Community gardens in Philadelphia are often the quiet pillars of livability in our urban landscape. They give us much-needed green space and bright, pretty flowers, and ripe tomatoes in the summer, but they also provide a number of critical, but sometimes less obvious benefits. City lots under cultivation have permeable soil, which prevents stormwater from running off and burdening a hundreds-year-old drainage system. They lower temperatures by combating the “heat island effect,” which occurs in cities when the concrete bakes in the summer sun. Studies have also shown that there is a direct correlation between the amount of vacant land in a neighborhood and the instance of violent crime. A well-tended garden is a message of care and concern and demonstrates with a quiet ferocity that the community is watching.

On Dec. 5, 2019, the Environmental Law Committee hosted a lunchtime program entitled “Spotlight on Community Gardening in Philadelphia and the Challenges Lawyers Face Representing Broader Constituencies” to explore the new and not-so-new legal tools that are being used to preserve these vital resources. The featured speakers included Ebony H. Griffin, a staff attorney and the director of the Garden Justice Legal Initiative at the Public Interest Law Center and Andrea Saah, a staff attorney at the Philadelphia Land Bank.

In Philadelphia, there are approximately 400 community gardens and about 30,000 empty lots. Many of these verdant plots were created organically, no pun intended, when neighbors started cultivating vacant, weedy lots. Years pass, but the community gardeners have no land security under the law for the well-tended soil under their feet. This lack of legal standing becomes an acute problem when land values increase, and developers start buying properties.

Griffin explained that the Garden Justice Legal continued on page 15

Panelists Ebony H. Griffin (from second from right) and Andrea Saah, with the Environmental and Energy Law Committee vice chairs, Zachary J. Koslap (from far left) and Kaitlyn Maxwell, at the Dec. 5 CLE.

By Leah Cilo

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Guilty Pleasures

By A. Michael Snyder

A few hours before I began to write this column, I engaged in one of my guilty pleasures. No, don’t get upset! It wasn’t illegal, illicit, immoral, intoxicating or even fattening. You see, this guilty pleasure is something I’ve done for years. In fact, I would do it again now, if I could.

So, what is it? I’ll give you a few clues: it provides amusement, it entertains; it educates; it has humor; it has pathos; it takes me to places I’ve never been; and it tells me stories I could only dream of.

Okay, I guess I’ve kept you in suspense long enough. My guilty pleasure is . . . I like to watch “Antiques Roadshow.” Actually, I don’t just like to watch it, I love to watch it. In fact, I watch both the British version and the American version. I am, I am forced to admit, a “Roadshow” addict. I watch it whenever, and wherever I am. I know each of the appraisers as if they are old friends. I’ve even gotten my wife addicted to the show. We love the restrained enthusiasm of the British when told that the item they found in their attic is worth millions of dollars (“Oh, isn’t that lovely?”), or the marvelous sangfroid they show when they learn that their long-held treasure, a Stradivarius violin, is, in fact, a cheap copy made last year (“Oh dear, well, that’s rather disappointing, isn’t it?”). We Americans, on the other hand, tend to be more exuberant. When the ugly ashtray that we thought was worth $50.00 turns out to be worth $75.00, we jump up and down, our jaws drop open and we kiss the appraiser. Should our attic find really be worth something, we are just as likely to cry with joy as we are to faint. And when the “treasure” turns out to be worthless, we just say, “I always hated the darn thing anyway!”

Over the years, I’ve played a game whenever I watch the show: I listen to the appraiser start to describe the piece, and I call out my estimate of the value, before the appraiser can state their opinion of the value. I’ve actually gotten pretty good at it; I am generally within 5% of the appraiser’s estimate, with the exception of one or two areas of collecting: Native American bead or basket work, and within 5% of the appraiser’s estimate, with the exception of one or two areas of collecting: Native American bead or basket work, and the logical processes employed in making them, has existed by the logical processes that lead to the creation of the item. I love these items.

So, what do plastic models and “The Antiques Road Show” have to do with anything related to the law, or to anything going on around us today? I’ve talked and written about my belief that we need to encourage young children to think of the law as a desirable profession, and one that is in reach to them, no matter their economic situation. I’ve talked and written, as has my dear friend, Shell Fedullo, of the value of mentorship.

Young children benefit from mentorship in ways that cannot be calculated. Not only can they receive the love and guidance that they need, but they can be guided to learn new skills. If kids are exposed to simple things like building models, or looking at architecture, and they learn to look at things in different ways, they are being given skills that may encourage them to analyze problems and issues. In short, simple activities like building a model car with someone they trust may give them the building blocks to think of law as a desirable career path. When you think of it, putting a model together—seeing where the various pieces go and then watching the pieces come together to make a coherent whole—is much like the legal process: seeing a problem, analyzing the issues and using the knowledge gained to find a solution to the problem. Lawyers solve problems; it’s what we do. Teaching kids to solve problems, as a mentor or friend, is what we must do. It will feel good for you and feel great for the kids who benefit. So, go find a kid, buy a model and let the lessons begin.

H. A. Michael Snyder (Ret.), msnyder@aqadri.com is the 93rd Chancellor of the Philadelphia Bar Association.
On Oct. 31, 2019, Governor Tom Wolf signed Act 77 of 2019, the first significant election reform bill in more than 80 years. Act 77 implements several “voter-friendly” changes in time for the presidential primary election on April 28.

Act 77 does several things to facilitate increased voter participation. Perhaps most importantly, the law allows Pennsylvania residents to vote by mail up to 50 days before an election, without an excuse. Further, voters can elect to be placed on a list to permanently receive a ballot application by mail. Ideally, this reform will alleviate the burden of being physically present at the polls to vote. Additionally, Act 77 extends the deadline to register to vote from 30 days to 15 days before an election.

Increasing the opportunity to vote increases turnout. According to a U.S. Government Accountability Office report in 2016, providing more days to register to vote and no-excuse mail-in ballots increased voter participation by more than 4%, or nearly 250,000 votes in Pennsylvania. Act 77 applies to all elections in Pennsylvania and will certainly have an impact on future local and judicial elections.

The YLD is committed to educating the Philadelphia community about how Act 77 reduces barriers to the voting booth. As part of the YLD’s effort to increase voter participation, we will assist voters with obtaining their mail-in ballots and, if they so choose, with being placed on the mail-in-ballot list to permanently receive a ballot application by mail.

Hillary N. Ladov (hladov@goldbergsegalla.com), associate in Goldberg Segalla’s Global Insurance Services practice, is chair of the Young Lawyers Division.

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What’s New:

Long respected as a trial judge and a succinct commentator on evidence, Judge Bernstein has significantly revised the 2020 edition of “Judge Bernstein on Evidence” to focus on current legal issues.

Published personally by Judge Bernstein, this edition contains an entirely new section on electronic communications as evidence, including social media, emails, text messages and instant messages, and a revised section on cross-examination of expert witnesses.

The Supreme Court’s BouSaadra decision, which significantly changes the work product doctrine, is also extensively reviewed in this year’s volume.

Judge Bernstein is available for mediations and arbitrations at JudgeBernstein.org
Each year, the Philadelphia Bar Foundation looks for innovative ways to maximize the funds available for the delivery of civil legal aid to those in need. Since 2018, we’ve been using a Unified Approach to Giving for our law firm and business fundraising, which is an annual one-time gift that aims to obviate the need for multiple requests for event sponsorships throughout the year.

Unified Giving is beneficial for many reasons, including providing long-term sustainability for the Foundation and the many legal service organizations that the Foundation funds. Unified Giving also allows the Foundation to focus on visionary projects, such as the Equal Justice Center, a center that will co-locate many Philadelphia civil legal aid organizations and set a new standard for collaboration and efficiency in the public interest legal community. We are grateful to all the Philadelphia law firms and businesses who have supported us in this model.

2019 was another strong year at the Foundation. As I highlighted in my last column, we were able to fund more than $370,000 in grants to our nonprofit partners, which would not have been possible without our Unified Giving partners as well as generous individual donors. We are grateful to each of our donors for their commitment to civil legal aid.

We look forward to continuing to work with our Unified Giving partners in 2020. Thank you for your continued service to us and our nonprofit partners.

Leslie E. John (johne@ballardspahr.com), partner at Ballard Spahr LLP, is president of the Philadelphia Bar Foundation.

The Philadelphia Bar Foundation would like to thank our 2019 Unified Giving Partners:

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Top left: Hon. Gerald A. McHugh, U.S. District Court for the Eastern District of Pennsylvania (middle), who presided over the naturalization ceremony; with distinguished featured speaker, Dr. Marisa Guerin, an international human resources consultant (on right); and 2019 Chancellor Rochelle M. Fedullo, who provided remarks on behalf of the Philadelphia Bar Association; at the Jan. 16 ceremony.

Bottom left: Maria Auersperg, formerly of Spain, provided remarks on behalf of the new citizens.

Bottom left and right: Fifty-seven people from 29 countries became U.S. citizens at the ceremony.
On Jan. 14, the Executive Committee of the Business Law Section had its first meeting of the year. The committee welcomed several new members and discussed goals and events for the new year.

From left to right: (Back row) Secretary/Treasurer Evan Miller, Bayard, P.A.; Advisory Board Liaison Merritt Cole, Earp Cohn P.C.; Vice Chair Ernie Holtzheimer, Montgomery McCracken Walker & Rhoads LLP; Communications Officer Adam Coleman, City of Philadelphia Law Department; Section Chair Mike Zanan, Cozen O’Connor; At-Large Member Allie Misner, Dechert LLP; with (front row) Evy Cruz, Philadelphia VIP/LawWorks; At-Large Member Sohana Sethi, Comcast; YLD Liaison Jourdan Garvey, Saul Ewing Arnstein & Lehr LLP; At-Large Member Terrance Reilly, Pepper Hamilton LLP; At-Large Member Geneva Brown, Cigna; Past Chair Marcel Pratt, City Solicitor, City of Philadelphia Law Department; and At-Large Member Justin Moriconi, Moriconi Flowers Ltd.
MLK Breakfast and Clean Slate, Jan. 20

On Monday, Jan. 20, the Barristers’ Association of Philadelphia held its annual Dr. Martin Luther King, Jr. Memorial Breakfast at the Loews Philadelphia Hotel Regency Ballroom, honoring the achievements of Joe H. Tucker, Jr., founder and CEO of Tucker Law Group; Community Legal Services of Philadelphia; Kevin Harden Jr., of Ross Feller Casey; Hon. Cheryl L. Austin, Montgomery County Court of Common Pleas; and Carl E. Singley, of counsel to Tucker Law Group. Approximately 700 people attended.

On right: (From left to right) Barristers’ MLK Breakfast Committeeperson Clementa Amazan, a judicial law clerk; Barristers’ MLK Breakfast Chairwoman Osazenoriwa Ebose, Schnader; Carl E. Singley; Kevin Harden Jr.; Barristers’ President David C. Williams; Kline & Specter; Hon. Cheryl L. Austin; and Deborah L. Freedman, executive director of Community Legal Services.

After the MLK Breakfast, Barristers’ held a Clean Slate Screening Event with Community Legal Services and State Rep. Jordan Harris at the Grand Yesha Ballroom in South Philadelphia to advise Philadelphians about their eligibility for record sealing, expungement and pardons. In two hours, over 70 people were served.

On left: (From left to right) Reginald Streater, Archer Law; and Aaron Dunbar, Post & Schell; were the chairs of the Clean Slate Screening Event on behalf of the Barristers’.
The Workers’ Compensation Section of the Philadelphia Bar Association is excited to be celebrating its 25th anniversary as a Section this year and will be marking this event with a grand gala taking place on June 25 at the National Museum of American Jewish History. The gala will celebrate the practitioners and judges that helped the Section to flourish over the years. Please look for a series of articles forthcoming in the Philadelphia Bar Reporter, reflecting back on the history of the Section, including interviews with the Section’s founders and first cochairs, interviews with past recipients of the Martha Hampton and Irv Stander awards, and insights into the Section from current and former Workers’ Compensation judges and attorneys.

Caroline E. Gentilcore, an associate at Thomas, Thomas, & Hafer, LLC, is cochair-elect for the Workers’ Compensation Section for 2021 and is presently a member of the Section’s Marketing and Communications Committee.
Serving Low-Income Members of the Transgender, Non-Binary, and Gender-Nonconforming Community: Legal Name Change in Philadelphia
Sat., 2/1/20 - 10:00 - 12:15 p.m. (1 SUB/1 ETH)
Hosted by the LGBT Rights Committee of the Philadelphia Bar Association
Held at Community College of Philadelphia, Center for Business & Industry, 1751 Callowhill St., Philadelphia
For many members of the transgender, non-binary, and gender-nonconforming community, a legal name change is not merely a choice, it’s a necessity. Presenting identification documents that do not match an individual’s identity can lead to confusion, discrimination, harassment, and even violence. Some individuals proceed through the legal name change process pro se, and some have the means to hire an attorney; however, court fees, out of pocket costs, and other issues faced by individuals seeking a name change relating to their gender identity present barriers that have the effect of limiting access to a name change and the benefits that come with it. This CLE is geared toward attorneys interested in providing pro bono representation to low-income residents of Philadelphia who are seeking a legal name change relating to gender identity.

VIDEO ENCORE: Obligations of Local Counsel Under Pennsylvania Rules of Professional Conduct
Fri. 2/7/20 - 12:30 - 1:30 p.m. (1 ETH)
A lawyer hired to serve as ‘local counsel’ is immediately confronted with ethical and practical questions, and the ‘wrong’ answer to any of those questions can lead to significant professional problems. In this video-encore program, panelists who specialize in ethics and professional responsibility answer a myriad of questions, such as: does ‘local counsel’ have customary ethical obligations to the hiring lawyer, and/or to that lawyer’s client; does ‘local counsel’ in litigation have obligations beyond those of ‘local counsel’ in a transaction matter; can serving as mere ‘local counsel’ be used to disqualify you from future representations, on basis of conflict of interest; and how does the court’s power to sanction affect a judge’s approach in regulating attorney professional responsibility as local counsel?

Welcome to Your Practice! The Nuts & Bolts of Opening a Law Office in 2020
Tue., 2/11/20 - 12:30 - 1:30 p.m. (1 SUB) – LIVE and WEBCAST
Hosted by the Solo and Small Firm Management Committee
Being self-employed has its benefits and challenges. This dynamic nuts-and-bolts program will provide you with the tools to maximize the benefits of being your own boss and a successful business/practice owner. This comprehensive overview will highlight the steps needed to open your law office, including emphasizing practical considerations when making the decision to go out on your own. Our panelists will offer guidance on unique requirements of running a law office, such as, choosing the right business entity, finding and securing office space, opening the law firm and IOLTA bank accounts, creating your website, using advertising and social media, and more. This is a “Must-Attend” program for all new and experienced attorneys considering starting their own practice!

Defending the Dog Bite Case in Pennsylvania
Wed., 2/12/20 - 12:30 - 1:30 p.m. (1 SUB) – LIVE and WEBCAST
Presented with the Philadelphia Association of Paralegals
Dog bite law is more complicated than one might think and differs from state to state. The dog owner’s (the defendant’s) options for a successful defense varies based upon applicability of the statutes and negligence rules. This program will examine strategies for those defending dog bite cases in Pennsylvania. The program will review and provide guidance on the following: Common-Law principle, applicable Pennsylvania statutes, case law regarding liability for a dog bite, defenses to a dog bite claim, and investigating a claim. Don’t miss this opportunity to obtain practical insight and pointers that will give you a leg up on your next dog bite case.

Fri. 2/14/20 - 12:30 - 1:30 p.m. (1 SUB) – LIVE and WEBCAST
Hosted by the Social Security Disability Committee
On January 23, 2020 the Third Circuit issued an opinion regarding application of exhaustion requirements to Lucia v. SEC, 138 S. Ct. 2044 (2018), challenges to Social Security Administration ALJs – Cirko v. Commissioner, 2020 WL 370832. This timely and relevant program will highlight the recent Third Circuit decision and address recent federal court practice. If you are a Social Security Administration practitioner, this is a “can’t miss” program!

For questions regarding Philadelphia Bar Association CLE, contact Director of Continuing Legal Education Tara D. Phoenix at 215-238-6349 or tphoenix@philabar.org.
Social media can be a powerful and inexpensive marketing tool for small firms’ legal marketing professionals and solo practitioners, but the platforms are not without their hazards. In this video-encore program, panelists will provide tips for marketing your firm and practice online effectively and efficiently, while remaining compliant with the rules of professional responsibility. Hear how to get the most out of social media on a limited budget, and/or limited resources, and learn why social media is an important tool in marketing your firm and yourself.

It’s the Vote that Matters: Proxy Voting Issues Affecting Mutual Funds
Thu., 2/20/20 - 12:30 - 1:30 p.m. (1 SUB) – LIVE and WEBCAST
Hosted by the Investment Companies Committee
This luncheon CLE program will address Proxy mechanics. Speakers will focus on obtaining the vote, - planning the proxy campaign and path to success, understanding the underlying shareholder base, and maintaining the integrity of the vote through thorough reconciliation and methods of obtaining votes, including next-gen campaign outreach to shareholders. Join the Investment Companies Committee to hear guidance on proxy voting issues affecting mutual funds.

The New Rules for Fee Reviews, Utilization Reviews, and C&Rs
Fri., 2/21/20 - 12:30 - 1:30 p.m. (1 SUB) – LIVE and WEBCAST
Hosted by the Workers’ Compensation Section
In a recent series of Opinions, the Commonwealth Court has reshaped how workers’ compensation practitioners must deal with medical billing. This CLE will provide synopsis and analysis of the recent case law from the Commonwealth Court, beginning with Armour I, and discuss the practical implications for claimants, defendants, and healthcare providers for Fee Review, Utilization Review, and Compromise & Release Agreements.

VIDEO ENCORE: Handling Custody Cases Involving Teenagers: Perspectives from the Bench and Mental Health Professionals Regarding Contempt, Mental Health, and Reunification
Mon., 2/24/20 - 12:30 - 2:30 p.m. (2 SUB)
This must-see video-encore program will help attendees understand and navigate issues that may arise in custody matters involving teenagers. Panelists will provide best practice tips, valuable perspectives from the bench, and insight from mental health professionals. Panelists will address the following topics, among others: contempt in custody matters and how to help your client in these situations, issues of mental health and how to address them within the context of the custody case and when reunification is necessary, and the process associated with reunification therapy.

VIDEO ENCORE: Small Contracts for Short, Finite Periods of Time . . . What Could Possibly Go Wrong
Wed., 2/26/20 - 12:30 - 1:30 p.m. (1 SUB)
In this video-encore program, panelists will use real life examples of contracts to demonstrate how “simple,” poorly worded or poorly drafted contracts can lead to big problems. When clients want to save money while preparing a “simple” agreement, they can just “recycle” an old agreement you’ve prepared for them, right? Wrong. Individuals that are drafting contracts need to fully understand all facets of the deal, conceptualize those areas where disputes could arise down the road, and preemptively address these potential situations through their drafting skills. Not just for newer attorneys, panelists identify specific problems with two separate contracts and provide clear and straightforward methods for making those agreements stronger, less ambiguous, and more accurate in terms of documenting the true agreement of the parties. This program will also highlight critical—but often unconsidered—principles to assist both attorneys and business professionals with drafting, analyzing, and interpreting contracts.

Criminal Justice Reinvestment Initiative
Wed., 2/26/20 - 4:00 - 5:00 p.m. (1 SUB) – LIVE and WEBCAST
Hosted by the Criminal Justice Section
Governor Tom Wolf signed Justice Reinvestment Initiative bill, Pennsylvania Act 115 of 2019 into law in December 2019, hailing it as a successful bipartisan effort to make the state’s justice system fairer while keeping communities safe. Experienced panelists will explain the new bill and break down the major changes in the criminal law. Panelists from Pennsylvania ACLU, the state sentencing commission, and practitioners representing the prosecution and defense will offer guidance on new mandatory sentences enacted by the legislature, changes in the state parole process, including presumptive parole, changes in the State Intermediate Punishment (SIP) program, changes in Boot Camp eligibility, and new sanctions for parole violations.

VIDEO ENCORE: To Be or Not To Be a Franchisor or Franchisee
Thu., 2/27/20 - 12:30 - 2:00 p.m. (1.5 SUB)
You may have a client who owns and operates a successful business and, in considering options for how to continue growing and expanding that business, wants to investigate what would be involved in franchising the business model or system. On the other hand, you may have a client who is interested in becoming a franchisee of an existing franchise system. This video-encore program will address the aforementioned issues and factors and examine, among other things: how franchising compares to other methods and forms of growing a business (including joint ventures, or maintaining sole ownership but opening other branches), what federal and state legal requirements exist and must be satisfied in order to establish a franchise system, and what protections potential franchisees may have in terms of geographic exclusivity, termination or transfers of their franchises, etc.

VIDEO ENCORE: My First Federal Trial: Proper Procedure and Successful Advocacy
Fri., 2/28/20 - 12:30 - 2:30 p.m. (2 SUB)
Missed the LIVE presentation? Attend this video-encore!
Federal court practice varies greatly from state court practice. Attorneys learn quickly that there are significant substantive differences in practices and procedures when trying their first federal case. Federal court boasts its own rules of civil procedure, rules of evidence, and discovery. Attorneys must also learn the role of magistrate judges in the process. This video-encore offers fundamental guidance to attorneys with little or no experience trying federal cases, and acts as a refresher course for attorneys looking to brush up on best practices for federal trials.

For more new, unique and affordable CLE programs, please visit the Philadelphia Bar Association CLE webpage.
A Step-by-Step Guide to Conducting a Trial in Federal Court

By E. Alexander Hammershaimb

Attorneys that try a case in federal court must familiarize themselves with the local rules and the policies and procedures of the assigned judge. This was a common refrain throughout the CLE “My First Federal Trial,” hosted by the Federal Courts Committee on Sept. 18, 2019. Planned by Joe Tucker, founder and CEO of Tucker Law Group; and moderated by Catherine C. Henry, Senior Litigator at the Federal Community Defender Office for the Eastern District of Pennsylvania — Trial Unit; the event included a panel of current Eastern District of Pennsylvania judges—Hon. Mark A. Kearney and Hon. Mitchell S. Goldberg—as well as practicing attorneys in the federal court—Richard Harris, shareholder and cochair of the Litigation and Trials Practice Group at Littler Mendelson P.C.; and Leslie Miller Greenspan, partner at Tucker Law Group.

At the outset, Goldberg and Kearney both stated that they favored jury trials and strongly believe in the system. The panelists next discussed some of the differences between federal court and state court. First, federal trials are more formal, yet streamlined. Goldberg mentioned that federal cases typically have one judge assigned to the case from beginning to the end. Each panelist found it imperative that lawyers learn about each individual judge’s policies and procedures, and that they talk to the judge’s deputy clerk to learn how the judge conducts the trial.

The panelists also emphasized how important it is to be prepared for each step of the pre-trial process. In particular, the judges stated that each lawyer must be prepared to treat the rule 16 conference as a substantive discussion on the merits and ultimate value of the case. Judge Kearney emphasized that in his cases, whichever lawyer attends the pre-trial conference is going to be the trial counsel, no matter the attorney’s experience level. The panelists also discussed the importance of magistrate judges. District judges refer cases to their magistrate judges for mediation, to hear discovery disputes, to hear discovery disputes, to hear discovery disputes.
Consular Processing for Immigrant Visas

By Elisa C. Advani

On Oct. 29, 2019, the Immigration Law Committee of the Philadelphia Bar Association offered a program about immigrant visa applications, the obstacles attorneys and clients face and ways to avoid or overcome those obstacles. The presenters were Wendy Castor Hess, course planner and cochair of the Immigration Law Committee; Alex Isbell, partner at Solow, Isbell, & Palladino, LLC; Rachel Evans, paralegal at Solow, Isbell, & Palladino, LLC; and Cheyenne Lash, legal assistant at Landau, Hess, Simon & Choi.

Foreigners entering the U.S. do so with either a nonimmigrant or an immigrant visa. Nonimmigrant visas are temporary for entering the U.S. for a specific time period and for a specific purpose, such as for work or school. People applying for immigrant visas intend to live and work in the U.S. permanently. There are two ways to get lawful permanent status: apply from within the U.S. by requesting an adjustment status; or via consular processing, which means applying for permanent residency from overseas. If a client is statutorily ineligible to apply for lawful permanent status here in the U.S., they might be able to travel outside the U.S. for consular processing.

Visa applications within the U.S. are handled by the United States Citizenship and Immigration Services, an agency of the Department of Homeland Security, whereas visas processed outside of the U.S. are handled by the consulates under the Department of State. Although the rules and processes should be the same under both agencies, they are not. Sometimes when an immigrant petition, commonly referred to as a green card petition, goes from USCIS to the Department of State, there is a de novo review. There is also a presumption of fraud.

Attorneys must carefully consider when to recommend consular processing because “the worst thing would be to send the client overseas and the client does not come back,” said Hess. There are unfortunate situations where a person can be stuck and be prohibited from returning to the U.S. for a number of years. It is crucial for attorneys and their staff to be thorough not only in the intake questioning but throughout the representation as well. Attorneys have to be creative and ask the same question a multitude of ways in order to uncover any potential red flags with a client’s application. Criminal background, for instance, plays a huge role in immigrant visa processing. Alex Sobel asks continued on page 17

Becoming a Franchisor or a Franchisee

By Gregory E. Scott

A client’s decision to become a franchisor or a franchisee can be a daunting decision, and an attorney’s advice on the rules and regulations governing such an endeavor may be essential to the client making the right decision on the model of growth their business takes. “To Be or Not To Be A Franchisor or Franchisee” was a Dec. 17, 2019 CLE hosted by the Franchise Law Committee, which informed attendees on the regulatory basics a client should be aware of when contemplating whether they should enter into a franchise agreement. This CLE was paneled by Harris J. Chernow, of Reger Rizzo Darnall LLP and cochair of the Franchise Law Committee; Charles S. Martion, of Blank Rome LLP; and Craig R. Tractenberg, of Fox Rothschild LLP.

The CLE provided foundational information on areas of franchise law that an attorney must be familiar with when advising a client who is contemplating entering or creating a business franchise. Franchising is a model of economic growth beyond routine trademark license agreements. It is a model of duplication and brand recognition where a business can be duplicated with consistency from controls built into the agreement. Such agreements are subject to concurrent Federal Trade Commission regulations and state regulations, depending on the jurisdiction your client is located.

The FTC’s 2007 amendments require that all franchisors provide prospective franchisees with a Franchise Disclosure Document, formally known as a Uniform Franchise Offering Circular. An FDD must contain 23 separate categories of information, which include, but are not limited to: information on franchise offices; information on other franchisees; notice of pending litigation the franchisor is a party thereof; the franchisor’s business experience and expertise; pending bankruptcy proceedings of the franchisor; initial fees; additional or hidden costs; assistance the franchisor will provide before and after opening the franchisee’s branch; duties and limitations imposed on the franchisee; and the trademark agreement, among other disclosures.

The purpose of the FDD is to facilitate informed decision-making and to prevent deception on the part of the franchisor against the franchisee. To this end, the FTC mandates a “cooling off period,” where a franchisee may walk away from a signed franchise agreement after the FDD is provided and before consideration is provided. The 2007 FTC amendments attempted to harmonize the regulatory requirements at both the federal and state level. However, key distinctions remain. One such distinction is that FTC regulations do not provide for a private right of action for a breach of FDD requirements. The FTC enforces compliance with FDD requirements itself. However, many state regulations provide private right of actions for FDD breaches. Such distinction highlights the importance of familiarity with both federal and state regulations, which may govern a client’s potential franchise agreement. The panel’s full discussion offered valuable insight on such rules, regulations and distinctions.
By Mary LeMieux-Fillery

The Glenn Mills School was an open secret to an unavoidable fact, the juvenile residents suffered routine abuse at the hands of the staff. Lisa Gartner, the investigative reporter for the Philadelphia Inquirer who broke the story, participated in a panel discussion highlighting the abuses that occurred at the school. This panel discussion was hosted by the Legal Rights of Children Committee on Dec. 17, 2019, at the Philadelphia Bar Association.

Gartner’s attention was first drawn to the Glenn Mills School when she heard about the story of a 17-year-old resident who was strangled by his sweatshirt, dragged up the stairs and beaten to death. The Glen Mills School had reported this as an isolated incident, but Gartner quickly learned that this was far from the truth. She began her...
Community Gardens

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Initiative attempts to help these long-standing community garden groups by filing adverse possession claims, which is a legal concept that was first codified thousands of years ago in the Code of Hammurabi for, of all things, abandoned gardens. The elements of adverse possession include: (1) actual modifications; (2) open and notorious; (3) exclusive; (4) hostile; (5) under cover of claim or right; (6) and continuous and uninterrupted, for the statutory time period. Griffin noted that “hostile” in this context does not mean confrontational dispute. It simply refers to being against the interest of the record title holder. If a property owner gave permission to the gardeners, then the element of adversity cannot be met, and an adverse possession claim cannot be made.

The mechanics of filing an affirmative adverse possession claim on behalf of a community garden group begins with determining if the land has been continuously cultivated and continuous from page 1

By Charlotte Perbet, Claire-Astrid Bernard, Lucas Martin and Andrew Timmick

American and French students in the Lyon–Philadelphia bar exchange program recently participated in a presentation at McElroy, Deutsch, Mulvaney & Carpenter on Nov. 19 that was organized by the International Law Committee.

Charlotte Perbet, an intern at McElroy, Deutsch, addressed differences between the French and American judicial systems. France is a centralized country and has a unique Parliament, which votes on laws for the entire country. Departments and regions have only limited functions, but not legislative powers.

There is also no jury in French courts, except for criminal cases, where jurors serve with judges at trial and appellate levels, ruling together on the defendant’s guilt. In civil and administrative courts, only judges render decisions. In France, legally trained judges are considered more likely to render a fair decision than jurors with no legal experience. Judges are professionals who undergo a different examination than attorneys after studying law at university and receive special training at the National School for Magistrates.

Claire-Astrid Bernard, an intern at Blank Rome, compared the French and American processes to becoming an attorney. While French students must study law from their first year of university, American students can pick the academic subjects of their choice. Most French students study law for five years in college and obtain a general bachelor’s degree in law, then a master’s degree in a special legal field, before entering law school.

Another major divergence is the bar exam. In the U.S., the bar is the ultimate exam after the completion of law school. In France, it is the exam to enter law school. If applicants pass this difficult test, they attend law school for two years, during which they learn legal practice.

While interning at Lamy Lexel in Lyon, Andrew Timmick, a Penn Law student who is the inaugural recipient of the International Law Committee Lyon Internship Fund stipend, conducted research on access to justice for people who struggle with poverty, abuse and discrimination. He focused on l’aide juridictionnelle, a program which allows people of low incomes to pay little to no cost for legal services, and l’accès au droit, which allows clients free access to legal consultations with volunteer attorneys, regardless of their financial situation.

The Lyon Bar also sponsors efforts that look more like pro bono practice in the U.S., including a program that allows members to work on lifting improperly issued Interpol Red Notices and a project to support human rights attorneys in Turkey.

Lucas Martin, an intern at Pepper Hamilton, addressed differences between approaches to international arbitration.

U.S. v. France Law Education, One Journey, Two Paths

Presenters Charlotte Perbet (far left), Claire-Astrid Bernard (second from left), Andrew Timmick (second from right) and Lucas Martin (far right), with Michael Scullin (third from left) of McElroy, Deutsch, Mulvaney & Carpenter LLP and founder and director of the Lyon-Philadelphia Attorney Exchange Program at the Nov. 19 program.

A potential difficulty is finding and serving the absentee property owner. A thorough search should be done by examining the register of wills, social security records and postal records, and by posting public notice. If none of this research produces a defendant owner, then, at times, courts will grant alternative service motions and eventual summary judgment.

Griffin stressed that if there are any green-minded attorneys out there who are interested in helping community garden groups establish property rights, to please contact her at the Public Interest Law Center. The organization has created packets of materials to help legal volunteers assist gardeners to keep Philadelphia neighborhoods green and healthy. There is, after all, more than one way to plant a garden.

Leah Cilo (lcilo@paworkinjury.com) is an associate at Martin Law LLC.
and sometimes for plea hearings. Next, for pre-trial motions, the judges insisted that Daubert motions are overused and to be judicious with filing motions for limine. Judge Kearney stated that motions in limine should not be used as another crack at filing a summary judgment motion.

For trial, the panelists emphasized the importance of appearing on time, wearing appropriate dress, and ensuring that your technology works. The lawyer panelists advised visiting the courtroom before the trial date to become familiar with the room. Both judges stated that lawyers should submit exhibit books before trial to allow the exhibits to be brought in before the trial date. Goldberg stated that he believes opening statements are more important than closing statements. To the judges, the best opening statements are the ones that are concise and not argumentative.

The panelists also mentioned some considerations for voir dire and for witnesses. First, in voir dire, the panelists recommended that a lawyer ask questions that help identify one’s least favorite juror, and to identify jurors who will be fair and impartial. The panelists stated that a lawyer should only call witnesses that will help prove an element of their case.

Overall, the panelists repeatedly emphasized that lawyers familiarize themselves with the local rules and the assigned judge’s policies and procedures.

E. Alexander Hammershaimb is an associate at Wilson Elser Moskowitz Edelman & Dicker LLP.
several questions to determine if a client has ever been convicted. "I’ll ask them if they have ever ridden in the back of a police car, or ever been in a police station or handcuffed, or if they have had their fingerprints taken. The relationship between criminal law and immigration law is so nuanced that attorneys need to dig deeper," he said.

Attorneys need to verify the information about a client’s history regarding entry to the U.S., criminal background, and other considerations. Tattoos can be problematic because they can be interpreted as evidence of gang affiliation. Drug and alcohol use can also bar entry if the consulate in charge of processing wants to reject based on the person being an addict. Attorneys have legal and ethical obligations to their clients and should advise against consular processing if the risk of barring reentry is too great.

Elisa C. Advani is an attorney at Central Legal Services and is Editor-in-Chief of the Philadelphia Bar Reporter.

U.S. v. France
continued from page 15

Charlotte Perbet at the Nov. 19 program.

French and American legal infrastructures are both arbitration friendly. Both Paris and New York have highly effective arbitration centers, excellent lawyers and top-quality facilities.

The main difference lies in challenges to an award and enforcement proceedings. American judges sometimes apply the “Manifest Disregard” doctrine, which arguably goes beyond the grounds specified in the U.N. New York arbitration convention. French judges tend to more strictly apply the rules of the convention. U.S. courts are more likely to respect a foreign court’s annulment decision. By contrast, French courts will disregard a national court’s annulment, instead independently analyzing the award for consistency with the convention. The award is considered an international judicial decision, as opposed to one arising out of national courts or legislation.

Charlotte Perbet, Claire-Astrid Bernard and Lucas Martin are interns at McElroy, Deutsch, Mulvaney & Carpenter, Blank Rome LLP, and Pepper Hamilton, respectively. Andrew Timmick is a student at Penn Law and the recipient of the International Law Committee Lyon Internship Fund stipend.
Philadelphia VIP: A Friend and Ally to Nonprofits

By Sophie Bryan

Nonprofit organizations play an essential role in supporting the health and vitality of Philadelphia residents and communities. In prioritizing scarce resources for service provision, nonprofits often lack the financial capacity to hire an attorney when legal issues arise, as they almost inevitably do. A local nonprofit seeking to establish a recovery house for men with addiction challenges recently found itself in this position.

The nonprofit had purchased a property from another entity that provided recovery services. Only afterwards did it learn the property was not zoned to allow a recovery house. The nonprofit needed a zoning change to provide essential services to its clients, and anticipated it might face community opposition.

The nonprofit came to Philadelphia VIP for assistance, and VIP enlisted two outstanding volunteer attorneys: Robert Careless, a real estate and tax lawyer at Cozen O’Connor, aided by his associate Max Weiss, then a real estate lawyer at Cozen who has since become Director of Legislation and Policy for City Councilmember Jamie Gauthier.

Bob and Max leapt into action, filing an application for a special exception with the Zoning Board of Adjustment. Prior to the ZBA hearing, a community meeting would take place, at which the local civic association would decide whether to support or oppose the nonprofit’s application. Bob contacted the association, knowing how important its support would be. The civic association said it would oppose the special exception and would not meet with Bob informally before the community meeting.

The nonprofit and its volunteer attorneys had to win over a skeptical audience, and fast.

At the community meeting, Bob and the nonprofit’s executive director made a presentation showing that: (1) the nonprofit complies with state and national health/safety standards and ethics; (2) the property issue was compliant with all safety/building-related code requirements; (3) up to 10 men could reside in the property comfortably; and (4) the nonprofit has collaborative partnerships city-wide, affording access to a wide range of resources to assist its clients, and no medical treatment would occur on-site.

As importantly, they rallied dozens of neighbors to support the nonprofit at the meeting. Neighbors testified to the nonprofit’s track record of community engagement and investment, including efforts to clean and beautify the local streets and taking part in church services and functions. Bob also presented letters of support from local residents, and at writing an actual letter of support to the ZBA.

After Bob and Max provided this same information to the local city councilmember, the councilmember submitted a letter of non-opposition to the ZBA, referencing the supportive letters and petition. And, in an exceptionally rare turn of events, the civic association moved from opposition to writing an actual letter of support to the ZBA.

After Bob had thoroughly addressed all of the legal issues at play, and persuaded community members, the civic association and the councilmember to reverse their initial positions and support the nonprofit, the ZBA approved the special exception. In the face of the tragedy of addiction, the difficulties of recovery and often divisive politics, Bob and Max’s efforts to support recovery efforts and their success in uniting groups that began as opponents were remarkable, and so very welcome.

Sophie Bryan is the executive director of Philadelphia VIP
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As Philadelphia and cities across the country prepare for the annual Point-in-Time (PIT) Count – where outreach workers and volunteers canvas the community to capture the number of people experiencing homelessness – our most vulnerable neighbors endure cold winter nights sleeping in the streets. During the PIT Count last January, over 1,000 Philadelphians were found living without a roof over their heads. While street homelessness is nothing new, the growth of encampments has made this long-existing crisis more visible and, consequently, more politicized. In Sept. 2019, the White House issued a report entitled “The State of Homelessness in America.” Calling for the criminalization of homelessness and questioning the effectiveness of Housing First programs, the report is a cause of concern.

Given the Trump administration’s alarmingly punitive approach to “solving” homelessness, it is increasingly important to reflect on current policies surrounding homelessness in Philadelphia. The Homeless Advocacy Project strives to protect the civil rights of our clients while also advancing their overall health and well-being. HAP is committed to providing a holistic approach to lawyering that aims to break the cycle of homelessness through direct representation and systemic change. This approach is best exemplified by HAP’s continuous work with individuals living in encampments throughout Philadelphia.

One week after the 2019 PIT Count, the City of Philadelphia completed the Encampment Resolution Pilot by clearing out the last remaining homeless encampment in Kensington. With an understanding of the critical need to be flexible and accessible, HAP launched the Duffy Kensington Advocacy, Representation, and Empowerment Project to better respond to the unique challenges of those living in the encampments and safeguard the human dignity of its residents. Less than 24 hours after the last tent was torn down, HAP started a now bimonthly legal clinic at the Kensington Storefront, a community art space frequented by individuals displaced by the encampment closures. HAP also submitted an amicus brief in support of Safehouse—an overdose prevention site—and was awarded funding through the Statewide Opioid Response Housing and Support Services grant to help alleviate the devastating impact of the opioid crisis within the homeless population.

Witnessing the tremendous impact of targeted engagement with the street homeless population, HAP is able to dispel many proposed “solutions” offered by the Trump administration. When outreach workers heavily engage with encampment residents by offering resources and services that acknowledge the realities of homelessness, more individuals are able to move towards the path of recovery. Housing First programs only strengthen these efforts, as would Safehouse.

Despite the initial success of the Encampment Resolution Pilot, city officials recently proposed a new policy that shifts towards a punitive, rather than holistic, approach when dealing with any individual sleeping in a tent. As current case law suggests, Philadelphia cannot criminalize sleeping outside when people have nowhere else to go. Given the lack of adequate emergency shelter and behavioral health beds available throughout Philadelphia, HAP’s ongoing advocacy to challenge this latest directive governing encampments will be critical to protecting the dignity and civil rights of our clients.

Alie Muolo is a HAP Duffy Fellow.

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DLSC IN THE COMMUNITY - GOOD SHEPHERD MEDIATION PROGRAM

Philadelphia’s Eviction Crisis and How GSMP Helps

By Sue Wasserkrug

The eviction crisis in Philadelphia surely is not news to readers of this publication: more than 20,000 eviction proceedings are filed here every year. Several of the outstanding public interest legal organizations in this city devote both staff and volunteer time and expertise to assisting those who face eviction, but they are unable to serve all who need representation.

At court, landlords and tenants are offered an opportunity to resolve their case before appearing before a judge. If neither party is represented, they meet with a neutral mediator, provided by the court, who facilitates a conversation to see if the issues can be resolved in a way that works for both parties. If one party is represented, that attorney simply negotiates with the pro se party, without a neutral mediator.

The concept of resolving eviction proceedings through mediation was introduced to landlord-tenant court in Philadelphia many years ago by Sister Brigid Lawlor, founder of Good Shepherd Mediation Program (GSMP). Mediation has become an important option for renters and landlords once they find themselves in court. Similarly, GSMP has become a valuable resource for those who choose to resolve conflict outside of court.

In 2017, Mayor Jim Kenney created a Task Force on Eviction Prevention and Response to tackle the problem of eviction, which puts about one in 14 renter households in Philadelphia at risk of losing their home. Among the Task Force’s recommendations was a call to reduce the number of eviction filings—not just eviction proceedings—but landlords and tenants to resolve disputes before they escalate to the point that the landlord files for eviction. The rationale was that even if a case is resolved in court, the presence of an eviction filing on a renter’s record can have a negative impact on their ability to rent elsewhere.


As a result, the city’s Office of Community Empowerment and Opportunity engaged Good Shepherd Mediation Program to pilot a program through which landlord and tenant organizations can refer parties to GSMP for mediation, before an eviction is filed, at no cost to either party. Of course, GSMP has been mediating disputes between landlords and tenants since our founding in 1984, but, until now, most of the cases we have handled have not involved eviction.

In the alternative dispute resolution world, we like to say that mediation is a “win-win” when parties agree on a resolution to their problem, whereas court is, at best, “win-lose.” Pre-filing mediation is actually a win-win-win: the tenant avoids eviction and its disruptive consequences, the landlord avoids the costs of court and an empty unit, and the city saves money it would spend on shelter and social services for those renters who become homeless after an eviction. In general, disputants are able to resolve their differences through mediation about 85% of the time, and GSMP’s success rate is closer to 90%. GSMP looks forward to facilitating wins for all Philadelphians.

Sue Wasserkrug, (SWasserkrug@phillymediators.org), is the program director at the Good Shepherd Mediation Program.

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Rule 8.3: Reporting Other Lawyers

Sometimes known as “the rat rule,” ABA Model Rule 8.3 requires every lawyer to report certain professional misconduct by other lawyers to the appropriate disciplinary authority.

As a matter of professional responsibility, we attorneys are mandated reporters of other lawyers, and we were mandated reporters long before statutory mandated reporting became “a thing” in the 1970s and 1980s, first in the medical profession, and then in the social and human services generally.¹

Reporting on another’s misconduct is always a sensitive subject; one instinctively doesn’t want to be a squealer. We all learned in kindergarten it’s not nice to be a tattletale. But sometimes we must tell on someone, for the good of the profession.

So, when do you report another lawyer’s ethical misconduct, and how do you do it?

The brief language of Rule 8.3 is deceptively simple.

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

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¹ By statute in every state, mandated reporters include all professionals in such fields as education, health care, social services, childcare, mental health, law enforcement, correctional services, and clergy. Mailed reporters are required to report immediately upon learning of maltreatment (e.g., sexual or physical abuse or neglect of a minor or vulnerable adult).

Michael Churchill, of counsel to the Public Interest Law Center, was honored with the Drum Major for Civil Rights Award at the Philadelphia Martin Luther King Jr. Association for Nonviolence’s annual awards luncheon on Jan. 20 at the Philadelphia 201 Hotel.

Guy D’Andrea, of Laffey, Bucci & Kent, has been named Chair of the Young Lawyers Council of the National Crime Victim Bar Association, the nation’s only organization of attorneys and expert witnesses dedicated to helping victims of crime seek justice through the civil court system.

Michael B. Hayes, partner at Montgomery McCraken Walker & Rhoads LLP, is the new president of the Homeless Advocacy Project board of directors.


Gina Rubel, CEO of Furia Rubel Communications, Inc., has been appointed as cochair of the Philadelphia Bar Association’s Law Firm Risk Management Committee by 2020 Chancellor Hon. A. Michael Snyder (Ret.).

Robert Sing, has joined the law firm of Duffy + Fulginiti. A former law school intern at the practice, he will focus his practice on all areas of personal and catastrophic injury on behalf of plaintiffs.

Hon. Daniel R. Sulman was appointed by Pennsylvania Gov. Tom Wolf to a seat on the Philadelphia Court of Common Pleas, where he sits in the Family Court Division.

“People” highlights news of members’ awards, honors or appointments of a community or civic nature. Send news to Brittany Anne Robertson, communications associate at the Philadelphia Bar Association, at brobertson@philabar.org.

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