



THE JOURNAL

OF THE DELAWARE STATE BAR ASSOCIATION



WELLNESS FEATURES

Prioritize Wellness:
Lawyers Can
Be Healthy Too

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Cognitive Dissonance,
Hard Decisions, and
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Practical Meditation
as a Wellness Practice
for Attorneys

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THE WELLNESS ISSUE

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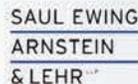
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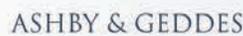
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The *Bar Journal* is the independent journal of the Delaware State Bar Association. It is a forum for the free expression of ideas on the law, the legal profession and the administration of justice. It may publish articles representing unpopular and controversial points of view. Publishing and editorial decisions are based on the quality of writing, the timeliness of the article, and the potential interest to readers, and all articles are subject to limitations of good taste. In every instance, the views expressed are those of the authors, and no endorsement of those views should be inferred, unless specifically identified as the policy of the Delaware State Bar Association.

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Delaware State Bar Association
405 North King Street, Suite 100
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The most difficult task of my term has been deciding the topic for each month's President's column. Once I settled on the topic, the rest was easy. As I started to think about writing my final column, selecting the topic was easy. There is one thought that keeps coming up — Thank you.

Thank you to the members for electing me to this position and trusting me this awesome task. Thank you for the opportunity to meet so many wonderful people over the last year.

Thank you to the members of the Executive Committee. We have 27 highly dedicated members of the Executive Committee who are engaged with the issues, give careful consideration of the action items on which they are asked to vote, and care deeply about our responsibility to our membership and those who are running our organization. I want to give a special thanks to Frank Murphy, our Treasurer. Not only does Frank serve on the Executive Committee, but he volunteered for several of the committees for special projects we formed over the year. On top of all of this, Frank did an excellent job leading the Finance Committee. Under his leadership, the DSBA was able to reduce its costs in significant ways, increase the return on the reserves account, and structure the financial reporting in a manner that makes it easier to track. And, well, he's just a great person to work with.

Another special thank you goes out to our Judicial Member, The Honorable Arlene Minus Coppadge. Even with her busy docket, Judge Coppadge not only attended the meetings, but she also provided invaluable insight and perspective on issues presented to the Executive Committee.

Thank you to the Presidential appointees to the Executive Committee —

I am honored and humbled to have had this opportunity.

Lori Brewington, Jamie Brown, Alberto Chávez, Nick Mozal, Katelin Morales, and Mae Oberste. Thank you for being willing to serve when I asked you last year and for putting in the extra effort on special projects, like the *Pro Bono* Committee, the Diverse Voices Committee, and the Evaluation Committee. I hope you gained as much out of the experience as the DSBA did from your participation.

Thank you to the many members of the DSBA who devoted their time to important initiatives, such as *Pro Bono* Committee, the Diverse Voices Committee, the Evaluation Committee, the Finance Committee, the Diversity Clerkship Committee, the Diversity, Equity & Inclusion Committee, the Lease Committee, CLE Committee, and the *Bar Journal* Editorial Board and Advisory Committee.

The biggest thank you goes out to the staff of the DSBA. An association of nearly 4,000 members is managed by a tremendous staff of six. LaTonya Tucker ensures that members are getting the most out of their membership. Deirdre Sadler-Crew assists small firms, who comprise the largest segment of the DSBA's membership. Caroleena Goldman recently took on the DSBA's important service of providing high-quality CLEs. She has already developed and scheduled a lineup of timely and relevant content. Antonio Byrd, the man behind the scenes, is the Director of Media and Cinematography. Among many other things, he is the producer of the upcoming Diverse Voices videos. When you see the highly professional quality of these videos, you will see what I experienced first-hand — Antonio takes great pride in the production and content of the DSBA

materials. Rebecca Baird, Director of Communications, is responsible for the content of the *Bar Journal*. Rebecca has been instrumental in helping diversify the authors of the various articles, is eager to include new content, and is willing to do whatever it takes to provide the best product for our members.

Then there is Mark Vavala. His title of Executive Director does not nearly do justice for all that Mark provides. He is the head of HR, leading a staff who give him their all and call him "friend." He is the chief marketing officer, always looking for ways to increase our membership (and being very successful) and providing services to our members. He is the chief financial officer, cutting expenses and being cautious with our budget. He is the chief problem solver, addressing issues quickly and professionally. He is the greatest single asset of the DSBA! Each of the members of the DSBA staff always greets you with a friendly "hello" and is willing to help provide the best services to our membership.

The DSBA will be left in the great hands of Chuck Durante, the incoming President and Kate Harmon, the incoming President-Elect. I have full confidence in Chuck and Kate and look forward to all that they will accomplish.

I am honored and humbled to have had this opportunity. Thank you! 🙏

Kathy Miller is the current President of the Delaware State Bar Association. She is a partner at Smith, Katzenstein & Jenkins LLP where she focuses her practice on corporate and commercial litigation and corporate bankruptcy matters. She can be reached at kmiller@skjlaw.com.



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Today the Green Grass

In years past, my article has occasionally aligned with what was, pre-Covid, an annual pilgrimage to Clearwater, Florida, to see the Phillies — along with some hopefuls — play a few spring training games. Like Bryce Harper anticipating and getting a hanging curveball, the trip tended to hit the sweet spot. The block on my calendar made winter seem more finite, and the tradition afforded a firm weekend for old friends scattered across the country and, for a couple of years, the world to get together and catch up under the afternoon sun in the outfield berm and then check college hoops bracket results in the tiki hut post-game. As with essentially everything, the pandemic altered that, including the cancellation of spring training in 2020, and travel and seating restrictions in 2021 made it a no-go. With 2022's improving public health conditions, baseball then committed the collective bargaining equivalent of a passed ball, via a lockout that was not resolved until March 10, 2022 and resulted in a truncated spring schedule. From the couch, I turned on one of the games in the final week of March, but it felt more like salt in the wound than its usual salve. I suspect I was not the only Phillies fan feeling a little put out and less than enthused at the start of the regular season.

Enter Brendan Quinn and Truth & Consequences, the branding and advertising agency where Quinn is a founding partner and Creative Director. He and I are also old buddies, having gone to Penn State together and then shared a place in Manayunk post-college until I moved to Delaware. You know the friend who can perfectly encapsulate a moment or concept with a pithy quip, as if he has an earpiece and a team of creative writers working 24/7? That is Quinn.

And yet, when the Phillies needed a good way to sound the horn for fans to return to the ballpark, the billboards were simple. Newly developed allergies notwithstanding, my personal favorite was just the grass at Citizens Bank Park. Another was

the word “Phillies” on the uniform front, and a third used a close-up of the Philly Phanatic's fur.¹ As Quinn explained on LinkedIn, “A younger me tended to overwrite things, hoping people would say ‘what genius wrote that headline?’ A more, ahem, seasoned me now loves the beauty of a simple concept that evokes a mood and a feeling.... No copy. No graphics. No 148-page strategy deck with ‘17 reasons to believe.’ Pure baseball.”

The closeness of the shots reminded me of a high school² photography class assignment that required the students to explore perspective. One shot needed to view an object from an odd angle or give a different scale. I snapped a close-up of a foosball player on the table in the basement. Aside from the rod turning him into a kabob, the most notable feature on the otherwise perfectly symmetrical figure was the Superman-style curl of plastic hair on his forehead. I had never noticed that, and I remain somewhat surprised the manufacturer took the time to incorporate that into the product. I doubt I ever would have taken the time to look and appreciate it had it not been for the photography assignment.

Today's assignment is to bring my perspective to this wellness issue. I would love to have and share an epiphany-inducing mantra or, even better, a recipe for a magic elixir. Alas, I am left to consider the beauty of simplicity, of scale, and of school-age concepts, all of which bring me to balance and the “wellness wheel.”

Off the cuff, I recalled most of the spokes from health class decades ago, down the hall from the photo lab: physical; emotional;³ social; spiritual;⁴ and financial. Apparently, some models of the wellness wheel have eight,⁵ with an occupational spoke that is separate from financial,⁶ along with intellectual and environmental prongs.⁷ My mental snapshot self-evaluation shows a few solid sections and then others that need tending to achieve better balance. I will leave the details and action plans to those better versed, but I recommend pe-



rusing the ABA's "Well-Being Toolkit for Lawyers and Legal Employers" by Anne M. Brafford for suggestions to put some tread on the wheel.⁸ I hope everyone takes the time to take in the green grass and have a healthy summer. 🌱

Notes:

1. Photographs of the billboards and more detail on their birth can be found at <https://musebycl.io/sports/phillies-welcome-back-baseball-sublime-copy-less-billboards>.
2. In my senior year of high school, The Jayhawks released their album *Tomorrow the Green Grass*. Its harmonic Americana sound contributed to many a mix tape. I heard "Blue" on a Sirius channel and dusted off the CD. The album really holds up and prompted this article's title.
3. Another ad that recently struck a chord shows a guy struggling to bench press, with the bar across his chest. Yet, he declines help, parroting comments that might serve as an excuse not to get mental help.
4. For a catchy mantra on the spirituality component — and in keeping with the wheel concept — it is tough to outdo Arrested Development's line in "Tennessee": "I know you're supposed to be my steering wheel, not just my spare tire."
5. See, e.g., the University of New Hampshire's wellness wheel model, <https://www.unh.edu/health/wellness-wheel>.
6. Having worked in various sectors of the economy and for enough employers to require a second page for a bar application's employment history, I have a firm appreciation that your job is more than the digits on your paystub.
7. Not to diminish any of the octagonal wheel's areas, but the wheel itself becoming more complicated seems a perfect representation of how life has progressed since the 90's and the days of hard copy textbooks — mandatorily wrapped in brown grocery bags.
8. Brafford, Anne M. "Well-Being Toolkit for Lawyers and Legal Employers." American Bar Association, August 2018. https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/ls_colap_well-being_toolkit_for_lawyers_legal_employers.authcheckdam.pdf.

Bar Journal Editor **Seth L. Thompson** joined Parkowski, Guerke & Swayze in July 2019, and he works predominantly in the firm's Wilmington office. His practice focuses on civil litigation, family law, and municipal law. For six years, he also served as a Legislative attorney for the Delaware House of Representatives. He has served on the Board of Professional Responsibility, the Board of Bar Examiners, and the Executive Committee for the Terry-Carey American Inn of Court, as well as serving as the Sussex County Bar Association President. He may be reached at sthompson@pgslegal.com.

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MAY 2022

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WELLNESS WITH DE-LAP

The month of May was Mental Health Awareness Month. Once again, DE-LAP and the Professional Guidance and Lawyers Assistance Committees of the DSBA hosted a Tri-County Walk on May 12 in Kent, Sussex, and New Castle counties. Photos from the New Castle and Kent County walks are below. The New Castle County Walk was called "The Shipyard Shuffle" and met at The Old Smoke Stack on Justison Street near the Shipyard Shops. The walk was designed to suit all comfort levels — out and back on the Jack A. Markell Trail for as long as the walkers wanted. The Kent County walkers met southwest of the Green to walk the "Green Mile." 🌿



New Castle County Wellness Walk in Wilmington, DE.



Kent County Wellness Walk at The Green in Dover, DE.



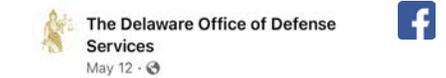
Kent County Wellness Walk at The Green in Dover, DE.



Kent County Wellness Walk at The Green in Dover, DE.



Wonderful @DelStateBar Law Day event yesterday. Congratulations to our #mentalhealth team: Alice O'Brien, MS, Sarah Falgowski, MD & Rich Lombino, Esq, LCSW (@lombinocounsel), co-recipients of the Liberty Bell Award.



Congratulations are in order to Assistant Public Defender Alex Shaffer, who on Thursday received a 2020 Excellence Award from the Multicultural Judges and Lawyers section of the Delaware State Bar Association. Way to go Alex!



Enjoying our day with the Delaware State Bar Association at the Small Firms Conference.



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OF NOTE

Condolences to the family of **Steven T. Davis, Esquire**, who died on March 8, 2022.

Condolences to the family of **Michael F. Duggan, Esquire**, who died on March 29, 2022.

Condolences to **Elwood T. “Woody” Eveland, Jr., Esquire**, on the death of his father, Elwood Eveland, Sr., who died on May 8, 2022.

If you have an item you would like to submit for the Of Note section, please contact Rebecca Baird at rbaird@dsba.org. 

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2022 CHRISTOPHER W. WHITE DISTINGUISHED ACCESS TO JUSTICE AWARDS BREAKFAST NOMINATIONS ARE NOW BEING ACCEPTED

The DSBA and the Awards Committee are seeking nominations for the 2022 Distinguished Access to Justice Awards formerly known as the Distinguished *Pro Bono* Service Awards.

THERE ARE FIVE CATEGORIES FOR WHICH INDIVIDUALS, FIRMS, OR ORGANIZATIONS CAN BE NOMINATED.

The Leadership Award

This award is presented to a legal organization (legal department or law office) that has demonstrated outstanding leadership in the field of *pro bono* service to Delaware's indigent population based on the following criterion including, but not limited to:

- The number of *pro bono* hours the organization contributes to the direct representation of indigent clients.
- The number of cases the organization accepts for *pro bono* representation.
- Flexibility and accessibility in accepting cases.
- The organization's commitment and service on committees dedicated to promoting and supporting the provision of legal services to those in need.
- Financial support to agencies providing legal services to Delaware's indigent population.
- The percentage of attorneys in the organization who accept *pro bono* cases.
- Fostering a culture, which recognizes the value of *pro bono* service.

The Commitment Award

This award is presented to a member of the Bar who has demonstrated a sterling commitment to *pro bono* work throughout his or her career by dedicating time and energy to the support and provision of legal services. The criterion includes, but is not limited to:

- The number of *pro bono* hours devoted to legal representation of indigent clients over the lawyer's career.
- The number of cases accepted for *pro bono* representation over the lawyer's career.
- The lawyer's commitment and service on committees dedicated to promoting and supporting the provision of legal services to those in need over the lawyer's career.

The Achievement Award

This award is presented to a member of the Bar who has shown an exemplary recent contribution to *pro bono* services (generally in the past one to three years) and stands as a role model to other attorneys. The criterion includes, but is not limited to:

- The number of *pro bono* hours recently devoted to legal representation of indigent clients.
- The number of cases accepted for *pro bono* representation.
- Consistency, flexibility, and accessibility in accepting cases.
- The lawyer's commitment and service on committees dedicated to promoting and supporting the provision of legal services to those in need.

Service to Children Award

Awarded to an individual lawyer, legal professional, or organization principally including lawyers, which demonstrates outstanding commitment to, and work for, children in the provision of legal or community services. It may be given to volunteers or those employed in the provision of legal services for children. This award is given as warranted, not necessarily annually.

Legal Professional Pro Bono Service Award

Awarded to a person, qualified by education, training or work experience, who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity, who performs *pro bono* legal work in the pursuit of Access to Justice. This is a newly-created award that is given as warranted, not necessarily annually.

Nominations should be submitted to Deirdre Sadler-Crew at dsadlercrew@dsba.org. The deadline for nominations is August 10, 2022. Please include: The name, firm, and title/occupation of the Candidate; name and contact information (firm, address, email, phone, and fax) of the individual nominating the Candidate; and a brief statement of the reasons the Candidate is deserving of the Award.

PROFESSIONAL GUIDANCE COMMITTEE

This committee provides peer counseling and support to lawyers overburdened by personal or practice-related problems. It offers help to lawyers who, during difficult times, may need assistance in meeting law practice demands. The members of this committee, individually or as a team, will help with the time and energy needed to keep a law practice operating smoothly and to protect clients. Call a member if you or someone you know needs assistance.

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CALENDAR OF EVENTS

June 2022

Thursday, June 2, 2022 • 1:00 p.m. – 2:30 p.m.

The Basics of Trial: Litigation Nuts and Bolts

1.5 hours CLE credit

Live Webinar via Zoom

Thursday, June 9, 2022 • 1:00 p.m. – 5:15 p.m.

Delaware Corporate Law 2022

4.0 hours CLE credit

Live Seminar at DSBA with Zoom Option

Wednesday, June 15, 2022 • 9:00 a.m. – 10:30 a.m.

Commercial Law Considerations: Enforcing Security Interests & LIBOR Transition

1.5 Hours CLE credit

Live Seminar at DSBA with Zoom Option

Friday, June 17, 2022 • 9:00 a.m. – 4:00 p.m.

Bench and Bar 2022: Come Together

3.0 hours CLE credit in Enhanced Ethics credit

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Dates, times, and locations of Events and CLEs may occasionally change after time of press. Please consult the DSBA website for the most up-to-date information at www.dsba.org.

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SECTION & COMMITTEE MEETINGS

June 2022

Tuesday, June 14, 2022 • 12:00 p.m.

Senior Lawyers Section Meeting

Hybrid Zoom / Delaware State Bar Association, 405 North King Street, Suite 100, Wilmington, DE

Wednesday, June 15, 2022 • 9:00 a.m.

ADR Section Meeting

Zoom Meeting, see Section listserv message for link and password

Thursday, June 16, 2022 • 12:00 p.m.

Executive Committee Meeting

Delaware State Bar Association, 405 North King Street, Suite 100, Wilmington, DE

Refer to the DSBA Section Listserv messages for the most up-to-date information on Section Meetings. Please contact LaTonya Tucker at ltucker@dsba.org or (302) 658-5279 to have your Section or Committee meetings listed in the *Bar Journal*.

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Technology to the Rescue: Could the Poison Also Be the Cure?

BY EDWARD A. CORMA, ESQUIRE



Edward A. Corma is an associate at Pachulski Stang Ziehl & Jones LLP and serves as Treasurer of the Young Lawyers Section. He can be reached at ecorma@pszjlaw.com.

The rise of technology can be cited as a major factor in the rise of the 24-hour, non-stop workday for many attorneys, further diminishing what little remained of work-life boundaries in the practice of law. However, technology, if harnessed properly, may prove valuable in improving productivity and well-being.

Work life for lawyers and other white-collar workers has been transforming for a number of years. Even before the pandemic, developments like smartphones, email access around the clock, and remote connectivity have blurred the line between work time and personal time. The pandemic made work-from-home a reality for millions who had never done it before and made us even more reliant on technology, with features like video-conferencing taking on a greater role. Going forward, the technology is here to stay, and it can offer benefits to workers who consciously seek to take advantage of its capabilities.

Whether you will be working remotely some or all of the time, or even if you have returned to the office full-time, recent changes have upended the old structure of our working lives. Without structure, any semblance of balance rapidly disappears to the detriment of our physical and mental health. In this new environment, it is increasingly being left up to individual workers to create the structure that is necessary to ensure that their lives are balanced and healthy. There are numerous ways to manage the role of technology in our professional lives — and even use it to our

advantage — to reestablish some of the structure that has been lost, thus achieving the goal of improving work productivity and personal fulfillment.

Tools for Better Management of Time and Tasks

While attorneys may seem tethered to their smartphones, these versatile devices can also help to keep tasks organized and manage one's time more efficiently. For example, Evernote offers a multitude of ways to record, store, and organize notes. Other apps like Todoist allow for easy entry of tasks and management of to-do lists, providing for easy prioritization of tasks and delegation of tasks to others. Furthermore, apps like Trello and Asana offer different ways to visualize and organize tasks, including traditional list views, “boards,” and “cards.”

As for time management, there are numerous apps available to facilitate greater focus and a more purposeful use of time, which can help break through mental blocks and encourage greater productivity. A number of these apps help the user employ the “Pomodoro Technique,” in which a timer is set for a length of time to work on a task — 25 minutes, for example — followed by a short break. After four such sessions, a longer break is taken. This technique can help attorneys to focus on one task at a time and reduce procrastination. Apps such as Pomodor, Focus Keeper, Forest, and Be Focused allow for easy tracking of Pomodoro cycles, along with additional features like progress markers. Thus, smartphones offer a variety of apps that can help attorneys stay on top of their workloads and balance out the ever-present emails, calls, and calendar entries.

Making the Most of Existing Features

Even without installing new apps, attorneys can find assistance in existing features that are included with devices

and software they likely already use on a daily basis. For instance, apps like “Notes” on iPhones, or “Google Keep” on Android devices, allow for quick and easy recording of tasks or other information, along with automatic syncing and saving. The native calendar and reminder apps on phones offer the ability to sync with multiple accounts, including work accounts as well as personal accounts such as those offered through Yahoo and Google. Built-in clock apps offer stopwatch and timer features that, while relatively basic compared to other time management apps, can be very useful in driving productivity. Other software used on a daily basis, like Microsoft Office and Outlook, have many features beyond their basic word-processing and email functions. These include tasks, reminders, and integration with other software programs like Adobe Acrobat or legal research platforms like Westlaw and Lexis.

It may be worthwhile to take some time to look through all the options and settings in the programs you use on a regular basis. With even a modest investment of time, you may find some unexpected or unused features that can make a difference in productivity and efficiency. In addition, virtually all of the programs and apps available today offer the capability to sync information across devices and with other programs. Sometimes looking beyond the basic functions of the tools we use all the time can lead to discoveries that can help to make completing tasks more efficient and less stressful.

Using Technology to Establish Routines and Priorities and Reduce Stress

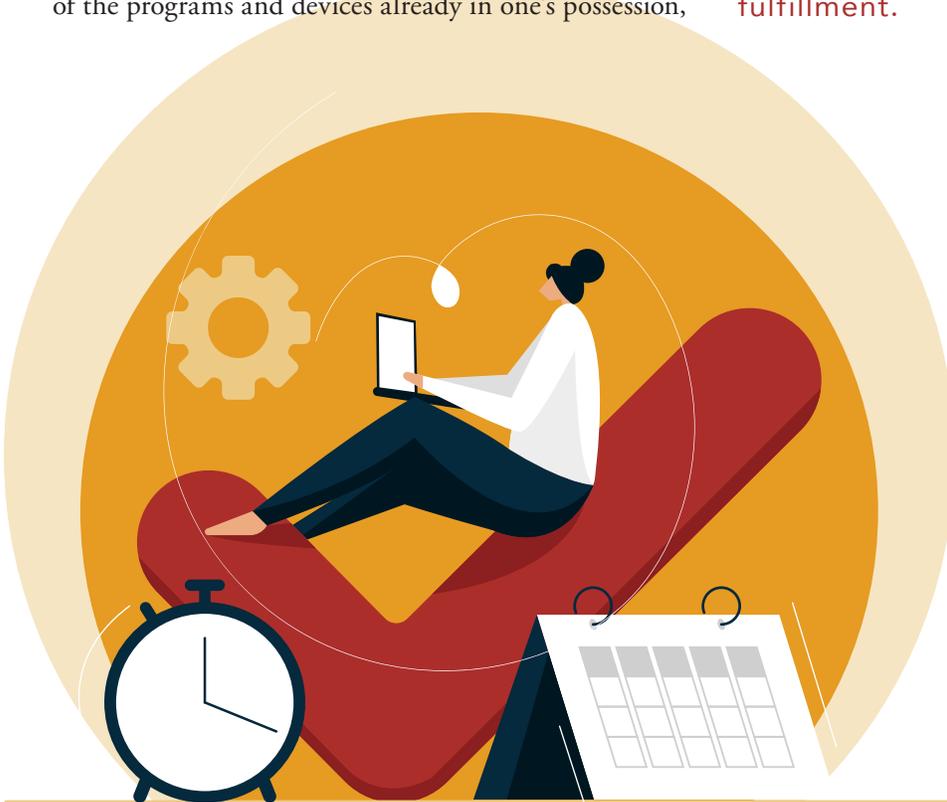
Whether seeking out new apps or making greater use of the programs and devices already in one’s possession,

There are numerous ways to manage the role of technology in our professional lives — and even use it to our advantage — to reestablish some of the structure that has been lost, thus achieving the goal of improving work productivity and personal fulfillment.

attorneys can benefit from using these tools as part of a larger plan to prioritize tasks and engage in daily routines. It harkens back to the classic adage, “work smarter, not harder.” Numerous apps and programs provide resources to assist in prioritizing tasks, including different ways to sort, tag, and visualize information. Organizing tasks by priority can help relieve stress by making one aware of exactly what needs to be done and when, and by facilitating completion of the most time-sensitive tasks first, which will relieve some of the more pressing sources of stress.

Similarly, establishing routines can reduce stress by eliminating unnecessary overthinking and streamlining the process of making decisions. When certain tasks are part of a daily routine, one is able simply to get to work without having to think about what to do next. This can be a powerful tool for reducing procrastination and minimizing interruptions — both of which, even when they do not prevent the ultimate completion of the task, create unnecessary stress and tend to cause unfinished work to stay on one’s mind for a longer period of time, thus inhibiting one’s quality of life outside the workplace. Priorities and routines can make a big difference with work tasks, and technology can be harnessed to accomplish these goals more effectively. By organizing tasks, tackling the most important ones first, and establishing routines to automate tasks and reduce the amount of excessive deliberations and decisions over everyday tasks, attorneys can reduce stress and provide a feeling of control over a situation, even if there is still a great deal of work yet to be done.

Hopefully these suggestions will be of use to you and will encourage you to take a fresh look at your work, routines, and schedules. As so much has changed, especially over the past two and a half years, revisiting work habits may reveal inefficiencies and sticking points that are having a negative effect on your productivity, physical health, and mental well-being. While technology has driven many of these changes and can be a source of much of our modern-day stress, with some forethought and deliberate use of technology we can make it work for us so that we are better equipped for the changing times ahead. 🕒





Fee Agreement Conundrum

As I approach my 300th column and 30th year of “Ethically Speaking,” I return to a favorite topic. While I doubt that anyone has read every article, even the occasional reader will note that I have long preached defensive lawyering through the use of the Holy Trinity of documenting the attorney-client relationship. If you ever have to produce your file in response to a disciplinary or malpractice complaint, your defense counsel will hope to find non-engagement, engagement, or disengagement letters to the client or non-client in your files.

Non-engagement letters advise the prospective clients that you will not undertake the representation and describe with some specificity both the identity of the client and a description of the declined matter. Failure to document that the representation was declined, exposes the attorney to claims that the prospective client reasonably believed that an attorney-client relationship was formed. This exposes the attorney to allegations of neglect such as failing to file a complaint within the statute of limitations, failing to file a timely answer or failure to appear for a court appearance. Lack of documentation describing the matter may also expose the attorney to a claim of conflict of interest if an opposing party subsequently seeks the attorney’s representation.

The engagement letter is simply a fee agreement. Again, it should identify both the client and the matter or scope of engagement. It should also comply

If you ever have to produce your file in response to a disciplinary or malpractice complaint, your defense counsel will hope to find non-engagement, engagement, or disengagement letters to the client or non-client in your files.

with Rules 1.5(f) (retainers are refundable if not earned) and 1.8(f) (lawyer can only accept compensation from someone other than the client if the client gives informed consent). As a reminder, written fee agreements are required in contingency fee cases but strongly encouraged in all other matters.

Finally, a disengagement letter sent at the conclusion of the representation should specify both the identity of the client and the nature of the concluded matter. Like the non-engagement letter, the absence of this document may impair the attorney’s defense of claims of post-representation neglect or conflict of interest.

But what happens when you follow this advice and send the client a proposed fee agreement only to receive the client’s own engagement letter or contract in response? Any attorney representing large corporations or practicing insurance defense may have encountered this situation.

In my practice, many attorneys and firms have a rider in their malpractice policy providing for the payment of disciplinary defense costs. In response to

my fee agreement to the client, I often receive an Approved Vendor application or “Service Provider” agreement.

While these agreements typically include provisions that the attorney will provide the legal services in compliance with the Professional Conduct Rules, the employment agreement may diverge from your professional obligations contained in those rules.

Rule 1.8(f) states, “A lawyer shall not accept compensation for representing a client from one other than the client unless the client gives informed consent and there is no interference with the lawyer’s independence, professional judgment, the client-lawyer relationship, and information relating to the representation where the client is protected as required by Rule 1.6.” Rarely do the carrier-proffered agreements reference this rule. The fact that the engagement letter comes from the carrier rather than the client suggests that the carrier expects more privity of contract than the Rules of Professional Conduct provide. The carrier’s agreement may also require disclosure of information that would otherwise be protected by the Rules.

Similarly, there is no opportunity to provide the required Rule 1.5(f) language that retainers are refundable if not earned, although this isn't much of a problem as I have yet to encounter a carrier willing to pay a retainer.

Carriers may also attempt to prospectively limit an attorney's practice by including a provision that the attorney or firm cannot represent another client they insure. Rule 5.6 prohibits a lawyer from participating in offering or making an employment or other similar type of agreement that restricts the rights of a lawyer to practice after termination of the relationship. Although this Rule is typically applied to attorney employment agreements with a firm, the plain language of the Rule could lend itself to application to carrier retention agreements.

Much has been written about the Tripartite Relationship between the attorney, client (the insured), and the insurance carrier. Generally, although there are exceptions in some jurisdictions, the insured is deemed the attor-

ney's client and all of the duties to the client found in the Professional Conduct Rules apply. However, insurance policies are contracts, and your client may have surrendered some of those rights while contracting for coverage. The terms of the policy may require the client to disclose information to the carrier. The policy may contain reservation of rights regarding participation in and authority to settle claims.

So, what is an attorney to do upon receipt of such a fee agreement counteroffer? My suggestion is to add a fourth writing to the aforementioned Trinity. Write a letter to the client (the actual client, not the insurer) advising that the carrier has proposed to retain you on their behalf. In that letter, provide the notice required by Rule 1.8(f) that a non-client will be paying the fee and that by returning a countersigned copy of the letter, your client (the insured) consents to that payment and the release of any attorney-client confidence required or requested by the carrier in order to secure coverage

of the claim. Finally, advise the client that notwithstanding anything in the agreement that would suggest the contrary, there will be no interference with your independence of professional judgment or the attorney-client relationship, especially when it comes to settling the claim.

Ultimately, this is not a bad problem to have. The client isn't going to be responsible for some or all of your fees, you are perhaps more likely to get paid, and making the carrier's "Approved Vendor" list may result in future, additional clients.

"Ethically Speaking" is intended to stimulate awareness of ethical issues. It is not intended as legal advice nor does it necessarily represent the opinion of the Delaware State Bar Association.

"Ethically Speaking" is available online. Columns from the past five years are available on www.dsba.org.

Charles Slanina is a partner in the firm of Finger & Slanina, LLC. His practice areas include disciplinary defense and consultations on professional responsibility issues. Additional information about the author is available at www.delawgroup.com.



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Wellness: A Call to Action

BY DAVID A. WHITE, ESQUIRE

In the spirit of advancing the discussion of attorney wellness and well-being, I wanted to offer a personal story of sadness and issue a simple call to action to you, my friends and colleagues in the Delaware Bar. In the late 1990s, well before DE-LAP was around, I was working at a firm with a group of young, smart, and talented lawyers, all in their 30s and early 40s. We were planning on becoming the next “great” Delaware firm and we were well on our way.

After working there for several years it became apparent to me that one of my colleagues was starting to slip. She was drinking more than she should, more often than she should, and her practice was starting to slip. She was smart, gregarious, aggressive, and had a thriving law practice in a niche area of the law. Her clients also loved her and were incredibly loyal. The alcohol concern and related practice concerns were brought to her attention and she promised to be better. For a while she was. And then she wasn't. Eventually, her drinking got to the point that an intervention including her colleagues, family, and close friends was attempted. A bag was packed for her and a room at a well-known treatment facility was made available, that day, in the event she was able to admit that alcohol had taken control over her and she was powerless to do anything about it.

That was my first experience with a colleague in trouble. A colleague who needed help in a big way. Well, the intervention failed. She refused to admit

her problem with alcohol and she failed to go to treatment. Think about it. She refused the gift of treatment ... and we had to go to work the next day. With her. It was bad. None of us knew she was actually worse off than we thought and a second plan was made to save her life and law practice. This second plan, with the input and blessing of her parents, included me leaving the firm if she refused to go to treatment the second time. You see, I had become an enabler. I was her primary associate, and for a long while I made sure the clients remained satisfied, made sure additional work was coming into the firm, and did whatever I could to make sure the judges we appeared before remained pleased with our work and our work product.

For a while I thought I could keep it all going; that she would get better while I was juggling, and eventually struggling, to keep it together. The only way she would get better, her family said, was for me to leave the firm. I agreed, and gave her a 60-day ultimatum: either she goes to treatment within 60 days or I will leave the firm. That was a difficult conversation. She was convinced I was bluffing; that I would never leave. I wasn't kidding. I was also vulnerable, mostly because I didn't have a place to go in the event I left the firm in 60 days. Thankfully, it didn't take too long for me to find a new professional home.

Well, fast forward 60 days, early 2001, and she continued to spiral. Alcohol retained its cruel grip on her and she continued to refuse the gift of treatment. On day 61, I announced I was leaving. You see, in the interim I had been hired by Superior Court to be the next Commissioner. I considered it to be my gift; a landing place that did not require me to give our clients a choice to come with me to a new law firm or stay with her. In leaving for public service again, I did not have to disrupt her practice and it felt like the right thing to do.

The practice of law in the twenty-first century is stressful and complicated. Admitting it is not a personal or professional failure.

Upon my departure, others at the firm tried to keep it all together... and they did for a while. On day 61 I also joined the Professional Guidance Committee of DSBA and made a promise to myself and others that I would do whatever I could help any Delaware lawyer who was struggling, with addiction or with professional duties and stresses.

The story did get better for my colleague. For a short while. On day 63 she thanked me for leaving, admitted I was enabling her, and agreed to seek treatment at a facility in Pennsylvania. It was the first time she admitted she had a problem with alcohol. As with most alcoholics (and other addicts), the first treatment facility didn't fix the problem. She got out 28 days later and soon thereafter started drinking again. She went back into treatment, for 28 days, at another facility in Pennsylvania. That didn't fix it either and she soon went to a third treatment facility, this time for 60 days, at a fa-

cility located in Maryland. This time, with the additional help of her friends, family, and AA, she was able to stop drinking...and she remained alcohol free for the rest of her life. Sadly, her years of drinking took an invisible and debilitating toll on her internal organs and she began a physical slide from which she would not recover. Multiple hospitalizations could not save her. Multiple other medical interventions could not save her. Placement on liver and kidney transplant lists could not save her. Sadly, she passed away in 2008. She was my friend.

This is my reality...and I pray none of you will ever have to repeat it. Here is my simple call to action: if you or someone you know needs help, please seek the confidential assistance of our friends at DE-LAP and/or the Professional Guidance Committee of the DSBA. My colleagues at the Office of Disciplinary Counsel and I are also here to help point you in the right

direction. As lawyers, we are hard-wired to be competitive. Failure is not in our vocabulary. Quitting is not something we understand. Admitting alcohol or drugs have taken hold is embarrassing, personally and professionally. The practice of law in the twenty-first century is stressful and complicated. Admitting it is not a personal or professional failure. Admitting we are fallible and stressed out is courageous and a sign of strength. I get it. I simply ask you to try. If you or someone you know needs help, please ask for it. Take a deep breath and call DE-LAP, or call a friend, or the Professional Guidance Committee. Or call me or one of my colleagues at ODC. We are all here to help. ⚖️



Dave White has been a member of the Delaware Bar for nearly 35 years and became Chief Disciplinary Counsel at ODC in March 2021. He can be reached at David.White@delaware.gov.




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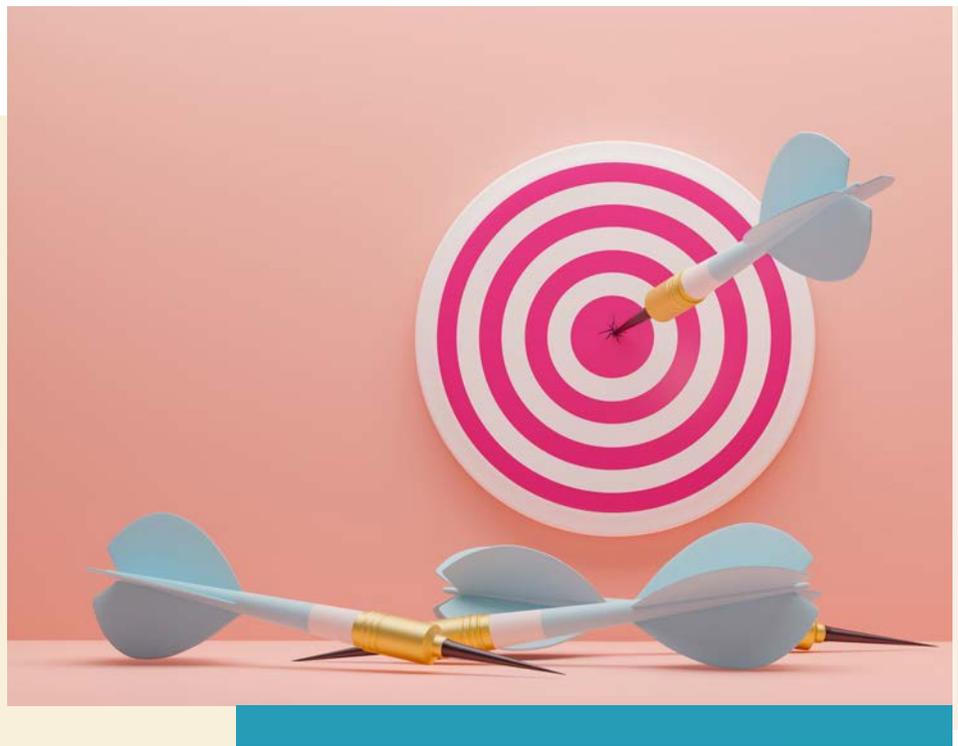

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Work + Life + Well-Being + Grit = Peak Performance

Twenty years ago, I presented a lecture at a Bar Association conference on stress management, wellness, and fitness to practice for law. I started the presentation with my interpretation of the Rules of Professional Conduct and how the astute attorney understands that fitness means more than just fitness of legal expertise; it also means those qualities of physical, mental, and psychological health that enable a lawyer to carry out the demands and the responsibilities to their clients and to their profession. More specifically, the fit attorney practices law while practicing personal wellness. Broadening the scope through the years, I discussed how to design a unique personal blueprint for implementing a sustained program of lawyer well-being and vitality, by taking baby (small) action steps to reach and sustain peak performance.

During these years, the concept of lawyer well-being was foreign to many in the legal profession. (Except in Delaware where former DSBA Executive Director Rina Marks was a pioneer in preaching wellness.) In those early years, however, the audience often seemed as though they were deer in the headlights because so many believed that it was impossible to be well and to live well while practicing law. On the other hand, some understood the message. In fact, they wanted to hear more about the coping tools that included personal wellness and



the grit to forcefully face the shifting demands of life and of what is a stressful and rapidly changing legal marketplace. After all, in some professions where there are high levels of stress, people can retire after 20 years and get a pension. For most lawyers, 20 years is only halfway into their careers, so it makes sense to get with a well-being regimen.

In an essay “On Being a Happy, Healthy and Ethical Member of an Unhappy, Unhealthy and Unethical Professional,” Patrick J. Schiltz wrote that “the few researchers who have studied the legal profession are unanimous that lawyers are, as a group in remarkably poor health.”¹

Additionally, a study in another article, “Caution: These Jobs Are the Most Harmful to Your Health,” rated a career in law as one of the worst jobs for your health, alongside transportation workers, enlisted soldiers, manual laborers, health care shift workers, and emergency services personnel. The article cited a study on stress and depression levels amongst lawyers as the reason for the poor ranking.²

Presently, there has been a remarkable shift in the legal culture. A new generation of change-agents including the American Bar Association, The Commission on Lawyers Assistance, Judicial stakeholders, and Bar Associations (including the DSBA'S Executive Director Mark Vavala) are sending a clear message of embracing lawyers' well-being and emphasizing support of it in the profession.

Peak Performance: Well-Being

Wellness and health are interrelated but distinct concepts. Health is considered freedom from disease; it is the condition in which people can do their most constructive work, provide the best possible service to their clients, and experience the highest possible enjoyment in leisure-time experiences. Wellness is more complex than essential physical health. Wellness can fully integrate physical, mental, emotional, social, and spiritual well-being into a practical lifestyle. Optimum wellness balances the following five primary dimensions:

- **Physical Dimension.** This dimension is related to sound nutritional practices, maintaining proper weight, participating in regular exercise, getting enough sleep, engaging in physical activity, avoiding risky behavior, and restricting intake of harmful substances.
- **Career Dimension.** This dimension is related to finding balance among various life roles as people engage in fulfilling work and associated activities and identifying leisure activities that will provide life satisfaction.
- **Emotional Dimension.** This dimension is related to understanding personal feelings, maintaining a relatively even emotional state, accepting one's limitations, expressing emotions effectively, adjusting to change, and maintaining good, healthy relationships with other people.
- **Social Dimension.** This dimension is related to sharing friendships, family relationships, and group memberships. It entails using empathy and active listening skills, caring genuinely about other people, being open to care from other people, and committing to the community's common good, the legal profession, the nation, and the world.
- **Spiritual Dimension.** This dimension is related to maintaining a sense that life is meaningful, employing a continuing quest for value and purpose, searching for clarity, committing to peace and contentment in life, and developing the fortitude to continue in the face of obstacles.³

What can you do to enhance your degree of lawyer well-being? You need to take personal responsibility in developing fitness by fully adopting and implementing a wellness lifestyle. The good news is that each of us can exercise a greater degree of control over our lifestyle and choices by reaching in within ourselves to find our true grit.

Striving For Peak Performance: Grit

If well-being is the recipe for lawyer happiness and fitness to practice, then grit is the way to achieve it. Grit is the mental toughness and passion that propels you toward achieving your vision for life. It's the key to remaining focused and motivated. Rather than courage or exceptional talent, grit is the tenacity, perseverance, resilience, and willingness to keep going despite obstacles. It is quickly adapting to new circumstances and being committed to work hard for long periods to achieve enduring well-being and vitality, trusting that if you can't see the light at the of the tunnel, you will light that sucker up yourself!

For example, many years ago, during a demanding and eventful time in my life, I first learned that I had grit. As an older law student, surely, I expected tough times, but nothing prepared me for that experience and the months to follow. In fact, anything that could have happened during this period, seemingly did. Suddenly, and without warning, I found something to propel me towards achieving a new vision

for my personal and professional life. Immediately I realized that I did have the power to focus on a new vision and improve my approach to well-being and that power was my grit.

Work + Life + Well-being + Grit = Peak Performance

Without a sense of purpose, it is difficult to maintain high levels of commitment to goals and, without purpose, goals have little relevance or meaning. You must make yourself a priority. Instead of putting all you clients ahead of your own well-being, make yourself your number one priority. While lawyers have been trained to put their work above everything else, as the statistics show, that model does not work.

Today, we realize that a new model is being used to reach one's peak performance as a lawyer: well-being. Remember too that part of well-being and grit is that you realize, to quote author Napoleon Hill, "every adversity, every failure, and every heartbreak carry with it the seed of an equivalent or greater benefit." On the other hand, you need well-being and grit to take those seeds, plant and harvest them. Change is inevitable; growth is optional. Use your inner power — find and use your true grit to enjoy a life of lawyer well-being and fitness to practice.

For more information on this topic, or other quality of life issues, contact DELAP at cwaldhauser@de-lap.org or call our confidential line (302) 777-0124 and visit our new website at www.de-lap.org. 

Notes:

1. Schiltz, Patrick J. "On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession." *Scholarship@Vanderbilt Law*. Accessed May 20, 2022. <https://scholarship.law.vanderbilt.edu/vlr/vol52/iss4/2/>.
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Carol P. Waldhauser is the Executive Director of the Delaware Lawyers Assistance Program and can be reached at cwaldhauser@de-lap.org.



PRIORITIZE WELLNESS: Lawyers Can Be Healthy Too

BY RICH LOMBINO, ESQUIRE, LCSW

“I have to get this work done. I’ll exercise tomorrow.” It’s likely most lawyers have said this or something similar many times. Whether it’s exercise, eating healthy, or other activities to promote good mental and physical health, they are often pushed aside for “more important” things. I have an idea: prioritize wellness.

The Reality of the Profession

We all know that practicing law can be an incredibly challenging and stressful profession. There are billable hours, complex work, deadlines, expectations of clients and supervisors, difficult opposing counsel, and many other factors. With technology, you can be connected all the time and in many cases are expected to respond to emails, messages and calls immediately, even if it’s late at night or on weekends. Plus you’re constantly checking your phone for them so even when there’s no activity, your mind is still plugged in to work.

All these and many other factors can create a highly fast-paced and intense environment. And if you couple work responsibilities with a busy personal life, it can be difficult or nearly impossible to balance and manage

It is possible to find a balance where the work gets done well while maintaining good health. Productivity can be the same and maybe even higher.

everything. Hey, I get it. When I was practicing law, there were times I prioritized work over other things. Now as a therapist specializing in helping lawyers, it’s a common theme I often hear.

Of course there’s nothing inherently wrong with working hard for long hours in pursuit of developing and maintaining a successful career. Most lawyers have been driven to achieve for many years and in some cases beginning at a young age. But at what cost? There are many possible sacrifices, including less time with significant others, children, other family, and friends. And also what I want to focus on in this article: the sacrifices to mental and physical health.

A New Perspective

When we’re on a flight, before we take off, we get a presentation of how to put on our seat belts, where the emergency exits are, and also what to do if the



“Change can be difficult. Especially if you’ve been doing things a certain way for years or even decades. But it is possible. Prioritize wellness and your mental and physical health today.”

ficiently. The time you spend doing the wellness activities will be more than made up in productivity. By the way, you’ll also be better significant others, parents, friends, and colleagues if you’re healthy.

Tips For Prioritizing Wellness

You don’t need to make drastic changes in your work schedule or lifestyle to be productive and feel better. Here’s some tips to improve the way you care for yourself:

Reset your perspective. Create that mind shift that your health is important too. Prioritize yourself. If you’re healthy, both in mind and body, you’ll be more productive. Instead of grabbing your phone to check email right when you wake up, consider spending a couple of minutes taking some deep breaths, getting in a positive mindset and focusing on wellness for the day.

Do what has been helpful in the past. Reconnect with those activities and coping skills that worked for you to maintain good mental and physical health. Go for walks after dinner. Meditate in the morning. Journal some thoughts of gratitude. Pick up that guitar. Spend time in nature.

Try new things. You’ve taken stock of what you’ve done in the past. Now it’s time to try some new ones as well. Maybe you considered a cooking class in the past and decided against it, but that was years ago. It might be helpful for you now. Give yoga another try. Create art.

Set easily achievable goals. It’s taken time and effort to make the deci-

sion to change. Setting easily achievable goals and accomplishing them, rather than falling short on unrealistic ones, can result in improving your mood and building confidence. You can then make your goals more ambitious over time at a reasonable pace. For example, you used to exercise for an hour every day, but that was years ago. Maybe start out with a less rigorous workout a few times a week for 15 minutes.

Be consistent to build momentum.

If you get into a consistent groove with these activities and coping skills, you’ll build momentum and have a greater chance of sustained success. You’re trying to achieve long-lasting positive change. Consider using apps to track progress such as step counters or more advanced options that show and reward your progress.

Conclusion

Change can be difficult. Especially if you’ve been doing things a certain way for years or even decades. But it is possible. Prioritize wellness and your mental and physical health today. You can feel better and be a great lawyer. 🌱



Rich Lombino is a therapist and lawyer. He provides therapy to adult individuals, couples and groups regarding stress, anxiety, depression, burnout, alcohol/drug use, couples concerns, career decisions and other related issues, with a speciality of helping lawyers. You can contact him at (302) 273-0700 and info@richlombino.com and learn more at richlombino.com.

oxygen mask deploys and we’re traveling with a child. As a parent, the instinct likely would be to put the mask on the child first, and then yourself. But that’s not the instructions we’re given. They say to put on your mask first because if you’re healthy, you’re able to help those around you. Use this as an analogy when considering decisions of self-care and wellness.

It is possible to find a balance where the work gets done well while maintaining good health. Productivity can be the same and maybe even higher. Here’s the key to remember: When you’re healthy, you’re a better and more productive lawyer. Think about the quality of your work product at 9:00 a.m. verses 9:00 p.m. Something that takes you 15 minutes in the morning may take you twice as long or longer at night. If you consistently take care of yourself, you’ll be feeling better and working more ef-



COGNITIVE DISSONANCE, HARD DECISIONS, AND WELLNESS

BY R. JUDSON SCAGGS, JR., ESQUIRE

This is not an article offering wellness tips or advice. Those are very important and lawyers have too long neglected their mental and emotional health. Our Delaware Lawyers Assistance Program offers a variety of resources and opportunities to take steps toward wellness. Please use them. DE-LAP also offers confidential assistance from professionals and peers for any Delaware lawyer who has, or thinks she might have, a problem with substance abuse or mental health. Please contact us if you think you might need help. That is the most important message the DSBA and DE-LAP can offer to members of the Delaware Bar. It is more important now than in the past. The Covid pandemic has only exacerbated our profession's unwellness.

In this article, I attempt to discuss one aspect of our thinking about values and actions and how it can impact our wellness. Based on my personal experience and the years I have been working with Carol Waldhauser to help impaired attorneys, I am convinced that too many of us are stressed, sad, or anxious. None of us should be surprised that we feel stress. We deal with the legal rights of our clients, including freedom of the accused, protection of society, reputations of persons, and large amounts of money in transactions and litigations. We must deal with

The simple process of recognizing the truth, deciding what we value and really trying to act in line with our values is, it seems to me, a difficult assignment these days.

lots of competing demands from clients, partners, supervisors, staff, counterparties in transactions, opponents in litigations, and judges. I am also convinced our profession, to do it well, requires a large amount of time — there is simply no escaping it. In addition, we are currently living in a world and society that has plenty of problems to make us uncomfortable: the war in Ukraine, inflation, climate change, suicide rates, drug and alcohol addiction rates, gun violence, poverty, deep political divisions, and the nastiness of political and social discourse, to name a few. I feel like I have no or little control over many of these stressors and problems. All this forced me to take a hard look at what I could try to control — my thoughts and conduct. I discovered they often do not match.

Cognitive dissonance refers to a situation involving conflicting attitudes, beliefs, or behaviors. When Leon Festinger published his *Theory of Cognitive Dis-*

sonance in 1957, he used this example: When people smoke, they know smoking causes cancer, which is a mismatch between their knowledge or belief and their actions. That mismatch can cause tension, anxiety, and stress — or at least discomfort. A person typically seeks to reduce their discomfort. They have two choices, change their actions or change their belief. The smoker can quit smoking. A smoker can also change their belief about the risks of smoking. The smoker could decide that the research on smoking was not conclusive — perhaps, in the past, with the help of messaging from tobacco companies — reducing their cognitive dissonance while continuing to smoke. This, to me, seems closer to common sense than modern psychology. Although the idea of cognitive dissonance seemed simple and rather obvious to me, when I tried to apply it honestly to my thinking and actions, it proved surprisingly profound, powerful, and difficult.

First, I had to decide what I really believed and what values should have priority in my life: kindness, welfare of my family, charity, ambition, hard work, honesty, etc. I noticed that my values had changed based on the state of the world around me and my stage of life, which I assume is natural and typical. I also discovered that an absolute ranking of values from top to bottom was both impossible and unworkable, which again seemed natural. Values are mixed and to some extent situational. But I was also enlightened and rather disconcerted to realize that, in many ways, my actions are based on the norms of society or my friends or family — to fit in — not based on values that I had consciously and affirmatively adopted as my own.

Second, I faced the really hard part, matching my actions to my beliefs. As a lawyer, if I believe in professionalism and civility, I need to practice it even when opposing counsel (and dare I say even a client, partner, or judge) acts rudely or unfairly toward me or when some “sharp” practice could give me an advantage. If I believe in training and mentoring associates, I have to make the time to give them feedback and check on

their welfare. Not always easy. I believe that I love and value nature, but what am I willing to change in my lifestyle to help abate climate change and pollution? Will I give up my oversized SUV and buy an electric car (but, wait, my SUV is an important part of my personal style and masculinity!)?¹ As a person with money to spare, I believe in charity, but the great Christian moralist and writer C. S. Lewis said: “The only safe rule is to give more than we can spare.... There ought to be things we should like to do and cannot do because our charities expenditure excludes them.”² Seriously? Now this is getting really hard, but why? Am I really that greedy? Lewis continues, “For many of us the great obstacle to charity lies not in our luxurious living or desire for more money, but our fear — our fear of insecurity.”³ Nailed me. So, as I discovered with many other mismatches between my values and actions, I mostly lack the necessary courage to change my actions.

I also realized that I must be discerning about the truth when I decide what to believe in the age of mass communication and social media. If I do not want to believe my candidate lost an election, I can find plenty of “facts” on the internet to prove my candidate actually won and was cheated, which will allow me to reduce my cognitive dissonance over whether my views and actions comport with our real and rightful leadership. The simple process of recognizing the truth, deciding what we value and really trying to act in line with our values is, it seems to me, a difficult assignment these days. In 1942, C.S. Lewis published *The Screwtape Letters*, where he wrote in the voice of a senior, experienced demon, Screwtape, giving advice to a novice demon assigned the task of tempting and persuading a young man to Hell. In the very first lesson, Screwtape warns his student not to try to persuade a modern man with logic:

It sounds as if you supposed that argument was the way to keep him [the human] out of the Enemy’s [God’s] clutches. That might have been so if he had lived a few centuries earlier. At that time the hu-

mans still knew pretty well when a thing was proved and when it was not; and if it was proved they really believed it. They still connected thinking with doing and were prepared to alter their way of life as the result of a chain of reasoning. But what with the weekly press and other such weapons we have largely altered that.⁴

I do not profess to be a good example. I struggle with identifying and living out my values, particularly when it is difficult to do so and I get mixed messages. The good news for me is the more actions I take that comport with my values and with what I know to be the truth — especially when those actions are not easy — the more whole and well I feel. I can see and feel my integrity increasing. According to Merriam-Webster, “integrity” is the “quality or state of being complete or undivided.” So to have integrity, my actions need to align with my values and the truth. I also find that I have more resilience when I act with integrity. I can only imagine the wonderful result from the world, or at least our country, acting on the truth to fulfill shared values. Perhaps, as lawyers, we can seize our role in society and work to provide an example of the highest integrity, and perhaps we will all improve our wellness by the effort. 🧘

Notes:

1. Many believe that oil companies followed the lead of tobacco companies and cast doubt on climate change research to help us reduce our cognitive dissonance while holding onto our large carbon footprints.
2. C.S. Lewis, *Mere Christianity*, 86 (HarperCollins 1952)
3. *Id.*
4. C.S. Lewis, *The Screwtape Letters*, 1 (HarperCollins 1942). Italics in original.



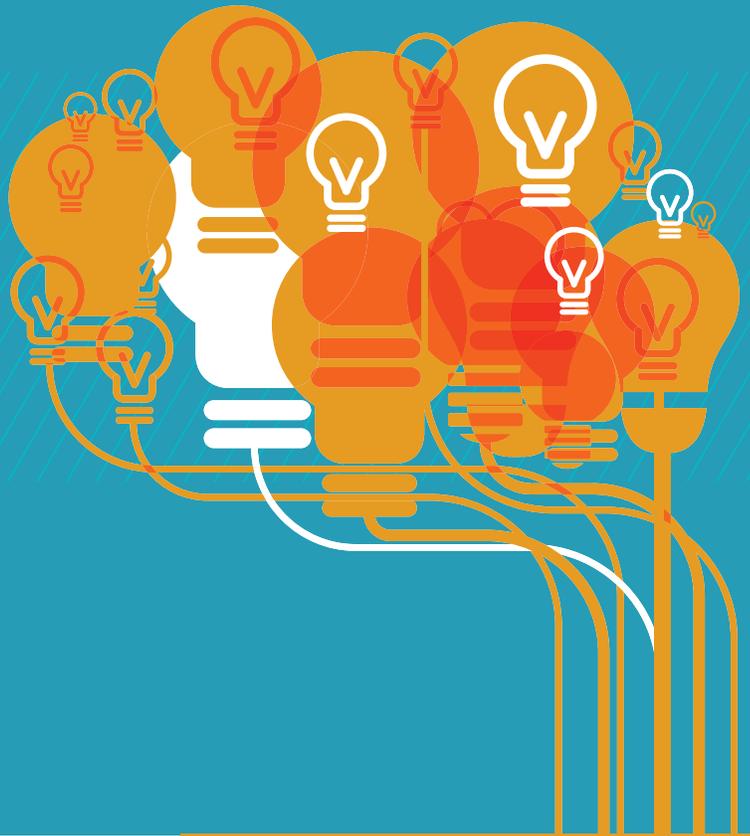
R. Judson Scaggs, Jr. (“R.J.”) is a partner in Morris, Nichols, Arsht & Tunnell where his practice is concentrated in

corporate and business litigation. R.J. is the Chairman of Delaware’s Lawyers Assistance Committee and is a frequent speaker on lawyer addiction, well-being, and recovery. He can be reached at rscaggs@morrisnichols.com.



ADHD: A Legislative Lawyer's Superpower

BY DEBORAH I. GOTTSCHALK, ESQUIRE



While much has been written about the challenges that having ADHD presents to being successful in our society, there is also increasing recognition that people with non-neurotypical brains often have unique skills that can be strengths in right environments. To that end, ADHD is only a disability in education and work settings because of expectations and requirements established by the neurotypical majority. Instead, “the ADHD nervous system [is] a unique and special creation that regulates attention and emotions in different ways than the nervous system in those without the condition.”¹

It is estimated that lifetime prevalence of ADHD is 8 percent of the population, including a prevalence of current adult ADHD of 4.4 percent.² ADHD can manifest as three different types: primarily hyperactive and impulsive, primarily inattentive, and combined.³ ADHD traits vary by each individual, and ADHD often presents very differently in the family members. Rather than a deficit of attention, ADHD is more the inability to focus attention. Thus, someone with ADHD is often described as a day-dreamer, or absentminded, and frequently told that these are character flaws they need to fix. However, recent brain imaging research has demonstrated that there are structural differences in ADHD brains which impair the ability to perform tasks as expected and required by schools and workplaces.⁴

I describe ADHD as seeing different colored lights appearing, but before I can focus on one, it starts to fade and another gets brighter. For example: I decide to walk the dog so I put on her leash, but I notice that I should turn off the coffee pot, then I put a dish in the dishwasher and see a plant I should water. Eventually, I notice the dog sitting patiently with her leash, and we go for our walk, maybe with a house key. Another example is the scene in *Everything Everywhere All at Once* where the main character jumps quickly between locations, leaving each just as we start to understand where she is and the implications. That is what ADHD is like, all day, every day.

Common ADHD traits that I have include:

- **Executive function deficits:** Difficulty planning, organizing, scheduling, and completing tasks. Includes working memory deficits: difficulty memorizing facts, including letters and numbers.
- **Time blindness:** Time is either *now* or *not now*; lose (or never had)

I describe ADHD as seeing different colored lights appearing, but before I can focus on one, it starts to fade and another gets brighter.

track of time; underestimate how long things will take to complete.

- **Hyperfocus:** When interested in a topic or when dealing with emergencies can get a lot done in a short amount of time.
- **Easily bored or an inability to sustain attention:** Novel tasks attract attention; thrive in highly stimulating situations.
- **Lack of impulse control:** Related to attention, so pay attention to whatever is most immediate.
- **Creative, full of ideas:** Able to tackle problems that stump others and see the big picture before others.

Combined with other learning disabilities, diagnosed after I'd been admitted to the Delaware Bar for 20 years, there are many aspects of lawyering that I find tedious and boring. I enjoy solving a puzzle, by finding the argument or wording to support a policy, but hate writing out the answer in long sentences with citations.

In law school, after dropping my first seminar (I hadn't started researching the seminar paper and couldn't even figure out how to approach the task), I enrolled in a seminar that had projects instead of papers. Instead, I had to research and then write a pamphlet on gay and lesbian domestic violence and then present a training on that topic to the Buffalo police. More recently, in my current job, and now on ADHD medication, I researched and wrote a 21-page research paper, with 139 footnotes.

As a legislative attorney, my job requires me to research and draft legislation on the entire range of topics included in the Delaware Code. I handle a large volume of projects and attend committee meetings and votes in the House and Senate to answer questions when bills I draft are on agendas. The job has two distinct paces: during session it is high-volume and fast-paced and much slower in the summer and fall.

Some of my ADHD traits are job skills that help me thrive in the legislative environment. Others present challenges, but because of these traits, I've found strategies that not only help me manage my work successfully, but assist legislators, stake-

holders, and my colleagues. This makes sense, since my brain is basically a constant committee meeting, and one that does not have a document filing system and operates without an agenda and with participants shouting out random ideas, including the person wondering what is for lunch and what the weather will be this weekend.

To accommodate my poor executive function and working memory, I've developed systems that help me keep track of my work, which also help colleagues, legislators, and stakeholders.

- To monitor drafting projects and track legislation that has been released, I created a spreadsheet to track my open projects and a spreadsheet for released legislation so I had a quick reference guide. Our Division Director realized what I was doing manually and asked me to work with IT staff to build a project tracking system into the legislative drafting computer system. Now, our entire office uses that system.

- The weekly hearing calendar I created for myself now includes the meetings for all bills drafted by our office, color-coded by attorney and who is attending each meeting.

- I type notes while I work, which easily convert to talking points for legislators and explanations for stakeholders about what changes a document makes to current law or prior drafts and why.

- The words in the sentences I write are rarely written in the order in which someone reads the final version. I often write answers to questions I anticipate being asked in advance of committee meetings or votes on legislation. I share these notes with legislators.

- My poor working memory also makes it very difficult for me to compare details of different laws. I started using spreadsheets to compare provisions. These spreadsheets become a useful resource for discussions, as guides and to explain drafting decisions and recommendations.

Other ADHD traits are job skills that neurotypical brains don't bring to this job.

- Working on a broad range of subjects.
- Making connections between concepts.
- Summarizing the main point of a conversation.
- Working in a fast-paced environment.
- Hyperfocus.
- Working in a fast-paced environment.

Thus, legislative drafting is an excellent fit for how my brain works. It requires skills that are my strengths and does not require much of the work I find tedious and boring. This isn't to say that some accommodations aren't necessary or helpful for me to be successful. Fortunately, technology provides a lot of assistance that does not require a special request, such as editing tools, spreadsheets, and calendar reminders.

In conclusion, "ADHD can be a uniquely powerful asset, a gift, if managed with understanding."⁵ I am grateful to work in an environment where my strengths are valued as a gift. 🧠

Notes:

1. Dodson, M.D., William. "Secrets of Your ADHD Brain." ADDitude. ADDitude, January 10, 2022. <https://www.additudemag.com/secrets-of-the-adhd-brain/>. re *Christianity*, 86 (HarperCollins 1952)
2. "Attention-Deficit/Hyperactivity Disorder (ADHD)." National Institute of Mental Health. U.S. Department of Health and Human Services. Accessed May 19, 2022. <https://www.nimh.nih.gov/health/statistics/attention-deficit-hyperactivity-disorder-adhd>.
3. Dodson, M.D., William. "Secrets of Your ADHD Brain." ADDitude. ADDitude, January 10, 2022. <https://www.additudemag.com/secrets-of-the-adhd-brain/>.
4. "Attention-Deficit/Hyperactivity Disorder (ADHD)." National Institute of Mental Health. U.S. Department of Health and Human Services. Accessed May 19, 2022. <https://www.nimh.nih.gov/health/statistics/attention-deficit-hyperactivity-disorder-adhd>.
5. *ADHD 2.0, New Science and Essential Strategies for Thriving with Distraction – from Childhood Through Adulthood*. Edward M. Hallowell, M.D. and John J. Ratey, M.D. (2021).

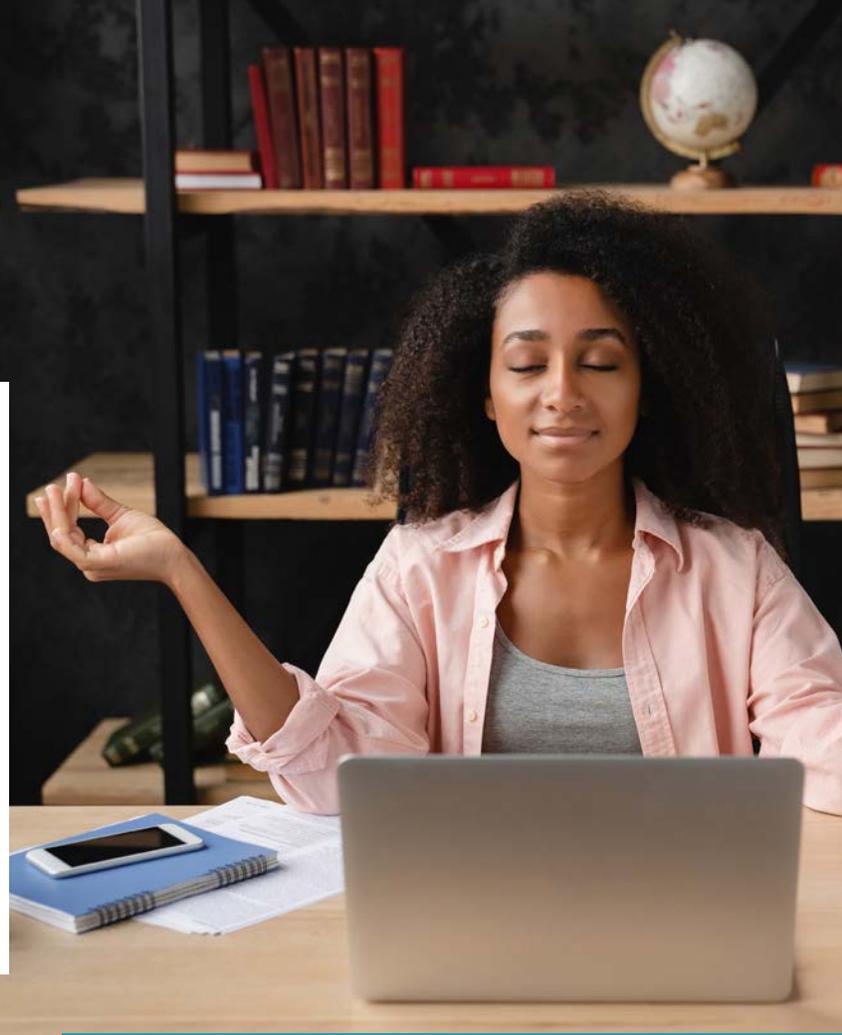


Debbie Gottschalk is a Senior Legislative Attorney at the Division of Research and volunteers as a coach for a high school mock trial team. Previously, she was the Chief Policy Advisory at DHSS and practiced at CLASI for 15 years. She can be reached at deborah.gottschalk@delaware.gov



PRACTICAL MEDITATION AS A WELLNESS PRACTICE FOR ATTORNEYS

BY LAURA N. NAJEMY, ESQUIRE



I recently attended a conference for in-house attorneys, my first since Covid shut the world down in 2020. As part of the Wellness Initiative at the conference, the organizers provided a meditation room, with hourly guided meditation. When I investigated the room, I found four attorneys all working on their laptops, while the meditation loop played in the background. It was a facepalm moment and it clearly illustrated how blurred the line between work and leisure had become during the pandemic, especially for attorneys.

For attorneys, the pandemic transformed many of our hours into work time. With attorneys working from home, commuting time was turned into work time. Complete physical isolation from colleagues meant that even the previous occasional lunches out with a co-worker changed into a quick meal in front of the computer, again working. Attorneys, who have poor boundaries to begin with, lost most of their ability to separate work and personal time, with the former slowly subsuming the later. It's no wonder that in a profession where practitioners are 3.6 times as likely to be depressed as in other jobs, the mental health has taken a turn for the worse. Wellness practices offer the potential to reverse this decline yet such practices need to be more

fully understood and implemented if they are to have any effect at all.

Back at the conference, I talked to several attorneys about the failure of the meditation room. One of participants told me, "Well I can't just sit there and shut down my brain. Tried it, but it doesn't work," expressing a fundamental misunderstanding of what meditation is specifically, and what wellness practices in general try to achieve.

The definition of meditation is:

1. continued extended thought, reflection or contemplation; or
2. to engage in mental exercise (such as concentration on one's breathing or repetition of a mantra) for the purpose of reaching a heightened level of awareness.

At no point does meditation, or wellness practices require stillness, shutting down or turning off. On the contrary,

Since constant worry builds anxiety, the goal is always to find ways to move the mind away from such thoughts.



as short as five minutes, where the person concentrates on a specific focus point: the rhythm of breathing, the movement of the muscles we walk, the repetitive pedal motion of a bike. All of these can become minutes of meditation.

Why is it important to start incorporating meditation into an attorney's wellness practices? Why does DE-LAP mention meditation regularly? Why do therapists and wellness spas push meditation? Because, meditation changes the actual physical structure of the brain for the better. A study run by Harvard Medical School showed that consistent meditation thickens the pre-frontal cortex of the brain, which is responsible for awareness, concentration, and decision making. Another study, carried out by Yale University showed that meditation decreased activity in the default mode network (DMN), the brain network responsible for mind-wandering and worrying. Since constant worry builds anxiety, the goal is always to find ways to move the mind away from such thoughts. Johns Hopkins University researchers found that the effect of meditation on the brain was comparable to that of antidepressants in its ability to address the symptoms of depression. Essentially, five minutes per day dedicated to meditation can have life long positive impacts on an attorney's well-being.

those who meditate, focus on something external. Often it's their breathing, which is a regular continuous movement that practitioners try to be aware of, but for those who fidget, it can be the actual fidgety movement of their hands or feet, which draws the focus and creates the meditative condition.

Even an act as universal and utilitarian as walking, with a focus on how the steps feel or how the muscles move to create the desired motion, can become a form of meditation. If during the walk, the person consciously makes an effort to focus intensely on their movements, unconsciously the other things they are focusing on will fade away. With regular practice, other thoughts fade completely into the background for that period of time. The same applies with someone intensely focusing on cooking, gardening, painting, weightlifting, textile arts, or bike riding. The key is a time period, even

However, due in no small part to the pandemic, the first challenge for attorneys will be to reclaim the time needed to employ such wellness practices. Those lunch hours, or travel time, that became even more dedicated to work have to be reclaimed. It may be a cliché, but it's an accurate one: we only have one life to live. Strive to live it well. 🧘



Laura Nastase Najemy is a Senior Assistant City Solicitor with the City of Wilmington. She is also a volunteer with DE-LAP, and on the Board of Postpartum Support International, Delaware Chapter where she advocates for families experiencing postpartum depression, anxiety, and other perinatal mood disorders. She can be reached at Innajemy@wilmingtonde.gov.

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The 31st Delaware High School Mock Trial Program

BY THE MOCK TRIAL COMMITTEE

Wilmington Friends School was the winner of this year's Competition, for a second time in a row. The Competition was held on March 4 and 5, 2022. Second place went to Archmere Academy, third place to the Charter School of Wilmington, fourth place to St. Elizabeth's and fifth place to Delaware Valley Classical School. A total of 17 teams and approximately 150 students participated in this year's competition. The competition was held remotely through Zoom. The Delaware Law Related Education Center, Inc. (DELREC) sponsored the event. The winning team will represent Delaware in the National Mock Trial Competition. Delaware Supreme Court Justice Tamika R. Montgomery-Reeves presided over the championship round with Delaware U.S. Attorney David Weiss and Senator Kyle Evans Gay acting as scoring judges.

Students from each school spent two days arguing both sides of a simulated criminal case involving allegations that a doctor was running his practice as an illegal "pill mill" and that the doctor administered opioid pain medication to a patient that resulted in his death. They presented opening statements, closing arguments and questioned "witnesses."

Newark Charter won the Delaware Way Award. This award is given to the team that the participating students believe best exemplifies the ideals of mock trial, including civility, justice, and fair

play. Best Attorney gavels went to Helen Qi from Archmere and Peter Chapman from St. Elizabeth's. Best Witness gavels were won by Greer Marvel from Friends and Caroline Dooley from the Charter School of Wilmington. Fran O'Malley, a professor at the University of Delaware and member of the Board of DELREC for over 30 years, was presented with the Pete Jones Award.

The 2022 Mock Trial Case Committee was co-chaired by Daniel M. Attaway, Esquire, and N. Christopher Griffiths, Esquire. The Honorable Francis J. Jones, Jr., Judge, Superior Court of Delaware served as an advisor to the co-chairs. Additional members of the Committee included Sean O'Sullivan, Claudine Smith, Margie Touchton, Kammas Kersch and Eileen Wilkinson. The Committee organized the case material and helped coordinate the competition. The Honorable Paul R. Wallace, Judge, Superior Court of Delaware, served as the Committee's Liaison to the Court. Pat Quann, Executive Director of DELREC, helped coordinate registration.

The Committee and DELREC thank the Delaware Supreme Court for its support, along with the Administrative Office of the Courts. The Committee and DELREC also thank the Delaware Bench and Bar, and the Delaware Paralegal Association, including Claudine Smith, for providing many of the volunteers that helped organize and operate the competition. We are very grateful for the Attorney Advisors who gave their time to support each of the teams. 

We are very grateful for the commitment of the following Attorney Advisors who gave so much help to our Mock Trial teams.

Kyle Kemmer, Esquire	Morgan Whittam, Esquire
The Hon. Brendan Linehan Shannon	Deborah I. Gottschalk, Esquire
Matthew M. Bartkowski, Esquire	Neill M. Walsh, Esquire
Kristin Glakas, Esquire	Randolph K. Herndon, Esquire
A. Dean Betts Jr., Esquire	April C. Betts, Esquire
Cathy Zwolak Killan, Esquire	Kevin A. Guerke, Esquire
Roxanne Merrill Eastes, Esquire	Natalie Wolf, Esquire
Kristina G. Lehman, Esquire	Douglas E. McCann, Esquire
Nicole Marie Walker, Esquire	Donna L. Culver, Esquire
Wade A. Adams III, Esquire	Maria T. Knoll, Esquire
Robert W. Whetzel, Esquire	Jenn McCloskey
Alexis Meyers, Esquire	Matthew C. Buckworth, Esquire
Nichole T. Whetham Warner, Esquire	Gregory P. Skolnik, Esquire
Karen C. Bifferato, Esquire	

The Competition would not be possible without the support from our scoring and presiding judges from the Bench and the Bar. We are very grateful to Margie Touchton of Morris James LLP for recruiting and coordinating the following volunteers:

Mary I. Akhimien, Esquire
Rachel D. Allen, Esquire
The Hon. Michael W. Arrington
Gregory R. Babowal, Esquire
Shakuntla L. Bhaya, Esquire
Tara A. Blakely, Esquire
Kelsey A. Bomar, Esquire
Emily A. Bryant - Álvarez, Esquire
The Hon. Peter Burcat
Justin P. Callaway, Esquire
Rae S. Campagnola, Esquire
The Hon. Jeffrey J. Clark
Oliver J. Cleary, Esquire
Lisa L. Coggins, Esquire
Sarah B. Cole, Esquire
Nora McDonough Crawford, Esquire
Curtis J. Crowther, Esquire
Douglas J. Cummings, Jr., Esquire
Catherine M. Di Lorenzo, Esquire
Kenneth M. Doss, Esquire
Amy M. Dudash, Esquire
David S. Eagle, Esquire
Sarah M. Ennis, Esquire
Eric J. Evain, Esquire
Nicole M. Faries, Esquire
Faith C. Flugence, Esquire
Richard A. Forsten, Esquire
Kevin Gross, Esquire
Shauna T. Hagan, Esquire
James J. Haley, Jr., Esquire
Jennifer Anne Hartnett, Esquire
Ronald W. Hartnett, Esquire
Katherine L. Hemming, Esquire
Loren Holland, Esquire
The Hon. James Horn
Lindsey E. Imbrogno, Esquire
The Hon. Francis J. "Pete" Jones, Jr.
Lee E. Kaufman, Esquire
The Hon. Felice Glennon Kerr
Ipek Kurul, Esquire
Bradley P. Lehman, Esquire
Michael J. Logullo, Esquire

Irina N. Luzhatsky, Esquire
John A. Macconi, Jr., Esquire
Lauren E. Maguire, Esquire
Peter Akawie Mazur, Esquire
Maureen McCartney, Esquire
Chantelle D. McClamb, Esquire
Lauren C. McConnell, Esquire
Elizabeth Roberts McFarlan, Esquire
The Hon. James G. McGiffin, Jr.
Michael F. McGroerty, Esquire
John D. McLaughlin, Esquire
Frederick H. Mitsdarfer III, Esquire
Taylor Trapp Nicholl, Esquire
The Honorable Maryellen Noreika
Darryl A. Parson, Esquire
Jordan J. Perry, Esquire
Olivia C. Phillips, Esquire
Maura Crough Popp, Esquire
Donald M. Ransom, Esquire
Michael C. Rosendorf, Esquire
Amanda Lynn Rossi, Esquire
Kelly E. Rowe, Esquire
Abigail Samuels, Esquire
Kathryn M. Sanchez, Esquire
Bradford J. Sandler, Esquire
Kelly H. Sheridan, Esquire
Kathleen D. Smith, Esquire
Michelle C. Streifthau-Livizos, Esquire
Aaron H. Stulman, Esquire
Paul D. Sunshine, Esquire
Elizabeth M. Taylor, Esquire
Stephanie A. Tsantes, Esquire
Benjamin L. Wallace, Esquire
The Hon. Paul R. Wallace
Jennifer Welsh, Esquire
Holly M. Whitney, Esquire
Chandra J. Williams, Esquire
The Hon. William L. Witham, Jr.
James J. Woods, Jr., Esquire
Christian Douglas Wright, Esquire
Jing-Li Yu, Esquire

We also thank volunteers from the Delaware Paralegal Association for their help with the 2022 Competition:

Delaware Paralegal Association members who volunteered: Claudine Smith, Veronica McKain, Stephanie McConaghy, Christy Grazer, Jessica Thompson, and Judith Nazarewycz.

Delaware Paralegal Association Student Volunteer: Lucien Edwards

Administrative of the Courts: Bethany Geleski and Sarah Bowers

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2022 Law Day Luncheon

Monday, May 2, 2022

The DSBA held its annual Law Day Luncheon on May 2 at the Hotel du Pont. Members of the Delaware Bench and Bar gathered to celebrate the 2022 Law Day Awardees: Maria Paris Newill, Esquire, recipient of the Community Service Award; Tracy Walls-Pulling, recipient of the Myrna L. Rubenstein Professional Support Recognition Award; and Dr. Sarah Falgowski, MD, Rich Lombino, Esquire, LCSW, and Alice R. O'Brien, MS, NCC, LPCMH, recipients of the Liberty Bell Award.

At the event, keynote speaker Kermit Roosevelt III, a professor of constitutional law at the University of Pennsylvania Law School, a former clerk for Supreme Court Justice David Souter, a member of the Presidential Commission on the Supreme Court, and an award-winning author, discussed the topic of his new book *The Nation that Never Was: The Source of American Constitutional Values*. 📖



DSBA President Kathleen M. Miller, Esquire, welcomed guests to the 2022 Law Day Luncheon.



Attendees at the 2022 Law Day Luncheon, the first live Law Day event since 2019.



Rodney A. Smolla, Esquire, Dean, Professor of Law Widener University Delaware Law School introduced the keynote speaker.



Professor Kermit Roosevelt III gave the Keynote Address.



Community Service Award recipient Tracy Walls-Pulling of the Superior Court of the State of Delaware (L) with presenter The Honorable William C. Carpenter, Jr. of the Superior Court of the State of Delaware (R).



Myrna L. Rubenstein Professional Support Recognition Award recipient Maria Paris Newill, Esquire, of Heckler & Frabizzio, P.A. (R) with presenter Miranda D. Clifton, Esquire, of Heckler & Frabizzio, P.A. (L).



Liberty Bell Award recipients Alice R. O'Brien, MS, NCC, LPCMH, (L) and Rich Lombino, Esquire, LCSW (R) with presenter Carol P. Waldhauser, Executive Director Delaware Lawyers Assistance Program (C).
Not pictured: Awardee Dr. Sarah Falgowski, MD.

Q&A with Kermit Roosevelt III



Kermit Roosevelt III, author of *The Nation that Never Was: The Source of American Constitutional Values*, released on June 13, 2022, answers a few questions about his family legacy in politics, his theory on American identity, and hope for the future.

1. Is there any correlation between your famous great-grandfather's passion for politics and your desire to write about the issues in your new book?

I do think that Theodore Roosevelt's political career had an effect on me. It made me believe that I should try to make the world a better place. It also probably discouraged me from electoral politics, although I don't think I had much of a tendency in that direction anyway — I wanted to do something where I could feel inspired by Roosevelt, and live up to his values, rather than something where I felt like I was imitating him, and would never be able to live up to his example. So writing books about political ideas seemed like a good solution — although of course Roosevelt also wrote more books than I expect I ever will.

2. Your book presents a novel theory on the Constitution of 1789 and the Civil War. When did you first develop this theory?

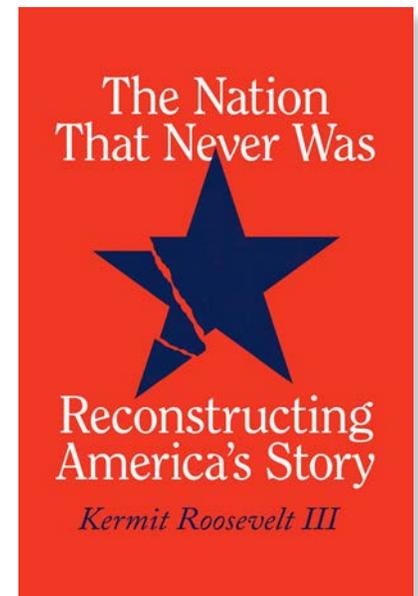
I started thinking about the question of American identity about ten years ago, when I was asked to do a review of two books by my former teacher, Yale Law professor Jack Balkin. In the course of working on that, I started wondering why we talked so much about the Declaration of Independence and so little about the Fourteenth Amendment. And then I started trying to figure out what the Declaration of Independence actually meant to the people who wrote and read it in 1776, and suddenly a lot of things began to look different to me.

3. Who are the historical figures you consider "authentic" who embody the true spirit of America (if any)?

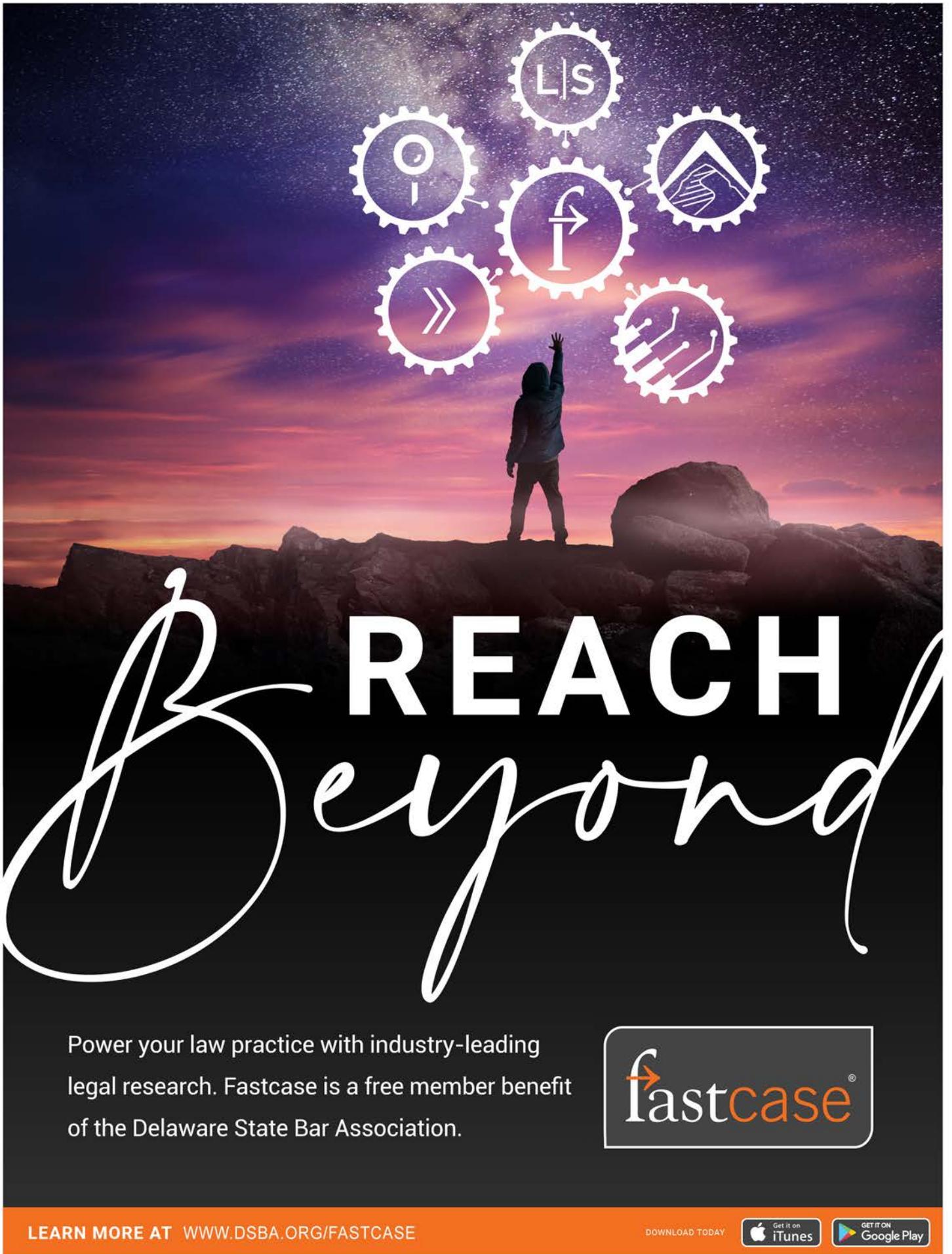
One of the things that I like better about the story I tell than the standard story that locates American ideals in the Declaration of Independence is that the heroes of my story—people from the Civil War and Reconstruction—are typically better than the heroes of the Revolution and the Founding. I'd pick Abraham Lincoln as a good example, though not a perfect one: he turned a war for union into a war for freedom. Or, the members of the Reconstruction Congress, people like Charles Sumner and Thaddeus Stevens: when they couldn't get the justice they sought within the existing Constitution, they broke it and made a new one. Or, the soldiers of the U.S. Army, who fought not only for themselves but for the liberty of all.

4. You have mentioned that your observations could herald a dark time to come or they could be considered hopeful. Given what you are seeing in politics and government, do you see anything that is hopeful?

I'm always inspired by my students. I think the generation that is coming along now has a keen sense of justice, and I expect great things from them. And I think that America has made progress — not without some steps back, too, but if you think about it in 50-year increments, we're usually getting better. 🕊️



Kermit Roosevelt III is a professor of constitutional law at the University of Pennsylvania Law School, a former clerk for Supreme Court Justice David Souter, a member of the Presidential Commission on the Supreme Court, and an award-winning author. A frequent op-ed contributor, his work has appeared in the *New York Times*, the *Foreign Policy Research Institute*, *The Washington Times*, *TIME*, *Newsweek*, and *The Hill*, among many other outlets. He serves as a media expert and keynote speaker, discussing topics including the Supreme Court, civil rights, U.S. presidential history, leadership, American politics, patriotism, and U.S. current events.



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Member Appreciation Spring Event

Saturday, May 14, 2022 | Ramsey's Farm

A Carnival of Fun with the DSBA

Our carnival-themed Member Appreciation Event at Ramsey's Farm on May 14 gave members a chance to get outside (even in the rain), mingle with their colleagues, eat some good food, play games, and win prizes. The event was well-attended with members and their families taking a chance on the weather. The Plum Pit food truck and Cajun-Sno ice cream truck provided lunch and treats for attendees, while children (and some adults!) got their faces painted by Ilana's Glitterbugz, played carnival games, basketball, and Jenga, went on a hayride, and visited the farm animals. All the children got a turn at the piñata and everyone was a winner. The DSBA-sponsored event is part of member appreciation month and a way to get DSBA members and their families together and have fun. We hope you'll join us next year! 🎉



DELAWARE STATE BAR ASSOCIATION BENCH AND BAR CONFERENCE 2022

FRIDAY, JUNE 17, 2022 | CHASE CENTER ON THE RIVERFRONT | WILMINGTON, DELAWARE

3.0 hours CLE credit in Enhanced Ethics for Delaware and Pennsylvania attorneys

CONFERENCE SCHEDULE

8:00 a.m. - 9:00 a.m.	Registration Breakfast/Vendor Visit
9:00 a.m. - 9:25 a.m.	Opening Session <i>Welcome Remarks</i> <i>Address from the Combined Campaign for Justice</i> <i>State of the Judiciary</i>
9:25 a.m. - 9:40 a.m.	CLE Keynote Speaker Deborah Enix-Ross
9:40 a.m. - 10:30 a.m.	CLE Panel Discussion on Bench & Bar Diversity Committee Report and Recommendations to the Supreme Court
10:30 a.m. - 10:45 a.m.	Beverage Break/Vendor Visit
10:45 a.m. - 11:45 a.m.	Annual Meeting
11:45 a.m. - 12:00 p.m.	Refreshment Break/Vendor Visit
12:00 p.m. - 1:30 p.m.	CLE Plenary Session with Keynote Speaker David E. Sanger
1:30 p.m. - 3:00 p.m.	Social Reception

ANNUAL MEETING

Presided over by Kathleen M. Miller, Esquire, Delaware State Bar Association President
Presentation of the First State Distinguished Service Award to The Honorable Michael N. Castle
Recognition of individuals who have been members of the Delaware Bar for more than 50 years
Election of 2022-2023 Executive Committee Members
Passing of the Gavel to the new Delaware State Bar Association President, Charles J. Durante, Esquire

COME TOGETHER!

Join us for a lively reception where you can catch up with colleagues, make new acquaintances, listen to live Beatles-inspired music, and enjoy themed food stations. Casual dress encouraged!

Hosted by: The Honorable Collins J. Seitz, Jr., Chief Justice of the Supreme Court of Delaware
Justices Karen L. Valihura, James T. Vaughn, Jr., Gary F. Traynor, and Tamika R. Montgomery-Reeves,
The Delaware Judicial Conference, and the Delaware State Bar Association

Deborah Enix-Ross

American Bar Association
President-Elect, 2021-2022



Deborah Enix-Ross is a senior adviser to the International Dispute Resolution Group of Debevoise & Plimpton in New York City. In August 2022, she will become president of the ABA, the world's largest voluntary association of lawyers, judges, and other legal professionals. Ms. Enix-Ross served as chair of the ABA's policy-making House of Delegates and as chair of the ABA Center for Human Rights. As chair of the ABA International Law Section, she co-founded the Women's Interest Network and worked with the International Bar Association to create its Women's Interest Group. She also led an international legal exchange delegation to Liberia, Sierra Leone, and Ghana, where she delivered an address commemorating the country's 50th anniversary of independence. Ms. Enix-Ross will address Diversity in her keynote address.

David E. Sanger

White House and national security correspondent
and a senior writer at *The New York Times*



In his keynote address, "The Perfect Weapon: War, Sabotage and Fear in the Cyber Age," Mr. Sanger will discuss how long before Russia invaded Ukraine, it was clear that the world was headed into new forms of warfare that complement the old — and that takes the battle to cyberspace. Russia, China, Iran and North Korea are the main adversaries, but hardly the only ones. And the battlefield they operate on is global — including targeting government agencies, courts, and international organizations. This lecture will take on the question of what we have learned in the past decade, since the United States mounted a major cyber attack on Iran's nuclear program, and China and Russia have stepped up their targeting of critical information and critical infrastructure. And it will look ahead, to what we have learned from the war in Ukraine and a new age of conflict.

CLE: We Can Work It Out

PANEL DISCUSSION ON BENCH & BAR DIVERSITY COMMITTEE REPORT
AND RECOMMENDATIONS TO THE SUPREME COURT

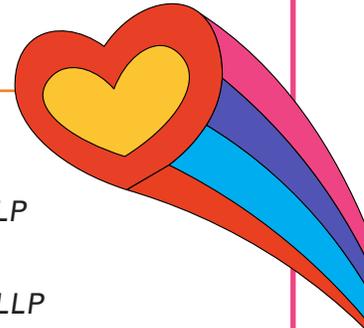
PANELISTS

The Honorable Collins J. Seitz, Jr.
Chief Justice of the Supreme Court of Delaware

Doneene Keemer Damon, Esquire
Richards, Layton & Finger, P.A.

Jennifer C. Wasson, Esquire
Potter Anderson & Corroon LLP

Kathleen M. Miller, Esquire
Smith, Katzenstein & Jenkins LLP



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Get to Know the Delaware League of Women Voters!

BY TIFFANY GEYER LYDON, ESQUIRE

Now, more than ever, it's so important to make sure your voice is heard. Our featured columnist this month discusses how you can engage and be heard at a local level.



The League of Women Voters (the “League” or “LWV”) is a non-profit, nonpartisan, grassroots organization that works to protect and expand voting rights and ensure everyone is represented in our democracy. The League empowers voters and defends democracy through advocacy, education, and litigation at three levels — local, state, and national. As set forth in its bylaws, LWV’s purpose is “to promote political responsibility through informed and active participation in government and to act on selected governmental issues.” LWV believes in representational government, individual liberties, and balance of powers.

Since becoming a League member, I have discovered that there are a few misconceptions about exactly who LWV is and what it does. One misconception is likely a result of the League’s traditional name. Contrary to what some may think, you do not have to identify as a woman to be a member, and in fact, you do not even have to be a voter yet. The League encourages all members of society to participate in LWV activities and programs and hopefully join the League. It is incredibly important for Delaware’s youth to learn about democracy and all its tenets, and as such, LWV encourages them to participate in League events and become student members. Youth involvement in many causes has been encouraging in recent years, and the League is delighted to facilitate and foster that enthusiasm with education and action.

The Delaware League of Women Voters is also proud to have initiated a Diversity, Equity, and Inclusion Policy, which states that “there shall be no barriers to full participation” in LWV “on the basis of gender, gender identity, ethnicity, race, native or indigenous origin, age, generation, sexual orientation, culture, religion, belief system, marital status, parental status, socioeconomic status, language, accent, ability status, mental health, educational level or background, geography, nationality, work style, work experience, job role function, thinking style, personality type, physical appearance, political perspective or affiliation and/or any other characteristic that can be identified

as recognizing or illustrating diversity.” Diversity, equity, and inclusion are central to LWV’s current and future success in creating a more perfect democracy. The League cannot ensure that it is fully representing Delawareans in its advocacy unless it is obtaining and listening to all views.

Another misconception is a belief that the League’s sole focus is voting rights. While voter registration and voting rights are undoubtedly a high priority, the League’s overall goal is much broader — to protect democracy and ensure equitable representation in government at all levels. As such, the League provides voter services and educational programming on a wide variety of topics. LWV also influences public policy through advocacy and education, conducting extensive research and discussion before it takes a position on a topic.

The League’s Advocacy Corps monitors the activities of the Delaware Legislature as it conducts the state’s business and tracks administrative actions conducted by state agencies. The Advocacy Corps supports or opposes legislative and administrative proposals in accordance with policy positions approved by the LWV State Board, and offers testimony in person and electronically at hearings. As a demonstration of the breadth of the League’s focus, the Advocacy Corps Portfolios currently include Climate Change/Energy, Criminal Justice, Education, Elections and Voting, Government/Finance/Taxation, Health Care, Land Use/Transportation, Money in Politics, Natural Resources, Redistricting, and Social Policy.

While being a League member in any state is a rewarding experience, it is especially meaningful in a small state like Delaware. We are fortunate that our advocacy on behalf of Delaware residents can have an immediate and significant impact on the state’s laws and policies. We are also incredibly lucky that most Delaware state legislators are active and responsive to their constituents’ views and genuinely engage with advocacy organizations like LWV. Local and state officials (and even federal representatives) are often present at League events and programs, and some are themselves members of the League. The League is also proud to partner with other non-profit organizations and coalitions, which again, in a small state like Delaware, can have a tremendous impact.

One of the most important resources the national League provides is Vote411, a user-friendly website where voters can confirm their polling location, check if an ID is required, and see what their personal ballot will look like. LWV has long been a trusted source of objective and nonpartisan election information, and since 2006, VOTE411.org has served tens of millions of voters. LWV Delaware adds local and state election information to the site. Vote411 was a valuable resource for candidate information in Delaware’s recent school board elections.

LWV is proud to host informative programs on a variety of topics through the state and local chapters. Some examples of recent ones include a virtual tour and discussion of Dr. King’s

civil rights journey, a discussion of the proposal for an inspector general for Delaware, a presentation on offshore wind power, and a discussion of New Castle County’s 2050 comprehensive plan. The Delaware LWV also sponsors League Days, a series

Contrary to what some may think, you do not have to identify as a woman to be a member, and in fact, you do not even have to be a voter yet. The League encourages all members of society to participate in LWV activities and programs and hopefully join the League.

of important legislative topics, which, for 2022, included online programs on education, criminal justice, and climate & energy. Recordings of many of LWV’s Zoom events are available to the public on the League’s website and YouTube page. The LWV also holds member discussions that cover world events, books, and TED talks.

And of course, the League often has a presence at community events where it provides information, resources, and voter registration services. LWV recently conducted an outreach project for young Latino/Latina voters at an event at the University of Delaware, participated in the Delaware Youth Environmental Summit, and provides welcome packets with valuable resources to new citizens at naturalization ceremonies.

Although LWV expects to have more in-person events in the future, many of the programs will continue to occur through Zoom. As the midterm elections approach, the League anticipates facilitating regular candidate forums.

As lawyers, we have skills and experience that align well with the League’s goals and could be of great service to LWV chapters. No matter your political party or views, we all enjoy the freedoms and benefits of living in a democracy and want to protect them. As lawyers, we balance so many responsibilities and tasks, but the great thing about LWV is that is always an available resource, and if you decide to join, it is entirely up to you how active you want to be.

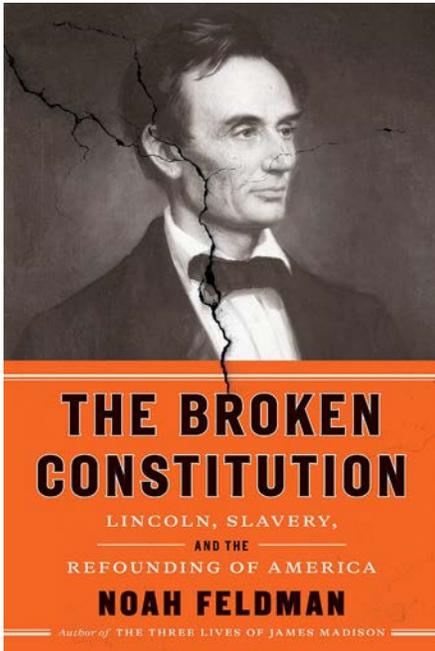
Delaware has three local chapters of LWV, one for each county. When you join as a member of any of these chapters, you automatically become a member of the state and national Leagues as well. For more information or to join the League, please visit <https://my.lwv.org/delaware>. In addition to the League’s YouTube channel, LWV Delaware has a presence on Facebook, Instagram, and Twitter. 

Tiffany Geyer Lydon is Senior Counsel at Ashby & Geddes and a board member of the New Castle County chapter of the League of Women Voters. She can be reached at tlydon@ashbygeddes.com.





Lincoln's Incredible Balancing Act



The Broken Constitution: Lincoln, Slavery, and the Refounding of America

By Noah Feldman
Farrar, Strauss and
Giroux, 2021

It is often difficult to comprehend the challenges of the past. History has a way of normalizing everything and making something that was originally uncertain or risky seem obvious or a sure thing. We fail to appreciate the past because it is the only story we know. The North won the Civil War because the North was always going to win the Civil War, it was just a question of time. The Allies won World War II because the Allies were always going to win World War II. The Berlin Wall fell, and the Soviet Union unraveled, because the Soviet Union was unsustainable. Hindsight is always 20/20, but, in the moment, when history is being made, the future is still the undiscovered country and the eventual outcome is far from certain.

So it was at the beginning of the Civil War. When Abraham Lincoln took office as our sixteenth President in 1861, seven states had declared their secession from the Union. Four would follow shortly thereafter. Upon entering office, Lincoln was working under a “broken” Constitution, facing a challenge the Founders had never anticipated. In *The Broken Constitution: Lincoln, Slavery, and the Refounding of America*, Professor Noah Feldman tells the story of Lincoln’s struggles under the Constitution as it had been interpreted and applied up to that time, as he fought to save the Union and, ultimately, to end slavery.

Feldman begins by describing the Constitution, as it existed up until 1861, as the “Compromise Constitution.” That is, for better or worse, the Constitution of 1787 which represented a compromise between southern slave states and northern free states. The fugitive slave clause, the three-fifths clause, and other language was necessary, or all 13 states would not have come together to ratify. Many of the Founders, including Jefferson and Madison, hoped that slavery was on the road to dying out, and perhaps it might have except for the invention of the cotton gin; but, regardless, the Constitution was a “compromise,” even if the compromise was one so horrific. Secession ended the compromise.

When Lincoln took office, there were many aspects of the Constitution which presented obvious difficulties. As troops began to travel to Washington, in response to Lincoln’s initial call for volunteers, they were attacked and harassed in Maryland (a slave state which had not seceded, but was home to many southern sympathizers). Congress would not be in session for several months, and so Lincoln suspended the writ of habeas corpus even though the Constitution only grants that power to Congress. John Merryman was a lieutenant in the Maryland state militia that had burned bridges north of Maryland to hinder troop movements to Washington, D.C. He was arrested and held at Fort McHenry in Baltimore. Merryman’s friends filed for a writ of habeas corpus with Chief Justice Roger Taney (acting in his capacity as a circuit judge), and Taney issued the writ, but the military, per Lincoln’s suspension, refused to release Merryman. Taney then issued his decision, *Ex parte Merryman*, holding that only Congress could suspend the writ and ordering Merryman

Hindsight is always 20/20, but, in the moment, when history is being made, the future is still the undiscovered country and the eventual outcome is far from certain.

produced. Lincoln ignored the decision on the theory that the exigencies of rebellion justified his actions (particularly as Congress was not in session at the time) and famously responded: “Are all the laws but one to go unexecuted and the government itself go to pieces lest that one be violated.” Later, in 1863, Congress would authorize the President to suspend the great writ. Some, however, thought Lincoln a dictator for ignoring the Constitution and a court order.

Lincoln also countenanced the shut down of various critical newspapers and, in at least two instances, ordered newspapers shut down that had published a fake presidential proclamation. In 1864, at least 34 newspapers were shut down or otherwise restrained. To Feldman, Lincoln was ignoring provisions of the Constitution in order, ultimately, to save it.

Of all the constitutional issues Lincoln faced, though, the most difficult (from a constitutional perspective) was emancipation. At the beginning of the war, Lincoln hoped for some form of reconciliation that would bring the southern states back into the Union. He also wanted to avoid taking any action that might cause the border slave states (Missouri, Kentucky, Maryland, and Delaware) from joining the Confederacy. Nor did he believe he was authorized by the Constitution to simply free the slaves — the “compromise” Constitution protected slavery and Lincoln did not believe he could take unilateral action with respect to it.

Lincoln’s solution was based on the war itself. The Emancipation Proclamation was a wartime measure undertaken in his capacity as Commander-in-Chief. It did not end slavery throughout the nation. Rather, it only applied to the

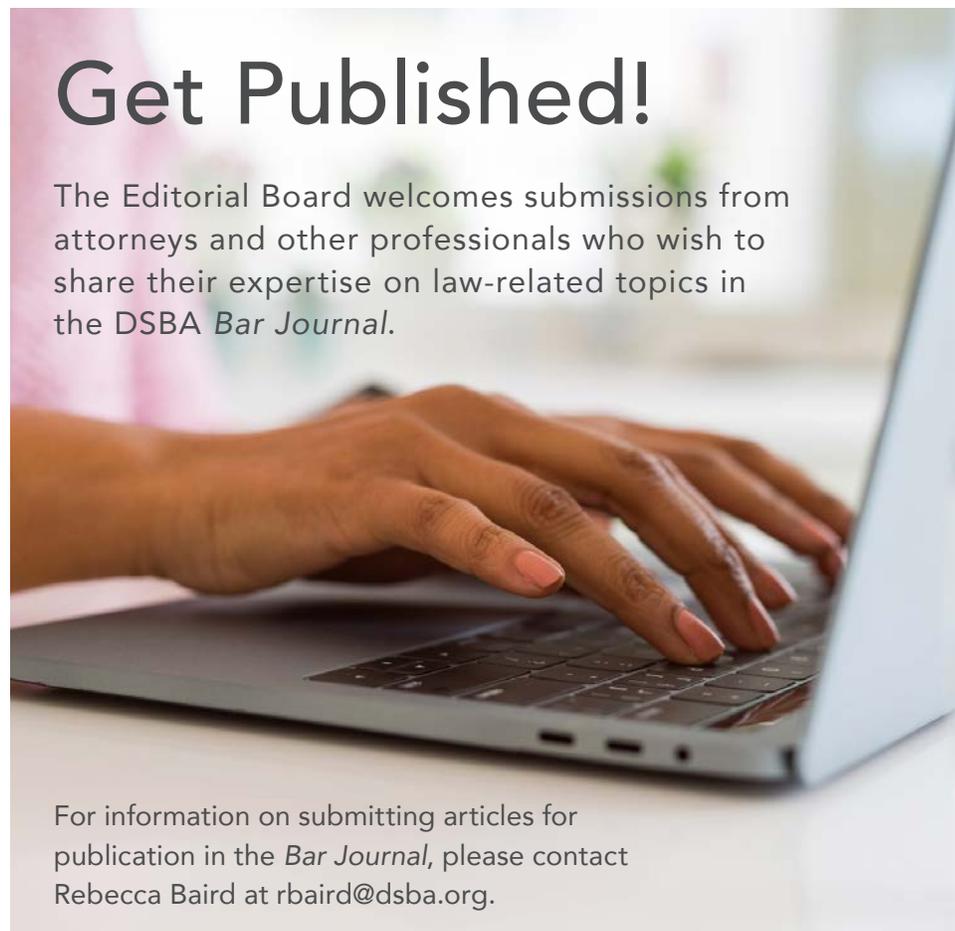
territory of those states in rebellion; and, it only freed the slaves in that territory under the view that the government could confiscate the “property” of those in rebellion. The Emancipation Proclamation was a wartime measure and, therefore, not in violation of the Constitution itself.

Slavery would be formally ended throughout the country with the passage of the Thirteenth Amendment, which was passed by Congress on January 31, 1865, and ratified by the requisite number of states in December of that year. Lincoln would not live to see that ratification, but he did consider the Emancipation Proclamation itself as his greatest achievement, explaining: “I

never, in my life, felt more certain that I was doing right, than I do in signing this paper. If my name ever goes into history it will be for this act.” And so it has.

Hindsight is always 20/20, and today we take the Civil War Amendments to the Constitution as something for granted. We also assume the North was bound to win, and the Union would prevail. None of those things was preordained in 1861. The Constitution itself, resting on a fragile and unholy compromise, had “broken.” Lincoln, though, was able to steer the country through both its military crisis and its constitutional one. *The Broken Constitution* tells the story of Lincoln’s constitutional efforts and his lawyerly and political skill that ultimately led to the Constitution we know today. 🗣️

Richard “Shark” Forsten is a partner with Saul Ewing Arnstein & Lehr LLP, where he practices in the areas of commercial real estate, land use, business transactions, and related litigation. He can be reached at Richard.Forsten@saul.com.



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For information on submitting articles for publication in the *Bar Journal*, please contact Rebecca Baird at rbaird@dsba.org.



Ceviche: It's No Fluke

© istockphoto.com/L. Yevhenii Dorofiev

It's no fluke that a delicate, mild, flatfish can contribute to one's well-being. First, fluke's nutritional benefits are widely known – it can reduce cholesterol levels and provide a good source of protein. Additionally, I believe that the brightness and lightness of a meal, in this case, a summer ceviche, can lift one's overall mood. So, for Wellness Month, I include a recipe for fluke ceviche, fennel salad, and a potato side. (The proportions are for two as a main course.) 



For the Ceviche

- ½ pound skinless fluke filet
- Juice of one lime
- Juice of one orange (Valencia are good for juicing)
- Juice of 3 lemons
- Small bunch of chives, finely snipped
- ¼ jalapeno, thinly sliced
- ½ teaspoon sea salt

For the Salad

- ½ fennel bulb, shaved
- ½ orange, cut into segments
- Small handful of cilantro with leaves pinched off
- Juice of ½ lime
- Sesame oil
- Extra virgin olive oil
- Finishing salt

For the Potatoes

- 10 baby red potatoes, halved
- 1 handful of watercress
- Juice of ½ lemon
- Rice wine vinegar
- Extra virgin olive oil
- Sea salt
- Freshly ground black pepper

INSTRUCTIONS

Prepare the potatoes: Start with the potatoes so that they can be served chilled. Boil the potatoes until tender enough for a fork to go through easily. Rinse with cold water and refrigerate until cool. Just before serving, add the watercress and toss with the lemon juice, vinegar, and olive oil. Season with the salt and pepper to taste.

Prepare the ceviche: Freeze the fluke slightly so that it is firm enough to easily slice into ¼ inch pieces with a utility knife. Place the fluke slices in a medium sized glass bowl. Add the other ingredients, making sure that the fish is completely submerged. Cover with plastic wrap and refrigerator for one to two hours, until the fluke is opaque. Do not make ahead of time, rather, serve once it is finished "cooking" in the citrus juices.

A note on the chives: While many ceviche recipes call for red onion, I much prefer chives. They provide an oniony taste but are much milder.

Prepare the salad: Add the fennel, orange, and cilantro to a small bowl. Toss with the lime juice, oils, and sea salt to taste.

To plate, create a bed of the salad and lay fluke slices on top, making sure to include some chives and jalapeno for color. Serve the potatoes on the side, with additional wedges of lemon and lime.

Pair with a Prosecco or a dry Riesling from Alsace. The citrusy flavors of these high acidity wines will complement the citrus of the ceviche.



Susan E. Poppiti is Associate Faculty in Mathematics at Immaculata University and a math coach for middle school, high school, and college students. To further her commitment to mathematics education, she also serves as a math content expert for UPchieve, an ed-tech nonprofit providing free, online STEM tutoring to high school students. Susan can be reached at spoppiti@hotmail.com.

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Nominations Sought for 2022 Awards



The Delaware State Bar Association and the Awards Committee are seeking nominations for the following awards:

Daniel L. Herrmann Professional Conduct Award
Outstanding Service to the Courts and Bar Award
Distinguished Mentoring Award
Government Service Award

AWARDS DESCRIPTION

Daniel L. Herrmann Professional Conduct Award

Awarded to a member of the Delaware Bar who, over the course of time, has demonstrated those qualities of courtesy and civility which, together with high ability and distinguished service, exemplifies the Delaware lawyer.

Outstanding Service to the Courts and Bar Award

Awarded to a Delaware lawyer or judge who, by exemplary service to the Delaware Courts and the Delaware Bar, has substantially assisted the courts and the Bar and has strengthened public trust and confidence in the courts in the state of Delaware and the Administration of Justice.

Distinguished Mentoring Award

Awarded to a Delaware lawyer or judge who, by distinguished mentoring of other Delaware lawyers (or future lawyers) over a period of many years, has served as an inspiration to and a model for those lawyers in striving for and maintaining the highest standards in their professional careers and in their community involvement.

Government Service Award

Awarded to a full-time government service employee in recognition of dedicated and distinguished contribution to the Administration of Justice.

These are not necessarily annual awards. All or some of these awards will be presented only upon the recommendation of the Awards Committee and approval by the Executive Committee of the DSBA. Please note that previous nominations must be renewed to be considered. These awards will be presented in a special Awards Luncheon in December 2022.

Delaware State Bar Association Awards Nomination Form

Name of Candidate: _____

Title/Occupation of Candidate: _____

Award: _____

Date: _____

Nominator: _____

Phone: _____ Fax: _____ E-Mail: _____

Firm: _____

Address: _____

Brief statement of reasons that candidate is deserving of Award (see above Award criteria). Please attach sheet if necessary.

Nominations should be submitted by **September 6, 2022** to Mark S. Vavala, Executive Director at mvavala@dsba.org.



10 U.S. SUPREME COURT CASES

Affecting LGBTQ+ Rights

BY SHAKUNTALA L. BHAYA, ESQUIRE
DOROSHOW PASQUALE KRAWITZ & BHAYA

Rights for LGBTQ+ citizens have shifted dramatically in the past 50 years and social awareness of LGBTQ+ rights have increased as well on television, in sports, and even in politics. The path of these rights has not been easy and, as we've seen in recent days, the security of these rights is not certain. As we face a new, conservative Court, it may be a good idea to look back at how the rights for LGBTQ+ people evolved.

1 *One, Inc. v. Olesen (1958)*. *One* was the first magazine widely-distributed for gay readers. The Los Angeles postal authorities seized issues in 1953, arguing they violated obscenity laws which was upheld by California's court system. The U.S. Supreme Court overturned the lower court ruling and stated that material which was aimed at a gay audience was not "inherently obscene."

2 *Baker v. Nelson (1972)*. Richard Baker and James McConnell wanted to get married and sued for that right all the way to the Supreme Court. The Court however dismissed their case "for want of a substantial federal question." The two were married anyway in Minnesota when James changed his name to Pat to get a marriage license and a minister married them.

3 *Roe v. Wade (1973)*. While this case clearly deals with the establishment of a woman's right to have an abortion, many scholars say it is intertwined with LGBTQ+ rights because it establishes a right to privacy and individual freedom in one's sexual decisions.

4 *Bowers v. Hardwick (1986)*. In a step backwards, the U.S. Supreme Court upheld Georgia's sodomy laws in this case where Michael Hardwick was caught by Georgia police having oral sex with another man. Justice Byron White opined that it was "facetious" to claim that there was a right to engage in such activity because it was rooted in our Nation's history and tradition.

5 *Romer v. Evans (1996)*. The Supreme Court ruled that laws could not single out LGBTQ+ people to take away their rights and not others because of the Fourteenth Amendment's equal protection clause. They overturned Colorado's law which banned cities from passing anti-discrimination laws which would protect gay people.

6 *Boy Scouts of America v. Dale (1996)*. Despite the ruling in *Romer*, the Court found that a private organization could discriminate based on sexual orientation. In this case, the Court upheld the Boy Scout's expulsion of an assistant scoutmaster and Eagle Scout who was identified in a newspaper as the leader of Rutgers University's lesbian/gay alliance. (Note: In 2013, the Boy Scouts ended its ban on gay children, but continued its ban of gay adult leaders.)

7 *Lawrence v. Texas (2003)*. *Bowers v. Hardwick* was overturned in this landmark decision. Justice Kennedy wrote that "public ideas about morality cannot justify infringing on people's constitutional rights."

8 *United States v. Windsor (2013)* The Court eliminated a portion of the Defense of Marriage Act that defined marriage as a legal union between a man and woman.

9 *Obergefell v. Hodges (2015)*. A group of 14 same-sex couples and 2 same-sex widowers brought this action, arguing that the Fourteenth Amendment protected the right to marry for LGBTQ+ persons. Once again, Justice Kennedy wrote the opinion, which stated, "It is demeaning to lock same-sex couples out of a central institution of the Nation's society."

10 *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission (2018)*. Despite the new right to marry for LGBTQ+ citizens, the Supreme Court found that Colorado baker Jack Phillips, who had refused to make a gay couple a wedding cake on religious grounds, had the right to make this refusal. ⚖️



Shaku Bhaya is an equity partner with the statewide Law Offices of Doroshow, Pasquale, Krawitz & Bhaya. She can be reached at shakubhaya@dplaw.com.

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