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From the President

Sanford Strenger

The leaves have begun to fall, and we are all now fully engaged in our respective practices of law. In the past month I have attended committee meetings, CLE programs, and social events at the NCBA, and I have found that the buzz around Domus, and the general sentiment from all, is that it's good to be back in person. This year's Judiciary Night on October 19 was attended by over 200 practitioners and judiciary, who stayed long into the event, catching up and enjoying the camaraderie. Similarly, the courts of Nassau County are in full swing. Trials are being held and cases conferenced. Despite the high interest rates, deals are happening. The most common complaint I hear as I talk to members is that they are busy and wish they had time to personally come to Domus for meetings or CLE programs. This leads me to the elephant in the room, in person vs. hybrid meetings and CLE programs.

At the recent NCBA Board meeting, we went around the table with each Board member expressing their opinion on this sensitive issue. Why sensitive you ask? Because it goes to the heart of what we do here at the NCBA. Some Members have expressed that their busy day does not permit them to leave their desk to travel to Domus and attend live programming, yet they feel they are missing important content or information, which can enhance their practice. Some Members believe that all meetings and programs be hybrid, so they can at least have the benefit of the information. Others express that staring at a screen, filled with little squares of avatars, makes the meeting hollow and deprives them of the interaction and networking that is key to creating and maintaining the relationships that make them successful. Committee Chairs tell me that it is difficult to attract quality speakers, since the speakers have no incentive to be in a room with only two others, even though there are 90 avatars in cyberland. From an economic perspective, NCBA's caterer is hard pressed to offer variety when the demand is low. In sum and substance, this is a conundrum.

In my view, and the view of most with whom I speak, there is no substitute for being at Domus. A short interaction with an adversary, in a non-adversarial setting, permits one to humanize the process and defuse the inherent and subliminal animosity that exists in intense negotiations or litigation. Social and medical science have documented that taking a break reduces stress and aids in one's wellbeing. Our younger or newer colleagues gain the most from being in person at Domus. They not only begin to make the relationships and contacts that will assist them to be successful, but they also get to spend time with you in a social setting. Being "in the know" is not the same as knowing the decision maker. Being in person gives the decision maker, whether it is a judge or government official, a face to attach to a name, and you the ability to feel more confident when you are in their presence in their "official settings." I know I am not telling you anything you don't already know. However, an impending deadline may not permit you to take that breath today and attend in-person programming to garner all the benefits it offers.

For these reasons, the NCBA must continue to offer meetings and CLE programs hybrid, but also hold in person-only programming. We have invested in technology to make the process of holding hybrid programming smoother. The rule of thumb will be to have at least one hybrid meeting every quarter for each committee, and depending upon the speaker, continue to have hybrid CLE programs.

Speaking of CLE, almost all programs are recorded. As an NCBA Member, you are entitled to 12 hours a year of free access to recorded CLE content from our online library. If you can't attend in person or on Zoom, the chances are that in a few days the program will appear in our online CLE library. That library contains over 600 programs held at Domus over the past four years. In addition, last month, the NCBA Board approved the purchase of a new database and website for the NCBA, which will make your online interaction with us much simpler and more efficient. This new system will be implemented in the coming months.

Take a moment to take a breath and to view the changing foliage. Better yet, take that moment while on your way to Domus. I look forward to seeing you there.

Meet The New NCBA Corporate Partners..

Continued from Page 1

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FOCUS: TAX LAW

Does ChatGPT Pass the Test for Giving Tax Advice?

Priya Suresh

Currently, there are real issues with tax advisors who use ChatGPT to provide advice to clients, and for students looking for a short-cut on course work or even exams. Professors at the University of Minnesota Law School conducted an experiment to use ChatGPT to answer its final exam on four different courses.[1] The results were alarming: the chatbot averaged a C+, which would allow a student to graduate.[2] The professors suspect that ChatGPT will be helpful for tax advisors in some aspects such as, preparing the initial draft of a memo or creating an initial batch of arguments.[3] But this should not be considered a replacement, however, for the research and writing skills that students and junior associates fundamentally need to offer reliable tax advice.

When it comes to tax law, ChatGPT is especially risky generally due to the complexity of the law and the numbers involved. This article details two problem sets posed to ChatGPT, and the legal advice that each prompt generated.[4] These questions are similar to ones that a junior tax professional might be asked to research for a senior colleague, or that a student could expect to see on a final exam. The answers show what ChatGPT can do now, and how much farther it has to go.

Problem Set 1: Estate and Gift Tax

The first question inputted dealt with a person, D, who transfers $1 million of marketable securities into a trust where the trustee is permitted to distribute income and or principal to D and their children. Upon D's death, the trust assets will be distributed to D's living issue. D and their sister serve as co-trustees of the trust. ChatGPT was asked to discuss the gift tax consequences to D upon the funding of the trust and the estate tax consequences upon their death and how this would change if D was not trustee.[5]

Chat GPT did not give a very detailed answer, but rather gave a general overview of estate and gift taxation. This would not be helpful for a tax advisor, who already knows the basics and would need a detailed plan for their client. For example, every knowledgeable tax advisor in this field knows the annual exclusion amount for gift tax or the basic estate tax exemption. Evidently ChatGPT has not achieved a level of accuracy to supplement the work that a junior associate would perform for a partner on complex questions.[6]

Additionally, ChatGPT missed several important details. For example, right when the trust is funded, when it comes to estate tax exposure, ChatGPT completely glosses over the very important IRC §2036, a broad provision that includes a lot about what goes back into a decedent's gross estate.[7] Section 2036(a)(2) applies here because D retained the right to designate the individuals who would enjoy the transferred property, and Section 2038(a)(1) applies because D retained the power to alter or amend. Therefore, the full value of property should be included in his gross estate for estate tax purposes.

When it comes to the gift tax exposure, even though ChatGPT mentioned D being a trustee, it gave no real answer and rather stated there may be some consequences. It should have mentioned that D is a co-trustee, and that the donor has ability to have trust property re-transferred to him—in other words, revocable—which would render the transfer incomplete for gift tax purposes.[8] At the time the trust is funded, there is no gift tax. ChatGPT also fails to mention the treatment of joint powers, which is very important to gift tax exposure. If the co-trustee has an interest adverse to the exercise of power only then does the gift tax issue matter but if not, then there is no gift tax.[9] Once it is given to his children, Dave has no more control over it, so then it is a completed gift.[10] ChatGPT does not mention any of the very important Treasury Regulations that are the relevant guidance concerning the gift tax consequences of retained beneficial interests, particularly Treasury Regulation §25-11-2.[11]

Additionally, ChatGPT completely ignores the issue of how the answer would change if D did not serve as Trustee. This is a problem because some details are particularly important in the gift tax context when it comes to self-settled trusts and valuing the retained beneficial interest. D would not have the ability to re-vest trust property in himself, so this would be a completed gift of the full $1,000,000 into the trust. If the state in which D resides recognizes self-settled trusts, then this changes the answer; if creditors can then reach into the assets, then it is almost treated as a revocable trust and it will not be a completed gift, and therefore there will be no gift tax. It is important to add that this would only be a completed gift if D was not trustee. The annual exclusion would not be available because this gift is one of a future interest in property. ChatGPT fails to mention this future interest limitation.

For estate tax consequences, If D was not trustee, he remains a discretionary beneficiary and is not guaranteed a right to income. Under Section 2036(a)(1) one needs possession/enjoyment of personal property or right to income from investment property. If the donor's creditors can access trust assets, there is a retained beneficial ownership of property under Section 2036(a)(1) because it is giving the right to income to creditors which is basically like having right to income ourselves and therefore would be estate tax exposure.[12]

Problem Set 2: Partnership Tax

The second question inputted dealt with two people, A, the general partner and B, the limited partner, who each contributed $100,000 to form a limited partnership. The partnership purchased an office building on leased land for $200,000. Assume straight-line depreciation over ten years. The partnership agreement allocated tax items to the two partners equally, except for depreciation deductions, which are allocated entirely to B. ChatGPT was to assume that both partners have an unconditional deficit restoration obligation, and that the partnership's rental income equals its cash operating expenses, leaving just the depreciation deduction to be specially allocated. The question was, what must the partners' respective

capital account balances be at the end of Year 1 if the allocation of cost recovery deductions is to have economic effect?[13]

When it came to this more technical question, it seems that ChatGPT got some background information correct like partnership income being $0 and $20,000 of depreciation deductions allocated to B each year. It leaves out critical details, however, as to how to have economic effect. In order for an allocation to have economic effect, the partnership agreement must provide for the maintenance of partner capital accounts in accordance with Treas. Reg. §1.704-1(b)(2)(iv) for the entire term of the partnership.[14] Each partner's book capital account would be increased by the cash contribution and B's capital account must be decreased by B's distributive share of loss or deduction.[15] This means that B's capital account is reduced from $100,000 by its $20,000 depreciation deduction to $80,000. However, ChatGPT stated B's capital account was $120,000 at the end of year 1, by adding the $20,000 depreciation deduction instead.

This demonstrates that ChatGPT was not reliable when it came to technical issues involving very specific numbers. As scholars have noted, any such hallucination or fabrication "presents a serious risk for the unwary researcher who may be led to believe, because of a chatbot's large database of information and confident tone, that its answers are accurate."[16] So, a tax advisor should not rely on this, especially for clients with very complex numbers in their estate plan and for partnership tax issues in general, since it is one of the most difficult areas of tax law.

It is important to note that ChatGPT is currently unable to look into and parse the Internal Revenue Code or Treasury Regulations, the primary resources used by practitioners for answering many tax-related questions.[17] Maybe in the future with certain updates, this will change.

Conclusion

A sole reliance on AI is not a good idea for the field of tax. Tax is a particularly complicated type of law. It may be helpful to use ChatGPT for a general overview of certain tax concepts, but when it comes to specific tax planning or technical issues, it is best to consult a tax advisor who would do the research themselves. The AI system sometimes fabricates, gives false information, and does not provide many sources to allow users to verify the information.

Nor is ChatGPT helpful for tax problem sets done in class nor would it be for an exam given the difficulty of the questions. Therefore, students should not use this for exam purposes (and may be prohibited by their school's rules from doing so, in any case). For right now, practitioners cannot not rely heavily on ChatGPT and instead utilize other resources.

There are other resources tools available, such as Blue J, that utilize AI specifically for tax purposes.[18] Rather than using keywords, such systems find answers based on factors and outcomes and similar decisions. There are very interesting features, such as the diagram tool and prediction tool, which are great for visual learners who need to organize their client's information or predict outcomes based on a client's situation. However, it is important to note that that Blue J has less material on the Estate and Gift tax area. Overall, this platform is a lot more reliable and tailored specifically to tax law versus ChatGPT, which will answer anything and everything. Unlike ChatGPT, Blue J is programmed to provide only real, primary source material, and it identifies its sources.[19] Since there are concerns of ChatGPT hallucinating, like giving back a list of fake sources when asked, it is very important as a tax advisor confirm every cited source.

1. Jonathan H. Choi, Kristin E. Hickman, Amy B. Monahan, Daniel B. Schwarcz, *ChatGPT Goes to Law School*, Journal of Legal Education (Forthcoming) 1, 3 (2023).
2. *Id.* at 12.
3. *Id.*
4. These problem sets were devised by Professor Brant Hellwig of NYU School of Law, and are used with his permission.
5. Brant J. Hellwig, Robert T. Danforth, Estate and Gift Taxation 201 (3d ed. 2019).
6. Libin Zhang, *Four Tax Questions for ChatGPT and Other Language Models*, 179 Tax Notes Federal 969, 969 (2023).
7. *See* I.R.C. §2036(a)(1).
8. Treas. Reg. §25.2511-2(c)).
9. Treas. Reg. §25.2511-2(e)).
10. Treas. Reg. §25.2511-2(f)).
11. Brant J. Hellwig, Robert T. Danforth, Estate and Gift Taxation 195.
12. Brant J. Hellwig, Robert T. Danforth, Estate and Gift Taxation 186.
13. Schwarz, Lathrope and Hellwig, Fundamentals of Partnership Taxation 15 (11th ed. 2019).
14. Treas. Reg. §1.704–1(b)(2)(iv).
15. Treas. Reg §1.704-1(b)(2)(ii)(b)(1).
16. Benjamin Alarie, Kim Condon, Susan Massey, Christopher Yan, *The Rise of Generative AI for Tax Research*, 179 Tax Notes Federal 1509, 1511 (2023).
17. *Id.* at 972 ("They are currently unable to look into any IRC sections or articles that discuss the issue, including ones that are publicly available on the internet.").
18. *See* https://tax.bluej.com/.
19. Alarie, *supra* note 17, at 1516.

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FOCUS: PERSONAL INJURY

After *Grady*, Is the Assumption of Risk Doctrine at Risk?

Christopher J. DelliCarpini

In *Grady v. Chenango Valley School District*, the Court of Appeals this past April reaffirmed the doctrine of assumption of risk, which limits liability in personal injury cases arising from sports-related injuries.[1] But a pair of partial dissents suggest that the doctrine remains contentious, and these dissents may illuminate a path to repealing the doctrine.

Assumption of Risk: Contributory Negligence Lives!

Assumption of risk enjoys a long pedigree in New York common. Law. More than a century ago, the doctrine barred recovery for injured employees, who "assume[d] the ordinary risks of employment."[2] But for almost as long, assumption of risk has been applied equally to participants and spectators in sports and recreation.[3] In *Murphy v. Steeplechase Amusement Co.*, the Court of Appeals denied the claim of an amusement park patron injured on an attraction and restated the doctrine:

> One who takes part in such a sport accepts the dangers that inhere in it so far as they are obvious and necessary, just as a fencer accepts the risk of a thrust by his antagonist or a spectator at a ball game the chance of contact with the ball.[4]

The doctrine appeared to be on its way out, however, when New York seemed to eliminate contributory negligence in 1975 with the adoption of CPLR 1411:

> In any action to recover damages for personal injury, injury to property, or wrongful death, the culpable conduct attributable to the claimant or to the decedent, including contributory negligence or assumption of risk, shall not bar recovery....

In this comparative negligence milieu, the plaintiff's negligence would not preclude liability, but rather would only limit damages, the Court held.

By 1985, however, the Court of Appeals had reaffirmed that assumption of risk could still bar recovery in some circumstances. In *Arbegast v. Board of Education of South New Berlin Central School*, a student teacher sued after being injured in a donkey basketball game, and the Court affirmed a jury verdict for the defendant.[5] Citing evidence that the organizers had disclosed that donkeys could buck and cause riders to fall off as the plaintiff had, the Court held that CPLR 1411 "applies to a strict liability action involving the vicious propensities of a domesticated animal, and to the implied assumption of risk by a person injured by such an animal, but not to the express assumption of risk by such a person."[6]

After *Arbegast*, the Court recognized implied assumption of risk by professional athletes. In *Maddox v. New York* the Court of Appeals denied claims of a player for the Yankees injured during a game because the evidence "established [the plaintiff's] implied assumption as a matter of law."[7] In *Turcotte v. Fell*, the Court similarly dismissed claims of a professional jockey who "by engaging in the sport of horseracing, relieved other participants of any duty of reasonable care with respect to known dangers or risks which inhere in that activity."[8]

The Court then applied implied assumption of risk to any consenting participant. In *Benitez v. New York City Board of Education*, the Court dismissed the claims of a star high-school football player, holding that such plaintiffs fall somewhere between a professional athlete and "those warranting strict parental duties of supervision."[9] Less than a decade later in *Morgan v. State*, the Court abolished the distinction between professional and amateurs: "by engaging in a sport or recreational activity, a participant consents to those commonly appreciated risks which are inherent in and arise out of the nature of the sport generally and flow from such participation."[10]

Another decade, another decision: the Court now held that even risks not inherent in the sport could be assumed. In *Bukowski v. Clarkson University*, the Court denied claims of a college baseball player injured during a drill that lacked the protective "L-screen in their batting cages."[11] In *Custodi v. Town of Amherst*, however, the Court refused to apply the doctrine to a rollerblader injured skating from the sidewalk down a driveway: "extension of the doctrine to cases involving persons injured while traversing streets and sidewalks would create an unwarranted diminution of the general duty of landowners—both public and private—to maintain their premises in a reasonably safe condition."[12]

Grady Affirms the Doctrine—And Undermines It

Now, in this context, the Court in *Grady* resolved two pending cases. Grady itself involved a high-school baseball player injured in a drill that involved two coaches hitting balls to players in the infield, including a "short first base" with an L-screen between him and the actual first base; the Third Department affirmed summary judgment for the defendants.[13] In the other case, *Secky v. New Paltz Central School District*, involving a high-school basketball player who injured his shoulder during a rebound drill conducted without boundary lines, the Third Department reversed denial of summary judgment for the defendants.[14]

With Judge Michael Garcia writing for the majority, the Court affirmed summary judgment in *Grady* but reversed in *Secky*, based on its own view of which risks were inherent in baseball and basketball. The fielding drill in *Grady* presented "unique circumstances," so the Court reversed: "we cannot say that, as a matter of law, the conditions of play were 'as safe as they appear[ed] to be."[15] In *Secky*, however, "the risk of collision [with an open and obvious item near a basketball court] was inherent in playing on that court," therefore the Court affirmed summary judgment.[16]

Chief Judge Rowan Wilson and Judge Madeline Singas each separately concurred in part and dissented in part. Their opinions may prove more significant than the majority, as they show how and why the Court might one day reject assumption of risk.

Judge Wilson concurred in the decision in Grady, but he faulted the Court for "misinterpret[ing] CPLR 1411's plain text," and argued that the Court should abolish implied assumption of risk altogether.[17] In a lengthy dissent, he pointed out that CPLR 1411 on its face "sounds the death kneel of contributory negligence and assumption of risk's per se rule," and that the legislative history evinces an intent "to abolish assumption of

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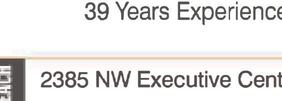

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risk as an absolute bar to recovery."[18] He faulted the Court for bringing assumption of risk back, and argued that the circumstances warranted overruling the post-CPLR 1411 precedent. He also pointed out that the doctrine forces the courts to decide which activities are "recreative" and which are not; a plaintiff who engages in reckless behavior in public can be in a better position to recover than one who is injured in a sporting event.[19] Judge Singas in dissent thought that both claims should be dismissed.[20] She found that in neither case was the argument for repealing assumption of risk preserved, but on the merits she cited precedent to hold that as a matter of law the injuries sustained in *Grady* and *Secky* were inherent in each sport. Judge Singas also commented that abolishing the doctrine might raise costs for sports organizers, driving out of business programs that cannot afford the insurance.

The majority "reject[ed] the dissent's entreaty to abandon decades of applicable precedent that has been so frequently, and so recently, reaffirmed."[21] It dismissed Judge Wilson's "unsupported assertion" that the policy justification for assumption of risk is unfounded as "summarily characteriz[ing] nearly 50 years of precedent as a misinterpretation of CPLR 1411 ... albeit one that the legislature has never sought to 'correct.'"[22]

Inherent Risks for Assumption of Risk

The majority in *Grady* unequivocally endorsed assumption of risk, but the dissents may have laid out a roadmap for the doctrine's eventual demise.

The most viable case to challenge assumption of risk might well be one which, like *Grady* and *Secky*, presents a battle of the experts as to the inherent nature of the risk. It was not a necessary consequence of judge-made implied assumption of risk, but as the majority and Judge Singas' dissent show, the Court subordinates actual expertise to a common law of sport, where the inherent risks are defined by judges. Expert opinions should be crafted with an eye to the controlling case law on assumption of risk in the relevant sport, to distinguish contrary precedent and show the value of actual expertise.

But assumption of risk could survive even if courts deferred more to expert opinion, so any personal injury plaintiff aspiring to undermine assumption of risk needs to preserve that particular argument in the trial court and the Appellate Division. Judge Wilson did not think that this was necessary since lower courts are bound to follow Court of Appeals precedent,[23] but Judge Singas found the failure to preserve was a fatal flaw.[24] Defense counsel facing such a challenge should therefore look to see whether the argument has been preserved.

Any argument that assumption of risk is contrary to the language and intent of CPLR 1411 would have to not just lay out the case law critiqued by Judge Wilson, but also would have to articulate a "compelling justification" for departing from stare decisis.[25] This will likely entail the review of the legislative record laid out by Judge Wilson, but will have to buttress that argument with evidence that "other jurisdictions with comparative negligence laws have abolished assumption of risk as a complete defense without seeing an end to youth sports or youth leagues," and that "the fear of 'potentially crushing liability' on school athletics has no basis in reality."[26] Such evidence could come under a host of challenges by defense counsel, including, possibly, a *Frye* hearing.

Assumption of risk is the law of the land today, but judge-made doctrine is only as enduring as the next case. Personal injury counsel on both sides will have to litigate on the law as it is while watching for cases that may provide plaintiffs an opportunity to argue for repeal of the doctrine.

1. 40 N.Y.3d 89 (2023).
2. *Rettig v. Fifth Ave. Transp. Co.*, 6 Misc. 328, 332 (N.Y. Super.Ct., Gen. Term 1893).
3. *See Johnson v. City of New York*, 186 N.Y. 139, 149 (1906).
4. 250 N.Y. 479, 482 (1929).
5. 65 N.Y.2d 161 (1985). Donkey basketball is played not by donkeys, but by humans riding donkeys. *Id.* at 162–63.
6. *Id.* at 164.
7. 66 N.Y.2d 270, 276 (1985).
8. 68 N.Y.2d 432, 436 (1986).
9. 73 N.Y.2d 650, 658 (1989).
10. 90 N.Y.2d 471, 484 (1997).
11. 19 N.Y.3d 353, 355 (2012).
12. 20 N.Y.3d 83, 89 (2012).
13. 40 N.Y.3d at 98.
14. 40 N.Y.3d at 97.
15. 40 N.Y.3d at 99 (quoting *Turcotte*, 68 N.Y.2d at 439).
16. 40 N.Y.3d at 97.
17. 40 N.Y.3d at 100 (Wilson, J., dissenting in part).
18. 40 N.Y.3d at 101 (Wilson, J., dissenting in part).
19. 4 N.Y.3d at 113 (discussing *Trupia v. Lake George Cent. School Dist.*, 14 N.Y.3d 392 (2010)).
20. 40 N.Y.3d at 118–20.
21. 40 N.Y.3d at 96.
22. 40 N.Y.3d at 96.
23. 40 N.Y.3d at 103 n.3 (Wilson, J., dissenting in part).
24. 40 N.Y.3d at 119 (Singas, J., dissenting in part).
25. 40 N.Y.3d at 96.
26. 40 N.Y.3d at 116 (quoting *Bukowski v Clarkson Univ.*, 19 N.Y.3d 353, 356 (2012)).

Christopher J. DelliCarpini is an attorney with Sullivan Papain Block McGrath Coffinas & Cannavo PC in Garden City, representing personal injury plaintiffs on appellate matters. He is also an Assistant Dean of the Nassau Academy of Law. He can be reached at cdellicarpini@triallaw1.com.

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FOCUS: VETERANS LAW

PACT Act: A Historic Expansion of Benefits for Veterans

Cynthia A. Augello

The PACT Act, or the Sergeant First Class ("SFC") Heath Robinson Honoring our Promise to Address Comprehensive Toxics ("PACT") Act, is the most significant expansion of The United States Department of Veterans Affairs ("VA") benefits veterans exposed to toxic substances in recent history. The PACT Act was signed into law on August 10, 2022, which expands eligibility for VA health care for veterans with toxic exposures and veterans of the Vietnam, Gulf War, and post-9/11 eras.[1] It also adds an additional 23 presumptive conditions for burn pits, Agent Orange, and other toxic exposures, and more presumptive-exposure locations for Agent Orange and radiation. Additionally, the PACT Act requires the VA to provide a toxic exposure screening to every veteran enrolled in VA health care.

Background on Toxic Exposure

Millions of veterans have been exposed to toxic substances during their military service. These exposures include:

- Burn pits: Burn pits are open-air incinerators that were used to dispose of waste, including plastics, medical waste, and human remains during the Vietnam War and other conflicts. Burn pits emitted a variety of toxic pollutants, including dioxins, furans, and heavy metals.
- Agent Orange: Agent Orange is a herbicide that was used during the Vietnam War to defoliate forests and deny cover to enemy combatants. Agent Orange contains the toxic compound dioxin, which has been linked to a variety of health problems, including cancer, birth defects, and neurological disorders.
- Radiation: Exposure can occur from nuclear weapons testing, accidents at nuclear power plants, and exposure to depleted uranium.
- Other toxic substances: Veterans have also been exposed to other toxic substances during their military service, such as radiation, asbestos, and lead.

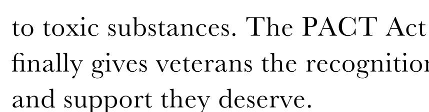
Exposure to toxic substances can cause a wide range of health problems, including:

- Cancer
- Respiratory problems
- Cardiovascular disease
- Neurological disorders
- Reproductive problems
- Birth defects

Many of the health problems caused by exposure to toxic substances do not develop immediately. It can take years or even decades for symptoms to appear. This makes it difficult for veterans to prove that their illnesses and injuries were caused by their military service.

What is the PACT Act?

The PACT Act is the culmination of years of work by veterans' advocates and lawmakers. Veterans have long been struggling to get the healthcare and benefits they need for the illnesses and injuries caused by their exposure



to toxic substances. The PACT Act finally gives veterans the recognition and support they deserve.

The PACT Act includes the following provisions[2]:

- Expands eligibility for VA health care to veterans who served in certain locations and during certain time periods, even if they cannot prove they were exposed to toxic substances. This includes veterans who served in Vietnam, the Gulf War, and the post-9/11 era.
- Adds 23 new presumptive conditions to the VA's list of diseases and injuries that are assumed to be caused by exposure to burn pits and other toxic substances. This means that veterans who have been diagnosed with one of these conditions will be eligible for VA disability compensation without having to prove that their condition was caused by their military service.
- Provides funding for the VA to improve its ability to diagnose and treat veterans who have been exposed to toxic substances. This includes funding for new research, new medical facilities, and new training for VA staff.
- The PACT Act requires VA to provide a toxic exposure screening to every veteran enrolled in VA health care. This screening will help VA to identify veterans who may have been exposed to toxic substances and connect them with the care and benefits they need.
- Creates a new VA office to oversee the implementation of the PACT Act and to ensure that veterans are getting the benefits they deserve.
- Veterans will have access to better care and treatment for the health problems they have developed as a result of toxic exposure.
- Veterans will have more support and resources available to them to help them navigate the VA claims process.

Why Is the PACT Act Important?

The PACT Act is important because it addresses a major public health issue facing veterans. Millions of veterans have been exposed to burn pits and other toxic substances while serving in the military. This exposure has put veterans at risk for a wide range of health problems, including cancer, respiratory diseases, and neurological disorders.

Despite the known risks of toxic exposure, veterans have often faced difficulty obtaining VA benefits for the health problems they have developed. The PACT Act makes it easier for veterans to get the care and benefits they deserve by expanding eligibility for VA health care and adding new presumptive conditions to the VA's list of diseases and injuries that are assumed to be caused by toxic exposure.

What Can Veterans Do to Take Advantage of the PACT Act?

Veterans who have been exposed to toxic substances should contact the VA to learn more about their eligibility for health care and benefits. Veterans can also file a claim for VA disability compensation if they have been diagnosed with one of the 23 new presumptive conditions.

The VA has created a number of resources to help veterans learn more

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It has been said that "*One who stoops to help a child stands tall in the eyes of the Lord.*"

about the PACT Act and to file claims for benefits. Veterans can visit the VA's website or call the VA's PACT Act hotline at 800-MY-VA-411 for more information.

Enrollment Period

The enrollment period for post 9/11 combat veterans[3] expired on September 30, 2023, for those who were discharged or released before October 1, 2013, to enroll in VA health care. Enrollment after this date will subject the veteran to the phased enrollment period described below.

The phased enrollment period outlined herein applies to two groups of veterans.

1. Veterans who served in other areas of known exposure. Other areas of known exposure are defined as follows: You must have served:
   - On or after August 2, 1990, in Iraq, Saudi Arabia, Kuwait, Somalia, Bahrain, Qatar, U.A.E., or Oman.
   - On or after September 11, 2001, in Afghanistan, Djibouti, Uzbekistan, Yemen, Egypt, Syria, Jordan, Lebanon or any location the VA Secretary determines is appropriate as future expansion of locations is possible.
   - In operations Iraqi Freedom, Enduring Freedom, New Dawn, Freedom's Sentinel, Inherent Resolve, or Resolute Support Mission.
   - If you've had any risk of exposure recorded in an exposure record tracking system, including Individual Longitudinal Exposure Record (ILER).
2. Post 9/11 veterans who were discharged or released before October 1, 2013, and do not enroll in VA health care on or before October 1, 2023.

The PACT Act and Veterans' Families[4]

The PACT Act also expands benefits for veterans' families. Survivors of veterans who died from toxic exposure-related conditions are now eligible for Dependency and Indemnity Compensation ("DIC") benefits. Additionally, the PACT Act extends the time period that veterans' children are eligible for education benefits.

The PACT Act and the Future

The PACT Act is a major step forward in providing care and benefits to veterans who were exposed to toxic substances during their service. However, there is still more work to be done. One challenge facing the VA is the backlog of claims from veterans who were exposed to toxic substances. The VA is working to reduce the backlog, but it is likely to take some time. Veterans who are waiting for a decision on their claim should continue to reach out to the VA for updates. Another challenge facing the VA is the increasing number of veterans who are seeking care for toxic exposure-related conditions. The VA is working to increase capacity to meet the needs of these veterans, but more resources are needed.

Conclusion

The PACT Act is a long-awaited victory for veterans and their families who have been fighting for years to get the care and benefits they deserve. Prior to the PACT Act, veterans had to prove that their exposure to toxic substances directly caused their illness, which was often difficult or impossible to do. The PACT Act eliminates this requirement for many conditions, making it easier for veterans to access the care and benefits they need.

Discharge Dates	Eligibility Begins
August 2, 1990 - September 11, 2001	October 1, 2024
September 12, 2001 - December 31, 2006	October 1, 2026
January 1, 2007 - December 31, 2012	October 1, 2028
January 1, 2013 - December 31, 2018	October 1, 2030

1. https://veterans.ny.gov/pact-act.
2. https://tinyurl.com/azz64cm2.
3. https://www.woundedwarriorproject.org/programs/government-affairs/advocacy-opportunity/pact. The veteran must have served after September 11, 2001, and been awarded one of the following medals: Campaign Specific Medal, Armed Forces Expeditionary Medal, Service Specific Expeditionary Medal, Combat Era Specific Expeditionary Medal, or any other combat theater award established by law or executive order.
4. https://veterans.ny.gov/pact-act.

Cynthia A. Augello is a Partner with the Warren Law Group specializing in Labor and Employment Law and Education Law. Cynthia is also the Chair of the Publications Committee for the Nassau County Bar Association.

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NASSAU ACADEMY OF LAW PROGRAM CALENDAR

November 8, 2023 (HYBRID)

Dean's Hour: The Supreme Court's Harvard/UNC Affirmative Action Ruling—Where Do We Go from Here?

With the NCBA Civil Rights and Education Law Committees

12:30PM–2:00PM
1.5 credits in Diversity, Inclusion & Elimination of Bias

In *Students for Fair Admissions and Fellows of Harvard College, et al.* 143 S, Ct. 2141 (2023), the U.S. Supreme Court recently held, with regard to the admissions programs of both Harvard College and the University of North Carolina, that their admissions programs lacked: 1) sufficient focused and measurable objectives warranting the use of race; 2) unavoidably employed race in a negative manner; 3) involved racial stereotyping; and 4) lacked meaningful endpoints.

Guest Speakers:
Tiffany C. Graham, Associate Professor and Associate Dean of Diversity and Inclusion, Touro Law Center
David A. Bythewood, Esq., Chair, NCBA Civil Rights Committee and Hofstra School of Law Adjunct
Douglas E. Libby, Esq., Vice Chair, NCBA Education Law Committee

Registration Fees:
NCBA Members FREE; Non-Members $50

November 15, 2023 (HYBRID)

Dean's Hour: Properly Drafting and Maintaining Life Insurance in Trusts

12:30PM–2:00PM
1.5 credits in Professional Practice

Most current trustees responsible for your clients ILIT's are their eldest siblings acting as unskilled/amateur trustees. For the most part, they are not aware of various opportunities and strategies available to them, nor are they aware of the responsibility and fiduciary liability they're assumed for or the maintenance of the life insurance funding the trust. Speakers will discuss various strategies to enhance drafting and trust planning to enhance and create a larger legacy for the trust beneficiaries.

Guest Speakers:
Henry Montag, CFP, Managing Director, The TOLI Center East
Vincent J. Russo, Esq., Managing Shareholder, Russo Law Group, P.C.

Registration Fees:
NCBA Members Free; Non-Members $50

November 28, 2024 (HYBRID–IN PERSON STRONGLY RECOMMENDED)

Criminal Law and Procedure Update 2023

With the NCBA Criminal Court Law & Procedure Committee and the Nassau County Assigned Counsel Defender Plan

Program sponsored by NCBA Corporate Partner PHP

1:00PM–4:00PM
Light refreshments to be served and printed materials given to in-person attendees.
2.5 credits in Professional Practice and .5 credit in Ethics

The perennial favorite for criminal law practitioners will address developments in federal and state case law and recent statutory changes.

Guest Speakers:
Hon. Mark D. Cohen, (Ret.), Distinguished Jurist in Residence, Touro Law Center
Ken Moston, Esq., Training Director, Legal Aid Society of Suffolk County
Moderator: Robert M. Nigro, Esq., Administrator, Nassau County Assigned Defender Plan

Registration Fees:
NCBA Members and Nassau 18B Members FREE; Non-Members $105

PART 36 CERTIFIED TRAINING PROGRAMS ON DEMAND

Pursuant to Article 81 of the Mental Health Law, to serve as Guardian, Court Evaluator, or Attorney for Alleged Incapacitated Persons (API), you must receive training approved by the Guardian and Fiduciary Services of the Office of Court Administration.

Part 36 of the Rules of the Chief Judge establishes training requirements for appointment as a guardian, court evaluator or attorney for API. The Nassau Academy of Law offers on-demand certified training programs for Part 36 Fiduciaries and Appointees for attorneys and lay persons.

Our Nassau Academy of Law On Demand Programs include:

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- Guardian Ad Litem
- Receivership
- Supplemental Needs Trustee

Seminar materials are included in the purchase as well as the paperwork to be submitted to the court for proof of training. Attorneys receive CLE credit for completing the training.

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FOCUS: ASIAN AMERICAN ATTORNEY SECTION

An Evening Discussing *This Light Between Us* and Asian Racism with Andrew Fukuda

Jennifer L. Koo

Racism in America is not an ocean – obvious and clear, but rather, droplets that are felt sporadically – subtle but still impactful. Andrew Fukuda expressed a similar thought in his presentation at the Nassau County Bar Association on Thursday, October 5, 2023. A unique event titled Fireside Chat *This Light Between Us:* An Interview with Andrew Fukuda by Ching-Lee Fukuda brought Andrew Fukuda, an Assistant District Attorney with the Nassau County District Attorney's Office, to Domus to discuss his life and experiences as an Asian attorney and an Asian author. Interviewed by his wife, Ching-Lee, Andrew discussed how he was born in Manhattan but raised in Hong Kong. Being half Japanese and half Chinese, he seldom felt like he belonged, a constant nomad. Those in Hong Kong only saw his Japanese half, labeling him a foreigner and outsider. He then lived in Japan for a short time but was also labeled a foreigner due to his Chinese side.

Growing up in a strict Asian household, Andrew was limited to one hour of television a week. His entertainment was books. He became a lover of the written word, creating short stories as he sat in class. As an adult, Andrew dreamed of being published by one of "the big six" publishers. He experienced rejections and rewrote his first manuscript several times. But his efforts paid off and Andrew's first book *Crossing* was published in 2010. He then wrote *The Hunt* trilogy. However, his most recent book and the focus of his presentation on October 5 was *This Light Between Us*.

This Light Between Us tells the story of Alex, a Japanese American boy who becomes pen pals with Charlie, a Jewish Parisian girl. It starts as a required school assignment but expands into 10 years of friendship and tentative love. Then World War II hits. The Japanese bomb Pearl Harbor. The Germans commit mass genocide. And two friends struggle to maintain their friendship. America starts to see the Japanese Americans as enemies, blaming them for bringing the war to their doorstep. Those of Japanese descent are rounded up and held at internment camps. Alex and his family become prisoners in a country they thought was home.

Similarly, Charlie tells through her letters of how she and her family are imprisoned for being Jewish. Her father refuses to leave Paris which results in her parents' capture. Charlie asks the police for help, but all the police do is arrest her and through those actions, Charlie discovers that it is the French police that were taking away French citizens. Charlie describes her experience living in the Holocaust camps.

Soon the letters between Alex and Charlie cease due to the Germans blocking all mail into and out of France. Alex enlists in the Army and into the first all Japanese 442nd Regiment to help his family but to also find out what happened to Charlie. Alex gets sent to Italy and then to France. It was there that Alex learns that Charlie was sent to Auschwitz and then to Dachau where her story ends. She never made it out of the camp alive. The two pen pals never meet in person. Alex returns home and years later, he still dreams of a girl strolling along the Seine River, gazing towards America.

Andrew's idea for *This Light Between Us* developed when he and his family visited Manzanar Historic Site in California which was one of ten camps where the U.S. government incarcerated Japanese immigrants and Japanese American citizens. Angry at how the Japanese were treated in the U.S. during World War II, angry at how his sons would have been encamped there had they been born 60 years earlier, Andrew knew he wanted his next story to be about the internment camps. But he needed his angle, his unique viewpoint that had not already been written.

Mindlessly perusing the internet, Andrew came across a little-known fact that Anne Frank had an American pen pal. He then found out that there was an all-Japanese regiment fighting for America in Europe which liberated one of the camps. Taking these tidbits of history, and doing a lot more research, his next novel was born. His goal with this book was to reflect the reality of life in the 1940s and not to rely on stereotypes.

As an author, Andrew fights against biases when he is often the only Asian American at book signings or other author events. As an attorney, Andrew proves that the racist thoughts that an Asian cannot write or speak English well are untrue.

Ching-Lee, a Partner at the law firm Sidley, also discussed the stereotypes against Asian American women and how such women are perceived as submissive, always agreeing with their male counterparts. Ching-Lee stressed that you cannot let expectations dictate how you perform. She prefers to make a stronger point, to speak out and express her opinion, even if she is seen as somewhat aggressive. Asian American women are still trailblazing, and she has pushed herself and her colleagues to be role models.

The program on October 5 was sponsored by the Asian American Attorney Section and the Diversity and Inclusion Committee. A special thanks to Ching-Lee's firm Sidley for sponsoring the cocktail hour. The Asian American Attorney Section is the first of its kind at the Nassau County Bar Association. There is no local affinity bar for Asian American attorneys. The Asian American Bar Association of New York is a great organization but holds all of its events and meetings in New York City. We wanted a group for Asian attorneys here in Long Island. This desire led to the creation of the Asian American Attorney Section in March of this year with its first formal meeting held in September. The goal of the Section is to address the legal needs of the Asian attorney, confront Asian bias, disseminate relevant information, and hold networking and social events among the Asian attorney community. It is open to all Bar Association members, without regard to race or ethnicity.

Jennifer L. Koo is an attorney and Partner at Sales Tax Defense LLC. She is also a member of the NCBA Board of Directors, NAL Advisory Board, and serves as Chair of the NCBA Asian American Attorney Section and Association Membership Committee. She can be reached at jkoo@salestaxdefense.com.

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FOCUS:
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The DD-214 Follows Veterans After Military Service

Gary Port

Nassau and Suffolk Counties are home to more than 80,000 veterans.[1] What all veterans have in common is that the Department of Defense (DoD) issued to them the Department of Defense Form, 214, ("DD 214"), the Discharge Certificate. The DD 214 "plays a crucial role in the allocation of veterans benefits, reemployment rights, and unemployment insurance…"[2] While there are two versions, the long Form is preferred for employers due to its detailed character of discharge section. Any attorney representing a veteran should have some basic understanding of this critical document.

Who Gets One?

"(1) The following members will be issued a DD Form 214: (a) Members who are separated or released from active service. (b) Recalled retirees reverting to retired status, regardless of the period of active duty service. (c) Members who are separated for cause or for physical disability, regardless of the period of active service. (d) Personnel being separated, when they have served 90 days or more or when required by the Secretary concerned for shorter periods, from a period of active duty for training, full-time training duty, or active duty for operational support. (e) Reserve Component personnel ordered to active duty for a contingency operation for a period greater than 30 days. (f) Members who change their status or component while serving on active service. (g) Members who are issued a DD Form 214-1."[3]

Obtaining the DD Form 214

Veterans should request a copy of the long form, which includes blocks 23-30. The County Clerk will file these and provide certified copies as needed.[4] There are a number of companies which will charge to obtain the DD 214, however the Government provides it FREE of charge.[5]

The DD 214 includes details such as:

- Name and social security number
- Dates of service, including enlistment and separation dates
- Rank and pay grade at the time of discharge
- Military occupational specialty (MOS)
- Awards and decorations received
- Character of service[6]

Character of Discharge Section

The character of discharge, encompassing blocks 23-29, is a critical component of the 214[7]. It determines eligibility for various benefits.[8] An honorable discharge is generally the most desirable, as it opens up a host of benefits provided by federal, state, and local governments.[9]

Understanding the Character of Discharge

The character of discharge, as indicated in line 24 of the 214, shapes a veteran's future opportunities. There are five types of discharge characterizations:[10]

1. Honorable Discharge
An honorable discharge is the best. It opens the door to a wide range of VA benefits, including educational grants, loans, home grants, business loans, and job preference benefits. Employers and government agencies hold an honorable discharge in high regard.

2. General Under Honorable Conditions
A general under honorable conditions discharge is given for various reasons. Silver compared to the Gold. While it is still considered a favorable discharge, the narrative reason for separation is clearly stated on the 214, which might impact future employment prospects. Additionally, certain veteran's benefits may not be available to individuals with this type of discharge.

3. Other Than Honorable Discharge
An other than honorable discharge (OTH) is typically granted due to significant misconduct, such as a failed drug or alcohol urinalysis test. This discharge carries negative implications for employment and restricts access to many veteran's benefits.

4. Bad Conduct Discharge (BCD) and Dishonorable Discharge (DD)
A bad conduct discharge (BCD) and a dishonorable discharge (DD) are only issued after court-martial proceedings. These are federal convictions. Individuals with BCD or DD discharges face considerable prejudice from employers and are generally ineligible for any veteran's benefits.

5. Entry Level Separation (ELS) or Non-Characterized Discharge
An entry level separation (ELS) is given to soldiers within the first 180 days of their initial enlistment. It is a non-characterized discharge, meaning it is not characterized as honorable or less than honorable. Individuals with an ELD cannot expect to receive any veteran's benefits.

Decoding the Separation Codes

The separation code, found in block 26 of the 214, provides details about the separation. While the Department of Defense claims to no longer release the definition of these codes, many have been previously released and can be accessed by prospective employers.[11] These Separation Codes can be benign or very toxic.

What are Military Separation Codes?

Military separation codes are designations used to classify the reasons the discharge. However, practitioners have noted that assignment of the codes is not well regulated. Reference can be made to the DoDI on this issue[12] and the various branches that have enacted various regulations.[13] To lawyers assisting clients with correcting their DD 214, the process can seem very arbitrary. For example, in *Doyon v. United States*[14] the veteran received a DD-214 form containing a separation code indicating that he was discharged for unsuitability due to a personality disorder. This prevented him from receiving veterans' benefits. He was further denied medical disability retirement. The Court found that he should have been discharged for PTSD which would have conferred benefits.

Where to Find the Separation Code on a DD214

The separation code can be found in Box 26 of the long-form DD214. The separation code can have a significant impact on their future employment prospects.

Some examples:[15]

- BDA: Fraudulent Entry
- BLC: Homosexuality
- BKA: Pattern Of Misconduct
- BKB: Misconduct (Civil Conviction)
- BKK: Misconduct (Drug Abuse)
- BKL: Misconduct (Sexual Perversion)
- GHJ: Unsatisfactory Performance
- BFX: Personality Disorder

The Role of Separation Codes in the Hiring Process

Employers may request a copy of the DD214 to verify a candidate's military service and discharge status. There does not seem to a specific bar to this, however perhaps an argument can be made under New York Labor Law sec. 194-a that such a request is an improper request for wage and salary history.[16] The separation code can influence an employer's decision to hire or not hire a veteran.

A veteran who presents a DD 214 showing unsatisfactory performance, misconduct, sexual perversion, or personality disorder is probably not going to be hired.

How Employers Access Separation Codes

Employers can access separation codes by requesting a copy of a veteran's DD214 or by utilizing specialized services that provide military background checks. Again, it is unclear how legal or illegal these practices are absent specific statutes.

Common Misconceptions and Stereotypes

Employers may make assumptions about a veteran's character or work ethic based solely on their separation code, without considering the full context of their military service. It is crucial for veterans to proactively address any concerns and provide employers with a comprehensive overview of their skills, experience, and qualifications.

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The Impact of RE Codes

The RE code, listed in block 27, refers to the enlisted eligibility for reentry. It is important for veterans who wish to reenlist in the military. Each branch of service has its own reenlistment codes, which determine the conditions for future service.

There are generally four RE codes. RE 1 is the best, and means that the person is welcome back in to service. RE 4 is the worst, and means that the person cannot come back into service.[17] The Navy and Marines have 8 RE codes and RE 4 is again, the worst.[18]

The Air Force also has 4 RE codes[19]. The Air Force RE 4 is mostly pejorative.

The practical effect of this is that a veteran with an Honorable Discharge and an RE 4 code could find themselves locked out of employment.

Disputing the Character of Discharge

If a veteran believes that their character of discharge was made in error, they have the option to request a discharge review. The discharge review boards (DRBs) of the respective military branches have the authority to modify or correct any discharge or dismissal, except those resulting from a general court martial.[20]

Applying for a Discharge Upgrade

Each branch also has a board for the correction of military records. This board has the power to literally re-write the military records of an applicant.[21]

Veterans who have received a less than honorable discharge may be eligible for a discharge upgrade if they can demonstrate that their discharge was connected to mental health conditions, such as PTSD or traumatic brain injury.[22 23]

It is best practice to draft the appeal like a detailed petition for relief, with citations to the law and a robust statement of facts. Witness statements and exhibits can be helpful, and the Board can elect to conduct an in-person hearing.

Veteran Benefits[24]

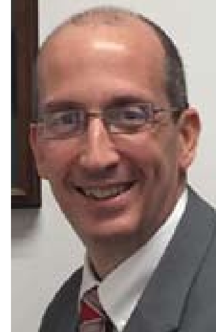
Veterans with an honorable discharge are generally eligible for a wide range of benefits. Veterans with a general discharge under honorable conditions may have access to many benefits, but some programs may be restricted.

Veterans with an other than honorable discharge, bad conduct discharge, or dishonorable discharge may face limitations in accessing certain benefits. These discharge types can disqualify veterans for almost all benefits.

Conclusion

The DD Form 214 is a critical document that provides valuable information about a veteran's military service and discharge. Unfortunately, it is an area where there is almost no academic training on it. Other than the ABA text, and Military Discharge Upgrade, there is a dearth of formal hornbooks on the subject.[25] The DD 214 is literally the most critical document which a veteran receives as it is the gateway to an innumerable number of benefits and resources. A practitioner should have at least a passing familiarity with it, and understand the basic procedure on how to file to correct it, if necessary.

1. https://www.unitedwayli.org/mission-united#:~:text=Serving%20Those%20Who%20Served%20Our%20Country&text=The%20need%20for%20these%20services,veterans%20living%20in%20our%20communities.
2. DoDI 1336.01 (February 17, 2022) Sec. 3.1.
3. DoDI 1336.01 (February 17, 2022) Sec. 3.2.
4. https://www.nassaucountyny.gov/478/Veteran-Services#:~:text=As%20a%20courtesy%20to%20the,request%2C%20will%20provide%20certified%20copies.&text=Very%20often%20veterans%20are%20required,they%20apply%20for%20certain%20benefits.
5. https://www.va.gov/records/get-military-service-records/.
6. DoDI 1336.01 (February 17, 2022) Table 1.
7. DoDI 1336.01 (February 17, 2022) Table 1.
8. 38 CFR §3.12.
9. 38 CFR §3.12.
10. *See* generally 38 USC 5303, 38 USC 7905 and 38 CFC 3.12.
11. https://militarypay.defense.gov/Portals/3/Documents/Recoupment/SPD_May_2011.xlsx.
12. DoDI 1336.01 (February 17, 2022).
13. Army Regulation 635-200, for example.
14. *Doyon v. United States*, 58 F.4th 1235.
15. https://www.coalitionofvets.org/military_separation_codes/military_separation_codes_alphabetical_codes.pdf.
16. NY CLS Labor §194-a.
17. *See* Army Regulation 601-280, generally for the Army.
18. https://www.secnav.navy.mil/ig/Lists/FAQs/DispForm.aspx?ID=641.
19. https://static.e-publishing.af.mil/production/1/af_a1/publication/afi36-2606/afi36-2606.pdf.
20. 10 U.S. Code §1553.
21. 10 USC 1552.
22. https://www.defense.gov/Contact/Help-Center/Article/Article/2742507/requests-for-upgrade-of-discharge-characterization/.
23. https://www.va.gov/discharge-upgrade-instructions/#:~:text=All%20branches%20of%20the%20military,Traumatic%20brain%20injury%20(TBI).
24. 38 CFR §3.12.
25. Military Discharge Upgrades, Kuzma, et al ABA (2021).



Gary Port is a retired Army Lieutenant Colonel, and is currently the Army Reserve Ambassador for the State of New York, a two-star position. He is also the Greater New York Chapter President of the Association of the United States Army, and Commander of American Legion Post 81. Mr. Port is currently the chair of the Nassau Bar Veterans Committee and sits on the New York State Bar Veterans' Committee. He is a partner in Port and Sava, and practices Matrimonial/Family Law and military/Veterans law.

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FOCUS: ELDER LAW

Elder Law Committee Sets Goal to Foster Greater Diversity Among Members

Dana Walsh Sivak and Mary Beth Heiskell

The Nassau County Bar Association's Elder Law, Social Services and Health Advocacy Committee's first meeting took place on September 14, 2023. The Committee brought its membership together for lunch in the North Dining Room at Domus, where a discussion was held to explore ways that the Committee could increase diversity among its membership.

More specifically, the need and intention to diversify the attorneys working in the Part 36 guardianship courts in Nassau County was explored. A panel of guests were invited to offer their unique perspective on these topics. The overarching goal in convening this panel was to help foster a conversation amongst the Committee, and its guests, to discuss how diversity and inclusion impacts the practice of elder law.

Panelist discussed their reflections and offered suggestions regarding the state of diversity in elder law, its importance, and ways the Committee could work to foster increased diversity and inclusion. The panel consisted of the following individuals: Honorable David J. Gugerty, J.S.C. (Guardianship Part, Nassau County); Honorable Gary F. Knobel, J.S.C. (Guardianship Part, Nassau County); Brandon Freycinet, Esq. (private practice, Little Neck); Oscar Michelen, Esq. (Partner, Cuomo Law, LLC, NCBA Board of Directors, and incoming President of the Long Island Hispanic Bar Association); Jessica Molinares Kalpakis, Esq. (Senior Counsel, Harris Beach, PLLC); and Kaleem Sikandar, Esq. (Haimo Law)

The group also started to brainstorm some ideas of how to recruit more individuals to better represent traditionally marginalized individuals or groups in the "elder law" community.

Committee Vice Chairs Dana Walsh Sivak and Christinna Lamm, Hon. David J. Gugerty, and Committee Chairs Lisa Valente and Mary Beth Heiskell

The meeting gathered approximately 60 attendees. During introductions, one attendee reflected on his experience with the NCBA and noted that "in 40 years of coming here, this is the most diverse a room I've ever seen at the Bar," a sentiment that was echoed by many attendees.

The Hon. David J. Gugerty shared how Nassau County's population is becoming wonderfully diverse – people are coming from other places and setting down roots in Nassau, and may not have a family attorney yet. He also spoke about how individuals needing legal assistance may resist seeking help if attorneys and social workers immediately begin to ask for highly personal, financial, and medical information, as this could foster a natural distrust with a stranger.

Justice Gugerty further shared that looking at and speaking with someone who looks like themself or their brother, aunt, or another family member can make a big difference in creating more open conversations. Justice Gugerty also suggested that the "E" in Diversity, Equity & Inclusion can stand for more than just Equity, but also EMBRACE inclusivity and EDUCATE oneself to different cultural backgrounds, while showing EMPATHY for those whom one works to serve.

The Hon. Gary F. Knobel suggested that we could increase outreach to law school students and encourage them to consider elder law as a practice area. He also encouraged that attendees find ways to link newly admitted attorneys with pro bono service in elder law and guardianship work.

Brandon Freycinet, Esq., shared his opinion on the importance of having a mentor: "I had a mentor. Without having a mentor, I wouldn't have known about guardianship and that's how I learned about it." He recommended that we host more workshops geared toward educating other young attorneys (especially ones with more diverse backgrounds) and promote their exposure to and familiarity with other Nassau County-practicing attorneys.

This led the Committee's Co-Chair and panel discussion moderator, Mary Beth Heiskell, Esq., to remind the meeting's attendees regarding the Committee's plans to organize a mentorship initiative to begin on October 11. This effort aims to foster inclusivity and help members develop increased skills in their legal practice. It will pair or group attorneys of different experiential levels to share varying expertise with one another, and help members learn more about certain, new aspects of elder law. In some cases, mentors may also be mentees, as everyone has greater experience in some things as well as areas where skills could diversify and expand.

Panelist Jessica Molinares Kalpakis, Esq., discussed her personal experience with the practical aspects regarding the financial component of guardianship

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work where fees are sometimes limited or subject to court approval or available funds. She challenged this potential barrier to taking on these types of cases by highlighting the opportunity to develop skills that can be applied across the board in all other areas of practice, particularly for newer attorneys.

Oscar Michelen, Esq., noted that while Nassau County is becoming more diverse, it is one of the most segregated counties, with groups of ethnic minorities and socioeconomic disadvantages still primarily grouped together in specific neighborhoods. He also suggested that logistical or physical access to the courts themselves can serve as a barrier to individuals accessing justice, including clients actually getting to Court, particularly when the court is not located nearby.

Mr. Michelen also spoke about the need to make the "Courthouse" more physically accessible by using alternate locations in different communities. Mr. Michelen also stated that "Diversity and inclusion isn't just for people of color; we all gain by diversity – it doesn't just help the underrepresented communities. Diversity helps us all grow."

The final panelist to speak, Kaleem Sikandar, Esq., related his approach to representing clients though a more holistic set of services and supports. He stated: "We're not just looking at the legal and financial needs of clients, we want to think about emotional needs as well." These emotional needs, he shared, include spirituality: "Spirituality is more than religion – what is their faith, what is their higher power, how can I connect with them?"

In closing, Mary Beth Heiskell requested that the members and guests in attendance consider Judge Knobel's words from earlier where he stated "Lots of people say they became lawyers to change the world… If people want to make a change in society, they can start here."

Ms. Heiskell encouraged attendees put the afternoon's discussion into practice: "Please commit to something [using] your unique set of expertise and contribute toward fostering more diversity in your daily work and within your participation on this committee." She also shared that the committee's leadership has committed to focusing on diversity and inclusion in every meeting and event planned for this year.

Lastly, Ms. Heiskell invited Committee members to attend the Diversity & Inclusion Committee meeting the following week to join their discussion on how the 18b assigned counsel in criminal matters and the Part 36 fiduciary appointments in guardianship matters could diversify.

The following is a listing of resources that were discussed and shared at the meeting:

• The Color of Law: A Forgotten History of How Our Government Segregated America, by Richard Rothstein, available at https://www.amazon.com/Color-Law-Forgotten-Government-Segregated/dp/1631492853

• Podcast by Honorable Joseph Zayas (suggested by Judge Gugerty): https://podcasts.apple.com/us/podcast/amici-podcast/id1487249036.

Dana Walsh Sivak is a Partner at Falcon Rappaport & Berkman LLP, where she serves as Co-Chair of the firm's Elder Law practice group, as well as senior member of the firm's Cannabis and Litigation practice groups. She is the Co-Vice Chair of the NCBA's Elder Law, Social Services & Health Advocacy Committee.

Mary Beth Heiskell is an Associate Attorney at Kiley, Kiley & Kiley, PLLC, where she focuses in elder law, estates and trusts planning, Medicaid eligibility, special needs practice and real estate. She is the Co-Chair of the NCBA Elder Law, Social Services & Health Advocacy Committee.

NCBA Committee Meeting Calendar November 8, 2023–December 7, 2023

Questions? Contact Stephanie Pagano at (516) 747-4070 or spagano@nassaubar.org.
Please Note: Committee meetings are for NCBA Members.
Dates and times are subject to change. Check www.nassaubar.org for updated information.

WEDNESDAY, NOVEMBER 8
Association Membership
12:30 p.m.
Jennifer L. Koo

WEDNESDAY, NOVEMBER 8
Medical Legal
12:30 p.m.
Bruce M. Cohn

WEDNESDAY, NOVEMBER 8
Matrimonial Law
5:30 p.m.
Karen L. Bodner

THURSDAY, NOVEMBER 9
Business Law Tax & Accounting
12:30 p.m.
Varun Kathait

THURSDAY, NOVEMBER 9
Asian American Attorney Section
12:30 p.m.
Jennifer L. Koo

TUESDAY, NOVEMBER 14
Women in the Law
12:30 p.m.
Melissa P. Corrado, Ariel E. Ronneburger

TUESDAY, NOVEMBER 14
Labor & Employment Law
12:30 p.m.
Marcus Monteiro

TUESDAY, NOVEMBER 14
General, Solo, and Small Law Practice Management
12:30 p.m.
Scott J. Limmer, Oscar Michelen

WEDNESDAY, NOVEMBER 15
Construction Law
12:30 p.m.
Anthony P. DeCapua

WEDNESDAY, NOVEMBER 15
Commercial Litigation/ New Lawyers
12:30 p.m.
Christopher J. Clarke, Danielle Gatto—Commercial Litigation
Byron Chou, Michael A. Berger—New Lawyers

WEDNESDAY, NOVEMBER 15
Ethics
5:30 p.m.
Mitchell T. Borkowsky

WEDNESDAY, NOVEMBER 15
Diversity & Inclusion
6:30 p.m.
Sherwin F. Safir

THURSDAY, NOVEMBER 16
Family Court, Law, Procedure & Adoption
12:30 p.m.
James J. Graham, Jr.

THURSDAY, NOVEMBER 16
Government Relations
6:00 p.m.
Michael H. Sahn

TUESDAY, NOVEMBER 21
Intellectual Property
12:30 p.m.
Sara M. Dorchak

TUESDAY, NOVEMBER 21
Surrogate's Court Estates & Trusts
5:30 p.m.
Michael Calcagni, Edward D. Baker

TUESDAY, NOVEMBER 28
Plaintiff's Personal Injury
12:30 p.m.
Giulia R. Marino

WEDNESDAY, NOVEMBER 29
District Court
12:30 p.m.
Bradley D. Schnur

FRIDAY, DECEMBER 1
Appellate Practice
12:30 p.m.
Amy E. Abbandondelo, Melissa A. Danowski

TUESDAY, DECEMBER 5
Women in the Law
12:30 p.m.
Melissa P. Corrado, Ariel E. Ronneburger

WEDNESDAY, DECEMBER 6
Real Property Law
12:30 p.m.
Suzanne Player

WEDNESDAY, DECEMBER 6
Government Relations
6:00 p.m.
Michael H. Sahn

THURSDAY, DECEMBER 7
Hospital & Health Law
8:30 a.m.
Douglas K. Stern

THURSDAY, DECEMBER 7
Community Relations & Public Education
12:45 p.m.
Ira S. Slavit

THURSDAY, DECEMBER 7
Publications
12:45 p.m.
Cynthia A. Augello

FOCUS: LAW AND AMERICAN CULTURE

It was Sixty Years Ago Today... November 22, 1963

Rudy Carmenaty

It was the crime of the last century. It was a crime that altered the course of history. It was a crime which spawned countless conspiracy theories. It was also a crime that was captured on film. A crime seared in the mind of every American than alive.

On November 22, 1963, President John F. Kennedy was assassinated. Kennedy was murdered as he was riding in a motorcade in Dallas. Beside him was his First Lady, the glamourous Jacqueline Kennedy.

Juxtaposed to the martyred president is his accused assassin. Lee Harvey Oswald remains an enigma. A Marine turned Marxist, Oswald once defected to the Soviet Union and was a vocal supporter of Fidel Castro. Oswald was a misfit and a loner.

From the moment shots were fired in Dealey Plaza, the two men would be forever linked. That the lowly Lee Oswald took the life of the gallant John Kennedy continues to be difficult to accept, even all these years later.

Another name linked to the Kennedy assassination, but far less conspicuously, is that of Abraham Zapruder. Zapruder captured on his home movie camera graphic motion picture images of the President as he was being killed. The footage is known as the 'Zapruder Film.'

Kennedy was officially pronounced dead at 1:00 pm central standard time at Parkland Memorial Hospital. The President sustained a massive "*gunshot wound to the brain*."[1]

Lee Harvey Oswald never stood trial. At 1:07 p.m. on November 24, about forty-eight hours later, Oswald would himself die by gunfire. Oswald was mortally wounded by Jack Ruby on live television.

Jack Ruby, aka Rubenstein, was an unsavory character with ties to organized crime. He ran a strip club in Dallas. Ruby shot Oswald in the basement of Dallas Police headquarters as Oswald was being transferred to the county jail.

Ruby was convicted and sentenced to death. That conviction was overturned by the Texas Court of Criminal Appeals and Ruby was granted a new trial. In January 1967, Jack Ruby died of cancer while awaiting his court date.

Exactly one week after Kennedy's death on November 29, Lyndon Johnson, the new president, formed the Warren Commission.[2] Charged with investigating the assassination, the Commission concluded Oswald was the lone assassin.

To bolster this conclusion, the Commission explicitly ruled out the possibility of a conspiracy, either foreign or domestic. Johnson no doubt wanted to reassure the public that it was an open and shut case. Oswald, a deranged nut, was responsible.

This august panel was chaired by Earl Warren, the Chief Justice. It was comprised of eminent men with impeccable reputations.[3] Among its members was future president Gerald Ford.[4]

The Warren Report was released on September 24, 1964. That November, the Commission published twenty-six volumes of evidentiary documentation. Johnson expected this would quell lurking suspicions about what had happened in Dallas.

Initially accepted as the definitive word, the Warren Report soon began generating more questions than answers. It was subsequently dismissed as a 'whitewash' and spawned claims of a post-assassination cover-up.

President Kennedy had been in Dallas that November on a campaign swing. Gearing-up for reelection, Kennedy needed to carry Texas, if he was going to hold on to the White House.

Sentiment in Dallas was openly hostile toward Kennedy and his administration. Kennedy shared his qualms with an aide, Dave Powers, "*God, I hate to go to Texas*" as he had "*a terrible feeling about going*."[5]

John Kennedy possessed a morbid stoicism. In spite of the public image, he was plagued by ill health and on more than one occasion had received the Last Rights of the Roman Catholic Church.

Yet this was different. For the President had also told Powers on November 18, just days before his death, that riding in a motorcade offered an ideal opportunity for an assassin with a "*high-powered rifle outfitted with telescopic sight.*"[6]

Air Force One landed at Love Field on November 22. When the President and the First Lady descended on to the tarmac, Jackie Kennedy received a bouquet of roses which accentuated her outfit. An outfit which would be stained with her husband's blood.

Joining the Kennedys would be Texas Governor John Connally and Connally's wife Nellie. The two couples rode in the procession together in an open-air Lincoln continental limousine.[7]

The sun was shining, and the crowds were exuberant. Everything seemed to be going perfectly. Prophetically, the President, the first Roman Catholic elected to the office, twice stopped to shake hands with nuns along the route.

At about 12:30 p.m. the motorcade turned from Houston Street onto Elm Street into Dealey Plaza. The Lincoln carrying the President's party then ominously crossed the Texas School Book Depository.

Ahead was a sloping embankment forever branded the 'Grassy Knoll.' The Grassy Knoll would take on a significance which would seize the nation's collective imagination.

According to the Warren Report, it was from a six-story window of the Texas School Book Depository that Oswald took aim at the President with a mail-order rifle.[8] At least three shots were fired at the motorcade.[9]

The first shot missed its intended target. About that time, Nellie Connally turned and said "*Mr. President, you can't say Dallas doesn't love you*."[10] The President spoke his final words, "*No certainly, can't*".[11]

Two ensuing shots, one right after the other, struck the President. One of them, if the Warren Report is to be believed, had to have also hit Governor Connally.

Known as the 'Single Bullet' theory, the Warren Report contends that the second shot wounded both Kennedy and Connally.[12] This one bullet struck the President from the back of the neck. This shot then exited the President's throat.

The bullet went on to seriously injure the Governor.[13] Sloping downward, the bullet entered on the right side of Connally's back. It then exited his chest, passing through his right wrist, and leaving fragments in his left thigh.

Frame 230 of the footage taken by Zapruder clearly shows the President raising his arms as if he had been hit in the throat. Critics have derided the single bullet as the 'Magic Bullet."

If the non-fatal wounds inflicted on the President and the Governor were not caused by the same bullet, then the only logical assumption is that another sniper must have been present in Dealey Plaza. This would undermine the Warren Report.

A third shot hit the President squarely on the right-side of his head, splattering brain matter all about. This was the fatal blow. The First Lady cradled her dying husband in her arms crying: "*Jack, Jack, can you hear me? I love you*."[14] It is doubtful the near-lifeless President heard his wife's tender words.

As seen in Frame 313 of the Zapruder Film, the third bullet appears to strike the President from the front. Considerable speculation has this shot originating not from behind the President (where the Book Depository is situated), but rather from the Grassy Knoll.

The images that follow Frame 313 indicate the President's head and torso lurched backward and leftward upon impact. This appears to be inconsistent with the President being shot from the rear. The Warren Report contends all three shots came from no place other than the Texas School Book Depository.

Almost immediately, Dallas law enforcement directed their efforts to the Book Depository's sixth floor. There they would find a rifle and three spent cartridges. They also discovered that employee Lee Oswald was unaccounted for.

When Oswald was apprehended, he was paraded before the cameras as the President's assailant. He professed his innocence, going so far as to call himself a '*patsy*'. As a court was never able to determine his guilt, Oswald's secrets died with him.

The possibility of another gunman, by definition a conspiracy, was something officialdom was never willing to actively pursue. The dichotomy between the Warren Report and what the naked eye is able to garner from the Zapruder Film is jarring.

The Zapruder Film consists of Kodak Double 8 color stock, a quarter of an inch wide and six feet long, that runs for twenty-six seconds. These silent, gruesome images are visceral. A source of endless conjecture, the Zapruder Film has taken on all the elements of a Rorschach test.

The footage was taken with an 8mm Bell & Howell. Zapruder, a local dress manufacturer, had his offices across the street from the Book Depository. Zapruder spent the morning looking for an ideal perch to photograph the President.

As the motorcade approached, he was standing on a four-foot concrete slab on the Grassy Knoll. By happenstance, Zapruder had a nearly untrammeled view of the President as he was struck both times. To his credit, Zapruder never flinched.

Shortly after the shooting, Zapruder embarks on a day long odyssey to get the film processed, developed, and copied. The resulting footage, consisting of 483 frames of Kodak Kodachrome film, documents the assassination in focus and in color.

By the evening of the 22nd, Zapruder had the original film with three additional prints made. He turns over two of the prints to the Secret Service. He kept the original and the third copy.

It would take a dozen years before the American people were able to view the Zapruder Film. All that could be seen at first were enlarged black & white still frames that were printed in the November 29, 1963 edition of *Life* Magazine.

Life bought the rights for a combined $150,000. There were actually two separate contracts, negotiated two days apart. The first one, secured on Saturday the 23rd, was for $50,000 for the exclusive publication rights. Zapruder turned over his original and the copy.

On Monday, November 25th, *Life* and Zapruder negotiated for the motion picture rights which sold for a further $100,000. The men who ran *Life* magazine, upon seeing the footage, decided among themselves to suppress the Zapruder Film.

Life did share the footage with the Warren Commission. Slides taken from the Zapruder Film appear as exhibits in the Warren Report. These reproductions omit certain frames and confuse their order. Also, splices appear indicating the film was tampered with.

The first time the Zapruder film was exhibited in public was in 1969 during the trial of Clay Shaw in New Orleans. District Attorney Jim Garrison subpoenaed the film from *Life* as evidence and Zapruder was called in as a witness.

Garrison charged Shaw with conspiring to assassinate the President. Garrison claimed he had incontrovertible evidence that proved Shaw's guilt, he did not. Shaw was promptly acquitted by a jury.

Garrison, for his efforts, became a folk hero among conspiracy aficionados. This prosecution was the basis for Oliver Sone's technically brilliant, but historically speculative film *JFK* (1991).

Garrison surreptitiously had copies made of the subpoenaed evidence. Garrison disseminated the footage in violation of *Life's* copyright. Twelve years after Dallas, the Zapruder Film aired on American television.

Geraldo Rivera hosted a late-night show called *Good Night America*. On March 6, 1975, Rivera, along with comedian Dick Gregory and researcher/photo analyst Richard Groden, aired a grainy print.[15] This broadcast caused a sensation.

The next year, the House of Representatives created a Selected Committee on Assassinations. The Select Committee conducted a two-year inquiry into the murders of President Kennedy and Martin Luther King, Jr.

In its final report, the Select Committee concurred with the Warren Report about Oswald's guilt and the Single Bullet theory. Yet it concluded the assassination was the "*result of a conspiracy*" with "*a ninety-five percent probability that shots were fired at the President from two different locations.*"[16]

The Select Committee then sealed its files until 2029, but interestingly it had also recommended that the Justice Department investigate the matter further. Many Americans felt the government had once again hidden the truth from them.

Likewise feeling the nation's censure was *Time Life* for holding back the Zapruder Film. In 1975, tired of all the controversy, the company sold its rights back to Zapruder's heirs for $1.[17] Zapruder had died in 1970.

The footage has since been seen in a myriad of documentaries and motion pictures. Notably, Oliver Stone's aforementioned *JFK*. Though Garrison did not secure a conviction, in the court room of public opinion Stone's film struck a raw nerve.

During the movie's closing credits, the audience is informed the files from the House Select Committee remain sealed and the Justice Department has done nothing to investigate Kennedy's assassination.[18]

Like the screening of the Zapruder Film on ABC in 1975, *JFK* caused an outcry that prompted Congress to act. In 1992, Congress enacted the *JFK Records Act*.[19] Stone even testified before a committee in support of the proposed legislation.[20]

The law called for the National Archives to amass and release all records related to the Kennedy assassination in twenty-five years. Over 320,000 records, consisting of millions of pages, were deposited in the National Archive.

If the *JFK Records Act* were fully complied with, all materials would have been made public by October 2017. To date, approximately ninety-nine percent of the documents collected have been released.[21]

However, 4,684 documents remain sealed or redacted at the National Archives.[22] Most disturbingly, there may never be a full accounting under the *JFK Records Act*.

The law provides that if the President so certifies, continued postponement is permitted if "*identifiable harm*" to national security "*outweighs the value of disclosure*".[23] At the insistence of the CIA, the FBI, and other agencies, Presidents Trump and Biden have blocked the release of the complete catalog.

On June 30th of this year, the Biden administration circulated a 'a final order'. This directive takes the issue out of the President's hands and places the decision to release any additional documents into the hands of the intelligence community.

This development has been described as "*an abrogation of responsibility under the 1992 law*" on the part of President Biden.[24] Last October, the Mary Ferrell Foundation had sued the government after Biden issued a further postponement.[25]

The Mary Ferrell Foundation operates the internet's most exhaustive collection of JFK assassination related materials. Its lawsuit seeks to force the release of all "*undisclosed documents*" or in the alternative have the government "*conduct a thorough review … using a specific set of criteria outlined in the 1992 law.*"[26]

A federal district court in San Francisco declined to overturn Biden's June 30th order.[27] As things presently stand, a future president has the option to release the documents. Or that President can allow Biden's order to remain in place.

In 1999, a federal arbitration panel awarded Zapruder's heirs $16 million for the government's acquisition of the Zapruder Film under the *JFK Records Act*.[28] The original footage has been kept in the National Archives since the 1970's.

The Zapruder Film, like the Warren Report, has done little to resolve persistent and underlying questions. Who is actually responsible for the assassination? And why? And what was the role of the authorities before, during, and after November 22nd?

We may never know with complete certainty if Oswald murdered President Kennedy. Or if he acted alone. Or if the fatal shot, captured on Frame 313, came from the Grassy Knoll.

All the Zapruder Film confirms is that seeing is not always believing. People will perceive what they wish to perceive. Nevertheless, the footage and the event it depicts irretrievably changed our culture. Kennedy's killing haunts us still.

It certainly haunted Abraham Zapruder until the day he died. A Jewish immigrant from the Ukraine, he realized the American dream only to experience firsthand an American nightmare. An avid camera buff, he never again picked up his Bell & Howell.

Nor was Zapruder unique in his anguish. Much like the Eternal Flame lit at the President's gravesite at Arlington, the passions aroused, and

the melancholy birthed on November 22, 1963, have failed to dissipate.

An answer which satisfies everyone may never be arrived at. The only resolution, however disappointing, lies with people themselves. Individuals will have to make their own conclusions on seeing the Zapruder Film and weighing the available evidence.

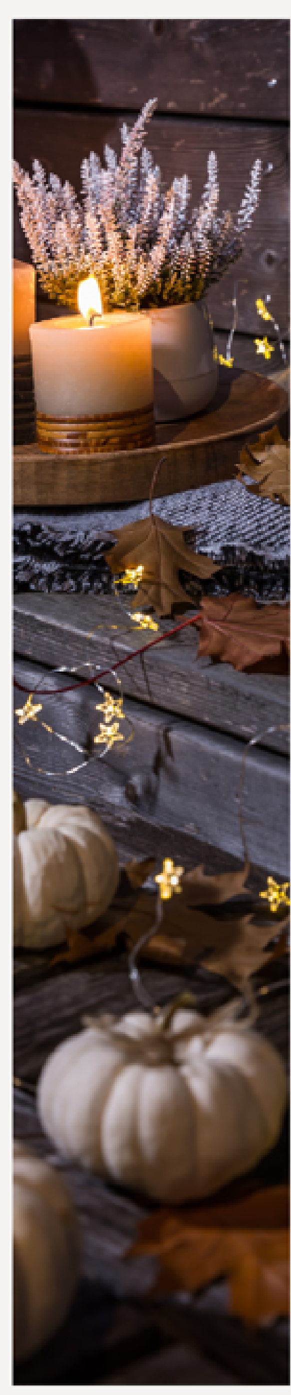
The author would like to dedicate this article to the noted jurist, the Hon. Ira Warshawsky. For few men during their public careers have better embodied the ideals espoused by President Kennedy than has Judge Warshawsky.

1.This description was given Malcolm Kilduff, Deputy White House Press Secretary, when he announced the President's death at Parkland Hospital.
2.The Warren Commission was formally known as the **President's Commission on the Assassination of President Kennedy**.
3. In addition to Chief Justice Warren, then Congressman Ford, the other members of the Warren Commission were Congressman Hale Boggs, Senator Sherman Cooper, former CIA Director Allen Dulles, diplomat and banker John J. McCloy, and Senator Richard Russell.
4. Ford, as President, was subjected to two assassination attempts in 1975.
5. Bethania Palma, *Before Assassination, JFK Was Reportedly Haunted By Death*, (November 21, 2022) *Snopes* at https://www.snopes.com.
6. *Id.*
7. Also present in the President's car were two Secret Service men. The entire procession consisted of fourteen vehicles, a four-member motorcycle escort from the Dallas Police, and two press buses. Among those in the presidential entourage were Vice-President Johnson, his wife Lady Bird, Texas Senator Ralph Yarborough, members of the Texas Congressional delegation, local officials, White House staff, military aides, and secret service agents.
8. According to the Warren Report, the murder weapon was an Italian Carcano M91/38 bolt action rifle, equipped with a faulty 4x telescopic sight. A World War II Italian infantry rifle, Oswald appears to have purchased the weapon by mail-order for $12.88 in March 1963 under an assumed named, A.J. Hidell.
9. It was the conclusion of the Warren Commission that the majority of the witnesses in Dealey Plaza heard at least three shots fired.
10. National Public Radio, *Nellie Connally Dies, Rode with JFK on Fateful Day* (September 2, 2006) at https://www.npr.org.
11. Laura Cahn, *The Last Thing JFK Said Before He Died,* (February 7, 2019) Reader's Digest at https://www.rd.com.
12. Future Pennsylvania Senator Arlen Spector is the originator of the Single Bullet theory. The Single Bullet theory purportedly explains the President's throat injury and the numerous wounds inflicted on Governor Connally. The bullet was found in near pristine condition on a stretcher at Parkland Hospital. A photograph of this ëSingle Bullet' can be seen in Warren Commission Exhibit #399.
13. Connally suffered an entry wound on his back, a broken rib, an exit wound in the chest, a shattered right wrist, and bullet fragments in his left thigh.
14. Cahn, *supra*.
15.THE ZAPRUDER FILM IS SHOWN ON "GOOD NIGHT AMERICA" (ABC-TV) (MARCH 6, 1975) at https://youtube.com.
16. Marjorie Hunter, House Panel Reports a Conspiracy "Probable" in the Kennedy Slaying, (December 31, 1978) *New York Times* at https://nytimes.com.
17. *Time Life* sold the rights back to the LMH Company. This entity was formed by the family to license use of the footage. The family has since given the copyright of the Zapruder Film to the Sixth Floor Museum in Dealey Plaza.
18. Movie *JFK-End Scroll* (1991) at https://youtube.com.
19. *The President John F. Kennedy Assassination Records Collection Act* (Public Law 102-526).
20. See Disclosure of JFK Assassination Records/C-Span.org at https://www.c-span.org.
21. Peter Baker, *Biden's "Final Order" on the Kennedy Files Leaves Some Still Wanting More*, (July 17, 2023) *New York Times* at https://nytimes.com.
22. *Id.*
23. *Id.*
24. Baker, *supra*.
25. Ellie Mae Czachor, *Biden and National Archive sued over JFK assassination records*, (October 19, 2022) CBS News at https://www.cbsnews.com.
26. *Id.*
27. Baker, *supra*.
28. David Johnson, *Zapruder Heirs Get $16 Million For Dallas Film*, (August 4, 1999) *New York Times* at https://nytimes.com.

Rudy Carmenaty is the Deputy Commissioner of the Nassau County Department of Social Services. He can be reached at rudolph.carmenaty@hhsnassaucountyny.us.

Lawyer Wellness Corner

Stress Awareness & Management



As the holiday season approaches, increased stress can become as much a part of the landscape as pumpkins and apple cider. As you juggle additional social responsibilities with your typical workload, don't lose focus on yourself.

Stress and anxiety can lead to self-medication (with alcohol or drugs) and thrill-seeking behaviors (such as gambling) as distraction. These can take a serious toll on personal and professional relationships. They can also lead to physical symptoms like fatigue, shortness of breath, dry mouth, even functional breakdown. If you experience any of these issues, or feel as though you might, try these simple ways to regain control.

5 Real-Time Ways to Quickly Reduce Stress:

1. Take One Thing at a Time – The Big Picture can be paralyzing. Break tasks down into manageable steps and tackle them individually until the whole is completed.
2. Cut Yourself Some Slack - Shed the "superman/superwoman" urge. Nobody's perfect, not even you. Mistakes are inevitable, thoroughly human and always fixable.
3. Have a Giggle Fit - Laughter triggers the release of endorphins, the body's natural feel-good chemicals.
4. Get Out – Break up a stressful day by going for a walk. Fresh air, comedic squirrels and a good leg stretch are the perfect team to calm your mind and provide a quick dose of relaxation.
5. Do Your Best Impression of a Zen Pretzel – Yoga, tai chi and meditation are all proven stress busters. Stretching, deep breathing and focusing on the moment will do wonders for your both emotional and physical well-being.

Have a warm, cozy, stress-minimized November!

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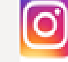
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The NCBA Lawyer Assistance Program is directed by Beth Eckhardt, PhD, and the Lawyer Assistance Committee is chaired by Dan Strecker, Esq. LAP is supported by funding from the NYS Office of Court Administration, the NY Bar Foundation, and the WE CARE Fund of the Nassau County Bar Foundation. *Strict confidentiality protected by Section 499 of the Judiciary Law.

NCBA Judiciary Night • October 19, 2023

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First Annual Fall Festival

The WE CARE Fund held its First Annual Fall Festival on October 9, 2023. Offering pumpkin picking and painting, child safety fingerprinting, light refreshments, and meet and greets with Nassau County Mounted Police and Nassau County Fire Departments, WE CARE hosted over 300 children and their families for a day of Fall fun!

WE CARE Golf & Tennis Classic

The 27th Annual WE CARE Golf & Tennis Classic was held on September 18, 2023. Despite a rained-out golf tournament, WE CARE still hosted nearly 300 people for a beautiful dinner at Brookville Country Club, honoring Michael H. Masri, Jeffrey Mercado, and Hon. Andrew M. Engel.

New Members:

We Welcome the Following New Members

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In Brief

Louisa Portnoy, class of 2023 at Hofstra Law, joined Joseph Law Group, P.C. as an Associate Attorney. She will be practicing exclusively in the areas of matrimonial and family law.

Daniel Strecker, Partner at Harris Beach PLLC, has been appointed Vice-Chair for Publications of the American Bar Association Toxic Torts and Environmental Law Committee. *Long Island Business News* also names Harris Beach Partner **Jack Martins** to their 60 Most Influential Long Islanders of 2023 list.

William M. Savino, Partner at Rivkin Radler, LLP, is proud to announce that the following attorneys have been named to the *2023 New York Metro Super Lawyers* list: **Brian S. Conneely** (Employment & Labor); **Stuart I. Gordon** (Bankruptcy: Business); **Joel M. Greenberg** (Health Care); **Jean A. Hegler** (Estate & Probate); **Benjamin P. Malerba** (Health Care); **Patricia C. Marcin** (Estate & Probate); **Heather S. Milanese** (Estate & Probate); **Jeffrey P. Rust** (Health Care); William M. Savino (Insurance Coverage); **Wendy H. Sheinberg** (Elder Law); and **Matthew V. Spero** (Bankruptcy: Business). In addition, the following attorneys have been named to the *2023 New York Metro Rising Starts* list: **Jonah H. Blumenthal** (Estate & Probate); **Philip Nash** (Business Litigation); **Catherina Savio** (Business Litigation); and **Sean N. Simensky** (Business/Corp). **Maria Harghel** has also joined the firm's Insurance Fraud Practice Group as an Associate.

Gregory S. Lisi, Partner at Forchelli Deegan Terrana (FDT), is proud to announce that the following attorneys have been named to the *2023 New York Metro Super Lawyers* list: **Stephanie M. Alberts** (Estate & Probate); **Joseph P. Asselta** (Construction Litigation); **Douglas W. Atkins** (Tax); **Richard A. Blumberg** (Real Estate); **William F. Bonesso** (Land Use & Zoning); **Lorraine S. Boss** (Estate & Probate); **Frank W. Brennan** (Employment & Labor); **Myrna A. Cadet-Osse** (Tax); **Lisa M. Casa** (Employment & Labor); **John M. Comiskey** (Construction Litigation); **Andrea Tsoukalas Curto** (Land Use & Zoning); **Andrew E. Curto** (Business Litigation); **Daniel P. Deegan** (Real Estate); **Kathleen Deegan Dickson** (Land Use & Zoning); **Jeffrey D. Forchelli** (Land Use & Zoning); **Nicole S. Forchelli** (Tax); **Keith J. Frank** (Employment & Labor); **Nathan R. Jones** (Business Litigation); **Donald F. Leistman** (Real Estate); **Alexander Leong** (Employment & Labor); Gregory S. Lisi (Employment & Labor); **Gerard R. Luckman** (Bankruptcy: Business); **Mary E. Mongioi** (Business & Corporate); **Elbert F. Nasis** (Civil Litigation: Defense); **James C. Ricca** (Banking); **Risë E. Rosen** (Tax); **Brian R. Sahn** (Real Estate); **Judy L. Simoncic** (Land Use & Zoning); **Peter B. Skelos** (Appellate); **John V. Terrana** (Real Estate); **Russell G. Tisman** (Business Litigation) and **Danielle E. Tricolla** (Business Litigation). The following FDT attorneys have been named to the *2023 New York Metro Rising Starts* list: **Michael A. Berger** (Employment & Labor); **Gabriella E. Botticelli** (General Litigation); **Raymond A. Castronovo** (Construction Litigation); **Danielle B. Gatto** (Business Litigation); **Cheryl L. Katz** (Estate & Trust Litigation); **Lindsay Mesh Lotito** (Banking); **Jeremy M. Musella** (Mergers & Acquisitions); **Robert L. Renda** (Real Estate); **Erik W. Snipas** (Land Use & Zoning); and **Rebecca L. Stein** (Estate & Probate). **Judy L. Simoncic** was also selected by *Long Island Business News* as one of the 60 Most Influential Long Islanders of 2023.

Thomas J. McNamara, Partner at Certilman Balin Adler & Hyman, LLP is proud to announce that the following attorneys have been named to the *2023 New York Metro Super Lawyers* list: Thomas J. McNamara, **Jaspreet S. Mayall**, **Lisa S. Hunter**, **Paul S. Linzer**, **Douglas Rowe**, **Paul B. Sweeney**, **Carrie Adduci**, and **Rebecca Sklar**.

Joseph A. Quatela, Partner at Quatela Chimeri PLLC, with offices in Hauppauge and Garden city, welcomes **John P. Whiteman III** as Partner concentrating in the matrimonial and family law practice group. Mr. Whiteman brings more than 15 years of extensive experience practicing in the matrimonial and family law arena. Quatela Chimeri PLLC also welcomes **Gabriella Leon** as Associate, concentrating in the matrimonial and family law practice group. Ms. Leon graduated *cum laude* from Touro College Jacob D. Fuchsberg law Center in 2019.

Marc L. Hamroff, Partner at Moritt Hock & Hamroff LLP, is proud to announce that the firm has been recognized as one of *Long Island Business News*' Inaugural 2023 Empowering Women Honorees for its commitment to the growth and advancement of women, cultivation of diverse and inclusive communities, and fostering of social responsibility.

Karen J. Tenanbaum, Founding Partner of Tenenbaum Law, P.C., was recognized for the tenth year as a *2023 New York Metro Super Lawyer*. Tenenaum was also honored among Blank Slate Media's 2023 Nassau County Women of Distinction. The firm presented "NYS Tax Collection" for HalfMoon Education. Tenenbaum was interviewed by Sydney Steinhardt for the NYSSCPA, Trusted Professional. Karen moderated a presentation for the Suffolk Academy of Law by Ronald Stair titled "Everything You Wanted to Know About Retirement Plans, but Were Afraid to Ask."

Douglas M. Lieberman, Parter at Markotsis & Lieberman, P.C., has been named a *2023 New York Metro Super Lawyer* in Business Litigation.

Barton R. Resnicoff has been named for the fourteenth year to the *2023 New York Metro Super Lawyers* list. Resnicoff has also been recertified, for the fourth time, as Board Certified Family Trial Law Attorney by the National Board of Trial Advocacy.

Ronald Fatoullah of Ronald Fatoullah & Associates is honored to be the moderator of "Caregiving in the 21st Century," a summit for all formal and informal caregivers to be hosted by Hofstra University School of Health Professionals and Human Services on November 9.

Peter A. Bee, Senior Partner at Bee Ready Fishbein Hatter & Donovan, LLP (Bee Ready Law Group), is pleased to announce the promotion of **Rhoda Y. Andors** from Associate to Senior Associate. Andors has been with Bee Ready Law Group for five years in the Litigation and Employment and Labor Law Departments.

Stuart Siris, Partner at Solomon & Siris, P.C., has been selected as one of *Long Island Business News*' Long Island Business Influencers in Law. Siris was also named, for the tenth consecutive year, to the 2023 New York Metro Super Lawyers list in the field of Real Estate and Real Estate Litigation.

Scott L. Wiss, Partner and Managing Attorney of Levine & Wiss, PLLC, has been installed as President of the Nassau Lawyers' Association.

Sharon N. Berlin, Parter at Lamb & Barnosky, LLP, is proud to announce that the following attorneys have been selected for the *2023 New York Metro Super Lawyers* list: Sharon N. Berlin (Employment & Labor); **Richard K. Zuckerman** (Employment & Labor); and **Jeffrey A. Zankel** (Estate Planning & Probate). **Alyssa L. Zuckerman** was also selected for the New York Super Lawyers Rising Stars 2023 list for Employment & Labor Law. Berlin will be a co-speaker at the 27th Annual Pre-Convention School Law Seminar. The following attorneys have been selected by their peers for recognition in the 2024 30th Edition of *The Best Lawyers in America*: **Richard K. Zuckerman** (Education Law, Employment Law—Management, Labor Law—Management and Litigation, and Litigation—Labor and Employment); Sharon N. Berlin (Labor Law—Management); and Alyssa L. Zuckerman was also selected specifically for the "Ones to Watch" sector for Labor Law—Management.

Robert S. Barnett, Parter at Capell Barnett Matalon & Schoenfeld, is proud to announce that he, along with **Gregory L. Matalon**, **Stuart Schoenfeld**, and **Yvonne R. Cort** have been selected for the *2023 New York Metro Super Lawyers* list. In addition, **Erik Olson** has also been selected as a Super Lawyer Rising Star in the field of Estate Planning and Probate.

NCBA Corporate Partner Abstracts, Incorporated welcomes **Denise Angiulo** as Vice President of Sales. Denise has 22 years of experience in the title industry with clients in both NY and NJ but can provide title insurance anywhere. She can be reached at dangiulo@abstractsinc.com or (631) 830-1451.

Anthony A. Nozzolillo received the 2023 Affiliate Member of the Year Award from the New York Association of Mortgage Brokers at the 35th Annual Award Ceremony.

The IN BRIEF column is compiled by **Marian C. Rice**, a partner at the Garden City law firm L'Abbate Balkan Colavita & Contini, LLP, where she chairs the Attorney Professional Liability Practice Group. In addition to representing attorneys for 40 years, Ms. Rice is a Past President of NCBA. Please email your submissions to nassaulawyer@nassaubar.org with subject line: IN BRIEF

The *Nassau Lawyer* welcomes submissions to the IN BRIEF column announcing news, events, and recent accomplishments of its current members. Due to space limitations, submissions may be edited for length and content.

PLEASE NOTE: All submissions to the IN BRIEF column must be made as WORD DOCUMENTS.

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