Does Title VII Protect Against Sexual Orientation Discrimination?

*By Triston “Chase” O’Savio*

Since the Civil Rights Movement, America has prioritized protecting the dignity of employees in the workplace. Title VII of the Civil Rights Act of 1964 made it unlawful for an employer to discriminate against an employee based on “race, color, religion, sex, or national origin.” The U.S. Supreme Court has interpreted Title VII to prohibit the creation of a hostile work environment and recognized the emotional and psychological damage discrimination has on minority groups in the workplace. Although discrimination based on “sex” is expressly prohibited under Title VII, discrimination on the basis of “sexual orientation” is not.

This lack of protection has become problematic, as the social and scientific understanding of sexual orientation has continued to advance, as well as the law with it. The Supreme Court has emphasized the importance of allowing gay individuals to express their identity while maintaining their dignity and liberty in a free society.

In *Obergefell v. Hodges*—the landmark case that required states to recognize same-sex marriage—the court opined that “[t]here is dignity in the bond between two men or two women who seek to marry and in their autonomy to make such profound choices.” Similarly, in *Lawrence v. Texas*, the Supreme Court stated that homosexuals are “entitled to respect for their private lives” and “still retain their dignity as free persons.”

In 2015, the Equal Employment Opportunity Commission (EEOC), the agency responsible for interpreting Title VII, held for the first time that sexual orientation is inherently a sex-based consideration and is an allegation of sex discrimination under Title VII. The EEOC used a test that focused on discrimination due to a relationship with a person of a particular sex. Some courts have followed suit and categorized sexual orientation as a proxy for sex discrimination, recognizing that the definition of sexual orientation is inherently dependent on one’s sex and the sex of those to whom he or she is attracted.

The Seventh and Second Circuits have both determined that sexual orientation discrimination is prohibited under Title VII by asking whether a homosexual employee would have been treated differently “but for” the employee’s sex. For example, would a gay man have been subjected to a hostile workplace environment if he had been a woman who was attracted to men? This analysis is based on the general principle that if a male and female employee share a trait but experience different employment outcomes because of that trait, they experience sex-based discrimination.

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In 2001, the Third Circuit held that sexual orientation discrimination is not prohibited under Title VII.

However, the Third Circuit provided an alternative avenue: gender stereotype discrimination. Under this theory, an employee could proceed to trial if he portrays observable characteristics that deviate from established gender norms.

There are three obvious reasons as to why gender stereotype discrimination is an inadequate alternative to actual protection against sexual orientation discrimination.

First, employees who face discrimination because of their sexual orientation will be able to recover only if they are gender nonconforming. Individuals who fail to conform to either masculine or feminine stereotypes may be precluded from raising a gender stereotype claim and will continue facing harassment devoid any relief under Title VII. Those who raise a claim are forced to plead that they were “acting gay” so that the court can then decide whether they were conforming to their gender stereotype.

Second, gender stereotype claims force courts to adopt standards about gender norms, solidifying gender stereotypes as a matter of law. While courts are bound by prior decisions, gender norms are forever changing and continue to evolve as society progresses.

Finally, although Bibby could be seen as a step in the right direction in 2001, it is legally unsound, as it now contradicts decisions from the Supreme Court, other federal courts and the EEOC.

The Supreme Court granted certiorari on this issue and will hear oral arguments on Oct. 8, 2019, to decide whether Title VII includes protections for LGBTQ workers. In May 2019, the Equality Act, a bill guaranteeing nondiscrimination protections for LGBTQ employees, passed the House with a bipartisan vote of 236-173.

Regardless of what the Supreme Court decides, Congress has an opportunity to pass a law on the right side of history. For the dignity of all employees, Congress should absolutely seize it.

Triston “Chase” O’Savio is a labor and employment lawyer. Chase previously served as a federal judicial law clerk to Judge James M. Munley in the Middle District of Pennsylvania. He received his J.D. from Dickinson Law, where he served as president of the Moot Court Board. As president, Chase founded Dickinson Law’s O’Savio Moot Court Competition, which is now an annual event. Chase also competed on the National Trial Team, where he was inducted into The Order of Barristers and was awarded the Joseph T. McDonald Scholarship. Chase completed his undergraduate studies at Dickinson College, where he majored in economics.
Do Attorneys Need A 'New IQ' Test? Part 2

By Patrick McKnight

In *The Next IQ: The Next Level of Intelligence for 21st Century Leaders*, Dr. Arin Reeves suggests updating our traditional definition of intelligence. In Part 1 of this article, I examined why this discussion matters for young attorneys, including Dr. Reeves’ contrast of the Wikipedia versus Encyclopedia Britannica models of problem solving, the importance of inclusion and the challenges specific to 21st century leadership. In this article, I will discuss the other major themes of the book, including cognitive biases, heuristics and cognitive diversity.

**Defining Our Terms**

In everyday speech, people often tend to use words like “bias,” “stereotype,” “prejudice” and “discrimination” interchangeably. *The Next IQ* stresses the importance of differentiating between these terms. This is not simply for the sake of accuracy and precision. Instead, Dr. Reeves points out the intervention mechanism for each of these phenomenon is different.

Bias is our proclivity to think one state of affairs is truer than another due to our socialization, past experiences and a host of other potential factors. Bias can be conscious or unconscious, but it is not always grounded in reality.

Dr. Reeves defines stereotypes as the exaggerated group-based identities we build in our minds based on bias. Like biases, stereotypes can be positive or negative and conscious or unconscious. The book gives the example of a defense attorney identifying unconscious stereotypes during jury selection in a drug case. The attorney asked the jury pool if anyone knew “what a drug dealer looks like?” Hands shot up immediately before people had time to process the implications of their reactions. The jurors soon felt embarrassed. Through savvy lawyering and creative questioning, the attorney helped translate an unconscious negative stereotype into a conscious awareness.

Based on recent research, many psychologists have concluded that instead of being the exclusive domain of close-minded extremists, everyone employs stereotypes on a regular basis. Making things more complicated is the fact that stereotyping is not usually a conscious activity.

Prejudice is prejudgment of a group or its individual members based on their membership in that group. Dr. Reeves explains that once we solidify stereotypes into prejudices, we begin to mentally form ideas about in-groups and out-groups based on perceived similarities and differences.

Discrimination is defined by behavior. Unlike biases, stereotypes and prejudices, discrimination refers to the actions we take arising from explicit or implicit biases.

**'Gut Feelings' in Legal Job Interviews**

Dr. Reeves shares two private studies where she observed interviews for extremely competitive summer clerkships positions. The studies found the interviewer often reported a “gut feeling” about a candidate based on his/her resume. This feeling was apparently caused by recognizing an alma mater, extracurricular activity or personal interest similar to their own. As a result, when the interviewer also proceeded to do more of the talking, he/she tended to give the candidate a higher rating.

None of the interviewers felt they were biased, however, the study seemed to indicate the interviews themselves were essentially irrelevant. Instead, the interview process reflected the self-fulfilling prophecy of the interviewer. Most of the time the interviewer was unaware their “gut feeling” was caused by a subconscious comfort arising from personal similarities.

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Do Attorneys Need A 'New IQ' Test?

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The Next IQ argues that intelligence in the 21st century requires pushing ourselves out of our comfort zones. Although this comfort stems from connections and perceived similarities, these “gut feelings” can prevent us from engaging with diverse perspectives. Always staying within our comfort zone means shunning change, innovation and forward thinking.

The book examines some of the most common heuristics and how they can lead us astray in the legal profession. These include the anchoring and adjustment heuristic, the availability heuristic, the recognition heuristic and the fluency heuristic. In social psychology, a heuristic is simply a rule of thumb or “common sense” used to avoid analyzing large amounts of information. In certain contexts using heuristics can be rational, but in others they lead to stagnation and prevent innovation.

Dr. Reeves suggests the anchoring and adjustment heuristic may play a role in explaining why many law firms continue to pay female partners less than males. She relates her experience consulting for a large firm’s compensation committee. The compensation “rating” formula was objectively fair and free from explicit bias. On the other hand, it seemed that current productivity had little impact on a partner’s rating. Upon closer analysis of the data, however, Reeves identified a strong correlation between previous compensation and the current year’s rating. Because compensation was tied to the rating, the status quo was effectively an anchor weighing against the probability of future pay increases.

Conclusion

The Next IQ makes a forceful argument for redefining intelligence. This is particularly true in the context of the law. The book introduces powerful social psychology and cognitive science research in a reader-friendly format. Dr. Reeves walks a fine line between fully embracing the wisdom of the crowds while simultaneously rejecting the dangers of groupthink. According to Dr. Reeves, groupthink only results when agreement is prioritized over new ideas. Instead, respectful disagreement can be extraordinarily productive. Similarly, the unpopularity of new ideas is not a reliable barometer of their importance.

A growing body of research indicates having multiple cognitive perspectives within an organization generates better ideas, insights and solutions. It is becoming increas-ingly clear that diversity and inclusion is a major, ongoing challenge in the legal profession. Although the popular discussion of diversity focuses on demographics, The Next IQ suggests that the problem may run even deeper. A lack of demographic diversity is also likely to result in an absence of cognitive diversity. Research indicates that this intellectual homogeneity leads to an overall decline in organization’s ability to solve problems.

Anyone interested in how to approach these complex problems should consider reading The Next IQ. The book is co-sponsored by the American Bar Association Center for Racial & Ethnic Diversity.

Patrick McKnight is a JD/MBA student at Rutgers University and a law clerk for a large Philadelphia firm. He writes for the ABA Forum on Construction Law, the ABA Cyberspace Law Committee and the Cannabis Law Report.

PA IOLTA Loan Repayment Assistance Program

On Sept. 1, the statewide Loan Repayment Assistance Program (LRAP) began its 10th year of helping attorneys employed at civil legal services organizations funded by Pennsylvania Interest on Lawyers Trust Accounts (PA IOLTA) better manage their undergraduate and law school debt. Attorneys employed at these organizations provide free legal assistance to Pennsylvania’s poor and disadvantaged.

Eligible attorneys will have until Oct. 15 to submit their online applications for loan assistance at www.paioltagrants.org. For more information about the program, click here.
Looking Back at My 1L Year: A Lesson in Stress-Management

By SJ Morrison

I can now proudly say that I know precisely what a plaintiff is. Of course, this is only the tip of the iceberg, considering what I learned this year. While understanding basic legal terminology is part of what I expected to learn, I would be remiss to say that this is the extent of the instruction I received. Learning new stress and workload management strategies proved to be a necessity as I drank from the proverbial firehose that is 1L year.

Prior to embarking on this pursuit, I spoke to every attorney I could. Each attorney I spoke with warned me of the Socratic method, the competitive atmosphere and long hours in the library. Thereafter, sitting in Civil Procedure on the first day of class, I felt prepared to tackle these obstacles head on. As the year progressed, however, the fatigue—and even feelings of apathy—began to settle in. This came as a shock to me because, like many of my peers, I regard myself as a high achiever. In my work experience prior to law school, I managed to successfully juggle a high volume of projects. Law school, however, was beyond the juggling to which I had become accustomed.

Naturally, I began by buckling down and increasing my hours in the library. I outlined harder, briefed cases more thoroughly and cut off all social engagements. What happened next was the greatest shock of all: my performance got worse. Cold calls became my worst nightmare and speaking up in class became unconscionable. How was it that I was doing everything “right” and continually coming up short? Surprisingly, I did not find the answer I was looking for in the library. Instead, I found it in the gym.

Given the amount of time I was devoting to my studies, adding a 45-minute workout into the mix seemed impossible. But I started by going to the gym one day a week, which led to three days a week, and so on and so forth. Then, like dominoes, the other pieces began to fall. My sleep improved, my diet went from a breakfast of chocolate and energy drinks to black coffee and overnight oats. As a result, the fog in my mind lifted. Once again, I found myself on the edge of my seat ready for lecture.

Beyond improving my in-class attitude, the tactics I was applying spilled over into my studies. As I was no longer turning to the vending machine for sustenance, additional planning was required for my meals during the week. I quickly learned how long food prep would take me, and I began the habit of planning not only my meals, but also my schedule, a week in advance. This required better self-awareness of not only my stamina, but also foresight concerning my patterns of behavior. Also, sleep and meditation took the place of late unproductive nights in the library. In closing, as much as I still abhor the Socratic method, Socrates was right – know thyself.

SJ Morrison is a first-year student at the Duquesne University School of Law. She is the president of the Educational Initiative for Individual Diversity and co-founder of the Mental Health Alliance.
Hyperbole and Candor in Family Law

By Graham K. Staton

As Tony Schwartz said, “truthful hyperbole is a contradiction in terms. It’s a way of saying, ‘It’s a lie, but who cares?’” In litigation, hyperbole is tempting. It can creep its way into our writing and oral arguments. Although the general public discourse seems rife with hyperbole, which is generally excused, lawyers cannot allow hyperbole to creep into our arguments before the court in the same manner.

In the moment, hyperbole lets us feel as if we are zealous advocates, bolstering our client’s position through sweeping declarations. Unfortunately, in actuality, it has the opposite effect. It can undermine clients’ positions by casting doubt on their credibility and grasp on reality. Avoiding hyperbole is all the more important in family law, as clients are assuredly going through an emotionally difficult time and may be prone to exaggerate facts. It is our obligation as attorneys to temper our clients’ inclinations towards hyperbole and provide clear and realistic presentations to the court. Not only will the use of hyperbole undermine a client’s credibility, but it may also violate the Rules of Professional Conduct and damage a lawyer’s professional reputation.

Your Client’s Credibility

We are all familiar with Aesop’s Fable, The Boy Who Cried Wolf. The shepherd boy cried “wolf” and his neighbors rushed to his aid, only to find there was no wolf. The shepherd boy did so again and again. Then, when the wolf did come, he cried out for help and no one believed him. The moral of this story is also applicable in a family law setting.

Without your diligence, a client may place themself into a similar position. Much of family law is “he said, she said” and courts are forced to make credibility determinations as to the parties’ statements. Keeping your client’s statements grounded in reality will give the court reason to readily accept your client’s version of the facts. Conversely, allowing your client to use hyperbole will render their version of the facts suspicious.

Rules of Professional Conduct

Under Pa. R.P.C. 3.3(a)(1), attorneys have a duty of candor toward the tribunal. Specifically, the rule provides that “A lawyer shall not knowingly make a false statement of material fact ... to a tribunal.” Hyperbole is a false statement. Further, the comments to the rule provide that an advocate has an obligation to present the client’s case with persuasive force, but that duty is qualified by the advocate’s duty of candor to the tribunal. Pa. R.P.C. 3.3 cmt. 2. If the opposing party misses two weekly child support payments and we claim that he does absolutely nothing to support his kids, that is a false statement. If the opposing party disciplines a child in an appropriate manner and we characterize the actions as child abuse, we are misleading the tribunal. When a statement is laden with embellishment and absolutes, it casts doubt on your client’s credibility.

An attorney may justify his use of hyperbole by pointing to the requirement, “knowingly,” claiming that he cannot knowingly make a false statement, as he is reliant on his client’s representation of the facts. The comments to Pa. R.P.C. 3.3 further provide that “[a]lthough a lawyer in an adversary proceeding is not required to ... vouch for the evidence submitted in a cause, the lawyer must not allow the tribunal to be misled by false statements ...” Pa. R.P.C. 3.3
cmt. 2. This speaks to the duty of diligence under Pa. R.P.C. 1.3, which provides that “[a] lawyer shall act with reasonable diligence and promptness in representing a client.” Reasonable diligence requires that you clarify your client’s statements. Ask your client appropriate questions to determine if the statements are supported by objective facts and based in reality. For example, if your client states that the opposing party does “nothing” to support his children, you should ask if there were any agreements between the parties regarding support, what is his child support obligation, how often does he pay and how many payments has he missed, does he pay for extracurricular activities or other expenses, etc. Reasonable diligence in discussions with a client ensures that the lawyer will not allow the tribunal to be misled and the lawyer will be prepared to explain relevant details to the court. Further, under Pa. R.P.C. 1.2, the client has ultimate authority to determine the purpose of the representation, but it is the attorney’s prerogative to determine the means by which the client’s objectives are reached. The attorney has the ultimate authority to determine what is presented to the court. Do not let a dramatic client push you to violate the duty of candor.

Professional Reputation


Courts favor settlement and cooperation. The parties can fashion a better agreement for themselves than the court can provide them. Your colleagues and the courts will appreciate your efforts to be grounded and reasonable. No one wants to work with an attorney who actively makes a contentious matter more difficult. Temper your and your client’s statements such that you become known as a driving factor for resolution, rather than another part of the problem.

Further, even assuming that your use of hyperbole generates some small advantage for your client, that client’s case will end, but your reputation for hyperbole will carry with you to your future clients and may impede their cases. If a future client is in a situation where the opposing party’s actions truly are egregious, you may not be able to convey that to the court convincingly because you have a reputation for being dramatic.

In conclusion, presenting a caricature of the situation by engaging in hyperbolic argument has little persuasive force, may damage your client’s credibility, may undermine your own credibility and damage your professional reputation. Be mindful of your duty of candor and manage your clients accordingly.

Graham K. Staton, Esq. graduated from Rutgers School of Law–Camden in 2016. He is barred in New Jersey and Pennsylvania. From 2017 to 2018, Graham practiced with the Rutgers Law Associates Fellowship Program, a general practice firm that serves low to moderate income clients in New Jersey. Graham served as law clerk to Judge Craig R. Harris, J.S.C. in Essex County, New Jersey. Currently, he is an associate with Inglesino, Webster, Wyciskala & Taylor LLC in Parsippany, New Jersey.
A few months ago, I was visiting an incarcerated client at our county jail when she told me that the visitation room, while adequately furnished, had few toys for her nine-year-old son. She said the visit with him went well, but she wished she could play a game or color with him. This conversation got me thinking.

Later that day, another one of my incarcerated clients sent me a letter asking if I would let her mom know that she was wanting more books to read. Apparently, the county jail had only about 60 books for about 120 inmates, and the waiting list for this little library was long. This got me thinking harder.

What if I were the one incarcerated? I couldn't live without something to read! Last year alone, I read 52 books. What if I were the one incarcerated and unable to see my children? They would come and we'd play with... what, exactly? Where do these resources come from? Do county taxpayers foot the bill for this? Certainly toys and books aren't considered luxuries at the county jail, are they?

As a result of this thought process, I had a long conversation with our warden. He indicated that there is currently no funding to assist in these areas but, of course, they would take donations, if someone so chose. Donations? At a county jail? Now my thinking gears were firing on all cylinders! What if I coordinated those donations? We could get the toys to the visitation room and cut down on the wait time for the jail's library. We could get the community to recognize that our incarcerated citizens are still people with families and deserve some simple necessities. So I did exactly that.

I organized a toy and book drive for our county jail with our local bar association. I put a plea out on Facebook for donations, mentioned it at our quarterly meeting, and I am now getting ready to send fliers to each local attorney reminding them of this activity. The local newspaper will be capturing the moment by taking a picture of the warden and me next to the donations. Our warden vowed that anything the jail cannot use would be split between other local organizations that serve our incarcerated population, including our county probation office.

It’s atypical to think of the county jail and other local governmental agencies as places that receive donations. But what if that was your son or daughter who were incarcerated? Wouldn’t you want them to have age-appropriate toys for their children and books to read while they are awaiting trial or plea dates? Surely your local organizations are in need of similar donations, assistance and awareness. Your local bar association or Young Lawyers Division is a great platform to help you get started. Reach out to a criminal defense attorney to see what resources the jail needs and what resources they are lacking. It takes nothing more than a five-minute phone call, but it could make someone’s day much brighter when you show up with a box full of paperback books and a bag full of gently-used toys.

To date, our county jail library has over 400 books with more donations coming in weekly. We have donated four
Unexpected Gratitude
Continued from page 8

boxes of gently-used and new toys and have six more bags, two more totes and a giant box full to donate at the end of the month. No, the county jail isn't first in my mind for organizations seeking donations, but that doesn't make it any less worthy. I am willing to bet that many of us were blessed to never have limited resources in our families, education or finances. Let’s further our commitment to this profession and to our communities by giving back to the population that is not so blessed and receiving some unexpected gratitude in a place and time where it is most needed.

Megan Will is a lawyer licensed to practice in Pennsylvania and is engaged in the general practice of law in Somerset County, with a focus on criminal defense, juvenile, family law, and estate planning and administration. She also functions as independent court-appointed conflict counsel and is an active member of the Somerset County Bar Association. Megan is a graduate of Susquehanna University where she obtained her Bachelor of Arts in political science and Spanish. She obtained her J.D. from the Duquesne University School of Law, receiving the Pro Bono Service Award and Excellence in Criminal Advocacy Award. Megan presently serves on boards of directors for three local nonprofit organizations. She is the only Somerset County attorney who is qualified to represent clients who speak only Spanish.

Workplace Violence in Health Care: How Lawyers Can Help
By Mimi Miller

Many health care providers, such as nurses, doctors, physician assistants and nurse aides, experience physical and/or verbal assault by patients or their families on a frequent basis. Workplace violence causes a multitude of problems, some of which are systemic. These assaults can diminish health care workers’ ability to deliver care by causing post-traumatic stress disorder and instilling fear in and out of the workplace.

While there are explicit statutory protections for patients who are subject to abuse or inappropriate behavior by medical personnel, there are few protections for medical personnel in Pennsylvania. Of the statutory protections that do exist, only emergency medical services personnel are protected. Because of the lack of protections and inability of the Legislature to enact increased protections, the frequency and severity of attacks by patients and their families upon medical personnel are increasing. “A 2001 U.S. Bureau of Justice Statistics (BJS) document reported an annual incidence of 16.2 assaults per 1,000 physicians, 21.9 assaults per 1,000 nurses... In 2011 the incidence of assaults on nurses nearly doubled the 2001 rate.” See Alicia Abbot & John T. Brinkmann, Workplace Violence Against Healthcare Providers, October 2017, https://opedge.com/Articles/ViewArticle/2017-10-01/workplace-violence-against-healthcare-providers.

Medical personnel often do not have knowledge of their legal options, typically attributable to an unfortunate lack of communication between the fields of medicine and law.

Young lawyers can get involved in this area of work and begin mending the lack of communication and cooperation between the medical and legal fields by working with hospitals or in hospitals to save facilities money and protect their staff.

This article delves into two of the major issues that result from medical personnel being subject to assault and some solutions that lawyers can recommend. The first major issue with which health care providers are concerned is supervisory retaliation. Second, burnout is negatively affecting health care workers by inflicting psychological tolls and low morale on health care staff as a result of workplace violence.

To the first issue, there is a common sentiment that violent patients are just part of the job and some nurses fear retaliation if they report a physical attack by a patient. The National Advisory Council on Nurse Education and Practice has explained that providers’ acceptance of aggressive patients stems from customer service initiatives and an accepting attitude of violence in the workplace.

Nurse managers have been involved in perpetrating or being unresponsive to nurse complaints. In a survey of nurses, over half agreed with a statement saying that a
Workplace Violence in Healthcare  
*Continued from page 9*

nurse who takes legal action against a patient is in danger of losing his/her job. Because of the fear of supervisory retaliation and uncertainty of what constitutes violence, there is underreporting of workplace violence in health care. One nurse described being kicked in the pelvis by a patient with such force that she was slammed against a wall when she was two months pregnant. When she reported it to her supervisor, her supervisor was surprised that the nurse reported the incident and refused to honor the complaint.

Hospitals obtain roughly 30% of their Centers for Medicare and Medicaid (CMS) funding based upon patient satisfaction, known as Hospital Consumer Assessment of Healthcare Providers and Systems (HCAHPS). The hospitals receive or lose up to 1.5% funding from CMS, 30% of which depends on their HCAHPS scores. Attaining more funding is a primary motivation for nurse managers and hospital administrators, leading them to compromise the safety of their employees and place a priority on customer perceived service. The focus on funding stems from facilities lacking equipment and the decentralized, uncoordinated nature of health care.

To the second issue, burnout has negative effects on health care practitioners. The psychological toll of workplace violence is a large factor of burnout and causes a high turnover rate in the medical profession. Between 2012 and 2014, for nurses and nurse assistants alone, the rates of reported workplace violence injuries rose by 65% nationally. As a result, Pennsylvanians are putting years and thousands of dollars into medical training, and then trained workers are leaving the profession. In a study of registered nurses who voluntarily resigned from their jobs, workload and staffing ratios, as well as immediate management, were in the top 10 listed reasons for resignation. Abuses by patients and their families are decreasing the retention of trained medical staff in hospitals and facilities.

Staff resignations and violent outbursts by patients cost the hospitals and facilities in many ways, such as the need to recruit, hire and train new staff more often and at a greater frequency (which costs an average of $53.6K to $138.6K), the cost of paid medical leave when a staff member is harmed, and paying more to incentivize staff to work overtime or come in on a day off because they are short staffed. One of the reasons for increased violence by patients and families is lower staffing levels, which result in slower responses to situations and fewer staff available when a patient turns violent. When hospitals and facilities are perpetually understaffed, both practitioners and patients suffer.

There are a few ways young lawyers in Pennsylvania can assist medical professionals and become involved in this important and growing field. The principal method is to inform medical professionals that they have options, such as filing criminal charges. A second method is to pursue hospital and facility administration and incite changes to the system, specifically targeting understaffing and HCAHPS as well as supporting the movement to better education. A third way is to pursue and encourage legislative amendments to help support medical personnel and offer them protections that are more robust.

Medical professionals should be encouraged to report all incidents and file criminal charges against patients when they are the victim of a crime. Occupational Safety and Health Administration (OSHA) has recommended that medical professionals bring criminal charges against patients if a crime such as rape, assault, a lesser offense or homicide occurs. Many medical professionals are uneducated about...  
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what constitutes an assault and that they are able to press charges.

There are few incidents where medical professionals have brought criminal charges. Unfortunately, it often only happens in the most extreme circumstances. One such incident is that of a patient who was arrested in 2019 for manslaughter. A nurse in Louisiana died from the injuries she received while interrupting a patient's attack on another nurse. Such extreme violence in health care facilities reflects that this problem is much greater than has previously been recognized. In Pennsylvania, criminal charges were brought against a man who attempted to rape a nurse in his hospital room in 2018. Also in Pennsylvania, in 2017, a nurse pressed criminal charges when he was stabbed in the neck by a former patient. Had a doctor not been standing in the hallway as this occurred, the nurse would have died. As outlined by these recent examples, safety for medical professionals is an important issue in Pennsylvania, and lawyers have the opportunity and responsibility to enact change to the approach of medical care.

By taking care of Pennsylvania’s medical professionals, both patient and practitioner lives will be improved. Additionally, as many medical personnel do not have sufficient funds to pursue legal action, lawyers can refer medical professionals to legal aid or provide pro bono work of this nature. There are also various movements by nurses throughout Pennsylvania that are pushing for legislative and policy reform that lawyers can become involved in. Young lawyers can also get involved in this developing field working with hospitals to protect their staff through pressing criminal charges and lawsuits or providing better education to medical staff about their options regarding workplace violence, both of which will save hospitals time and money.

Mimi Miller is going into her second year of law school at Penn State's Dickinson School of Law, where she is the current president of Dickinson Law's Criminal Law Society and a member of the Student Bar Association’s Budget Committee. She is currently interning with the Pennsylvania Department of State Office of General Counsel’s Prosecution Division. She began working as a certified nursing assistant during her senior year of high school and continued through the summer after her first year of college. Mimi also worked as a volunteer and then as assistant director of a homeless outreach in Portland, Oregon, during her second and third summers of university. Mimi has also spent time volunteering with a civil legal clinic at the Bethesda Mission in Harrisburg and with Project Share in Carlisle.

Wills for Heroes

A program cosponsored by the PBA Young Lawyers Division, Wills for Heroes provides free basic estate planning documents to first responders and military veterans in Pennsylvania. Wills for Heroes provides police, fire, emergency medical personnel, other first responders and military veterans – those on the frontlines for our personal safety – the tools they need to prepare adequately for the future.

Programs are staffed by lawyer volunteers and are conveniently offered to first responders at meeting halls and police and fire stations.

Want to bring Wills for Heroes to your county?

Click here for a list of county coordinators.

For more information, contact the YLD or one of the Pennsylvania program directors:

- Dan McKenna
- Sandra A. Romaszewski
- Lisa Shearman

Want to be a volunteer? Click here.

Upcoming W4H County Events

- Sept. 21 - Merck and Co., Inc., Montour County
- Oct. 18 - TBD, Crawford County
- Oct. 26 - Cumberland County Department of Public Safety, Cumberland County
- Nov. 2 - Lancaster County Public Safety Training Center, Lancaster County
- Nov. 8 – Lackawanna Bar Association, Lackawanna County

Check the YLD Wills for Heroes webpage throughout the year to see events or to sign up to volunteer.
The 2019-20 Bar Leadership Institute class pictured from left to right: BLI Co-chair Philip H. Yoon, Schawnne Kilgus, Lindsey Alexander, Chynna Beisel, Patrice Turenne, Peter Rogers, Jada Greenhowe, Benjamin Johns, PBA President Anne N. John, Elizabeth Fineman, Timothy Knowles, Tara Burns, Nathan Bible and BLI Co-chair Stephanie Latimore

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