Recognizing concerns over numerous actions taken by Sen. Jefferson Beauregard Sessions III that call into question his qualifications as U.S. Attorney General, the Board of Governors unanimously adopted a resolution on Dec. 15 urging Sen. Bob Casey Jr., Sen. Pat Toomey and other members of the U.S. Senate to thoroughly investigate and assess all of the issues listed in the resolution at the forthcoming Senate hearing to determine whether or not Sen. Sessions should be confirmed for the position of Attorney General.

Continued on page 2

Pro Bono Service to Be Chancellor’s Focus for 2017

By Thomas E. Rogers

Surrounded on the dais by representatives of the more than 40 legal services organizations in Philadelphia, Deborah R. Gross, of counsel at Kaufman, Coren & Ress, P.C., ascended as the Philadelphia Bar Association’s 90th Chancellor on Dec. 7 on a platform of highlighting and expanding pro bono service.

Before being elected Vice Chancellor in 2014, for more than 12 years Gross was a trustee, an officer and president of the Philadelphia Bar Foundation, which provides grants to more than 30 legal services organizations in Philadelphia.

“Philadelphia is in a unique position of having more than 40 different legal services organizations as champions for those who are vulnerable or who are living at or below the poverty line,” Gross said at the Association’s Annual Meeting Luncheon at the Hyatt at The Bellevue. “These organizations fight for justice and make our legal system more fair.”

“While I know many of us have provided monetary support for their endeavors, and many of us have provided pro bono support as well…we need to step up our game and step out of our comfort zones,” the Chancellor said. She spoke about the 2016 Young Lawyers Division Expungement Clinic, of which she was a volunteer attorney, telling the audience “My nervousness and fright were overcome by the warmth and kindness of the people whom I helped.”

“My focus this year is three-fold,” Gross said. “First, supporting the legal services community and the individuals whom they serve; second, encouraging greater pro bono efforts by all lawyers; and third, creating a new pro bono task force that will report broadly and publicly our progress in the last 15 years since a task force was impaneled by Chancellor Allan H. Gordon.”

“We are embarking on unchartered waters where there are real concerns for the rule of law, due process, individuals’ constitutional and civil rights, as well as a threat of decreased federal and state funding,” Gross said. “Regardless of our personal politics, none of us wants to see constitutionally protected rights of individuals and families compromised by new state or national reforms. The legal aid nonprofits… continued on page 13

Chancellor Deborah R. Gross gives her inaugural address surrounded by representatives of the more than 40 legal services organizations in Philadelphia at the Dec. 7 Annual Meeting Luncheon at the Hyatt at The Bellevue.
Board Urges Pa. Supreme Court to Opt Out of Categorical Bar

The Board of Governors unanimously adopted a resolution on Dec. 15 urging the Supreme Court of Pennsylvania and the Pennsylvania Board of Law Examiners to opt out of the categorical bar on professional licensing of immigrants without legal status and adopt rules providing for the admission of qualified candidates to the bar regardless of immigration status.

U.S. citizenship is not a requirement to practice law in Pennsylvania, and immigrants, particularly undocumented immigrants, face major barriers in obtaining higher education, including law degrees. The Philadelphia Bar Association is committed to advancing diversity and inclusion in the legal profession and to removing obstacles to participation in the profession based on national origin. Many immigrants currently without legal immigration status entered the U.S. with some form of lawful status, such as a visa; and numerous immigrants obtain legal status, such as asylum, only after arriving in the U.S. Many undocumented immigrants were brought to the U.S. as children, unaware of their immigration status, and being present in the U.S. without lawful status is not a crime.

Immigrant communities, and particularly communities of undocumented immigrants, are underserved by the legal profession. Approximately 180,000 immigrants are currently without legal immigration status and undocumented immigrants are at a heightened risk of discrimination and violation of their legal rights. The difficulty of obtaining legal redress is heightened for immigrants who have limited English proficiency and are unfamiliar with the American legal system, and who may fear retaliation.

Attorneys with ties to underserved immigrant communities and foreign language skills are well-positioned to help close this access-to-justice gap. 8 U.S.C. § 1621 prohibits states from granting benefits including professional licenses to immigrants without legal status, unless the state affirmatively chooses to opt out of this categorical bar. Pennsylvania has delegated exclusive authority over the licensing of attorneys to the courts. The Supreme Court of Pennsylvania has the power to opt out of the licensing restrictions contained in 8 U.S.C. § 1621; and the Supreme Court of Pennsylvania has delegated to the Pennsylvania Board of Law Examiners the responsibility for recommending rules pertaining to admission to the bar.

Sen. Sessions’ acts and words have called into question his regard for the rule of law and desire to protect basic civil rights. When nominated in 1986 to serve as a U.S. District Court judge, the Senate refused to confirm Sen. Sessions after being presented with accusations that he made several controversial and racially insensitive statements, including that he considered the American Civil Liberties Union, the NAACP Defense Fund and the National Council of Churches “un-American.”

“Irrespective of political views, Sen. Sessions’ past, including his actions and words regarding civil rights, raises questions and calls for a discerning, objective look at his nomination, particularly given the nature of the office,” said Matthew S. Olesh, chair, Young Lawyers Division, who helped draft the resolution.

Absent complete and satisfactory explanations from Sen. Sessions regarding each of the serious concerns raised in the resolution, the Philadelphia Bar Association urges all members of the U.S. Senate to vote against the confirmation of Sen. Sessions as U.S. Attorney General.

To view the full resolution, visit PhiladelphiaBar.org.
Moving Forward as a Unified Bar

By Deborah R. Gross

Despite anyone’s political views, since the presidential election, “uncertainty” seems to be a popular buzzword in conversations about the future of our profession, our country and our legal services community.

As we prepare for the year ahead, this is also a time when we often reflect on the year we just completed. Before talking about the challenges and opportunities for 2017, I would like to take a moment to thank our Immediate Past Chancellor Gaetan J. Alfano for his last year of service and congratulate him on everything he, our Association members and staff accomplished in 2016.

Gaetan’s focus on fiscal responsibility, relevancy and sustainability and growing membership was remarkable. In fact, we gained 455 new members (net) in 2016. That may be the single greatest testament to all of the hard work and efforts to increase member benefits (which were tripled last year), advocacy for our members, and overall improvement of the membership experience.

Speaking of advocacy, last year the Association adopted 17 resolutions on very important topics, fought against the proposed sales tax on legal services—which in all likelihood we will have to do again in 2017—and published a number of op-eds and letters to the editor in various news media.

In addition, we hosted well-attended, timely and topical Chancellor’s Forums. These forums focused on criminal records as a barrier to equality, the proposed sugary drink tax, the attorney general race and more. Equally notable, the Association hosted nearly 150 CLE courses in 2016, in less than a full-calendar year of becoming our own CLE provider.

Furthermore, given the notable success of our YLD Expungement Clinic, we are looking to host another one in 2017. We also are looking to host clinics on several topics, ranging from criminal records to immigration due process to name changes. This will be a topic of discussion this month at our Bar Leaders Retreat.

In the interest of time, please note that a name change clinic will be held the evening of Jan. 25. Volunteer attorneys are needed to staff the clinic, which will be held at the William Way LGBT Community Center from 5:30-8:30 p.m. The first hour will include a CLE training. The Association will share details Bar-wide via email and on PhiladelphiaBar.org as soon as they are available.

We can all agree that our legal services community and community-at-large gravely need our help and we need to do better. With so much uncertainty in the world, given our skill sets and unique position to contribute to the betterment of society to the best of our ability, we must move forward as a unified bar.

Deborah R. Gross (dfgross@tker-law.com), of counsel to Kaufman, Coren & Revs, P.C., is Chancellor of the Philadelphia Bar Association.

ATTORNEY DISCIPLINARY / ETHICS MATTERS
STATEWIDE PENNSYLVANIA MATTERS
NO CHARGE FOR INITIAL CONSULTATION

Representation, consultation and expert testimony in disciplinary matters and matters involving ethical issues, bar admissions and the Rules of Professional Conduct

James C. Schwartzman, Esq.
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• Former Chairman, Disciplinary Board of the Supreme Court of Pennsylvania
• Former Chairman, Continuing Legal Education Board of the Supreme Court of Pennsylvania
• Former Chairman, Supreme Court of Pennsylvania Interest on Lawyers Trust Account Board
• Former Federal Prosecutor
• Selected by his peers as one of the top 100 Super Lawyers in Pennsylvania and the top 100 Super Lawyers in Philadelphia
• Named by his peers as Best Lawyers in America 2015 Philadelphia Ethics and Professional Responsibility Law “Lawyer of the Year,” and in Plaintiffs and Defendents Legal Malpractice Law

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These are interesting times. Regardless of your political affiliation, I think it is safe to say that a lot of what has happened of late on both the domestic and global stage is uncharted territory, and as a result there is some degree of uncertainty as to where the path forward will lead. We are in the midst of moving on from a campaign season that was unquestionably tense and objectively fascinating, where the discourse and messaging was unlike any that I can recall in recent memory.

One of the more concerning things to come out of the campaign season was the manner in which civil rights were discussed. Statements were made by many – including our current president-elect – that could have far-reaching implications on the rights of many different groups. Immigrants, Muslim Americans, the LGBTQ community, African-Americans and women, to name a few, all heard statements made that – if followed through with action – could have a real impact on their rights.

As an association of politically diverse members, we must remain non-partisan. However, we also must speak up and, when necessary, take appropriate action when proposals are made that can impact what we stand for – which include the promotion of justice and protection of civil rights. As attorneys, we are uniquely situated to have a meaningful impact through these efforts.

As Chair of the Young Lawyers Division for 2017, I am committed to these principles. I hope that you will join me this year in taking action when it is necessary to help those individuals whose rights may be affected by policy proposals that are antithetic to what we stand for and our own mission, values and principles.

As the largest and one of the most active sections of the Philadelphia Bar Association, the YLD can wield real power to make a meaningful impact. We not only have strength in numbers, but we are fortunate to have an Executive Committee that is filled with unbelievably smart, passionate and dedicated young attorneys. One need look no further than the Expungement Clinic that YLD attorneys organized just a few short months ago to see our ability to make positive change happen and make a real difference in people’s lives. This is just one of many examples. Not only will we seek to build upon the success of the Expungement Clinic, but we will strive to use it as a model to meaningfully impact other causes.

Of course, we will continue to do all of the things that we do each year to benefit and support our own membership. We will continue to provide legal education and mentoring to our members. We will continue to provide opportunities for networking. We will advocate for positions on issues that are important to our constituency. And we will continue to be active in performing community service. Right now, however, our ability to use and expand upon our legal skills to further the protection of civil rights can truly be our most important asset.

I hope that you will join me in these endeavors, and look forward to a great 2017.

Matthew S. Olesh (molesh@chamberlainlaw.com), senior counsel at Chamberlain, Hrdlicka, White, Williams & Aughtry, is chair of the Young Lawyers Division.

YLD celebrates another year of hard work and camaraderie

The Young Lawyers Division celebrated 2016 at its Annual Holiday Party, Award Ceremony and Gift Drive at Top of the Tower on Nov. 30. Below: Erin E. Lamb, 2016 YLD chair (left); Dana Gittleman, YLD secretary (second from left); and Matthew S. Olesh, YLD chair (right); presented Jamie Gullen, attorney, Community Legal Services (center, right; left to right); Meghan Claiborne, co-chair, Young Lawyers Division Expungement Clinic; and John Coyle, co-chair, Young Lawyers Division Expungement Clinic; with the 2016 F. Sean Peretta Service Award for their work on the Nov. 12, 2016 Young Lawyers Division Expungement Clinic. Top right: Philip D. Amoa, associate, McCarter & English, LLP, was presented with the 2016 Craig M. Perry Service Award by Vincent N. Barbera, YLD chair-elect, at the Ceremony. Middle right: Representatives from U.S. Legal Support, Inc. were presented with the 2016 Vision Award by Anna B. Will, YLD treasurer, at the Ceremony.

The YLD also presented Turning Points for Children with donated toys and other items to hopefully make the holidays a little brighter for some underprivileged kids in Philadelphia. Bottom right: Immediate Past Chancellor Gaetan J. Alfano (left to right); Chancellor Deborah R. Gross; Eartha Holland, director of development, Turning Points for Children; Erin E. Lamb, 2016 YLD chair; and Matthew S. Olesh, YLD chair; with donations for Turning Points for Children at the Annual Holiday Party, Award Ceremony and Gift Drive.
CONTINUING LEGAL EDUCATION
PHILADELPHIA BAR ASSOCIATION
My Membership. My CLE.

JANUARY CLE COURSES

VIDEO ENCORE - So, Have You Updated Your Construction Contract Forms
Tue., 1/10/17 - 10 a.m. - 12 p.m. (1 SUB/1 ETH)
This VIDEO ENCORE CLE will actually explain risk transfer provisions in construction contracts so that you can effectively protect your construction-related clients. Due to the inherent risk in construction projects, contractual risk transfer provisions are important whether you represent owners/developers, contractors or subcontractors. This CLE will provide a practical and entertaining overview of indemnification provisions and insurance requirements in construction contracts so that you can better protect your clients.

VIDEO ENCORE - Be the Judge, Be the Jury... Become an Arbitrator!
Wed., 1/11/17 – 12 - 3 p.m. (2 SUB/1 ETH)
If you missed the live presentation of this practical and entertaining presentation, you can attend this video encore and learn how to conduct your first or next arbitration. Compulsory arbitration was created as a means of efficiently disposing of smaller civil cases and conserving judicial resources by requiring as a first step that such cases be tried before a panel of three local court-appointed attorneys, with the understanding that any party can later appeal from the decision and obtain a new trial. Experienced practitioners offer guidance and practical strategies to successfully conduct an arbitration and serve as an arbitrator. Attend this video CLE program and become certified to sit as an arbitrator for the Philadelphia Court of Common Pleas!

Drinking Water Contamination
Tue., 1/17/17 - 12:30 - 1:30 p.m. (1 SUB)
Don’t miss this headline-grabbing CLE issue hosted by the Environmental and Energy Law Committee
Safe and available drinking water is essential to human life. The Safe Drinking Water Act is designed to ensure that public water supplied to homes and businesses is potable and that consumers are alerted to the presence of contaminants or risks. As chronicled in media reports, lead contamination from pipes and other aging infrastructure is the subject of litigation not only in Flint, Mich. but also in other cities including Philadelphia, Chicago and the District of Columbia. The panel will discuss the legal issues arising out of the presence of traditional and emerging contaminants in drinking water.

VIDEO ENCORE - Strictly Speaking: Public Speaking Skills for Lawyers
Thu., 1/19/17 - 12 - 3 p.m. (3 SUB)
Featured Speaker: Past Chancellor John E. Savoth
If you missed this compelling CLE live, you may attend this video CLE presentation and learn the practical tips and techniques to prepare lawyers for any public speaking event. One of the most important skills for lawyers is the ability to speak in public, whether it is before a forum of hundreds or a conference room with only a handful of people in attendance. This course will provide attorneys with the tools to conquer any public speaking engagement, including courtroom arguments and orations, firm presentations, large audience addresses, toasts and eulogies. Through the use of video examples, former Philadelphia Bar Association Chancellor John E. Savoth, offers guidance on effective methods of delivery.

Apple vs. Samsung: Takeaways From the Smartphone Wars
Wed., 1/25/17 - 9 - 10 a.m. (1 SUB)
Join your colleagues and program host, the IP Law Committee, for a networking breakfast prior to the CLE program at 8:30 a.m.
This CLE program examines the ongoing litigation regarding design patent protection for smartphones and covers how appearance and design can be protected through the law. Panelists address the following questions, among other issues: What product shapes are/should be subject to design patent protection? Is that protection different than protection of product shapes under copyright and trademark law; and, if so, how? Do the remedies for design patent protection make it more viable/valuable than protection as trade dress/trademark? Should overlapping protections be available or should the rights holder have to elect one form of protection?

Legal Name Change
Wed., 1/25/17 – 5:30 – 6:30 p.m. (1 SUB)
Legal Name Change Clinic – 6:30 – 8:30 p.m.
William Way LGBT Community Center, Ballroom, 1315 Spruce St., Philadelphia
Transgender people who are transitioning sometimes have to jump through legal hoops to get the documentation changed to reflect their chosen name and gender. Pennsylvania’s laws make it possible but not exactly easy. Many young transgender people are reluctant to take legal steps to get their names changed because they don’t want to deal with the hassle, or because they find official acknowledgement of their wrongly-identified gender and old name to be extremely embarrassing, especially in a courtroom. This CLE program examines the legal processes for name changes and offers step-by-step guidance for assisting clients who wish to change their name and/or gender marker on identity documents and other records. This CLE program serves as training for all volunteer attorneys participating in the Legal Name Change Clinic that immediately follows this program.

VIDEO ENCORE - Mediating a Landlord Tenant Dispute
Fri., 1/27/17 - 12:00 - 2:15 p.m. (2 SUB)
Attendees MUST agree to handle at least one mediation within 30 days of the course in order to receive CLE credits.
Through the Landlord Tenant Appellate Mediation Program (LTAMP), volunteer lawyers meet with parties in landlord tenant disputes that have been appealed from Municipal Court to the Court of Common Pleas before trial and attempt to bring the parties to an agreement through mediation. In this video encore program, lawyers will learn the rules of LTAMP, review the documents used at mediation and hear typical case scenarios. The Philadelphia Bar Association’s Senior Staff Counsel, Public & Legal Services, Amy Seefeld, will be there to answer questions regarding the LTAMP program.

Dealing with Difficult Situations and Negotiating Outcomes
Thu., 1/31/17 – 12:30 – 1:30 p.m. (1 SUB)
A leadership seminar hosted by the Women in the Profession Committee
Effective leaders are skillful negotiators and undeterred by complexity. In this CLE leadership seminar, featured speaker, Dr. Natalie Adelson will equip attendees with the innovative strategies needed to excel in difficult situations and at the bargaining table. Dealing with Difficult Situations and Negotiating Outcomes distills cutting-edge research and real-world examples into a one-hour seminar, where attendees will have a chance to examine their assumptions and biases.

*Additional courses to be added at the end of the month.

TO REGISTER Visit the CLE page at PhiladelphiaBar.org
The Board of Governors unanimously adopted a resolution on Dec. 15 in recognition of the American Bar Association’s Commission on Women in the Profession honoring Roberta D. Liebenberg, senior partner, Fine Kaplan and Black, R.P.C., with the 2016 Margaret Brent Women Lawyers of Achievement Award. Liebenberg received the award based on her professional excellence and extraordinary efforts throughout her career on behalf of women lawyers to shatter the glass ceiling.

Liebenberg has achieved many leadership roles in the Philadelphia Bar Association, having served as chair of the Antitrust Committee and co-chair of the Women in the Profession Committee and the Gender Fairness Task Force. In 2008, she received the Association’s Sandra Day O’Connor Award, given annually to an outstanding woman attorney in the Philadelphia area who has achieved prominence and the highest degree of professional excellence in her field over a sustained period and who has openly and visibly used her position and stature in the community to mentor, promote and advance other women lawyers. From 2008 to 2011 and from 2013 to 2014, Liebenberg served as chair of the ABAs Commission on Women in the Profession, and from 2012 to 2013 served as the first chair of the ABAs Gender Equity Task Force. When Liebenberg accepted the O’Connor Award, she said, “The glass ceiling may be cracking, but it still looms over us.”

“Bobbi was more than deserving of the resolution and of the Margaret Brent award, which was the basis of the resolution. Her high level of professionalism and achievement within her practice as well as her tireless work on behalf of women in the workplace is unmatched,” said Jennifer S. Coatsworth, co-chair, Women in the Profession Committee.

The Philadelphia Bar Association Board of Governors congratulates Roberta D. Liebenberg on receiving the 2016 Margaret Brent Women Lawyers of Achievement Award and further expresses its gratitude and appreciation for her outstanding work throughout her career to advance the standing of, and opportunities for, women in the legal profession.

To view the full resolution, visit PhiladelphiaBar.org.
Handling Your First Federal Case: Tips from the Bench

By Annie Kernicky

An attorney’s first case in federal court may be intimidating, but a little guidance can go a long way in terms of making a good first impression in the courtroom. The Philadelphia Bar Association’s Federal Courts Committee hosted a panel featuring Hon. Mitchell S. Goldberg and Hon. Cynthia M. Rufe, U.S. District Court for the Eastern District of Pennsylvania, to discuss trial mechanics and handling your first federal case on Nov. 16. John Coyle, deputy city solicitor, City of Philadelphia Law Department (center, left); with Michael A. Morse and Lee A. Mariotti, 2016 co-chairs, Federal Courts Committee, at the Committee’s meeting on Nov. 16.

While the Federal Rules are a starting point, they are often amplified by the judge’s preferences. Judges Rufe and Goldberg suggested learning each individual judge’s policies and procedures ahead of trial, available on the court’s website, and ask colleagues who have had experience before a specific judge. Because each courtroom is different in terms of electronic and digital accessibility, Judge Rufe recommended contacting the judge’s deputy clerk or the clerk’s office well ahead of trial to prepare electronic equipment, and cautioned not to simply show up for the first day of trial without previously setting up electronics. She said that, in her experience, the most effective trials make use of digital evidence, and juries are now used to electronics and are expecting it.

When questioning a witness, Judge Rufe explained that she permits an attorney to stand at counsel’s table, instead of at the lectern, if it is necessary for the attorney to have many documents spread out that will be used during the examination. Judge Goldberg does not prefer whether an attorney sits or stands when questioning a direct witness, but advised, if standing, to be sure not to get in the way of the jury and to never sit for cross-examination. When making an objection, both judges agreed that it is respectful to stand. Judge Goldberg mentioned that a pet peeve of his is attorneys giving speaking objections, and noted that if it is necessary for an explanation of the objection, to request a sidebar on the record.

As for jury selection, Judge Rufe said that venire is the first opportunity to see potential jurors and to begin connecting with them. Judge Goldberg requires that the parties each submit proposed voir dire questions in advance, but he cautioned to focus the questions around the scope and facts of the case, and to keep in mind that attorneys are entitled to a “fair and impartial” jury, not to learn everything about every potential juror.

Once the jury is impaneled and opening instructions are given, Judge Goldberg said that the opening statement should get right to the facts of the case, and he encouraged giving long introductions of the attorneys and thanking the jurors. According to Judge Rufe, the opening is more crucial than the closing, and she said that 80 percent of jurors reach an initial conclusion based on the opening statement. For the closing argument, she warned against giving the same recitation of legal instructions that the judge will be giving, and recommended paying attention to the jury’s attention span, which is likely much less than the time permitted.

If the trial involves an expert witness, it is important to clearly explain Rule 702 and the role of the expert when preparing them to make the line of questioning more efficient, Judge Rufe said. As a practice tip, Judge Goldberg suggested that if the expert’s qualifications are not contested, the parties can agree not to object to leading or summarizing qualification questions.

Finally, both judges reminded that, especially for new attorneys looking for courtroom experience, the U.S. District Court for the Eastern District of Pennsylvania offers two pro bono programs where an attorney can often quickly appear before a federal judge; the prisoner’s civil rights panel, where the appointed attorney generally appears for the purpose of representing the plaintiff at a settlement conference and trial, and also the attorney panel for pro se plaintiffs in employment cases.

Annie Kernicky (annie.kernicky@flastergreenberg.com), associate at FlasterGreenberg, is an associate editor of the Philadelphia Bar Reporter.

For details on placing a Lawyer to Lawyer referral ad, contact Lana Ehrlich at 215-557-2392 or lehrlich@alm.com.
Judges Have Broad Power, But Must Explain Decisions

By Leah Cilo

Under the Workers’ Compensation Act and relevant case law, workers’ compensation judges determine the credibility of fact and expert witnesses, and factual and medical evidence, and their fact-finding power is broad. Nevertheless this power is not without limits, because they are also required to explain in their decisions why and how certain factual determinations were made in a well-reasoned manner. See generally Daniels v. Workers’ Compensation Appeal Board (Tristate Transport), 574 Pa. 61, 828 A.2d 1043 (2003) (holding that judges are the ultimate finder of fact, but that they must satisfy the statutory requirement of issuing a reasoned decision when making factual determinations).

The tension between fact finding and drafting a reasoned decision was the subject of a CLE hosted by the Philadelphia Bar Association’s Workers’ Compensation Section, presented by Workers’ Compensation Office of Adjudication Judges Scott Olin, Todd Seelig and Andrea McCormick, titled “Assessing Credibility and Reasoned Adjudication” on Nov. 18.

Generally, the judges described the process of fact finding and judicial articulation as being akin to crafting a mosaic and highlighted the factors that are used to create it. The pieces include the nature and severity of the work injury, the presentation and consistency of the injured worker’s testimony, the physical demands of the pre-injury job, and the employment history of the injured worker. In conjunction with those basic elements, they assess the medical and additional factual evidence that has been presented.

A claimant with a 20-year work history, no prior work injuries and a physically demanding job has a built-in advantage of being found credible. However, injured workers without these attributes and even with negative performance issues can succeed in establishing credibility by having a story that matches up with incident reports and treatment records, which detail a definitive injury. As Judge Seelig said “terrible employees can have work injuries.”

Additionally, Judges Olin, Seelig and McCormick all agreed that when employers attempt to undermine a claimant’s credibility with references to long-ago injuries and vague disciplinary actions, they often over reach. Employer fact witnesses present best when they neutrally criticize a claimant by using actual documentation regarding performance issues and when they have dealt with or observed a claimant directly.

The manner by which a claimant or any fact witness testifies at a hearing is pivotal, because under the case law, a judge’s credibility determination after making an in-person assessment is given greater deference in an appellate setting.

Strong expert medical evidence might seem authoritative to attorneys, but ultimately it is just another piece in building the factual mosaic. Treating physicians can be found to be more credible than specialists when their views are supported by diagnostic testing and medical records. Although Judge Olin said that while a family physician or general practitioner might be deemed credible, the work-related diagnoses might be truncated because of the lack of certified expertise.

Since the mortar that ultimately binds these determinations into a greater factual picture is a well reasoned, written decision, legal practitioners should take care to explain clearly in their briefs why a witness is credible and make specific references to the records and medical documentation in support of that contention. The process is not mysterious, it just has many components.

Leah Cilo (lcilo@paworkinjury.com) is an associate at Martin Law LLC.

CLE Topic Idea?

To submit a topic idea for a CLE course or volunteer to be a course planner or presenter, contact Director of Continuing Legal Education, Tara D. Phoenix, at 215-238-6349 or tphoenix@philabar.org.
Sailing to Distant Shores

"My mother told me, someday I would steer a galley with good oars, and sail to distant shores." – Age-old Viking Song

This is my first column as president of the Philadelphia Bar Foundation. It has been a privilege to serve as a Trustee of the Foundation since 2009. This has been an honor; but more importantly to me, it has been an inspiration. The quality of the people who dedicate their time to the Foundation and the quality of those who work at the various legal service organizations supported by the Foundation is awesome. I am humbled to follow Steven Bizar, partner at Dechert LLP, who provided strong and wise leadership for the Foundation while somehow balancing a busy trial schedule.

The Foundation has ambitious goals to achieve for the cause of equal justice, as I head into my two-year term as president. We are truly sailing to distant shores. I will need your help – all of you – to grab an oar and rally the legal community to fulfill the promise of the exciting opportunities that lie ahead.

But first let me step back and properly introduce myself.

I was born in the Logan section of Philadelphia and grew up in Upper Darby. I have been married for 41 years and have five daughters, one of whom will be graduating from the Temple University Beasley School of Law in May. I seem to be a serial father of the bride with daughters having been married in 2014, 2015, 2016 and one newly engaged and set to be married in 2017.

I attended college at the University of Dayton. I taught high school English for five and a half years after graduating from college. I attended law school in the evening while continuing to teach, becoming a proud graduate of the Temple University Beasley School of Law. I am most appreciative to Temple for affording me the opportunity to attend school at night while working during the day.

I started working at Marshall Dennehey Warner Coleman & Goggin, P.C. in 1979 as a paralegal and have served as the firm’s president and CEO since 2005. My practice has always focused on civil defense litigation. Over the years, I have represented corporations, individuals, and insurance companies on a wide range of issues but focusing most on product liability, premises liability and medical malpractice cases.

At Marshall Dennehey, “community involvement” is one of our core principles. We are deeply involved in and dedicated to the civic and charitable needs of Philadelphia and to all of the communities in which our various offices are located. Members of our firm serve on nonprofit boards and we have been long-term donors in “Raising the Bar” since we were first approached by past Philadelphia Bar Association Chancellor Alan M. Feldman to do so. We have several firm leaders participating on various Foundation and Association Sections and Committees and in other volunteer positions.

My personal enthusiasm for the Foundation’s mission of equal justice is driven by the need – and professional responsibility – to reduce or eliminate the overwhelming barriers facing many disadvantaged Philadelphians. Our city has one of the highest rates of people living in poverty in the nation, more than 25 percent of the population. People struggling with poverty, abuse or discrimination face obstacles that can be insurmountable without timely legal assistance, the kind of legal help that people of means can afford and often take for granted. The lack of access to justice often leads to lost opportunities for education, employment, housing, family unity, health care, safety and much more. These barriers add up to ultimately compromise the ability of individuals to exercise their basic rights and fully participate in our economic and civic systems. Those of us in the legal community with the means to help have an obligation to get involved and ensure our neighbors receive justice.

I fully agree with Chancellor Deborah R. Gross, my dear friend, as she emphasized in her inaugural remarks on Dec. 7 that the legal community must now dig deep and work together, taking collective action to support Philadelphia’s amazing network of nonprofit legal aid organizations. Our shared philanthropic and pro bono efforts can help to protect individual rights, ensure the rule of law and due process, and guard against inequity and intolerance.

The Foundation plays a leading role in these access-to-justice initiatives. It is the only foundation in Philadelphia solely dedicated to supporting our city’s legal aid community. We accomplish this mission by delivering grants and technical assistance in support of the full range of quality legal services, addressing unmet legal needs, and providing education on matters in the public interest. In just the last five years, the Foundation has given vital support through nearly $3 million in unrestricted grants to 38 organizations. Over the next two years, I hope to help steer our little vessel toward an ambitious vision of equal justice for all. I need your help for several key initiatives to successfully reach these “distant shores.”

As Chancellor Gross has emphasized, we must start the funding and construction of an Equal Justice Center. The EJC will be a national model for co-locating dozens of Philadelphia’s legal aid organizations in a central location to strengthen client services and realize operational and cost efficiencies.

The legal community should also aim to significantly increase its philanthropic and pro bono support for access to justice issues. This kind of generosity and commitment is in the best interest of us all, by raising individuals out of poverty, preserving overall community well-being, and improving confidence in the legal profession.

In addition, it is increasingly important for the entire legal community to come together in support of legal aid at the major events sponsored by the Foundation. The Golf & Tennis Classic in June and the Access to Justice Benefit in November are truly fun events for a great cause. The Young Lawyers Division also sponsors an outstanding annual fundraising event benefiting the Foundation. These events provide unique opportunities for the members and leaders of the legal community to raise the profile of our mutual philanthropic efforts.

The leadership, staff and partners of the Foundation work very hard to raise money for the benefit of the 38 legal service organizations that the Foundation supports. One of my priorities as President is to increase the number of attorneys who are engaged in these efforts and to persuade the legal community that the Foundation should be the “default” charity for lawyers. Philadelphia lawyers are busy balancing the demands of their jobs, their families and their communities, especially at certain times in their careers. It is at those times that lawyers should look to the Foundation and the legal service organizations it supports as a place to give money if they cannot give time.

I and other Foundation Trustees will be in touch to help you get involved in these exciting opportunities for progress. Please let me know what the Foundation can do to make this easy and rewarding for you and your firm, corporate legal department or other law-related business.

Thank you for joining us in ensuring equal access to justice for all in the Philadelphia region. Together, we can sail to reach those distant shores.

Thomas A. Brophy (tabrophy@mdwcg.com), president and CEO at Marshall Dennehey Warner Coleman & Goggin, P.C., is President of the Philadelphia Bar Foundation.

Bar Foundation

Donation Opportunity

Contributing to the Philadelphia Bar Foundation shows you care about our justice system and the assistance it provides to the community. With one contribution you are supporting all the public interest legal organizations in the Philadelphia area that serve those who need a lawyer to help them assert their legal rights but who cannot afford one. For more information, please visit www.philabarfoundation.org.
Pursuing Solutions to Climate Change Through Law

By Stephen G. Harvey

Media attention on climate change tends to focus on the risks we face from rising seas, melting glaciers and extreme weather. Solutions receive much less attention, and that is unfortunate because they are exactly where the focus needs to be.

Solutions to climate change and the role of the law and lawyers in those solutions was the subject of a full-day CLE titled “Addressing the Challenge of Climate Change” hosted by the Philadelphia Bar Association, the Pennsylvania Environmental Council and A Call to the Bar on Nov. 16 at Drinker Biddle & Reath LLP.

Nearly 70 lawyers attended. Notable speakers included Jeffrey D. Sachs, world-renowned leader in sustainable development, who appeared remotely by video link from the UN Climate Change Conference in Marrakech, Morocco. Other speakers included John Quigley, former secretary of the Pennsylvania Department of Environmental Protection; Megan Ceronisky, special assistant and associate counsel to the President of the United States; and panels of leading experts including lawyers, law professors, economists, and scientists, all of whom are listed along with the sponsors and agenda in the CLE calendar at ClimateChangeCLE.org.

A major point repeated throughout the day was that finding ways to meet our energy needs while reducing the greenhouse gas emissions that threaten humanity is the great moral and economic challenge of our age. Several speakers noted that the transition to clean energy is already underway and delivering substantial economic benefits to companies and workers in the solar, wind and other clean energy industries. Analysts agree that this trajectory of increasing reliance on clean energy and reduced emissions began and is projected to continue in the near term, without any significant push from government. But reducing emissions continues on page 18.

The Narrowing of Peer Review in Modern Health Care

By Maureen M. Farrell

There is little doubt that the way health care is delivered is changing in Pennsylvania. The delivery of service model is expanding rapidly along with an emerging corporate liability theory. It is common in the modern health care delivery system to outsource delivery services by using independent contractors, consultants and other experts. The hospital is no longer considered an entity employing a physician to produce the physician’s employee performance file after an allegation of negligence against the physician. The plaintiff had gone to an emergency room presenting with symptoms of chest pain. She was diagnosed with esophageal reflux and was sent home. Later, she suffered a massive heart attack. The doctor who conducted the peer review in that case worked for a subcontracted entity. The hospital that contracted with the third party medical provider claimed protection for his findings under the Peer Review Protection Act. The Superior Court of Pennsylvania held that because the only professional health care providers who may conduct privileged peer review are either direct practitioners or administrators of health care delivery facility, the file was not privileged.

“We have not found any meaningful evidence that peer review has made the delivery of health care any safer,” Weitz asked. The question remains. “Do processes cloaked in secrecy make the delivery of health care any safer?” Weitz asked. Legitimate public policy arguments exist for review of this process and to explore whether the act benefits patients and promotes public safety for patients and the public at large.

Maureen M. Farrell (maureen@maureenfarrellesq.com), principal of the Law Offices of Maureen M. Farrell, is an associate editor of the Philadelphia Bar Reporter.

CLE Topic Idea?

To submit a topic idea for a CLE course or volunteer to be a course planner or presenter, contact Director of Continuing Legal Education, Tara D. Phoenix, at 215-238-6349 or tphoenix@philabarb.org.
Cultural Understanding Necessary to Work With China

By Jesse Berwanger

Ever since President Nixon’s historic trip to China in 1973, the country has quickly gone from not trading at all to becoming Pennsylvania’s third-largest trading partner. With Chinese GDP growth far outpacing Western developed economies, more and more companies are now wanting to tap into its growing economy. The difficulties they may face in doing this include mitigating risk, maintaining staff and handling local business culture. The severity of these difficulties can increase especially if they do not have a partner there that can help them navigate the business culture. The Philadelphia Bar Association held a CLE program on Dec. 14 titled “Conducting Business with China, Navigating Law and Culture.” The panel was moderated by Jay M. Borowsky, principal, Law Offices of Jay M. Borowsky, and the speakers included Professor Mo Zhang, Temple University Beasley School of Law; Nan Sato, attorney, Shimin Law Offices PC; Jay M. Borowsky, principal, Law Offices of Jay M. Borowsky; Hon. Kenneth Wong, partner, NavPac Advisors LLC, and commissioner, Governor’s Advisory Commission for Asian Americans & Pacific Islanders; and Professor Mo Zhang, Temple University Beasley School of Law; at the Philadelphia Bar Association CLE on Dec. 14.

Anthony Mak, director, N.Y. Office Hong Kong Trade Development Council (left to right); Nan Sato, attorney, Shimin Law Offices PC; Jay M. Borowsky, principal, Law Offices of Jay M. Borowsky; Hon. Kenneth Wong, partner, NavPac Advisors LLC, and commissioner, Governor’s Advisory Commission for Asian Americans & Pacific Islanders; and Professor Mo Zhang, Temple University Beasley School of Law; at the Philadelphia Bar Association CLE on Dec. 14.

According to Wong, Chinese business people prefer to get to know their clients before entering a business relationship rather than the American practice of locking in a deal first. The Chinese use this practice because it helps develop trust and make the deals easier to form. You do not have to be an expert in business culture but you do have to be aware of their expectations when it comes to business dealings and you must make the necessary adjustments in your business practice.

Jesse Berwanger (berwangerjesse@gmail.com) is a student at Widener University Delaware Law School.

CLE Topic Idea?

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Sensitivity Required When Representing LGBTQ Clients

By Elisa C. Advani

Our LGBTQ citizens are at risk for harm from bias in the criminal justice system, not only as defendants, but even as victims and witnesses. On Nov. 21 the Philadelphia Bar Association’s Criminal Justice Section hosted a CLE program titled “The Representation of LGBTQ Witnesses, Victims, and Defendants in the Justice System” on the damaging effects of bias based on sexual orientation and gender identity. The panel was moderated by Kevin Harden Jr., chair, Criminal Justice Section, and featured Helen “Nellie” Fitzpatrick, director, Office of LGBT Affairs, City of Philadelphia; and Guy D’Andrea, assistant district attorney, Philadelphia District Attorney’s Office, and adjunct professor, Drexel University Thomas R. Kline School of Law.

Gender identity is determined by the individual and cannot be challenged by anyone else, and although legal name changes and gender reassignment surgery exist, these are luxuries that are not required for a person to live as his, her or their authentic self.

Yet sadly, even in death, the identity and dignity of our transgender citizens can be smeared by bias or lazy reporting. D’Andrea prosecuted the case against Raheam Felton for the murder of London Kiki Chanel, a transgender woman of color. “When I started to research the case I noticed so many inconsistencies throughout the paperwork,” said D’Andrea. He said that both the victim and witness were referred to as “he” and “she” and by the birth name instead of the changed name. It is never too late to correct the record, and attorneys must instruct judges on the proper pronouns to use in court proceedings. D’Andrea said how important it was to the victim’s family and friends that she be referred to by her proper name and pronouns. He went on to say that the eye witness in the case, also transgender, was nervous about time preparing the witness for testimony. “The defendant was going to argue self-defense but he ended up pleading guilty. Without that witness’s testimony, I don’t know that we could have secured that guilty plea,” D’Andrea said.

“Young people who are LGBTQ make up 5-8 percent of the youth population and in Philadelphia, 54 percent of homeless youth are LGBT,” Fitzpatrick said. Transgender citizens are one of the most marginalized groups of people in society. On average, the transgender population has a lower education level, lower income and higher suicide rate than any other minority. In some cases, these problems are the result of transgender individuals being rejected by their families and forced to live on the streets. Fitzpatrick also said that transgender women are often turned away from women’s homeless shelters and unable to access certain rehabilitation programs such as Dawn’s Court, designed for women with repeat prostitution offenses, to reduce both drug possession and recidivism. Additionally, Fitzpatrick said that “you are 3.32 times more likely to experience violence from police if you are transgender, and even higher if you are a transgender woman of color.”

The Philadelphia Police Department publicly released Directive 4.15, which governs department interactions with transgender individuals. The directive’s purpose is to “ensure that all persons are treated with the dignity which is inherently due to every person as a human being.” While Directive 4.15 is a step in the right direction, we have a long way to go in ensuring the rights of our transgender citizens.

CLE Topic Idea?
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Member Benefit: Pyramid Club

The Pyramid Club’s new offering special pricing to Philadelphia Bar Association members (applies to new Club members only). Contact Pyramid Club Membership Director, Maureen Coyke, at (215) 979-3131 or Maureen.coyke@clubcorp.com for more information.

Pyramid Club is a private business club strategically placed 52 floors high at the “top of the town,” above Center City in Philadelphia. The Club specializes in outstanding cuisine, personalized service, superb meeting and dining facilities and state-of-the-art technology.

For more information, visit the Member Benefits page at PhiladelphiaBar.org. The Pyramid Club is located at 1735 Market St., Philadelphia.

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will be on the front lines, addressing these sorts of reform efforts, and they will need our help.”

Also at the Annual Meeting Luncheon, the 2016 PNC Achievement Award was presented to Jay G. Ochroch, partner, Fox Rothschild LLP, and Manny D. Pokotilow, senior counsel, Caesar Rivise, PC.

Ochroch is a member of the board of directors and the executive committee of the Consumer Bankruptcy Assistance Project (CBAP). Pro bono clients of CBAP face financial challenges arising from unanticipated catastrophic life events.

“CBAP is very specialized. We don’t just file Chapter 7s,” Ochroch said. “It has to fit; it has to have a purpose. I want to urge lawyers who want to do a good deed and learn some law to volunteer at CBAP.”

Pokotilow was on the committee that founded the mediation program for the U.S. District Court for the Eastern District of Pennsylvania and founded the annual Philadelphia Bar Association 5K in 1979. The 5K benefits Support Center for Child Advocates.

“Thank you to Frank Cervone and the Support Center for Child Advocates for their heroic fight to combat child abuse,” said Pokotilow. “Thank you to Tom Bell and Eric Marzluf, who have been co-directors of the charity run; Michael Berkowitz who has been the team competition director; members of the charity run committee; the sponsors of the run; and the many volunteers.”

The 2016 Philadelphia Bar Association Charity 5K is on May 21. For the complete remarks from the 2016 Annual Meeting Luncheon, please visit Major Events on the Podcast page in the Publications menu of PhiladelphiaBar.org.
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continued on page 15
Φιλαδέλφη της Πανεπιστημίου Λουξσουημον μπορεί να αποδείξει την πόλη της πανεπιστημίου της Νταουάλα, Πετρογιανκόλο μπορεί να αποδείξει την πόλη της πανεπιστημίου της. Οι θέσεις που μπορούν να αποδείξουν την πόλη της πανεπιστημίου της μπορούν να αποδείξουν την πόλη της πανεπιστημίου της Νταουάλα, Πετρογιανκόλο μπορεί να αποδείξουν την πόλη της πανεπιστημίου της Νταουάλα, Πετρογιανκόλο. Οι θέσεις που μπορούν να αποδείξουν την πόλη της πανεπιστημίου της μπορούν να αποδείξουν την πόλη της πανεπιστημίου της Νταουάλα, Πετρογιανκόλο μπορεί να αποδείξουν την πόλη της πανεπιστημίου της. Οι θέσεις που μπορούν να αποδείξουν την πόλη της πανεπιστημίου της μπορούν να αποδείξουν την πόλη της πανεπιστημίου της Νταουάλα, Πετρογιανκόλο μπορεί να αποδείξουν την πόλη της πανεπιστημίου της. Οι θέσεις που μπορούν να αποδείξουν την πόλη της πανεπιστημίου της μπορούν να αποδείξουν την πόλη της πανεπιστημίου της Νταουάλα, Πετρογιανκόλο μπορεί να αποδείξουν την πόλη της πανεπιστημίου της. Οι θέσεις που μπορούν να αποδείξουν την πόλη της πανεπιστημίου της μπορούν να αποδείξουν την πόλη της πανεπιστημίου της Νταουάλα, Πετρογιανκόλο μπορεί να αποδείξουν την πόλη της πανεπιστημίου της. Οι θέσεις που μπορούν να αποδείξουν την πόλη της πανεπιστημίου της μπορούν να αποδείξουν την πόλη της πανεπιστημίου της Νταουάλα, Πετρογιανκόλο μπορεί να αποδείξουν την πόλη της πανεπιστημίου της. Οι θέσεις που μπορούν να αποδείξουν την πόλη της πανεπιστημίου της μπορούν να αποδείξουν την πόλη της πανεπιστημίου της Νταουάλα, Πετρογιανκόλο μπορεί να αποδείξουν την πόλη της πανεπιστημίου της. Οι θέσεις που μπορούν να αποδείξουν την πόλη της πανεπιστημίου της μπορούν να αποδείξουν την πόλη της πανεπιστημίου της Νταουάλα, Πετρογιανκόλο μπορεί να αποδείξουν την πόλη της πανεπιστημίου της. Οι θέσεις που μπορούν να αποδείξουν την πόλη της πανεπιστημίου της μπορούν να αποδείξουν την πόλη της πανεπιστημίου της Νταουάλα, Πετρογιανκόλο μπορεί να αποδείξουν την πόλη της πανεπιστημίου της. Οι θέσεις που μπορούν να αποδείξουν την πόλη της πανεπιστημίου της μπορούν να αποδείξουν την πόλη της πανεπιστημίου της Νταουάλα, Πετρογιανκόλο μπορεί να αποδείξουν την πόλη της πανεπιστημίου της. Οι θέσεις που μπορούν να αποδείξουν την πόλη της πανεπιστημίου της μπορούν να αποδείξουν την πόλη της πανεπιστημίου της Νταουάλα, Πετρογιανκόλο μπορεί να αποδείξουν την πόλη της πανεπιστημίου της. Οι θέσεις που μπορούν να αποδείξουν την πόλη της πανεπιστημίου της μπορούν να αποδείξουν την πόλη της πανεπιστημίου της Νταουάλα, Πετρογιανκόλο μπορεί να αποδείξουν την πόλη της πανεπιστημίου της. Οι θέσεις που μπορούν να αποδείξουν την πόλη της πανεπιστημίου της μπορούν να αποδείξουν την πόλη της πανεπιστημίου της Νταουάλα, Πετρογιανκόλο μπορεί να αποδείξουν την πόλη της πανεπιστημίου της. Οι θέσεις που μπορούν να αποδείξουν την πόλη της πανεπιστημίου της μπορούν να αποδείξουν την πόλη της πανεπιστημίου της Νταουάλα, Πετρογιανκόλο μπορεί να αποδείξουν την πόλη της πανεπιστημίου της. Οι θέσεις που μπορούν να αποδείξουν την πόλη της πανεπιστημίου της μπορούν να αποδείξουν την πόλη της πανεπιστημίου της Νταουάλα, Πετρογιανκόλο μπορεί να αποδείξουν την πόλη της πανεπιστημίου της. Οι θέσεις που μπορούν να αποδείξουν την πόλη της πανεπιστημίου της μπορούν να αποδείξουν την πόλη της πανεπιστημίου της ΝΔΑ. Οι θέσεις που μπορούν να αποδείξουν την πόλη της πανεπιστημίου της μπορούν να αποδείξουν την πόλη της πανεπιστημίου της. Οι θέσεις που μπορούν να αποδείξουν την πόλη της πανεπιστημίου της μπορούν να αποδείξουν την πόλη της πανεπιστημίου της.
Sections Celebrate 2016, Present Awards

Real Property Section

Cheryl L. Gaston, attorney, Spruce Law Group, LLC (left); presents Joseph Beller, principal, Offit Kurman; with the Real Property Section’s Harris Ominsky Award at the Real Property Section Reception and Awards Ceremony at Estia on Nov. 10.

Eileen Quigley, chair, Real Property Section (center), with Rachel Gallegos, 2016 Section chair, and Alexander F. Barth, Section treasurer.

Family Law Section

Lee A. Schwartz, 2015 chair, Family Law Section (left to right); Dina S. Ronsayro, 2016 Section chair; Richard Bost, Section chair; and Kristine L. Catalang, Section treasurer; during the "Passing of the Chairs" portion of the Section’s Annual Dinner & Award Presentation at The Ritz-Carlton Philadelphia on Dec. 1.

Workers’ Compensation Section

Judy Berkman, Regional Housing Legal Services; presents The Housing Preservation Initiative, represented by James Crowder, program officer for the sustainable communities west, LISC Philadelphia; with the Section’s Good Deed Award.

Immediate-Past Chancellor Gaetan J. Alfano (left); with 2016 Workers’ Compensation Co-Chairs Hon. Denise E. Krass, Workers Compensation Office of Adjudication (left to right); Danielle R. DeRosa and Eric B. Pearson; and 2017 Section Co-Chair Hon. Audrey Beach, Workers’ Compensation Office of Adjudication (second from right); with donations for Toys for Tots Philadelphia at the Workers’ Compensation Annual Holiday Reception at the Down Town Club on Dec. 7.

Photos by Thomas E. Rogers, unless otherwise credited
State Civil Litigation Section

Paul J. Kazaras, former assistant executive director, Philadelphia Bar Association (center, back row), with his wife Sharon, was presented with the State Civil Litigation Section’s Honorable Alex Bonavitacola Award by 2016 Section Co-Chairs Brad S. Rush (left) and Robert J. Casey Jr. at the Section’s Annual Meeting and Reception at Estia on Dec. 13.

Probate and Trust Law Section

Scott Small, 2016 section representative, Board of Governors, Probate and Trust Section (left to right); Rise P. Newman, Section chair-elect; Aaron H. Fox, 2016 Section chair; Laura E. Stegossi, Section chair; and Justin H. Brown, Section vice chair; at the Section’s Annual Meeting and Cocktail Reception at The Ritz-Carlton Philadelphia on Dec. 14.

Criminal Justice Section

Hon. Marsha H. Neifield, President Judge, Philadelphia Municipal Court, was presented with the Criminal Justice Section’s Justice Thurgood Marshall Award by Kevin Harden Jr., 2016 Section chair, at the Section’s Annual Reception and Awards in The Atrium of the Crystal Tea Room on Dec. 15.

The Philadelphia Sheriff’s Office was presented with the Section’s Henry Czajkowski Award by Harden at the Reception.
PRO BONO SPOTLIGHT - PHILADELPHIA VIP

Untangling Titles in Rent-to-Own Properties

By Nycole E. Watson

My pastor once said, "All it takes for evil to prevail is for good people to do nothing." That is why I have always been passionate about representing the underdog. So it must have been fate that brought me together with Ms. Taylor* in 2012. My grandmother had just passed away and here, Philadelphia VIP, the hub of pro bono services, was giving me the opportunity to help a 78-year-old mother and grandmother win back the home she had lived in for 34 years.

Taylor had entered into into a lease-purchase agreement, making small monthly payments toward an eventual purchase of the home. One of the only hopes for individuals who cannot qualify for a mortgage, lease-purchase contracts are risky. Often, the property owner saddles the client with a huge mortgage to pay off after the lease-purchase is made.

So it must have been fate that Day was passionate about representing the underdog. So it must have been fate that called me to help Taylor with her case. After doing everything right, she faced homelessness. "I think I'm going to lose the house," she told me sadly. "I don't have any money."

We kept fighting and praying, but Taylor's case had many complex issues and every time we resolved one issue, another came up. Fortunately, VIP paired me with a mentor attorney, Kenneth Fleischer of Zarwin Baum DeVito Kaplan Schaer Toddy PC. The bank refused to settle, so Fleischer helped me defend against a pre-trial motion, and we did a lot of research. We both cared so much and vowed not to take the easy way out. We filed two quiet title complaints and requested a release of inheritance tax lien. After two years, we extinguished the two mortgages and the Department of Revenue released the lien without a motion to dismiss. Taylor was ecstatic: "I've been fighting for this house for 20 years," she said. "This means so much to me."

Since Taylor was granted a free and clear title, she lives happily in her own home with an incredible asset to pass onto her children and grandchildren.

VIP's work is vital to preventing sellers from robbing home-buyers of their assets. "Without a lawyer, Taylor might have had to obtain a reverse mortgage to pay off the seller's mortgage, leaving her heirs with nothing but debt," said VIP Managing Attorney Kelly Gastley. When you take a case with VIP, you become a better lawyer and you change lives. You build legal skills and learn new areas of the law while putting procedures and knowledge into practice, something you cannot do in a classroom.

Taylor's case certainly changed my life for the better, and we still keep in touch. So take advantage of VIP's trainings, and volunteer. You can make a profound difference and be the reason that someone has a home to call her own.

Nycole E. Watson can be reached at niqueq@msn.com.

*The client's name was changed to protect her identity.

Climate Change

continued from page 10

emissions enough to avoid disaster requires sensible laws to encourage clean energy and discourage dirty energy. From a safety perspective, the changeover to clean energy cannot come soon enough. But when it will happen will depend on many factors, most importantly public awareness and support for clean energy.

Speakers noted that while reducing and soon eliminating greenhouse gas emissions are of paramount importance, significant attention also must be paid to the subject of adaptation, i.e., learning to live with rising waters, extreme heat, stronger storms and more. Adaptation is now driving the conversation in many places as government and private interests need to consider the effects on low-lying urban areas, coastal communities, military installations and infrastructure at sea level. The changes and their effects will present great challenges for our regions, states, country and world.

The day ended with a discussion about the role of lawyers in fighting climate change. Speakers agreed that, through litigation, counselling clients and promoting education and awareness, lawyers can help bring about sensible legal changes to protect the common good. The planners of the conference and a number of the speakers and attendees agreed to meet again soon to discuss ways to promote involvement by lawyers and the legal community.

Persons wishing to join the discussion or learn more can contact the author or visit www.calltothebar.org. A Call to the Bar grew out of a discussion in Philadelphia by lawyers and scientists about what members of the legal profession can do to help society face the urgent problem of climate change, knowing that viable solutions are technically and economically available but not being implemented because of a lack of public awareness and support. The argument was made that lawyers are one of the most powerful groups in our society and should use that power to help convince the public and politicians of the need for immediate action on climate change.

Stephen G. Harvey (steve@steveharveylaw.com), organizer of A Call to the Bar, is the owner of Steve Harvey Law LLC.

2017 Philadelphia Bar Association Budget

Sources of Funds

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<thead>
<tr>
<th>Source</th>
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Total Revenue                          | 4,020,283 |

Application of Funds

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Support Services

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High-Net-Worth Families Brace for New IRS Rules

By Mary E. Ashenbrenner

On Aug. 2, 2016, the Internal Revenue Service (IRS) issued proposed regulations under Section 2704 of the Internal Revenue Code that would significantly affect valuation discounts for estate and gift tax purposes. For those high-net-worth families who are over the estate tax thresholds, time is running short to take action before the new rules take effect. For this month’s interview, I sat down with Michael Moyer, senior wealth strategist with PNC Wealth Management® to discuss a few strategies that families may want to employ.

Mary Ashenbrenner (MA): What will these proposed regulations mean if they are adopted?

Michael Moyer (MM): In their current form, these regulations would eliminate most of the available discounts on transfer taxes for minority interests in family-controlled entities such as corporations, limited liability corporations, and partnerships. And, the rules apply to both operating businesses as well as family limited partnerships holding securities. If the proposals are adopted, which we think will happen early this year, there may be a very short window of opportunity for individuals to take advantage of the currently available discount rules, which have traditionally been used to help lower the value of assets subject to estate and gift taxes.

MA: What should a family do if it will be affected by this proposed legislation?

MM: First, it’s important to determine the potential impact of the proposed regulations on your family’s wealth transfer plans. If it’s necessary to take action, you may want to transfer interests in closely held family entities before the new law is finalized. However, it’s important to note that the decision to expedite a transfer of interests requires considerations beyond potential tax mitigation. Such a move could have a drastic impact on family dynamics. It’s a complex decision, with potential outcomes that could be felt for generations to come.

MA: What other options are there?

MM: You can explore other family wealth transfer strategies that will remain available even if the proposed regulations are finalized in their current form. First, you may want to structure entities to avoid family control levels that subject them to the regulations. If 20 percent or more of an entity is held by a charity or nonfamily member — for example, a friendly ex-spouse sharing the same children and grandchildren — then certain transfers may still qualify for discounts.

Second, you can use gift and generation-skipping-tax exemptions. For example, an individual looking to transfer his wealth has a $10 million estate, and $5 million of his exemptions remaining. That individual could look to gift half of his assets to trusts for his beneficiaries. Doing so would isolate those assets and their future appreciation from death tax at the time of that individual’s passing.

As a third option, you may want to consider the sale of assets at undiscounted value to family trusts in exchange for promissory notes. Sales or gifts of assets to family trusts for income tax purposes, the transferor continues to pay income tax on the taxable items of the trust. As a result, the trust assets outside of the taxable estate, unencumbered by income tax. In essence, the transferor’s payment of income tax on behalf of the family trust is what could be called a “free” gift and is not subject to federal gift tax. With that in mind, sales of assets to trusts with the transferor taking back a promissory note may offer discounting possibilities. Because the promissory note received back is not an entity subject to the proposed regulations, the note could potentially be transferred by the grantor at a discount.

MA: How soon should a family act to change its wealth transfer plans in anticipation of these new IRS rules?

MM: Due to the complexity of the rules and related tax laws involved along with the closing window of opportunity to take advantage of these discounts, there may be a greater demand on the time and resources of estate planning attorneys and valuation professionals, making it critical to take prompt action if you do intend to capitalize on the currently available discounts. The proposed 2704 regulations should be viewed as a call to action for you to engage with your financial advisor in an effort to fully understand how the proposals could affect your particular situation, and what options exist to help mitigate a problem. However, it’s also an ideal time to engage in a goals-based planning conversation as you prepare for the year ahead.

Mary E. Ashenbrenner (maryashenbrenner@pnc.com or 215-585-1041) is a senior vice president with PNC Wealth Management.
How to Approach a Case Outside Your AOP

Lawyers are frequently approached by friends, family and clients to give advice regarding a legal matter that is outside their area of practice (AOP). While it can be difficult to say no to such requests, there is one valid reason to do just that: you could be increasing your risk of a malpractice claim.

According to the American Bar Association (ABA), failing to know or apply the law is the number one most common legal malpractice claim made against an attorney. While you may be vaguely knowledgeable about an unfamiliar area of law, you likely are not aware of what else may be lurking there, such as a shorter notice requirement or an obscure statute of limitations. Missing those important details can lead to an ethics complaint, even against a well-meaning attorney who was just trying to help someone out.

So how can you minimize the risk of a malpractice claim stemming from a foray into an unfamiliar practice area?

- Just say no. Don’t take on a case outside your customary area of practice – no exceptions.
- Refer all cases in a recognized specialty to a recognized specialist.
- If a current client refuses to allow you to make a referral to a recognized specialist, withdraw representation.
- If you are unable to withdraw representation, hire a recognized specialist out of your own pocket.
- If you can’t afford to hire a specialist, immediately immerse yourself in that area of practice and prepare to provide competent representation. That’s the standard you will be held to by the ABA.

Don’t Fail to Act with Competence

Failing to act with competence is not only a basis for a legal malpractice claim, but is also an ethical violation. Rule 1.1 of the Model Rules of Professional Conduct states: A lawyer shall not fail to provide competent representation to a client. “Competent representation” is defined as having the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. Time and effort are required to become competent in a particular AOP, and cutting corners to do someone a favor is usually not worth the risk.

For more information about the risks of practicing outside your practice area, contact USI Affinity today.

For more information about insurance, visit the Philadelphia Bar Association Insurance Exchange at www.usiaffinityex.com/Philadelphia Bar. For Lawyers’ Professional Liability and other business coverage, you can continue to visit the regular Philadelphia Bar Association Insurance Program website at www.mybarinsurance.com/PhiladelphiaBar.

To learn more about LPL coverage, contact Jenny Shazes at USI Affinity today at (610) 537-1456 or jenny.shazes@usiaffinity.com.

For over 75 years, the divisions of USI Affinity have developed, marketed and administered insurance and financial programs that offer affinity clients and their members unique advantages in coverage, price and service. As the endorsed broker of the Philadelphia Bar Association and more than 30 other state and local bar associations and with more than 30,000 attorneys insured, USI Affinity has the experience and know-how to navigate the marketplace and design the most comprehensive and innovative insurance and benefits packages to fit a firm’s individual needs.

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QUICK BITES

By James Zwolak

In Philadelphia’s current era of celebrity-chef owned restaurant enterprises (Garces, Vetri, Solomonov), it is refreshing to see a modest real estate developer participate in this city’s competitive restaurant scene and succeed on his own terms. And that is exactly what George Anni has done. His trio of casual, cool eateries – Valanni, Mercato and Varga Bar – have become Washington Square West staples. Anni, who I have known for years in his real estate capacity, has cultivated his own stable of stellar chefs like Evan Turney and John Strain to keep the food great and the vibe fun. Valanni has been the happy hour spot for the young attorneys in my unit of the City of Philadelphia’s Law Department.

With his new space, Butcher Bar, Anni has taken his organization’s talents across Broad Street to the 2000 block of Chestnut Street. A defunct Korean BBQ joint has been transformed into a sleek space with 16-foot ceilings, subway tiles, and strategically placed butcher shop paraphernalia.

Their specialty cocktail menu is interesting: “barmeister” Paul Zuber brings in new small-batch whiskies and other spirits every 2-3 weeks. I enjoyed the tangy, fizzy El Diablo, brimming with tequila, crème de cassis, house ginger syrup and lime juice. My buddy had a straight-up martini that lacked no punches.

The starters were all uniformly stellar. The alpha males in our party celebrated our manliness by inhaling the Chicken Liver Mousse mixed with valrhona chocolate, toasted hazelnuts, brandied cherry and sea salt. The ladies loved the Roasted Cauliflower and Brussels Sprouts with parmesan, lemon and balsamic reduction. Butcher’s Baked Beans With Candied Bacon were so delectable I wanted to take a pint home. The Smoked Gouda Mac n Cheese satiated my inner 10-year-old, and the Sautéed Greens satisfied the ladies’ unquenchable desire for more green stuff.

For the à la carte diner, you can choose from a variety of Butcher’s house-made wood-grilled meatball or sausage entrees that are all reasonably priced under $15. However, our large group called ahead and took advantage of the Butcher’s house specialty – The Trough. This table-length field of meat dreams is the brainchild of Anni, who – in true Greek fashion – became inspired during a seaside family feast on the island of Skiathos after his father’s funeral. This $250 splurge – but a lot of great food for 6-8 carnivores – includes kabobs, rotisserie chicken, house-made sausage and slab bacon, grilled skirt steak and an abundance of ribs, along fries and pita bread. We had plenty of leftovers for our offspring.

The house-made desserts were also yummy. We tried all of them: the Madagascan Vanilla Bean Cheesecake with blueberries and Meyer lemon was our favorite. Butcher’s Cast Iron Chocolate Chip Cookie with Nutella and vanilla ice cream was glutinous, and the three assorted “crispy” ice creams – covered with either popcorn, pretzels or Rice Krispies Treats - were an interesting twist.

Based on the crowds, Anni and crew’s foray out of Wash. West seems to be a success. Bring a large party, try The Trough, and do not forget your doggie bags. Butcher Bar is located at 2034 Chestnut St., Philadelphia.

James Zwolak (James.Zwolak@phila.gov) is a divisional deputy city solicitor for the City of Philadelphia.

Butcher Bar, Another Success From Unlikely Figure

PHOTO BY JAMES ZWOLAK

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BUSINESS LAW SECTION

The Business Law Section held its Annual Meeting on Tuesday, Dec. 20, 2016, at which it elected its 2017 Executive Committee as well as approved amended and restated bylaws for the Section. The Section acknowledged its successful programming for the year including two Giants of the Bar programs, Young Lawyers Division programs, a Boots on the Ground program called Backbacks for Kids, and the launch of its Mindfulness Series. Congratulations to the 2017 officers of the Executive Committee: Sarah Gelb, chair; Eric S. Siegel, vice chair; Anne Aronson, secretary and treasurer; and Marcel S. Pratt, communications officer. Congratulations to the new members of the Executive Committee: Michael P. Zanan, Peter Jaslow, Genera C. Brown and Evan T. Miller; as well as the remaining members; Katayun Jaffari, 2016 Section chair; E. David Chanin; and Brad Matthew Rostolsky. Pictured (left to right): Siegel; Zanan; Jaslow; Chanin; Brown; Alison Merrick, community economic development coordinator, Philadelphia VIP; Gelb; Miller; Jaffari; and Merritt Cole, chair, Advisory Committee.
Joseph H. Jacovini, member at Dilworth Paxson LLP, was honored at the Rutgers/LEAP Alfredo Santiago Endowed Scholarship Fundraising Gala on Dec. 2.

Adam T. Gusdorff, partner at Heckscher, Teillon, Terrill & Sager, P.C., was recently elected as a Fellow of The American College of Trust and Estate Counsel.

David A. Nasatir, partner at Obermayer Rebmann Maxwell & Hippel LLP, was appointed to the Pennsylvania Convention Center Authority Board of Directors.

Katayun Jaffari, partner at Ballard Spahr LLP, was recognized by SmartCEO with the publication’s Star Influencer Award.

Josh J.T. Byrne, partner with Swartz Campbell LLC, presented to the Bucks County Bench Bar Association on Legal Malpractice Avoidance on Sept. 22, 2016.

William J. Leonard, partner at Obermayer Rebmann Maxwell & Hippel LLP, was elected to serve as a member of the Defender Association of Philadelphia’s board of directors.


Eric B. Meyer, partner at Dilworth Paxson LLP, was honored by the ABA Journal for his blog, The Employer Handbook, as a 100 Top Blog for the fifth time.

Eli Granek, associate with Swartz Campbell LLC, has been invited to join the prestigious Claims and Litigation Management Alliance.


Marina Angel, professor at Temple University Beasley School of Law, received the prestigious Ruth Bader Ginsburg Lifetime Achievement Award from the Women in Legal Education section of the Association of American Law Schools in San Francisco on Jan. 5.

“People” highlights news of members’ awards, honors or appointments of a community or civic nature. Send news to Thomas E. Rogers, Senior Managing Editor, Philadelphia Bar Reporter, at trogers@PhilaBar.org.

Mary-Kate Martin, editor-in-chief of the Philadelphia Bar Reporter, and her husband John Martin, welcomed their first child, Emily Jean Martin, on Sunday, July 10, 2016 at 6:55 a.m. Emily was born in Pennsylvania Hospital. She weighed 7 pounds, 15 ounces and was 20.5 inches long. Martin is a deputy city solicitor in the Philadelphia Law Department.

Meredith Z. Avakian-Hardaway, director of communications and marketing at the Philadelphia Bar Association, received the 2016 PRSA Philadelphia Anthony Fulginiti Commitment to Education Award for her dedication to the future of the public relations profession. The award honors a person who excels in education, contributes to PRSA student chapters, mentors/teaches, and helps shape the careers of future PR professionals. She is serving as PRSA Philadelphia’s first-ever diversity and inclusion chair in 2017. Additionally, Avakian-Hardaway was recently recognized by Billy Penn as one of its first “Who’s Next: Communication” honorees, partially due to her work at the Association.
FOR MORE THAN 30 YEARS, Sidney L. Gold & Associates, P.C. has dedicated its practice to the field of employment law and civil rights litigation. The firm’s attorneys take great pride in serving as both aggressive and compassionate advocates for victims of unlawful discrimination and harassment. As a result, the Martindale-Hubbell® Bar Register has certified Sidney L. Gold & Associates as a pre-eminent law firm in the field of labor and employment law. More than 4,500 lawyers throughout Pennsylvania and New Jersey look to Sidney L. Gold & Associates to refer their clients.

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