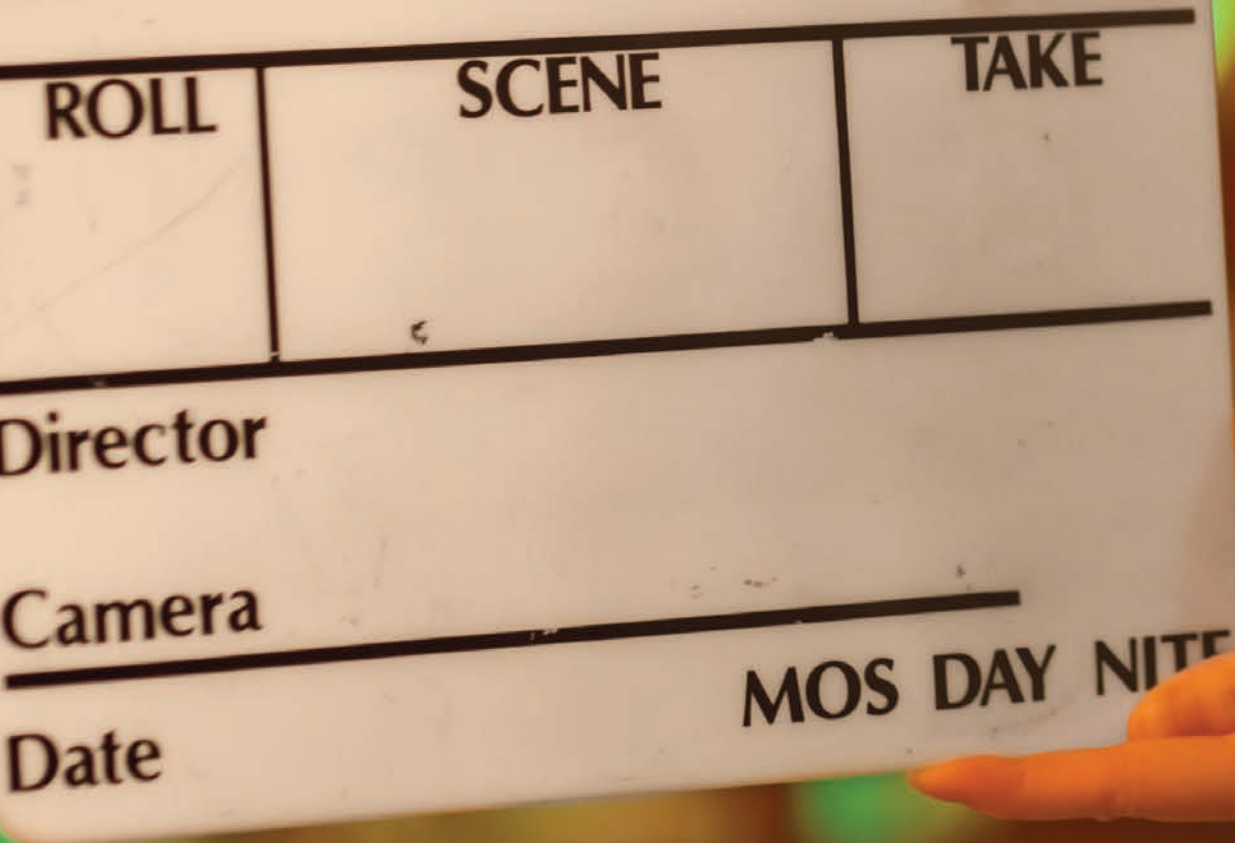


Profile of David R. Fine

Part of the periodic 'Making It Work' series

Reaching Beyond the Practice

By Chris Mondics



It has been observed that effective lawyering requires not only command of the law but also a certain ability to command the stage.

This is especially true for a trial lawyer seeking to persuade a jury of a client's innocence or, as the case may be, an accused criminal's guilt. The popular imagination is filled with images of swaggering trial lawyers — think of buckskin-clad defense attorney Gerry Spence pacing back and forth in front of a jury — turning courtrooms into virtual movie sets.

But it is also a skill that an appellate lawyer can put to good use.

There are times where appellate lawyers parry queries from jurists with a bluster that might seem perhaps a bit more robust than the underlying argument itself or, if the argument is strong, deploying a certain rhetorical finesse to convey conviction.

It's all part of the game.

David R. Fine is one lawyer who has taken that principle to another level. He not only continues to seek out opportunities to hone his appellate skills — he regularly handles pro bono appeals on criminal cases in addition to his paying clients — he's actually acted in a handful of movies.

He is certainly not doing it for the money. After the costs of travel and a hotel room, not to mention the lost time, he's lucky to break even given the pitiable sums that are the going rate for Hollywood extras. It's just a fun thing to do. And that in a way says a lot about Fine, who is a partner in the Harrisburg office of K&L Gates. This buttoned-down lawyer has, from time to time, a penchant for things that are slightly off script but also with a service subtext, whether it is making new friends on a movie set, winning a reduced sentence for a federal prisoner in a pro bono representation or working to found and then operate a heralded school for autistic children and adults in Central Pennsylvania.

Add to that his recent role as chair of the Pennsylvania Board of Law Examiners, a task complicated last year by the need to administer the bar exam remotely as a consequence of COVID-19, and a picture emerges of Fine as a lawyer who rolls up his sleeves and reaches out far beyond his practice. His term on the board ended in March.

Like so many pivotal moments, Fine's chance for some small measure of Hollywood glamour arrived serendipitously. He was eating lunch at his desk, reading an article in the *Philadelphia Inquirer* about a film that soon would be shooting in the city and that needed extras. Contact information was provided. The film, "The Upside," which starred Bryan Cranston, Kevin Hart and Nicole Kidman, was about a business executive who struggles to survive psychologically following a paragliding accident that left him paraplegic and the growing bond between Cranston's character and his caregiver.

Fine emailed the production company.

"I thought, what the heck, they will never call," he said.

But soon he received a reply. Would he be available on such and such a date and was he a good dancer?

"The answer to the first question was yes, I am available, and to the second was oh, God, no, because me dancing is like a carp flopping around on the dock," Fine recalled with a chuckle. "I spoke to my wife and she said write them back and say yes. I will teach you how to dance and, mind you, she did try, but after the second lesson she gave up."

Fine made the cut nonetheless and appears in a wedding party with a group of guests dancing, albeit the director, given the deficit of dancing skills, felt it advisable to place him off to the side. Fine's other acting stint was as a TV reporter, also a nonspeaking role, in the film "21 Bridges"



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with Chadwick Boseman. The role was especially hard duty — extras were left to stand out on the street in Center City Philadelphia in bitter cold as filming progressed from 6 o'clock in the evening to 6 in the morning.

“I had a hotel room and would sleep for three or four hours, get up and work (on various legal matters) and then go back to the set,” he recalled.

Those two movie roles, plus two guest appearances on NPR, one on the program “Wait Wait ... Don't Tell Me!” and the other on the discontinued “Whad'Ya Know,” to date compose the sum and substance of Fine's entertainment career and, to Fine's way of thinking, that is probably about right.

“Once in a while you have to break out of the usual confines of your life and do something different,” he said.

Fine came to the law indirectly. While an undergraduate at Cornell, he worked as a

news reporter for a local radio station founded and run by a group of Cornell students. Later he went to journalism school at Northwestern, and for a brief time after obtaining his degree, was a television news anchor in Utica, N.Y., a tiny market with limited possibilities for advancement. Engaged to be married — he met his future wife, Beth, also a Cornell graduate, at the radio station there where she was a DJ — and planning to start a family, he faced the pressing question of how to pay for it all.

He went to the University of Toledo law school and after clerking with federal district judge William W. Caldwell of the Middle District of Pennsylvania, joined the Harrisburg office of the global law firm now known as K&L Gates. One of the firm's senior appellate lawyers took Fine under his wing, and he soon found his calling.

“I found I liked looking at cases through the appellate lens,” said Fine.

In appellate cases, Fine advises clients to be strategic. It is often the case that they are aggrieved, feel deeply that that the trial judge got it wrong and want to set the record straight on all points. But winning an appeal, says Fine, is often a matter in which less is more.

Clients in appellate cases, he says, “have suffered all the slings and arrows and, if you lose, you want vindication. You are thinking, ‘I was right on all these issues and the trial judge was wrong and I want to get them right.’ But that is not the best strategy to win. Figuring out which of those issues should go up on appeal and how to frame them is a fascinating strategic exercise.”

And essential to winning appeals, he says.

Fine says his interest in pro bono representation emerged during his federal district clerkship. Then, the court received numerous habeas petitions from prisoners that he said seemed to have underlying merit but ended up going nowhere because the petitioners had no representation other than

themselves — and they had little or no ability to navigate the system.

The prisoners often had to go it alone because pro bono representation wasn't as extensive or available as it is today, with many big firms such as K&L Gates making it a priority. Fine vowed he would do something to fix that someday and now he argues these cases frequently before the U.S. Court of Appeals for the Third Circuit, based in Philadelphia.

In one memorable case, he persuaded the court to overturn the mandatory life sentence of a Philadelphia man who had been convicted of murder as a juvenile. The appeal was based on the U.S. Supreme Court ruling in *Miller vs. Alabama* finding that mandatory life sentences without the possibility of parole for juveniles were unconstitutional.

In another, he won a resentencing for a St. Thomas, Virgin Islands, man who had been sentenced to life in a jewelry store shooting. The appeal was based on the argument that the federal prosecutor in the case seemed to urge life imprisonment during his summation, even though the government had agreed as part of a plea deal not to recommend a sentence.

Fine took over as chair of the Board of Law Examiners in April of last year, just as COVID-19 was wreaking havoc in Pennsylvania and across the country. As the pandemic gathered force, he and other bar officials quickly realized that administering bar exams in the traditional way — in large rooms with proctors patrolling the aisles — would breach safety guidelines. A new method for administering the exam had to be devised.

In the end, the test was given remotely. Test-takers sat in front of their laptops, monitored by the computer camera, a security measure to protect against cheating, for their tests at home or in rooms provided by law firms and county bar associations. To allow for bathroom breaks, the test was

broken into a number of modules, and the test takers could not go back once a segment was completed.

“One of the most important facets of the bar examination is security,” Fine said. “While the vast majority of people who take the exam are completely on the up-and-up, there is always a small number of people who try to figure out a way to cheat. We had to work out a way with vendors ... to be able to monitor folks who would take the exam on a laptop.”

Fine said the system worked well and there were no known security breaches.

For all of his professional responsibilities, the central focus for Fine and his wife is

their son, Kenny, who has autism. Kenny, who is 27, was diagnosed at 18 months. His parents soon discovered that the educational offerings for children and adults with autism in the region were scant.

Fine connected with Harrisburg attorney Mike Jarman, retired from McNees Wallace & Nurick LLC of Harrisburg, and other parents of autistic children with the goal of founding a state-of-the-art school that would help each student reach his or her potential.

Within a few years, the Vista School opened in Hershey with a gleaming new campus leased from the Hershey Trust, an advanced pedagogical approach that emphasizes individualized learning for



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children and adults and a data-based system for evaluating what works for each student and monitoring his or her progress. A key goal is to help each student achieve as much independence as possible.

“One of the things, if you are fortunate, when your kid is diagnosed, is you find other parents who go through the same experience; people will talk about things and point you to the right literature,” said Fine, who is president and chair of the Vista School/Vista Foundation board of directors.

The challenges to opening the school were immense. After beginning work on the project in 1999, Fine and other founders soon realized that the school would need a special designation to receive certain state funding. No private school in Pennsylvania had received that designation, called an approved private school, since the Nixon presidency decades earlier.

It turned out there wasn't a lot of eagerness among tight-fisted state officials for funding new private schools.

Yet Fine was part of a determined group and they made the right connections. A key player at the time was then-Pennsylvania Education Secretary Charles Zogby — he's now deputy state treasurer for fiscal operations and policy — who became an enthusiastic supporter of the effort.

“There have been many times over the past 20 years when things became discouraging, but there has never been a moment when I doubted that we would get it done,” Fine said. “Our attitude was we were just going to figure out a way.”

Despite the hurdles, Vista opened its doors in 2002. Today, it has an annual budget of nearly \$25 million and a staff of 300. The current on-campus enrollment is 104 students, but the school also serves 200 additional people through off-campus programs.

“Never underestimate the parents of a child with a disability,” Fine said. “Because, as is the case with any parent, the desire is to do everything you can to make sure the child can live a full and meaningful life and if someone says here is an opportunity, work with me and we can improve life for your kid and other kids, that is powerful motivator.”

In his free time, Fine likes to ride his bicycle on 20- to 25-mile road trips. And, since Kenny loves to be near the water, the family spends vacation time at the seashore. But in Fine's world, the Vista School occupies a special place.

“We believe all the people we serve have their own unique potential and it is up to us to help them reach that potential,” he said. “And so many of them do. We have graduations every summer and I have been to a number of them now as both a parent and board president. If you don't shed a tear at one of them, you are carved out of granite or not of woman born.”

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Chris Mondics is a freelance journalist and author based in Philadelphia. In earlier assignments, he was the legal affairs writer for *The Philadelphia Inquirer* from 2007 through 2017, and had been a Washington correspondent for the newspaper for a decade before that. He focuses much

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