

# Queens

## BAR BULLETIN

Queens County Bar Association | qcba.org | 90-35 148th Street, Jamaica, NY 11435 | 718-291-4500

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## An Open Letter To Our Members: Planning For The Future

By Frank Bruno, Jr.

After taking office in June, I examined every aspect of the Bar Association. I started with myself and my commitment to do the very best job possible. Literally — not figuratively — I think about the Bar Association every day. I think about how to improve it, how to foster community, and how to lead the association judiciously. This position did not come with an instruction manual, but it did come with a responsibility to serve the membership and follow in the able footsteps of my predecessors. This position has been shaped by my 12 years on the Board of

Managers and my nearly quarter-century of membership. My leadership has been informed by terms as president of other civic and professional organizations, including my neighborhood Civic Association, a Queens County affiliate bar association, and others. Seems like I was made for mid-level management — I was even president of my college fraternity and of the Italian Club in high school.

As I took stock of QCBA, no stone was left unturned

in my analysis — the membership, the leadership, the by-laws and governance, and the committees; the building, the website, and the social media outreach; our Executive Director and staff; our relationships and our functions — the list goes on. All facets of our multifaceted association were put under scrutiny.

I'm writing this letter on behalf of the QCBA concerning the physical, spiritual, and economic health of the Bar Association and its constituents. I have been impassioned to address the mental health of attorneys and our membership in particular, and have encouraged various programs to accomplish this. I am equally interested in the structural health of the Bar Association as a whole.

As we approach 150 years in existence and over 60 years in the same building, I have tasked our association leadership with reassessing how we conduct business in all dimensions of Bar life. The pandemic has taught us that life is fleeting, but adaptable and unrelenting; we have the opportunity and awareness needed to reassess previously unchallenged items of life. Questions that

were seldom discussed in the past are now at the forefront of our conversations, as well as at

the forefront of my leadership. How do we present CLEs? How can we conduct meetings both in-person and virtual, and what role should technology play in our justice system? How should we assign tasks to committee chairs? How will we stoke the flames of inclusivity, diversity, and equitable representation in our leadership, and spearhead movements to address injustices due to race and class?

At my first meeting of the Board of Managers, I tasked a Building Committee to evaluate the physical structure of our sixty-year-old building and report back to the board. They shared that the building has very significant difficulties today that will last into the future if left unaddressed. There is no working air conditioning system; the building is not compliant with the Americans with Disabilities Act, making it a considerable challenge for an individual with a physical disability to

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# The Docket

Being the official notice of the meetings and programs listed below, which, unless otherwise noted, will be held at the Bar Association Building, 90-35 148th Street, Jamaica, NY. Due to unforeseen events, please note that dates listed in this schedule are subject to change. More information and changes will be made available to members via written notice and brochures. Questions? Please call 718-291-4500.

## CLE Seminar & Event listings

### NOVEMBER 2021

Tuesday, November 2	Election Day - Office Closed
Thursday, November 4	CLE: No Fault Update - 1:00 pm
Friday, November 5	Meditation Friday – 1:00 pm
Monday, November 8	Event: Mental Health Mondays
Thursday, November 11	Veteran’s Day - Office Closed
Monday, November 15	CLE: Successfully Handling a Consumer Chapter 7 Case: Beginning to End 5:00 pm
Tuesday, November 16	CLE: Search Warrant & Subpoenas 6:00 pm
Wednesday, November 17	CLE: Landlord & Tenant Update 2021 5:00 pm
Thursday, November 18	CLE: Estates Update - 1:00 pm
Friday, November 19	Event: Meditation Fridays <a href="https://us02web.zoom.us/j/81721343753?pwd=TE0wWHdRaGNxZk9YOE5XUTZUTJrUT09; Meeting ID: 817 2134 3753, Passcode: 734189">https://us02web.zoom.us/j/81721343753?pwd=TE0wWHdRaGNxZk9YOE5XUTZUTJrUT09; Meeting ID: 817 2134 3753, Passcode: 734189</a>
Tuesday, November 23	Event: Friendsgiving Event 6:00 pm
Thursday, November 25	Thanksgiving Day - Office Closed
Friday, November 26	Thanksgiving Holiday - Office Closed

### DECEMBER 2021

Friday, December 3	Meditation Friday – 1:00 pm
Wednesday, December 8	CLE: What Judges Expect You to Know About Distribution of Retirement Assets/QDROs and How to Avoid Top Mistakes 5:00 pm
Friday, December 10	Meditation Friday – 1:00 pm
Thursday, December 16	Holiday Party – The Inn at New Hyde Park – 5:30 pm
Friday, December 17	Meditation Friday – 1:00 pm
December 24-Deember 31	Office Closed
Friday, December 24	Christmas Holiday Observed
Friday, December 31	New Year’s Eve

### JANUARY 2022

Monday, January 17	Martin Luther King, Jr. Day - Office Closed
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### UPCOMING SEMINARS

Family Law Committee CLE’s  
Real Property Committee  
Young Lawyers Committee Events

# 2021-2022 Officers and Board of Managers of the Queens County Bar Association

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### Queens County Bar Association

**Annual Holiday Dinner Committee:**  
George E. Nicholas, *Chair* • Jay M. Abrahams, *Vice-Chair* • Michele Schuster, *Secretary*  
Kristen J. Dubowski Barba • Diana C. Gianturco • Delecia Hall • Maureen McHugh Heitner  
Mark J. Keller • Milene Mansouri • Elizabeth J. Newton • Cari E. Pepkin • Ricardo Rengifo • Peter S. Thomas

# HOLIDAY PARTY 2021

**THURSDAY, DECEMBER 16**  
**5:30 pm to 9:30 pm**

**THE INN AT NEW HYDE PARK**  
214 Jericho Turnpike, New Hyde Park, NY 11040

**Co-Hosted by:**  
*Assigned Counsel Association of Queens Family Court, Brandeis Association, Columbian Lawyers Association of Queens, Hellenic Lawyers Association, Latino Lawyers Association of Queens County, Macon B. Allen Black Bar Association, Queens County Women's Bar Association*

**\$95.00 per person or Group of 10 for \$900 – if payment received by Dec. 7**  
**\$105.00 after Dec. 7 & at the door**

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**Dance music by: ACC DJ**

**To Reserve for the 2021 Holiday Party with the QUEENS COUNTY BAR ASSOCIATION VISIT <https://tinyurl.com/QCBA2021> OR COMPLETE THIS FORM:**  
**Email: CLE@QCBA.ORG    Fax: 718-657-1789    Mail: QCBA, 90-35 148 St., Jamaica, NY 11435**

Pay by: ☐ Check ☐ MC ☐ Visa ☐ AMEX ☐ Disc    Signature: \_\_\_\_\_

Card #: \_\_\_\_\_    Exp.: \_\_\_\_/\_\_\_\_/\_\_\_\_    Code: \_\_\_\_\_

Tickets: # \_\_\_\_\_ x \$95 = \$ \_\_\_\_\_ until 12/7    Groups of 10: # \_\_\_\_\_ x \$900 = \$ \_\_\_\_\_ until 12/7

Tickets: # \_\_\_\_\_ x \$105 = \$ \_\_\_\_\_ after 12/7

Attendees (s): \_\_\_\_\_

Telephone: \_\_\_\_\_    Email: \_\_\_\_\_

Do you require kosher meals?    No ☐    Yes ☐    # Required: \_\_\_\_\_

# New Members

Kevin P. Caldwell	Johanna Ortega
Karla A. Guerra	Hadassah Schneider
Brian T. Kerr	Jasmine I. Valle
Ellen B. Langan	





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## President's Message:



In the worlds of self-improvement and personal development, one seemingly universal notion is this: “you are the average of the five people you spend the most time with.”

While this phrase is oft-cited and I think Jim Rohn either said it first or popularized it, this strategy, has merit.

You are—without question—a product of your environment, and the people you choose to surround yourself with, naturally, have a tremendous influence on everything from your ambition and the energy you are willing to expend to achieve it, the way you work, to the way you speak and present yourself.

People who you spend time with influences the person you eventually become. Who you are with can elevate you as much as it can bring you down.

Some accept this as truth, many seem to miss the unavoidable counter-notion: friend group influence works both ways.

If you are the average of the five people with whom you spend the most time, you are part of the same math for each of those people. Along with anyone else in your proximate sphere. Be better for them.

You should prioritize spending time with people who make you better, while eliminating those that don't. You also have a duty to the people you care about to be better and to always try to get better.

If you are circling the drain, your negative inertia

can draw others down as well.

Stay with people that who make you better or want to be better. Mastermind with them. Learn from them. Be on a Committee with them. Break bread with them. Have conversations with them. Be with them virtually and in person when you can.

Surround yourself with those that inspire and motivate you and do not let down your circle.

Improve. The people in your coterie are dependent on you.

We welcome Diana Gianturco as the Chair of the Lawyers Assistance Committee. Recently, she gave a CLE on reducing stress as an attorney and she has been running a Friday Meditation program at 1:00PM. The Mediation will run every Friday at 1:00PM except for occasional holidays or Committee conflicts. Please join us by zoom. We want to expand our community of caring professionals. Please enjoy her article in this month's Bulletin as she spearheads our mental health platform.

The Executive Board and Board of Managers take the needs of our attorney members very seriously. As President, along with Committee Chairs of Civil, Supreme and Family Law in separate meetings have met with the Administrative Judges of Civil and Supreme Court and have expressed the concerns of our members. Our voices were heard and have been responded to. Administrative leadership has been

generous with their time, sincere in their desire to address attorney and litigant concerns and have provided clarity into the subject including but not limited to issues affecting processing delays, further opening of the Courthouses and in person volume. We have charted a course for further engagement. Our Committee Chairs disseminate this information routinely to the membership at regularly scheduled meetings. Besides our concerns, we were able to offer the gratitude of our membership for the continued virtual workings of the Courthouse. The virtual conferences have been the silver lining of the pandemic practice.

Our Committee Chairs have open dialogue with Judges in their areas of subject matter expertise. The Judges of the Queens Courthouses have been overwhelmingly supportive of the Bar Association and are great friends indeed. As an example, at a recent Elder Law Seminar, three Guardianship Judges were present and offered practical expert comments. Judges across a variety of practice areas have been presenters for many QCBA sponsored programs. The open dialogue between Bench and the Bar provides information to our members, a more informed Queens County Bar Association attorney and ultimately an informed Queens County litigant.

Stay safe, be well and enjoy the ride.

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**FRANK BRUNO, JR. | PRESIDENT**





## “Batter UP ! How the Curve Balls In Life Can Impact Our Mental Health”

By Diana C. Gianturco, Esq.

I once played a season in the attorney soft ball league. When I heard them yell “Batter UP !” I wanted to run and hide. I couldn’t because I was expected to go out there, stare down the pitcher and knock it out of the ballpark – or at least hit a grounder to third. It was a lot of pressure. I was shaking inside. I had to step up to the plate looking fearless when all I could think of was not getting hit in the head with the ball! Of course, I couldn’t tell anyone. What would they think of me? Weak? Incapable? They all seemed to have it under control. They were tough and powerful. I was the only one frightened and anxious just waiting for a curve ball to the noggin.

Life can throw us a few curve balls. Sometimes it seems like life is just a pitching machine out there throwing curve balls, fast balls, knuckleballs. We must bob and weave to keep from getting hit by the ball while trying to hit a homerun and making it seem easy all at the same time. It can put a strain on our mental health.

The World Health Organization (WHO) defines mental health as a state of well-being in which an individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and is able to make a contribution to his or her community. . . Mental health promotion involves actions that improve psychological well-being. This may involve creating an environment that supports mental health. When we cannot cope with the normal stresses, this can lead to mental illness. The American Psychiatric Association defines mental illness as health conditions involving changes in emotion, thinking or behavior (or a combination of these) leading to distress and/or problems functioning in social, work or family activities. It can be brought on by trauma from a single incident or long-term circumstances. Almost 20% of adults in the US suffer from mental illness, but it is treatable.

Now let’s consider my softball career. It was a stressful situation including anxiety, fear of injury and embarrassment. Those were all reasonable feelings and, after I made it through the season, I reasonably decided that softball was not for me.

However, if my emotional reactions and thoughts resulted in my not being able to go to work on days when we had scheduled games or if I couldn’t watch the world series due to anxiety from my softball days, that could be considered serious mental illness because it would interfere with my functioning in usual activities. I might not seek help for those fears, but if I actually got hit in the head by a pitch and was knocked out, I would have drawn a crowd and an ambulance without question.

When mental illness is suspected, a primary care physician or mental health professional should be consulted. However, the stigma of mental illness often prevents people from talking about it or seeking help because it suggests weakness or instability. We must overcome this aspersion and mental illness should be viewed just as any other illness like heart disease or diabetes; an ailment that can be recognized, examined, and treated with favorable results. We don’t need to hide our fears. It may seem like everyone else is in control, but they are likely having the same difficulties you are. When I think back now, I probably wasn’t the only one worried about getting hit by a pitch.

Progress is being made regarding the recognition and acceptance of challenges to our mental health with the help of peer support groups. Queens Bar Association President Frank Bruno is personally promoting a lunchtime meeting on November 8, 2021, with presenters from the Lawyers Depression Project. Please join us and learn how to help ourselves, our colleagues and our loved ones who may be struggling in the face of difficult and changing times.

I am proud to have accepted the position of Chair of The Lawyers Acceptance Committee and will be collaborating with President Bruno in his platform to address mental health. Through QCBA social media platforms – Instagram, Facebook, and LinkedIn – we will have weekly challenges to introduce innovative ideas and activities to change perspectives in areas of self-image, appropriate responses to life’s curve balls and exercises to alleviate stress. We will hold Friday Lunchtime Meditation sessions

to introduce this worthwhile practice to newcomers or to add to your regular practice. Did you know that meditation actually strengthens your brain?

We will also make suggestions on choosing the right words and activities to promote mindfulness and increase brain function that can lead to intentional responses with beneficial outcomes instead of automatic reactions that may leave you feeling like you were sorry you said that. By becoming aware of your habitual thoughts and patterns, you can reshape aspects of your life that make you feel stuck and create new avenues for imagination and growth. For instance, a Cornell University study revealed that 85% of what subjects worried about never happened, and of the 15% that did happen, 79% of the subjects dealt with the issue better than they expected or they learned a lesson from it. Have you ever had anxiety and stress over a task and once it was completed you said, “That wasn’t as bad as I thought it would be?” That is what the Cornell study was about. What if all the energy wasted on worrying could be put toward something more productive? What if you could sleep better? What if you made better use of your free time ? What if . . . ?

This is a group effort. We need to grow as a community, to unite and share what we learn with friends, family, and children to increase awareness of our innate abilities to create. Please follow the Queens County Bar Association social media platforms on Instagram, Facebook, and LinkedIn to catch up on anything you have missed and be ready for something new. Plus, join us for Friday Lunchtime Meditation from 1:10-1:40 pm and come and go as you please.

If all this sounds distressing and too much work, just know we are in a “no pressure zone.” Do what feels comfortable for you and grow at your own pace. You don’t have to live beyond a reasonable doubt. Just get to 51% and the scales will begin to tip in your favor. Then swing for the fences!

*a/k/a Diana The Happy Lawyer  
Chair of Lawyers Acceptance Committee*



## Editor's Note

### Virtually Half-Baked

By Paul E. Kerson

Because of the coronavirus pandemic, we are largely living in the virtual world. We connect with each other by Microsoft Teams or Zoom or Facetime or other device where we can all sit separately in our homes and offices completely unconnected with human beings except by electricity, video and audio.

This ignores the entire goal of our profession.

The two main unwritten rules of the entire legal process are as follows:

1. He or she is the Judge/Justice/Referee/Law Secretary/Mediator/Arbitrator and you are not.
2. Nothing ever happens until everybody is in the same room at the same time.

All of our procedural Statutes: the Criminal Procedure Law, the Civil Practice Law and Rules, the Surrogate's Court Procedure Act, the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure and every other procedural statute all have the same goal in mind: get everybody into the same room at the same time with a neutral third party who can try to resolve the matter.

We can call it a Conference, we can call it a Motion, we can call it a Trial, we can even call it a Pre-Trial Conference to set a Trial date at some time in the far distant future. Whatever we call it, the goal is the same: try to resolve the dispute.

There is no question but that this takes face-to-face human contact.

The modern invention of virtual meetings is helpful for purely ministerial items: are your papers handed in? The answer is yes or no. Do you need an adjournment? What are Preliminary Conference dates? Was everything complied with? Yes, we can hand in papers electronically and the reader can decide whether oral argument is necessary. Yes, we can attend a Preliminary Conference or Compliance Conference virtually, because clients are not present.

However, after the now nearly two years of Experience in doing Depositions and Trials by Zoom and Microsoft Teams, we all know that something intangible and very valuable is lost.

Example: I just successfully completed a bitter corporate dissolution proceeding between two 50% shareholders. Over nearly two years, numerous virtual Conferences were held in the Court Part. We all stared

at each other in little boxes from a screen. Nothing was accomplished except further adjournments.

When we finally selected a Mediator at the Court's recommendation, the Mediator sat with our clients and both attorneys for six long hours forcing the two warring shareholders to address each other face-to-face and air all of their differences.

After the day was done, as the sun was setting, we wrote up a Stipulation of Settlement based on these face-to-face discussions.

It is respectfully suggested to the entire profession that is what we are all about. We do not exist to look at each other on television screens as if we were fictitious characters in a television drama.

Life is not a television drama. There is no script. We react to each other because of facial expression, bodily movements, tone of voice, loudness of voice, tangential discussions in the hallway which are not tangential at all, and, as much as anything else, the ability to eat lunch together.

In a break from the six-hour Mediation, various parties in the case ate lunch with each other.

You cannot break bread with someone on a television screen.

Any effort to substantially rely on video conferencing for justice is bound to fail.

Yes the coronavirus will be with us. And yes we fortunately have the tools to deal with it: face masks, vaccinations, social distancing, yes these must be practiced.

But we cannot give up face-to-face meetings, or the entire cause of justice will be lost.

And legal education, what about that? A CLE on a television screen is not nearly as effective as an in-person CLE program. It does not give us face-to-face meetings with other participants to meet in small groups and discuss the lecture and what it all meant. A CLE without a dinner attached to it is far less valuable than a video lecture. The dinner attached to it is where we discuss everything we learned. It is the questions to each other at the CLE dinner which are the most valuable.

And of course, we must get around to the most basic fact: when lawyers meet each other, there is business to be done. Cases are referred. The practice is

built up. Imagine a Bar Association with only virtual meetings. The Bar Association would disintegrate in several months!

We must get back to face-to-face communication as often as possible. Otherwise, the entire legal profession is on a slide down hill from which it may never recover.

We are the glue that holds our society together. We are the hosts of meetings of people who are hostile to each other: business partner vs. business partner in the Commercial Parts, family member vs. family member in the Family Court and the Surrogate's Court, State vs. the individual in the Criminal Courts and accident victim and civil wrong-doer in the Personal Injury Parts.

The entire reason generations upon generations of people before us built Courthouses was with one purpose in mind: bring the warring parties together in the same room at the same time.

For those of you old enough to remember, the 1964-1965 World's Fair in Flushing Meadows Park, Queens County, NY had a pavilion dedicated to the Future. Many of the major corporations in America put their finest minds to work to predict the Future for us here in 2021: Here is what they predicted:

1. There would be highways between skyscrapers at the upper floors.
2. There would be cities on the Moon.
3. We would all have jetpacks on our backs and we would be able to fly around to the various skyscrapers that would dominate our lives.

There was even a television show memorializing this prediction called the Jetsons where the cartoon characters flew around with jetpacks on their backs.

SURPRISE! None of this ever happened.

1. There are no highways connecting the upper floors of skyscrapers.
2. There are no cities on the Moon.
3. We do not fly around with jetpacks on our backs.

Accurate prediction: we will never give up face-to-face meetings for the purpose of producing justice. If you do not believe me, put on your jetpack and fly to a city on the Moon. That was the prediction for 2021 back in 1965.





## White House to Lift the Country Specific Travel Ban and Acceptable Vaccines to be Considered Fully Vaccinated!

The White House has announced that a more individual responsibility travel system will take effect Nov. 8, allowing entry for fully vaccinated foreign tourists and other non immigrant or temporary visa holders. This is a welcome change from the last 20 months whereby roughly 33 countries at varying points have had blanket restrictions for temporary travel to the US, unless there was proof that an applicant falling under a National Interest Exemption (NIE). This new rule will open up travel considerably, just in time for the holidays and before the start of 2022.

Having said the above, the decision will also make entry more challenging for the unvaccinated who don't fall into an exception category or qualify for a waiver. The new practice will allow entry for foreign nationals only with vaccinations approved by the World Health Organization, CDC, and/or FDA and would also add testing requirements for unvaccinated

Americans who are travelling abroad and returning home, or who are resident abroad and travelling into the United States.

Foreign nationals travelling into the U.S. will need to show proof of full vaccination as well as a pre-departure negative coronavirus RT PCR test taken within three days of travel before they can board a plane to the U.S. The govt is using 3 days instead of 72 hours to make it easier for travelers so they don't have to account for time difference and travel, they can just gage dates.

Air Carriers will collect passenger information, including a phone number and email and address where people will be staying, from all U.S.-bound travelers for contact tracing. Air Carriers are required to keep the information on hand for 30 days so health officials can follow up with travelers who may have been exposed to COVID-19.

Masking will still be required, however there will

be no quarantine mandate.

Vaccines that will be acceptable as proof for being full include:

- Johnson & Johnson
- Moderna
- Pfizer-BioNTech
- Oxford-AstraZeneca/Covishield
- Sinopharm
- Sinovac

Neither the White House nor the CDC has yet to release information on how people with vaccines not yet approved by WHO/FDA/CDC can enter the U.S. But it looks likely that additional guidance will be provided in the next few weeks. Indian nationals who have received Covaxin vaccination are yet to receive WHO approval to date.

BY DEV B. VISWANATH, ESQ.



**DEV BANAD VISWANATH, ESQ**

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BY HON. GEORGE HEYMANN

## Book Review: “On The House – A Washington Memoir”

By John Boehner

[Published, NYLJ, 9/14/21, p.6, col.4  
“Boehner Expounds on ‘Crazytown’ in Memoir”]

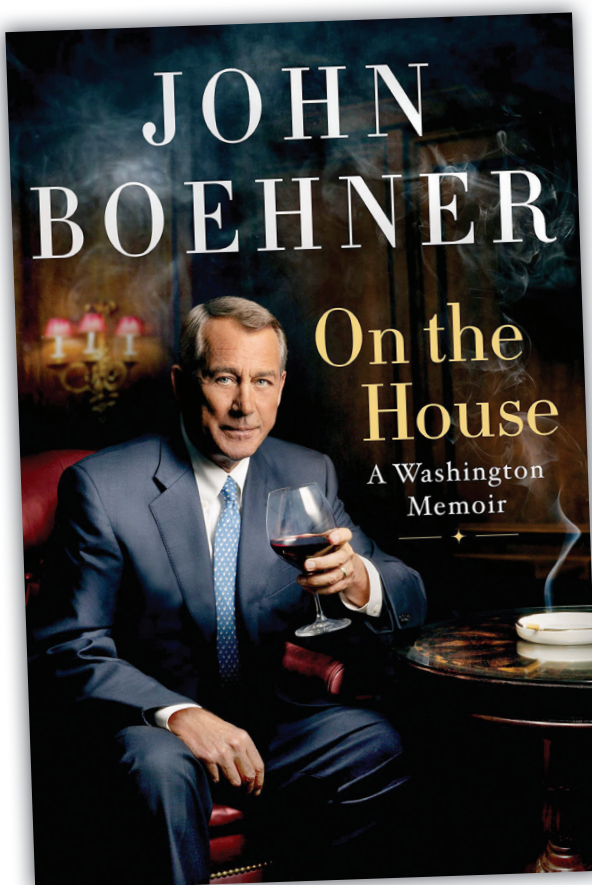
John Boehner’s memoir about his life pre, post and during his time in the House of Representatives, where he worked his way up to the Speakership, is a no holds barred read, expletives included. Notwithstanding his easy writing style, he draws you into his perspective of the world growing up to the present. His description of Congress as “Crazy Town” sums up his feelings of the state of affairs of our federal legislative branch of government in action.

Born the second child of twelve siblings, Boehner grew up in Reading, Ohio, a blue-collar city, where he was raised in a two-bedroom house; one room for the boys, the other for the girls. His parents slept on a pullout couch and as the author states, “[m]y parents were plenty busy, obviously.” Boehner admits that with so many siblings he often forgot some of their names, but he developed a “Zen-like approach to chaos” and “lived through a good-natured war zone all [his] life” and “[could] handle anything.”

When he was old enough to work, his father, Earl, would rouse him out of bed at 5AM and they would drive towards Cincinnati so they could open Andy’s Bar, started by Earl’s father Andy, at 5:30 AM to serve the factory workers breakfast and later lunch. That’s where he learned to work hard and value every dollar. Living in a brood of 14, he also learned the value of appreciating what you have and can call your “own”. Boehner explains that he has little tolerance for people wearing wrinkled suits, or loose ties, or scuffed shoes. “Dress like you are grateful you have something of your own.” Many years later, in 2011, after Boehner assumed the Speakership, then President Obama commented in his State of the Union address how the American Dream meant that “someone who began by sweeping the floors of his father’s Cincinnati bar can preside as Speaker of the House in the greatest nation on Earth”, an extraordinary accomplishment indeed.

Boehner grew up in a family of Democrats but acknowledges that he “bucked the trend” and voted for Richard Nixon in 1972, Gerald Ford in 1976 and Ronald Reagan in 1980. By the time the Reagan Revolution swept across America, Boehner had become a registered Republican, having convinced himself that “I’m not a Democrat anymore, I’m a Republican. And I’m a Reagan Republican too”. Ironically, as Boehner sadly notes, while Reagan is still idealized by Republicans, in today’s political climate, he would be considered a “leftist” and unelectable.

Boehner never intended to run for public office and his name was often the butt of jokes with most people, either inadvertently or perhaps intentionally at times, calling him “Boner” as opposed to “Bayner”.



In the spring of 1980, as the youngest member of his Homeowners Association, he was asked to serve as its president. As one local position led to another, Boehner became well known and served in the Ohio legislature from 1985-1990. He successfully ran for Congress in 1990 and began working his way up the leadership ladder. He points out that there are three tracks a Congressperson can pursue once elected: focus only on your constituents; concentrate on becoming an expert in certain areas of legislation; or try to move up in the leadership of your party, regardless of whether it’s in the majority or minority, to help influence the course of future legislation and the direction of national politics.

This book is replete with fascinating stories of the relationships between the various members of both the House and Senate on both sides of the aisle. One of my favorites is Boehner’s first meeting with a southern Democratic senator named Howell Heflin, an “old-school dealmaking pol” and former chief justice of the Alabama Supreme Court, who “thought the Clinton crowd was a bunch of radical hippies who were taking over his party”. As Boehner, an avid cigarette smoker, tells it: “I was at a DC restaurant, sitting with a group of other legislators and having a good time. Suddenly I felt a tap on my shoulder. I turned around to see a very round older man with slicked-back hair. It was senator

Heflin. Seeing me holding a Camel in my hand, he said, with a thick Alabama drawl, ‘I’m glad to see you smoking a cigarette.’ He told me he had just gone to the White House that day, his first day since the Clintons were elected. It was not a ‘kumbaya’ moment. ‘I lit up my cigarette like I always did,’ and these kids come running over to say, ‘Oh, senator, senator, you can’t smoke here.’ And I looked back at them and I said, ‘I can’t smoke here? But would it be okay if I put my penis in my mouth?’”

One of Boehner’s closest friends and mentor was the late President Gerald “Jerry” Ford. Both bonded over the years, especially on the golf course. Boehner recognizes that Ford, being sandwiched between the presidencies of Nixon and Reagan, and losing election in his own right to Jimmy Carter, is not considered a great Republican President. However, Ford “was an important leader in the twentieth century. He took over after Nixon resigned in disgrace, and his integrity and decency were essential to restoring trust in public officials”. But when it came to golf Boehner states that Ford “was not a natural”. His “kamikaze” golf balls were legendary for hitting others or their near misses. But the advice Ford gave Boehner during their friendship was immeasurable when the latter became Speaker. Unfortunately, Ford didn’t live to witness the event.

Coming from humble beginnings, Boehner was never comfortable with the “trappings” of the position of Speaker, often feeling “embarrassed” that he was being treated differently than others; being driven in black SUVs, and “followed around by people with sunglasses and guns all day long”, even standing in front of his house while he’s inside watching television at taxpayers’ expense. Clearly, not his style.

Boehner certainly tells it like it is when it comes to many of those formerly or currently serving in our government. He considers the “right wing ‘Freedom Caucus’ or the left wing ‘Squad’ [as] political terrorists, peddling chaos and crisis so that everyone keeps paying attention to them”. In his opinion, the “head lunatic” of the right wing “chaos caucus” in “Crazytown” is Senator Ted Cruz, who was trying to influence the conservative members of both the Senate and the House. Cruz, a man who thinks he has “all the answers” and “a solution for everything” was the person that Boehner despised the most. “There is nothing more dangerous than a reckless asshole who thinks he is smarter than everyone else.”

He describes present Speaker, Nancy Pelosi, as someone with a “killer instinct”, yet probably the most powerful Speaker ever because she understands power and is not afraid to use it. Former President

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## Book Review: “On The House – A Washington Memoir” By John Boehner

### CONTINUED FROM PAGE 8

George W. Bush was always “impatient” and a terrible poker player, but a good friend. Both Clinton and Obama were excellent communicators. Clinton was a “fantastic talker... and a master of the bully pulpit”. Obama was good at it too, but when meeting with him, Boehner never got the sense that Obama was “a particularly warm guy” and often had the look of being “too-cool-for-school.” Boehner believes that Trump lost the 2020 election because after “four years to watch and listen to him, [people] came to the conclusion that even if they agreed with him on policy, his personality just rubbed them the wrong way. And, Joe Biden, for all his faults, is basically a nice guy, who didn’t suffer from his own personality defects the way Hillary Clinton did.”

Although Boehner admits, perhaps reluctantly, that he voted for Trump, “the Donald” does not escape unscathed from Boehner’s criticism. He states that the election of Trump in 2016 was a “knock your socks off” moment. His first impression when the two met years earlier on a golf course, was that Trump was “direct, loud, intense. Pretty much the same guy who got

elected to the White House”. Basically, what you saw is what you got, for better or worse. Boehner states unequivocally, that in January 2021 “Trump incited that bloody insurrection for nothing more than selfish reasons, perpetuated by the bullshit he’d been shoveling since he lost a fair election the previous November”. Boehner was “pissed off” and called for Trump to resign.

Boehner assesses the current state of affair of our country thusly: “a double-decker shit sandwich, served up by an outrage-driven media and a self-interested political class”. Add to the mix not only the aftermath of the 2020 election, but the pandemic as well, it is clear that America is split “smack down the middle”. I wonder what Boehner would have to say about the recent disastrous withdrawal of American troops from Afghanistan, which occurred only five months after the publication of this book?

Throughout his discourse, Boehner intersperses various phrases that he has used over the years to help get him through difficult moments. He refers to them as “Boehnerisms”, some of which he created and some of which he borrowed from others and adopted. Two, in

particular, stand out. The first should apply to anyone holding a position, whether elected or appointed, that impacts on others: “A leader without followers is just a man out taking a walk”. The second is one that my parents taught me early on in life: “It doesn’t cost anything to be nice”.

Acknowledging that much has changed in the 25 years since he first entered Congress, Boehner insists that he has not and that when he left he was the same “jackass” as when he entered, “just a regular guy” “who went from working in a bar to a pretty big job”.

At the outset, Boehner informs the reader that if you’re expecting his writing to rise to the level of Shakespeare then this book is not for you. Fortunately, it was far easier, less complicated and more fun to read. I’m sure the Bard will agree.

### HON. GEORGE M. HEYMANN

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# The Vanishing Breed

- deep reflections of a WWII veteran  
- a human interest story

By Leonard L. Finz

Although I am 97 years old, the spirit surrounding Veterans Day induces me to record some of the deep reflections of this WWII veteran. That said, did you know...

That more than 16 million men and women in military uniform served our country in WWII? That at the near close of year 2021, released statistics show that there are fewer than 1% remaining survivors? That we are losing WWII veterans (whose ages range from the mid to upper 90's) at the rate of 350 or more each day, and rising with each passing month? That for the most part, many are either in VA facilities, nursing homes, or disabled? Were you aware of all of those "That" questions? Those shocking statistics are no predictor as to how long I will be counted within that infinitesimal group of surviving WWII veterans.

Ok. Now, to this article...

It was in the early 1940's when my older brother asked my dad, "Are we going to war with Germany?" I was all of 16 years of age-a high school sophomore more concerned about my coming regents exams than world tensions. One day at age 17, and a high school senior, I was playing stickball in the schoolyard across from the small apartment I shared with my parents, older sister, and two older brothers. It was Sunday, December 7, 1941 when my friend came by and casually told me he just heard a radio announcement that Japan had bombed Pearl Harbor in a surprise air attack. "Where was Pearl Harbor?", I wondered, as I continued to direct most of my attention to the stickball game than what I had just heard. I was really upset the next day however, when President Roosevelt declared that the United States was now at war with Japan.

Within a short time, I learned that all 18 year olds would be drafted into the Army. "Hey, I would turn 18 in a few months. Am I going to be drafted?" The very thought of it filled me with all kinds of teen-age anxieties. And then it happened. I graduated from high school, turned 18, and received my 1A draft notice. Soon after, I was ordered to report to 39 Whitehall Street in downtown Manhattan for a medical exam. Once there, I was rushed through a series of physicals. Having passed routine tests, I was directed into a large room with hundreds of other kids my age.

Up front, some guy in an Army uniform sounded out, "Raise your right hand." He then shouted out such words like "constitution", "defend", and "United States." The only sound he wanted to hear from us was, "I do." The "I do" response suddenly made me an Army recruit and a soldier in World War II. Wow! It happened so fast, it made my skin crawl. Without losing a beat, all of us in the room were herded outside the building and ordered to get into one of the many busses that lined the street. Within 15 minutes, the bus I was in took off. To where? Who knew!

My bus was part of a long caravan that kept on speeding on a roadway for many hours. Finally, it came to a stop at what looked like a gatehouse. A nearby sign read, "WELCOME TO CAMP UPTON, YAPHANK,

NY." Two uniformed soldiers who were standing there, waved the bus in. Yaphank? The name, "Yaphank" was completely foreign to me as I was totally in the dark as to where we were. "Am I really in the Army?," I wondered, as my anxieties continued to mount.

The bus then proceeded into the campgrounds and finally stopped in front of a one-story building. "Get out of the bus single file," someone shouted. When we were all outside, a soldier with two stripes on his uniform (I later found out that meant he was a corporal) started shouting at us. He had an angry look and was most hostile. "Shape up ladies," he roared. "You're in the Army now and we'll try to make you f...in' crybabies into real soldiers." Why was he so crude and nasty, and why did he call us "ladies?," I wondered. But then I realized he was just trying to rattle and shake us up. And he sure succeeded! He then ordered us into the building which I later learned was called a "barracks". Once inside, we were given our bed assignment. With an upper deck over each bed, the dark and gloomy interior looked very uninviting and real spooky.

For the next three hours, I was outfitted with an ill-fitting olive drab Army uniform, shoes, socks, underwear, coat, hat, and an assortment of bathroom stuff. When we returned to our barracks, I was instructed to wrap up my civies in thick brown paper, print my name and home address, and stack it in a corner of the barracks. I was told that the package would be delivered to my parent's apartment in several weeks.

It was now dinner time. We were rushed over to the mess hall while attempting to march in some kind of order. The soldiers in charge continued to shout at us using some foul words that would never be found in Webster's Dictionary. "March the f..k straight. Get your boney ass in. The same goes for your fat stomach," they barked. Their screaming and hostile orders frightened the hell out of me. When we finally arrived at the mess hall, I was handed a metal coffee cup, a metal plate, a metal fork and knife, and directed to a long table with large metal containers that looked like some kind of food inside. There were uniformed soldiers behind each container who splattered some contents that looked more like slop onto my metal plate. We were then ordered to sit on a wooden bench. The whole bit reminded me of a prison mess hall I had once seen in a movie. It was a horrible experience and I hated the lousy way we were being treated.

After chow, I was hustled back to the barracks. Shortly thereafter, it was lights out, and I spent the first night of my Army life feeling homesick and miserable. But it got worse! At 5:30am, the lights went on and the sergeant of the barracks shouted, "Rise and shine ladies." Those who failed to respond quickly enough were excoriated with all kinds of four letter words. He continued, "There's a duty roster on the bulletin board. Your name is on it so check it out. It tells you what your assignment is today so don't f..k up, ya' hear?" Before I go further, I must describe my less than pleasant encounter with the bathroom which in Army jargon was called the "latrine." I was conspicuously shocked to dis-

cover that there were no enclosed compartments for the toilets. They were all out in the open! "This is a nightmare." I cried to myself.

Now, to the assignment that was listed next to my name. It contained two words; "kitchen patrol" or what in Army talk was "KP." That meant that I had to report to the mess hall at 6:00am, eat some breakfast slop (the GI's called it "s..t on a shingle") that tasted foul. At 6:30am, I was ordered to peel a large sack of potatoes. When finished and my hands were raw, giant pots and pans had to be washed when all the GI's in the mess hall had finished eating their breakfast. I then had to scrub all the tables, mop up the floors, and polish all counters. Next, it was already time for lunch. Once again, everything had to be ready for the hundreds of soldiers who would be coming in for chow. The cleanup that followed breakfast, was repeated following lunch. And then of course came dinner, with more of the same! When all was done, it was after 9:00pm. Returning to my barracks, it was already lights out which meant I had better be in the sack before the sergeant came around for his nightly inspection. Up again at 5:30am, it was a repeat of the previous miserable day. Further, day 3 was just like day 1 and day 2.

On day 4, we were awakened once again at 5:30am, but this day would be different. I was no longer on KP duty. In fact, after breakfast chow, we were ordered to load all our belongings into a duffle bag. We were then hurried out following the orders of the shouting sergeant in charge, lined up in the road and ordered to march. "C'mon soldier. Keep up the f...in' pace." Sure it was easy for him to lash out and hassle us, but he wasn't carrying a duffle bag filled with stuff that weighed a ton. Worse? It was February, colder than an ice cube with howling winds from Eastern Long Island making it feel like we were in some place in Siberia.

We walked for more than a half mile and finally arrived at a railroad station where there was an awaiting train. As we were rushed inside one of the many cars, all I could hear was someone shouting, "Take a seat you clowns and stay put." Sitting down was the first comfort I felt in four days. "I don't have a clue where this train is taking me but it has to be better than the joint I'm leaving," I thought.

I looked around and strangely enough every window was totally blackened. "Probably some kind of security," I surmised.

After about an hour, the train started to move out. I still had no idea where we were going but I figured it had to be a better place than Camp Upton. Wow, did I make the wrong call on the coin toss on that one! As for food, we were given ham and cheese sandwiches as the day's meals. Being a very picky eater, I didn't eat any sandwiches. But anticipating my food problem, I bought packages of cookies, candy, and chocolate bars at the Camp Upton PX-and it's a good thing I did! Most of the guys around me ate like they were feasting on a steak dinner. At least, I survived on graham crackers and chocolate bars.

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# The Vanishing Breed

- deep reflections of a WWII veteran  
- a human interest story

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The train zoomed along for many hours making only two quick stops. I was still in the dark as to where we were or where we were heading. Hours later, the train came to a final halt. By that time it was already 3:00am in the morning. I still had no idea where we were. Soon thereafter, we were ordered out of the train and directed onto a large boat. "My God," I thought "I've been in the Army for only 4 days and I'm already going overseas. "What the heck is going on? I've had no soldier-training. I don't even have a rifle"-not that I would know how to use it even if one was assigned to me!

The hundreds of us got onto the boat, and all I could see were shore lights and a large body of water. "I can't believe it. I'm really going overseas. What kind of an Army is this?" Nervous, fearful, and anxious, were just some of the mildest terms I was experiencing. The boat then pulled away from the dock and further into the dark water as shore lights became more distant. Before long, I could see no land but only an angry sea. I was convinced we were in the middle of the Atlantic Ocean. "I can't believe it. I'm already going to war," I told myself with teenage trepidation. This disturbing thought continued for the next three hours.

Daylight finally arrived when suddenly, I spotted land. "This can't be Europe. Where are we?" I struggled with wild thoughts and then I learned that the boat was not a troop ship, but a huge ferry; and the body of water I mistook for the Atlantic Ocean was in fact, the expansive Chesapeake Bay. The land? Virginia Beach, Virginia, the place that housed Camp Pendleton. It was there where as a recruit, I would be assigned to the 46th Coast Artillery. And it was the military base where I would go through a tough four months of Army basic training.

As for basic, I was taught: how to march military style; how to load an M1 Girand 30 caliber rifle; how to fire it at a moving target; how to attach a bayonet to it; how to break it down and clean every component part; how to crawl in mud under barbed wire while live machine gun bullets were flying over my head; how to climb a rope ladder; how to dig a fox hole; how to wear a gas mask; how to break down a jeep's engine and brake system; how to change a tire; how to load and discharge a huge shell that would be inserted into a 155mm Long Tom cannon that had a barrel that was so long that when fired, the explosive could strike an enemy vessel many miles away; how to load and fire an

anti aircraft 50 caliber machine gun; how to survive a ten mile forced march with a rifle and heavy full pack; and much, more. But mostly, how to convert an 18 year-old teenager into a fighting battle machine.

But then there was my First Sergeant from the deep South who was an anti-Semite who didn't look too kindly upon a "Jew-boy from Brooklyn." But when that teenager completed basic training and was temporarily transferred to Special Services based upon his entertainment background, and assigned to write, direct, and produce weekly shows for the thousands of GI's on the base, the bigoted sergeant was not a happy camper. And when I was permanently transferred to the U.S. Army Band on the base as a saxophone and clarinet specialist, my Southern red-neck sergeant no longer had me to bully and push around. What a shame!

I loved the band experience and the wonderful guys who were part of it. But after a year of not being a real soldier, but in reality a musician in an Army uniform, I felt it was my duty to do my part in a war that so many young Americans were fighting. Result? I elected to leave a very cushy stateside job to become an active fighter in a war in which so many died, were wounded, and with so many making every human sacrifice



for our country. I wanted combat duty and to become a battlefield soldier. I therefor applied to Officers Candidate School (OCS) in the Field Artillery. Somehow, I passed the test requirements and was accepted as an OCS Field Artillery candidate at Fort Sill, Oklahoma. Although 100 GI's started in the class, many of whom were battle-scared sergeants from the European and Pacific Theaters, I was but a Private First Class, the second lowest ranking in the Army. They were real warriors. I was but a musician only dressed like a soldier.

OCS was a grueling West Point-like four month course-witnessing that another classmate was being dropped each day. At the end (without reciting all the intricacies of the OCS course), only 32 candidates made the grade. Miraculously, I was one of them. And on graduation day at the Fort Sill chapel, a general pinned gold bars onto my uniform epaulets. And with that formal act, I was officially transformed from a PFC into a commissioned Second Lieutenant in the Field Artillery. And as set out in the title of my memoir published in 2014, it was, "The Greatest Day of My Life."

Following my commission, I was trained in Japanese and beach landings. I was also assigned to be in the first wave attack force against Japan as a Field Artillery Second Lieutenant

Forward Observer with the duty of directing cannon fire upon enemy targets. Ordered onto a troop ship out of Los Angeles and ultimately into hostile Pacific waters, I was on my way to Okinawa to hook up with the 27th division for the planned attack. We were snaking through the Pacific in an attempt to avoid Japanese subs when on the 32nd day aboard ship, and just days before the attack the ship's Captain made a most extraordinary announcement. "Now hear this," he began "we have just received word that an Air Force B-29 has dropped atomic bombs on Hiroshima and Nagasaki. Japan has surrendered. The war is over." There aren't sufficient words to describe the euphoric bedlam that followed from the troops onboard.

Since a combat artillery officer was no longer needed, I was transferred to Leyte in the Philippines. Most surprisingly, my commanding officer, a full colonel summoned me into his office. Without going into much detail at this time, he told me that more than 50 GI's were prisoners and rotting in the stockade charged with various crimes. That since there were no lawyers from the Judge Advocate General Branch (JAG), they

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Allen E. Kaye

## Immigration Questions

# What You Need to Know About the New Proposed DACA Regulation



Joseph DeFelice

The Biden administration followed through on its Day One promise to create a new regulation to “preserve and fortify” the Deferred Action for Childhood Arrivals initiative (DACA) on September 27. The new rule would codify the original DACA protections as announced in 2012 without expanding them to include new groups of undocumented youth.

### Why is this DACA regulation being proposed?

In 2012, then-Secretary of Homeland Security Janet Napolitano issued a policy memorandum creating DACA. Over the next decade, more than 800,000 people applied for and received DACA protections, which also included the ability to work legally in the United States.

The Trump administration attempted to end the DACA initiative in 2017. That decision was eventually blocked in court, although the court battles prevented people who had not participated previously from applying for DACA for four years.

In 2018, as the fate of DACA was still uncertain, a coalition of states led by Texas sued to overturn DACA. This July, those states prevailed in front of a federal judge in Texas, who declared that DACA was created unlawfully because it did not go through the normal regulatory process. The judge also ruled that the program itself was likely illegal.

Although that decision is on appeal, it provides a key reason for the Biden administration to move forward now to protect DACA.

### What does the new DACA regulation do?

The new proposed regulation does not make any major changes to DACA. It would not expand the eligibility categories in the original 2012 DACA memo. As a result, DACA would continue to be limited to people born after June 1981, who came to the United States under the age of 16, who continuously resided in the United States since June 2007, and who have met certain educational requirements and have not been convicted of any disqualifying offense.

The only significant change proposed by the new regulation would be to potentially separate deportation protection through “deferred action” from the granting of employment authorization. If implemented, applicants for DACA could theoretically only apply only for deportation protections and would not be required to also apply for a work permit, as is the case now. However, the rule would still allow applicants to also apply for a work permit if they wanted.

As DHS explains in the rule, one key reason for doing this is because the judge which struck down DACA held that the granting of work permits through an initiative like DACA itself may be illegal. Although DHS says it does not agree with that decision, it recognizes that the only way to insulate the new DACA regulation from legal challenge might be the decoupling of depor-

tation protections from work authorization.

DHS does recognize in the rule that not allowing DACA recipients to work would “produce a great deal of human suffering,” but would at the very least protect undocumented youth from deportation.

### What happens next?

DHS is providing the public 60 days to comment on the new rule. The agency will then take those comments into consideration and issue a final rule at some point in the future. The best chance for undocumented youth to remain in the United States remains for Congress to act and provide permanent protections by law.

### • Humanitarian Parole and the Affidavit of Support: FAQ for Sponsors

**Q: What is humanitarian parole?** Humanitarian parole is a temporary discretionary authorization to enter the United States that can be granted based on humanitarian or significant public benefit reasons. Each application for humanitarian parole must be accompanied with an Affidavit of Support from a sponsor.

**Q: What does it mean to be a sponsor?** A sponsor must demonstrate they have sufficient income or financial resources to help support a humanitarian parole applicant so that they will not become a “public charge” while in the United States. “Public charge” is a term of art in immigration law but refers to situations when the individual is dependent on the federal government. The sponsor acts as the assurance to the government that they have financial means to help support a foreign national if that becomes necessary. Essentially, the I-134 form helps USCIS get a sense of the assistance that will be available to the parolee.

**Q: What kind of support do I have to provide?** There is no specific requirement regarding the kind of support. In effect, the support is mostly a moral obligation.

**Q: What does it mean to have sufficient income or resources?** There are no clear rules on what “sufficient” income or resources are under immigration law for the I-134 form. With that said, because USCIS has familiarity with the Federal Poverty Guidelines, these guidelines can be a guide to showing sufficient income. As an example, 100% of the poverty guidelines for a family of 4 is: \$26,500.

**Q: Is the Form I-134 legally binding?** No. According to the Department of State Foreign Affairs Manual: “This affidavit, submitted by the applicant at your request, is not legally binding on the sponsor and should not be accorded the same weight as Form I-864.”

**Q: What kind of evidence can a sponsor provide to show they have sufficient income or financial re-**

**sources?** The USCIS Form I-134 Instructions include a variety of sample supporting documents to submit along with Form I-134. Some of the typical documents include: the most recently filed IRS 1040 form, W-2 or 1099 form; verification of employment letter or business license; and paystubs for a minimum of a month for proof of sufficient income. For proof of sufficient resources, various documents can be provided to show the level of assets of the sponsor for example—a deed of home with estimate of value, financial statements for stocks and bonds, and bank account statements.

**Q: Can organizations serve as a sponsor?** Yes. Organizations such as legal service providers, churches, and non-profit organizations can serve as a sponsor. Organizations can also write letters of support to bolster an individual sponsor.

**Q: Do sponsors have to pay money up front?** No. Sponsors do not have to make a payment up front. Rather, they have to agree to financially support the foreign national if this becomes necessary while they are in the United States.

**Q: If I am sponsoring a family, do I have to fill out more than one form?** Yes. According to the Form Instructions, you must submit a separate Form I-134 for each foreign national.

**Q: Is there a fee for form I-134?** There is no fee for Form I-134 to serve as a financial sponsor. However, there is a fee for the humanitarian parole application, Form I-131.

**Q: Does a sponsor have to be a U.S. Citizen or lawful permanent resident (i.e., green card holder)?** There is no formal indication that the sponsor must be a U.S. citizen or green card holder.

**Q: When is the I-134 considered operative?** The I-134 is considered operative only when the individual has arrived in the United States.

**Q: Where can I find more information about the Form I-134?** There is very little government issued guidelines on the I-134. With that said, below are a few resources:

- USCIS – United States Citizenship and Immigration Resources
- Health and Human Services Poverty Guidelines
- Foreign Affairs Manual

### BY ALLEN E. KAYE AND JOSEPH DEFELICE

*Allen E. Kaye and Joseph DeFelice are the Co-Chairs of the Immigration and Naturalization Committee of the Queens County Bar Association.*





## The Practice Page

# The Stay Of Litigation Under CPLR 321(c)

BY JUSTICE MARK C. DILLON

*Serves on the Appellate Division, Second Department*

CPLR 321(c) provides for an automatic stay of litigation if a party's attorney dies, becomes physically or mentally incapacitated, or is removed, suspended or otherwise becomes disabled at any time before the judgment. The obvious purpose of the statute is to protect the party who has lost counsel, by providing an opportunity to obtain new counsel before further proceedings are taken and thereby avoid the prejudice that might conceivably arise from the absence of counsel in the meantime. The provisions of CPLR 321(c) typically apply when counsel is unable to act by virtue of death, disability, or attorney discipline. That is only fair, as the loss of counsel for such reasons are beyond the party's control. The stay also applies where counsel moves to be relieved, the client objects, and counsel is removed by court order. However, the stay does not apply to circumstances where the party discharges counsel or where the absence of counsel is caused by the party's own wrongful conduct.

A plaintiff whose attorney becomes unable to act has an incentive to retain new counsel. After all, the

plaintiff, having interposed claims, will not receive damages, if any, unless new counsel is retained or the plaintiff chooses to proceed pro se. The dynamic is the opposite where the defendant's attorney becomes unable to act. The automatic stay of CPLR 321(c), when triggered, has no set expiration. The defendant may retain counsel, choose to proceed pro se, or potentially, do nothing. By doing nothing, the defendant may use the stay as a shield against continuing litigation and the liability that could potentially flow from it. Any orders or judgments rendered in violation of the stay are void and must be vacated.

Where the party entitled to the stay does nothing, the adversary party is not without recourse. CPLR 321(c) provides a mechanism for jumpstarting the litigation again. The party wishing to proceed may serve a notice upon the party who has lost counsel, demanding the appointment of new counsel. The notice contemplated by CPLR 321(c) must be served upon that party personally or in such other manner as the court directs. The requirement for personal or other service recognizes that the recipient party

no longer enjoys the benefit of counsel for the acceptance of litigation papers under CPLR 2103(b). If new counsel fails to appear within 30 days of the service of the notice, or the party does not within the same period communicate an intention to proceed pro se, the statutory stay is lifted and the litigation then proceeds.

Often, if a stayed party is recalcitrant in obtaining new counsel, the statute will ultimately boil down to the service of the 30 day notice. But an interesting twist occurred recently in *Wells Fargo Bank, N.A. v Kurian*, which was decided by the Second Department on July 21, 2021. There, a plaintiff failed to serve any CPLR 321(c) notice upon the defendant to retain new counsel and moved for summary judgment in violation of the stay. Before the return date of the motion, the defendant retained new counsel who submitted papers in opposition to summary judgment and who cross-moved for a dismissal. The plaintiff prevailed on the motion and cross-motion. Thereafter, the defendant retained yet another attorney.

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## Greetings QCBA members!

By Jonathan Riegel, Executive Director



November is upon us and there is a distinct chill in the air – everywhere except at the Queens County Bar Association. As reflected in “The Docket” on page two, the QCBA is HOT! We are abuzz with activity, programs, CLEs, committee meetings and so much more. There are 18 working days in the month and we have some 20 programs and committee meetings on the calendar.

I am excited that our building is finally reopening for member use after some 20 months. The law library is available for your use – no appointment is necessary – and the conference rooms may be reserved with advance notice. Safety and cleaning protocols are in place to keep everyone healthy so please make use of our – your – facilities as the need arises.

The first event we hosted in the building was a meeting with leaders from many of the Queens County affinity bars. We had the opportunity to talk about our respective challenges and how we can collaborate more in the coming months. I am looking forward to cultivating and strengthening these relationships in the coming weeks and months. Over the past few weeks, I have had the opportunity to attend various events hosted by the affinity bars – a personal thank you to each of them for your hospitality and congratulations to all of their honorees. As someone that is new to the legal community, to listen to their outstanding achievements and to meet such accomplished men and women has been truly inspiring. I have had the opportunity to meet many QCBA members at these events and appreciate the good wishes so many have shared...I am looking forward to the day when things are finally back to “normal” and meeting members in person is not newsworthy.

Speaking of newsworthy, I am so happy to announce

that the annual QCBA Holiday Party is back on for this year. The party will be on Thursday, December 16 at The Inn at New Hyde Park. The venue is a new one for us but has a great reputation established over many, many years. The registration fee includes an open bar, extensive buffet dinner, passed Hors D’oeuvres, an elaborate cold Tuscan display, dessert, valet parking, a great DJ and more. Register early to save money – and bring your whole office for an additional discount! Plan to bring your good tidings, your appetite and your dancing shoes for a fun and festive night.

The QCBA Board of Managers recently discussed and drafted a letter to Chief Judge Janet DiFiore, encouraging her and the Office of Court Administration to significantly increase the number of cases and appearances scheduled for Queens courtrooms. In the letter, the Board of Managers advocated for enforcing a vaccine mandate or proof of a negative PCR test for all individuals entering the courthouse, thereby reducing social distancing requirements and allowing more parts to open. We are hopeful that the courts will act accordingly on behalf of the attorneys and litigants in Queens County.

I am awed by the dedication of our board members, past presidents, committee chairs and committee members. I participate in as many of their meetings as possible and each time I come away inspired. The Diversity and Inclusion Committee is working on some innovative and exciting projects. The Lawyers Assistance Committee has roared back to life, with weekly mental health challenges, almost-weekly meditation sessions and other related programs. At least 11 other committees have (or will have) hosted a wide array of CLE programs since late September, with over 500 people participating in

these seminars. Thank you to the committee chairs for planning these many programs and to you for taking advantage of the offerings. And a huge thank you to Sasha Khan and Janice Ruiz for all their efforts in coordinating, scheduling and managing all of these programs.

We are in the beginning stages of renewing our social media efforts. Relatively dormant for a long time, we have undertaken a dedicated effort to post routinely and ensure our social media sites are active and relevant. Ashley Mangra and Briana Persaud, seniors at St. John’s University, work in the office and are spearheading our social media efforts. They are developing content and designing posts, engaging with followers and will be launching a campaign in the next few weeks to attract additional followers. If you are active on LinkedIn, Facebook or Instagram, I encourage you to follow and/or like us – the content posted to our social media sites is not usually the same as what we are sending via email.

Finally, I congratulate our members that recently won seats in the recent judicial contests. We commend you on your elections and look forward to working with you. And a special note of gratitude to all QCBA members who served our country in the United States Armed Forces – we salute you and thank you every day but especially on Veterans Day.

The Queens County Bar Association has something for everyone – I invite you to engage with us, participate in our events and take advantage of all that YOUR association has to offer!

*I look forward to meeting all of you in the coming weeks and months. But until then, my phone and email box is always open – please contact me if there is anything we can do for you or just to introduce yourself – 718-291-4500, ext. 224 or jriegel@qcba.org.*

## The Vanishing Breed

- deep reflections of a WWII veteran - a human interest story

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could not be court-martialed and had to be kept in the prison compound until they could be tried. I can never forget what the colonel then said. He wanted to assign me to JAG as a Defense Counsel to individually defend the GI prisoners. Although JAG was an elite branch of the Army that required a member to have a college degree, an ABA law school degree, in addition to being a licensed member of the Bar, I was in complete shock! I was only a high school graduate with no legal experience. “Why me?” I countered. He was most flattering in describing his reasons. But he also warned of the dangers I would have to face...

That I would have to travel alone in an open jeep with only my 45mm sidearm as protection and go through the jungle to reach small Philippine villages in order to locate witnesses. That I would face real dangers since there were Japanese soldiers hiding in caves in the jungle who either did not know the war was over or if

they did, refused to surrender. Also, I was warned that there were Japanese snipers who lived in those caves and used them as fortresses. Although I had just turned 20 I agreed to take on such a grave responsibility with all of its attendant risks. Oddly enough, my decision to accept the dangerous challenge (made more than 75 years ago) ultimately shaped my future life.

Without going into detail, I defended every accused GI and was even rewarded with an early promotion to 1st Lieutenant in the middle of my many Court Martial trials. In fact, many years later, I was decorated with the prestigious Army Commendation Medal by order of the Secretary of the Army at a formal rifle and flag ceremony held at the World War II Memorial in Washington, D.C. Most recently, I was inducted and enshrined as a Member of the highly coveted Army Artillery OCS “Hall of Fame.” The archives confirm that I was the only WWII officer who was ever assigned to JAG with only a high school education out of the more than 16 million Americans who served in WWII.

But now at age 97, I reflect deeply upon all those who made such enormous sacrifices during WWII and who Tom Brokaw described as “The Greatest Generation.” As stated above, the military was made up of more than 16 million Americans who served in uniform during WWII—a colossal number. And what is even more staggering and bears repeating is that as of now we have fewer than 1% who are survivors with the numbers declining rapidly. We, who served in WWII are as the title of this article reads, “A Vanishing Breed.” When will we finally become “A Vanished Breed?” No one will ever know since only a higher authority holds that answer!

END OF STORY!

*Leonard L. Finz, age 97, is a former New York State Supreme Court Justice (Queens), a decorated WWII Veteran (1st Lt., Field Artillery, Philippines), Peer-Reviewed as “One of America’s Preeminent Lawyers”, and the Founder of Finz & Finz, P.C.*

# An Open Letter To Our Members: Planning For The Future

## CONTINUED FROM PAGE 1

access the building at all, and once inside, there is no access whatsoever to the lower level, the second floor, or any usable first floor bathrooms; the carpeting and furnishings are decades-old, the plumbing and electrical faculties have never been upgraded, and the technology is antiquated.

At the same time, I entrusted a Relocation Committee to account for the needs of the association generally, including the question of how much square footage is presently being used and what we might need if we sought new office space. I asked them to consider whether this building will continue to be useful for us, and if not, what blueprint we would need so that we could evolve, grow, and expand to meet the ever-changing demands of the 21st century. The pandemic further

taught us that the vitality and vibrancy of the association is not dependent on brick and mortar, but rather on people, the membership, the staff and relationships, and the sense of community within the association. The building was closed to the public for 20 months. While conditions were less than ideal, we thrived in numerous ways: we held more CLE programs than ever before, conducted more committee meetings, had better attendance at both, and made an impact as substantial as our pre-pandemic efforts.

The Bar Association building is owned by the QCBA Fund, Inc., a 501(c)3 charitable organization. When the building was erected in the late 1950s, charitable entities

were exempted from paying real estate taxes. Organizations took advantage of this practice to avoid paying New York City property taxes. Many years ago, I think in the 1970s, the city government in its infinite wisdom chose to totally eliminate the tax benefit and savings for charitable organizations. Since

then, taxes have been assessed on the value of the building — taxes which now amount to nearly \$50,000 per year. The QCBA Fund has owned the building, with the Bar Association as its tenant, since the building began operations over 60 years ago. The Bar Association has been held responsible for paying taxes and upkeep on the aging structure.

Understanding the extensive repairs necessary to retrofit the building and the expenses involved, I prompted the Board of Managers to ask the QCBA Fund, Inc. to explore the option of selling the building. We did not come to this decision lightly, but only after thoroughly analyzing the costs of maintaining the building in its current state. I do not think anyone on the board wants to move, nor do we make the mistake of thinking it will be easy, but we agree that it is in the best

long-term interest of the association and the membership. Others have reached similar conclusions about their venues and acted accordingly. The NYSBA, the City Bar and Nassau Bar sold their buildings and relocated. The Yankees, Mets, Giants, Jets, Nets and Islanders have all moved and renewed. It seems only the Dolan-owned Knicks and Rangers remained in their traditional homes, albeit with massive renovations — but does anyone agree

with most of what Dolan does anyway?

Let me be clear. No decisions have been made — we and the QCBA Fund are in the beginning stages of this process and no options are off the table. Can the building be partially rented? Can we raise funds for the discrete purpose of repairs? Can we create an endowment to save the building? Can we sell the air rights above the building? Can we partner with a developer for the development rights to most of the building while we retain some space? There will be no possibility left unexplored in what can be done, what should be done, and what options are available to us.

We also have to define the way we lead the Bar Association. What role can our current staff take? Do we hire a full-time fundraiser? Do we task a volunteer committee with raising the funds and how? Do we seek donations from our existing membership and very successful peers? Do we hone our grant writing skills and make that an aspect of the association, in order to further

promote the laudable goals of education and service to the greater Queens Community? What else can we do to address short-term concerns and long-term aspirations? As a leader, I am someone who asks high-quality questions, to develop high-quality solutions.

We stand ready now and, in the future, to move the Bar Association forward, and we look forward to your support and ongoing membership

FRANK BRUNO, JR. | PRESIDENT

## The Practice Page

### The Stay Of Litigation Under CPLR 321(c)

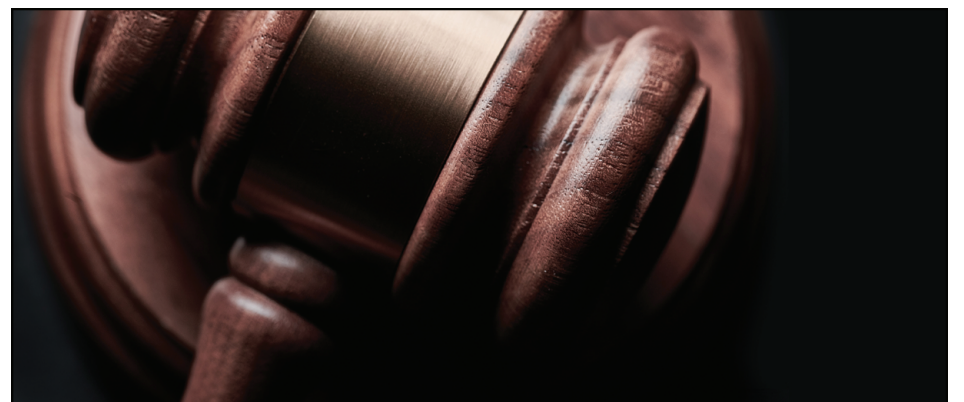
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ney who moved to vacate the court's order of summary judgment, on the ground that the underlying motion had been made while a CPLR 321(c) stay was in effect, rendering it void ab initio. The Appellate Division disagreed, holding that the defendant's retention of counsel prior to the motion's return date and submission of timely papers operated as a waiver of the CPLR 321(c) stay, by conduct. The holding reflects the maxim, "use it or lose it."

CPLR 321(c) strikes a proper balance between the legitimate interests of a party that has lost counsel through no fault of its own, and the rights of the adversary party to demand that the litigation resume after a reasonable opportunity has elapsed for the retention of substitute counsel.

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