

Amicus Lex

Spring 2022

“FRIEND OF THE LAW”

PRESIDENT’S MESSAGE

By Kathryn Greene, RP®

Spring has sprung, and I'm ready for warmer weather to stay! At the Annual Meeting in February, we welcomed new Board Members and Committee Chairs. We have some new faces, and some familiar faces in new roles. I am pleased to announce that Gene Weber was elected as Secretary, taking over for Tara Shade; and, elected for another term are Megan Beissel, 1st Vice President, Vicki Bolinger, 2nd Vice President, Kim Perez, Treasurer, Cathy Wright, Membership Director, Cathy Sheaffer, Member-at-Large, and Karen Sheriff, NFPA Primary Representative. I would like to congratulate everyone on their new (or continuing) role! I am fortunate to work with a great group of Directors and Committee Chairs and I thank all of you for their continued volunteer efforts! Without those efforts, CPPA would not exist.

At the Transition Meeting in March, the Board and Committee Chairs got together via Zoom to discuss and brainstorm ideas for the upcoming year, despite the challenges we have faced in the past few years. Things have gone very differently since the

pandemic began two years ago, but we all continue to bring you networking events, CLEs, and many opportunities to be involved, and this year is no different. As we look forward to the upcoming year, the Board and Committees are busy planning new ventures and ideas. Keep an eye out for more details and announcements in the upcoming newsletters!

I am also very pleased to announce that during the Transition Meeting, it was decided that our annual Take an Attorney to Lunch event will be returning this year, in person!! It has been two years since we have been able to hold the annual event, and I know it has been a greatly missed event by all. It will be held on October 13th at the Harrisburg Hilton Hotel, so mark your calendars now. Also, the CLE Committee and the Corporate Committee are in the process of gathering information for a potential fall education seminar.

As we look forward to the upcoming year, the Board and Committees are busy planning new ventures and ideas. Keep an eye out for details!

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We have had some noteworthy Lunch & Learn speakers in December, January, and March! Judge Robert Graci (Ret.) provided us with insight on the process of judicial conduct (and misconduct), Attorney Cynthia Haines provided changes in law during the COVID pandemic and how to navigate data privacy and security, and Attorney Judith Cassel provided updates on cannabis law in Pennsylvania. We have many Lunch & Learns scheduled for the remainder of the year and we hope that you can join us! If you would like to participate, registration can be done through our website with a few clicks of a mouse! Webinars are generally approved for CLE credit toward your credentials. Our next Lunch & Learn is scheduled for April 12 where Attorney Jason Raup will discuss hunting and trapping law.

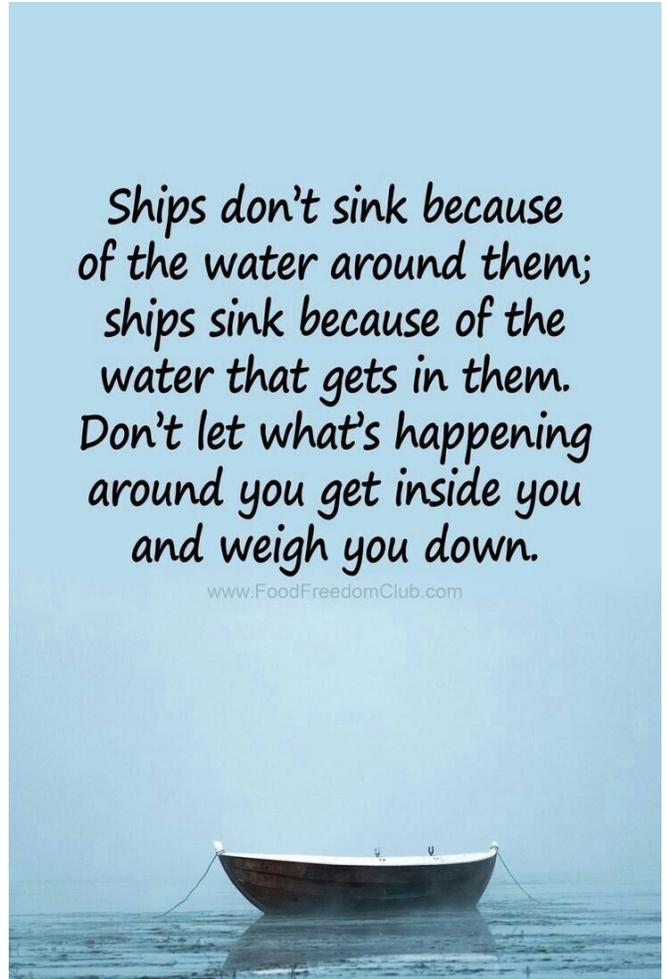
Thank you to all of our members – you are the best part of CPPA! I am always grateful to work with all of you, and I wish all of you a very safe, happy, and healthy spring.

Kathryn Greene

CPPA President

*Ships don't sink because
of the water around them;
ships sink because of the
water that gets in them.
Don't let what's happening
around you get inside you
and weigh you down.*

www.FoodFreedomClub.com



SHOP TALK: SHADOW DOCKET

The term “shadow docket” refers to decisions from the United States Supreme Court, which are decided outside of its regular docket without oral argument. Generally, the Supreme Court allows the parties to argue their points both in written briefs and orally before it issues a detailed explanation of its decision. However, cases on the shadow docket are decided on an application for emergency relief from a lower court’s order. The lower court has not made a final decision on the merits of the case by the time the case is decided on the shadow docket. Further, the Court’s decisions are rarely explained.

BECOME A PENNSYLVANIA CERTIFIED PARALEGAL!

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Pennsylvania has a certification program for paralegals, the Pennsylvania Certified Paralegal (Pa.C.P.) certification?

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Pennsylvania Certified Paralegals must meet educational and employment standards

Pennsylvania Certified Paralegals can bring more value for clients, by assisting with the legal work which, in the absence of paralegals, would normally be completed by an attorney, at a higher cost

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Pennsylvania Certified Paralegals bring education, experience and value to lawyers and law firms across Pennsylvania

Visit www.keystoneparalegals.org for more details on the Pa.C.P. certification and how you can earn yours.

PACE QUESTION -

For an enforceable contract to exist, there must be:

- A. An offer, acceptance and consideration
- B. A reference to the appropriate statute
- C. An accord and satisfaction clause
- D. Signatures of the parties

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"I'M SORRY, BUT THE ENTIRE DOOR HAS GONE TO LUNCH."

E-MAILS — NOT QUITE FORMAL BUT NOT INFORMAL, BRIDGING THE GAP IN COMMUNICATION

By Heather Hunter, McNees Wallace & Nurick LLC

We have all seen the memes on social media that jokingly offer instructions for how to professionally express yourself in an e-mail. Perhaps the most universal suggestion is “per my last e-mail,” meaning that the sender already answered your question – probably more than once.

It is safe to say that e-mails are an essential communication tool. Here are some eye-opening statistics from Radicati Group, Inc.:

- There are more than 3.9 billion e-mail users worldwide.
- In 2023, there will be over 4.3 billion e-mail users.
- More than half of the world’s population used e-mail in 2019 with 293.6 billion e-mail messages received each day.

But studies have shown e-mails can be a drain on productivity. According to one conducted by the Danwood Group, it takes an average of 64 seconds to recover from an e-mail interruption. How are we making those seconds count?

First and foremost, while e-mails are an effective tool for informal communication, they should not be written in the same manner that you speak. Here’s an example: A colleague notices a small error in your work product and stops by to address it with you in your office. You would not say, “I appreciate that you have brought this to my attention,” as you might do in a written communication. You would be much more likely, instead, to say, “Wow! I’m so sorry. I completely missed that.”

In a verbal communication, that may be appropriate, but it would not be in an e-mail. Yet, we send such-worded sentiments in emails to our colleagues and bosses all the time. The best advice: Write your e-mails as if the head of your firm or a judge will someday read them — clear, concise and to the point.

Another trap is trying too hard to express your willingness to be helpful or accommodating. For example, in a verbal interaction concerning scheduling, you likely will physically address your calendar in some manner. The person you are communicating with can read your physical cues and provide immediate feedback as you go back and forth on a date and time that works best.

In a written communication, failing to provide a concrete availability upfront can result in a never-ending back-and-forth. Rather than saying, “I have the week of September 12th available. What do you have,” you might suggest that you have, “September 12th from 9 a.m. to 11 a.m. available as well as September 13th from 10 a.m. to 2 p.m.” This way, you are offering the scope of your availability. Giving specific and realistic parameters when communicating by e-mail will eliminate the never-ending back-and-forth.

The last trap I am going to discuss is that “should have been in person” e-mail. If an email takes more than 20 minutes to compose or you end the message with “does this make sense” (and you are not sure that it does), you need to pick up the phone or walk into the person’s office. You are not effectively or efficiently communicating.

As paralegals, we must be effective communicators — e-mail is an opportunity to really set ourselves apart as professionals.

Lady Justice



For this column, I have decided to discuss a problem I know we all face. One that plagues us, confounds us and just like a pebble in our shoe - - annoys us to no end. I know we all experience this on some level - - that one employee in the office who loves to make our lives miserable! You know the type. The one who complains about everything and who tattles on others at the first chance they get. The ones who seem to get away with not following the rules and yet suffers no repercussions from

their actions or inactions. For the purposes of this column, I will call them the “office troublemaker”.

It seems like the office troublemaker has been in existence since the dawn of time. You know the one - - the one who tells the boss that someone took an extra two minutes for a smoke break. The one who reports a fellow employee for not wearing their mask. Or the one who repeats to management what s/he overheard while in the lunchroom. So, what motivates these people to stir up trouble?

For some, it may be attention-seeking behavior. For others, perhaps their lives are not how they want them to be, so they want to make everyone else miserable too. Some have a superiority complex and feel they are perfect and everyone else falls short. There could be a lot more reasons, but no matter what drives their behavior, we all need to deal with them.

Chances are management is already aware of the troublemaker’s propensity to get others in trouble. But why don’t they address the offending behavior? It could be for several reasons. First, perhaps there is a fear that if they terminate said troublemaker, they could get sued

for wrongful termination. Maybe the troublemaker would allege discrimination or some other trumped up charge. Perhaps management is afraid that if they have to address one issue, other issues will come to the forefront that they have to address as well. It has been my experience that while attorneys like to address conflicts head on, they do not like to address office conflicts with the same zeal. They just want everyone to get along and do their jobs. Not an unrealistic expectation, but it certainly doesn’t address office drama.

So, what do we do with the office troublemaker? I have a few suggestions. First, try to avoid them whenever possible. Second, don’t fall prey to their drama. If there is an office policy to wear your mask in the restroom, follow the office policy. Try to be the model employee. Do your job and do it well. By proving your value to your boss and management, you are proving your worth and your ability to be a team player. I know what you are probably saying at this point - - why should I have to be the model employee when office troublemaker is not? Well, the only thing I can tell you is that you can’t control what troublemaker is doing. You can only control how you react to it.

Try to look deeper into troublemaker’s action. Perhaps they lack self-confidence and so they act over-confident. Perhaps s/he is dealing with a health problem or a problem at home. Consider what you know about this person and whether he or she may have been criticized during their childhood, so this is the only way they know how to act. I’m not saying it is right for them to do so, but once you look at the reasoning behind someone’s actions, you might start looking at their behavior a different way. There is no justification for their actions, but perhaps once you realize the reason why he or she is acting this way, you will understand their motivation and not see them as a threat.

I will leave you with this parting question. At the end of the day, is office troublemaker worthy of your aggravation and stress? Does his or her actions offend you so much that you can’t let it go? If so, perhaps you need to speak with a manager. If not, try not to let their behavior bother you. We have enough stress in our everyday lives. Find some perspective and peace of mind. You will be doing yourself a huge favor by doing so.

Sincerely,

- Lady Justice

INTERVIEW OF JENNIFER OSWALD

1. When did you become a paralegal and what made you decide to enter into the profession?

Response: I became a paralegal in 1998. I was in 9th grade when I decided to become a paralegal. I was very interested in government policies

2. What have been your biggest challenges as a paralegal?

Response: My biggest challenge as a paralegal is speaking about my accomplishments

3. What do you feel your greatest strengths are as a paralegal?

Response: My greatest strength as a paralegal is my willingness to help with any project. I feel it really pushes my growth opportunities.

4. What advice would you give to others who are thinking of entering the profession?

Response: My advice to anyone entering the paralegal profession would be you have to have thick skin. You need to be able to take criticism as this is a fundamental requirement of collaborative relationships.

5. What was the funniest or oddest thing you have had to do in your job?

Response: The oddest thing I have ever had to do as a paralegal was testify on behalf of a prostitute when I worked at the Dauphin County District Attorney's Office

6. What is the thing you are most proud of with your job or your career?

Response: I am most proud of in my career is my ability to work with many different personalities. I try not to take myself too seriously!

7. If you had to do it all over again, would you still be a paralegal? If not, what other profession would you have wanted to try?

Response: If I had to do it all over again... I would not be a paralegal. I would be a school guidance counselor.

8. Where do you see the paralegal profession in five years?

Response: I see places of employment using paralegals much more. I foresee companies/firms seeing the value in their paralegals and the profession really growing!

9. Do you have a motivational quote?

Response: "Kindness is one thing you can't give away. It always comes back."

"Everyone deserves grace sometimes." "Life is Beautiful!"

Answer Key:

PACE ANSWER: A, explanation: For a contract to exist, there must be agreement (i.e. offer and an acceptance) and consideration (value exchanged between the parties to the contract). If these elements are missing, there is no enforceable contract.

Did you know CPPA has a job bank?

It is free to sign up.

Visit the Members Only section at centralpaparalegals.com and complete an application.

As job postings become available, you will receive an email. And, if your firm is hiring, let them know they can advertise here!

Upcoming Keystone Alliance CLE Opportunities

The Keystone Alliance is planning a virtual seminar to be held in the near future. The topics to be presented will be Dysfunctional Family Law, Human Trafficking, Drones, Equine Law, the Conspiracy of Silence, Manufacturing and Sexting. Dysfunctional Family Law will address legal, procedural, ethical and practical implications of unexpected circumstances. Human Trafficking in Pennsylvania will discuss the subject of human trafficking and modern-day slavery in PA. Unclean Manufacturing Hands will discuss the regulation of products, disclosure requirements and legal action taken against those who violate the regulations. To Sext or not to Sext will discuss what constitutes sexting, the legal implications of consent and sexting, as well as a comparison of the differing ramifications for minors and adults. An Equine Law Primer will explore the PA Equine Activity Immunity Act. A Game of Drones will discuss the proper operating license for a drone, potential FAA penalties and FAA requirements. The ethics presentation, The Conspiracy of Silence: Are We Assisting or Enabling the Impaired Lawyer will explore the warning signs of impairment, services provided by Lawyers Concerned for Lawyers and the role of education in breaking the stigma associated with addiction and mental illness. These offer unique opportunities to explore areas of law in which you might not be familiar. More information will be forthcoming from the Keystone Alliance in the near future. Visit their website at <https://keystoneparalegals.org>.



PA Supreme Court Chambers - photo courtesy of Elaine Schuch.
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ALL CASE SUMMARIES COPIED FROM JUSTIA (LAW.JUSTIA.COM)

Dongarra v. Smith, No. 20-2872 (3d Cir. 2022)

Dongarra, incarcerated for bank robbery, was transferred to a new prison and went through the onboarding process, supervised by Officer Smith. Smith gave him an ID card that indicated “Registered Offender,” and a T-shirt “know[n]” to be a “sex offender T-shirt.” The shirt falsely suggested that he had been imprisoned at Terre Haute, “a sex offender prison.” Dongarra stated that he “could be killed” if prisoners mistook him for a sex offender. Smith said he did not care and that he “hope[d] [Dongarra] kn[e]w how to fight.” Dongarra appealed to other staff, who asked Smith for another T-shirt. Smith refused. Frightened, Dongarra skipped meals and lost weight and stopped going out for recreation. Dongarra filed a grievance. Though he never got a response, a few weeks later the prison replaced his ID card and T-shirt.

Dongarra sued Smith and two unnamed officers, seeking damages and an injunction, citing “Bivens.” The Third Circuit affirmed the dismissal of his 42 U.S.C. 1983 case. Injunctive relief is not available because Dongarra had not sued anyone who could fire or discipline Smith and by the time Dongarra sued, the prison had corrected the error. No court has extended Bivens to cover similar facts; “special factors” bar extending Bivens here. Although the officer violated Dongarra’s rights, the feared risk never materialized. Damages cannot be awarded to compensate him for an assault that never happened.

Mears v. Connolly, No. 21-1148 (3d Cir. 2022)

Dongarra, incarcerated for bank robbery, was transferred June’s son, Brenden, suffers from severe bipolar disorder and is prone to violent outbursts. He has repeatedly been jailed and institutionalized. In 2017, he was involuntarily admitted to Greystone, a New Jersey state-run psychiatric hospital, where Brenden’s condition worsened. He stalked the halls, made an aggressive sexual comment to a staffer, and attacked other patients, sending one to the intensive care unit. Greystone staff encouraged June’s visits as part of Brenden’s treatment. Before one visit, June asked if it was safe to visit Brenden. Though Brenden had severely beaten another patient days earlier, his psychiatrist, Dr. Young, assured her that it was safe. Greystone employees were supposed to supervise all patient meetings but no one was assigned to monitor June’s visit. Initially, Brenden’s head nurse, Oglesby accompanied June, During June’s visit, Oglesby left the room. Brenden then attacked June, who suffered brain trauma, broken ribs, and PTSD.

The district court dismissed June’s suit under 42 U.S.C. 1983. Sovereign immunity barred the claims against Greystone and state officials in their official capacity. The Third Circuit reversed as to Oglesby, who abandoned June mid-visit. June’s injury was fairly direct as well as foreseeable. Oglesby’s affirmative act endangered June; her departure deprived June of the freedom to avoid an unsupervised visit or to take other precautions. Dr. Young took no affirmative acts.

Pennsylvania v. Felder No. 18 EAP 2018 (Supreme Court of PA)

In 2009, when he was seventeen-and-a-half years old, appellant Michael Felder was playing in a pick-up basketball game with Andrew Williams at an outdoor court in Philadelphia. The pair were matched against brothers Jarrett and Malcolm Green. Appellant's style of play became aggressive; an argument ensued after Williams refused to hand the ball over to the Greens. Appellant walked to the sideline and removed a .380 semiautomatic handgun from his gym bag, and shot Malcolm in the head before shooting Jarrett in the stomach and leg. A jury convicted appellant of first-degree murder and aggravated assault. Pursuant to the then-applicable mandatory sentence for first-degree murder, which also applied to juveniles, appellant was sentenced to life imprisonment without the possibility of parole. The Superior Court vacated appellant's judgment of sentence two years later; by then, *Miller v. Alabama*, 567 U.S. 460 (2012) and *Commonwealth v. Batts*, 66 A.3d 286 (Pa. 2013) ("Batts I") had been decided. Since appellant's judgment of sentence was not yet final, the Superior Court determined he was entitled to the benefit of those rulings and to consideration of the Miller factors before being resentenced, and remanded the case for such proceedings. Upon remand, the court imposed a discretionary 50-years-to-life sentence for appellant's first-degree murder conviction. On appeal to the Superior Court, appellant challenged the legality of his sentence, arguing "a 50-year minimum sentence is a de facto life sentence." The Superior Court found that although the sentence precluded appellant from seeking parole until he was 68 years old, it was constitutional because it "was the result of an individualized and discretionary sentencing hearing[.]" The Pennsylvania Supreme Court granted discretionary review limited to whether appellant's sentence was indeed a de facto life sentence requiring the sentencing court under *Commonwealth v. Batts*, 163 A.3d 410 (Pa. 2017) ("Batts II"), "[to] first find permanent incorrigibility, irreparable corruption or irretrievable depravity beyond a reasonable doubt." The Supreme Court determined *Jones v. Mississippi*, 141 S.Ct. 1307 (2021) "abrogates our foundational understanding in Batts II." So long as the sentence imposed is discretionary and takes into account the offender's youth, even if it amounts to a de facto life sentence, Miller is not violated. "Because the sentencing court in the present case followed this procedure, we affirm."

Did you know...

NFPA is the only national paralegal association to have a seat on the American Bar Association's Standing Committee on Pro Bono and Public Service. As such, NFPA has a vested interest in supporting these worthwhile activities. If you provide pro bono services on the local level, it is important for NFPA to know about its member's efforts so that they can have an accurate understanding of the volunteer hours that are spent on an annual basis.

Please report your pro bono/community service hours online under the members page found at this address:

[Login | National Federation of Paralegal Associations \(paralegals.org\)](https://www.paralegals.org)

The Intersection of Law and Politics

By Malinda A. Elliott, MLS, Pa.C.P.

As part of my graduate school curriculum, I had the good fortune to be selected to participate in an elective course, Law and Policy Study Tour: Washington DC, that took place last fall. This course was described in the syllabus as undertaking the study of how federal law is made, influenced, and enforced in our country, including the role that politics plays. I was immediately intrigued.

Since I sat in Professor John DeLeo's Constitutional Law course at Central Pennsylvania College decades ago, where he excitedly bounded around the room talking about International Shoe, I have been a self-proclaimed constitutional law nerd. Despite my deep love for the subject matter, I had no idea how transformative this course would prove to be.

The course was taught by the incomparable Nancy Hunt. Professor Hunt authored our textbook, *Lawyering in the Nation's Capital*, which has been, and will continue to be, a great resource for me. Not only was it a privilege to be taught by Professor Hunt, but my cohorts and I had the opportunity to hear from a variety of speakers, many of whom worked "on the hill." One such speaker was a young woman who had the pleasure of working as a congressional staffer for the renowned civil rights activist, Representative John Lewis. I also had the distinct pleasure of chatting with Attorney Jack White, who previously served as a law clerk for the late Honorable Justice Antonin Scalia.

The curriculum included tours of several DC institutions. Visiting the National Archives was a phenomenal experience, despite our time inside being short given the packed agenda. I saw the Constitution, the Bill of Rights, and the Declaration of Independence, as well as a host of other historically significant documents. Talk about a bucket list item for a girl who loves constitutional law! (Of note, the Constitution was magnificent, and on a much larger size of parchment than I imagined...the real document puts the one hanging in my family room to shame!)

We also walked around the Capitol complex. Although I had visited DC on multiple occasions in the past, I had never taken time to appreciate the beauty of the Capitol building, or even get close enough to it to appreciate its size and stature. Given the ongoing pandemic, we were unable to go inside the building, but being on the grassy knoll, looking toward the National Mall, was an amazing experience.

We then headed to the Library of Congress. It is architecturally exquisite. I cannot begin to describe how beautiful it is, both inside and out. Visiting the replica of Thomas Jefferson's library was fascinating, particularly seeing books that were part of his personal collection. Recognizing that Thomas Jefferson passed away in 1826 truly puts that information into context. Knowing that one

¹Hunt, N. W. (2018). *Lawyering in the Nation's Capital*. West Academic Press.

of the Founding Fathers touched the exact books that I was viewing was surreal. Also, envisioning myself studying in the main reading room was fun (anyone can apply for a Reader Identification Card at Library of Congress to access the various reading rooms, although some of the reading rooms require researchers to be over the age of eighteen).

After leaving the Library of Congress, we took a short walk over to the Supreme Court. COVID precautions prevented our group from accessing the building but even standing outside, I was in awe. I knew I would be impressed, but the way I felt was something much different than I expected. It is hallowed ground, a truly sacred place. A place where decisions are made that mold the shape of our country...Marbury v. Madison, Brown v. Board of Education, Miranda v. Arizona, Roe v. Wade, and Obergefell v. Hodges. Just a few, of the many, landmark cases that changed how our country functions. We took pictures and chatted about the significance of the Court. I look forward to one day taking a tour of the interior when pandemic restrictions are lifted.

We also had the opportunity to take a tour of the National Mall. If you have not been to visit, I recommend making time to see the monuments and the explore the beauty of “America’s Front Yard.” Feelings of patriotism and the rich history of our country are visible everywhere. It is a magical, yet serene, place inside the bustling city.

My visit to DC was in early October and the leaves were starting to change. The timing was somewhat symbolic as fall always demonstrates that change can be beautiful. Our country is always changing and evolving. But sometimes that change is hard to see underneath all the politics and negativity that bombards our daily lives. Given round-the-clock news coverage, the constant influx of social media posts, and the seemingly non-stop barrage of all things that divide, not unite us, it is easy to forget what the Founding Fathers envisioned when they formed our government. The Constitution, as with everything, is not without fault; however, it serves as a reminder that separation of powers is necessary to safeguard the interests of citizens, as well as to preserve liberty. The first three words of the Constitution say it all: “WE THE PEOPLE.” The government exists to serve the people and taking this course reminded me of all the ways in which it does just that.

I have included just a few of the many photos I took during my brief time in DC. I hope you enjoy them!



National Archives



Library of Congress



Reading Room in the Library of Congress



Supreme Court



White House



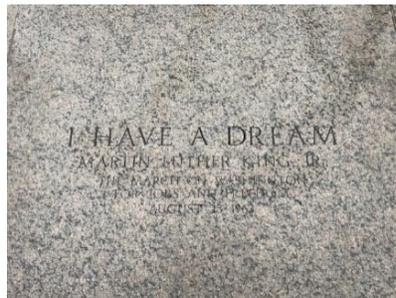
Photos of the Capitol Building



*View of the Washington Monument
from the Capitol*



Images from the National Mall



*Standing at the spot where this speech
was given in front of the Lincoln Memorial!*





Proud to honor & support the Central Pennsylvania Paralegal Association. Thank you for 35 years of dedication to the paralegal profession!



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