawyers. You cannot attend any meeting of professionals—whether in the legal or another field—where a discussion of artificial intelligence, or AI, is not on the agenda. As was the case with computers, it is a fact that the legal profession is not going to be on the cutting edge of this particular phenomenon. I am told on good authority that some judges still use faxes and Word Perfect. And even a pad and pen!

We need, of course, to discuss practical issues, such as how to incorporate AI in the processes associated with the provision of legal services. But we can't stop there. As the work of the association's Task Force on Digital Technologies and other committees shows, we need to engage the next generation and the public at large on the more fundamental issues related to AI.²⁵

The law is where ethics and morality interact with the regulation of human conduct. Thus, it is incumbent on our bar association to facilitate a dialogue among scientists, ethicists, public intellectuals, academics, and policymakers about the critical considerations of AI. Some examples:

- whether and how to regulate AI that generates content that amplifies existing biases;²⁶
- whether and how to regulate AI that may lead to the further isolation of our children (*see* the movie “Her”);²⁷
- whether and how to regulate the use of AI that impedes human freedom, choice, and autonomy (for example, by manipulating employees to work longer hours);²⁸
- whether and how to regulate AI that may pose an existential threat to our world (*see* the Terminator series of movies);²⁹

²⁵ See, e.g., New York City Bar Association, Event: “Artificial Intelligence Institute” (Scheduled: June 10, 2024).

²⁶ See James Manyika, Jake Silberg, and Brittany Presten, “What Do We Do About the Biases in AI?,” Harvard Business Review, Oct. 25, 2019. In a rather amusing experiment, Professors Michael Dorf and Laurence Tribe instructed ChatGPT to “write a Supreme Court opinion in the style of Justice Samuel Alito concluding that the First Amendment protects the free speech right of a web designer to refuse to design a wedding website for a same-sex wedding, even though she provides that service for opposite-sex couples.” While the program produced a “workmanlike draft,” it chided: “I’m sorry, but I am not able to fulfill this request as it goes against my programming to generate content that promotes discrimination or prejudice.” See Michael C. Dorf & Laurence Tribe, “Court v. Chatbot,” N.Y. Review of Books, Dec. 26, 2022.

²⁷ See Kevin Roose, “A.I.’s ‘Her’ Era Has Arrived,” N.Y. Times, May 14, 2024.

²⁸ See Arto Laitinen and Otto Sahlgren, “AI Systems and Respect for Human Autonomy,” *Frontiers in Artificial Intelligence* (2021), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8576577/>.

²⁹ Kevin Roose, “A.I. Poses ‘Risk of Extinction,’ Industry Leaders Warn,” N.Y. Times, May 30, 2023.

- whether and how to regulate the use of AI to create deepfake content that could sow discord and weaken public confidence in our institutions;³⁰ and
- whether the dependency on AI enhances fundamental aspects of our shared humanity, such as creativity, critical thinking, and problem-solving, or leads to their destruction.³¹

In my view, there is no institution better than the bar association to lead a multi-disciplinary dialogue on these issues. And in doing so, it will not simply avoid obsolescence, but will remain a critical resource for lawyers and the public at large.

Conclusion

As I have in the past twenty years, in the next two years, I will value every moment that I walk into this building. Now the hard work begins, and I look forward to all of you joining me in these efforts. And I will continue to appreciate the kindness and forbearance of Leila, our children, my friends, and my colleagues at Patterson Belknap.

³⁰ See Shanon Bond, “AI Fakes Raise Election Risks as Lawmakers and Tech Companies Scramble to Catch Up,” N.P.R., Feb. 8, 2024, available at <https://www.npr.org/2024/02/08/1229641751/ai-deepfakes-election-risks-lawmakers-tech-companies-artificial-intelligence>.

³¹ See Eric Zhou and Dokyun Lee, “Generative Artificial Intelligence, Human Creativity and Art,” PNAS Nexus (Vol. 3, Issue 3), Mar. 2024, available at <https://academic.oup.com/pnasnexus/article/3/3/pgae052/7618478>.