Palawlibrary, Bar Forge Agreement
by Daniel A. Cirucci

The Philadelphia Bar Association has entered into an agreement with palawlibrary.com to provide special- ly priced subscriptions to the palawlibrary.com research and information service and other special benefits to members.

The agreement is part of a plan announced by Chancellor Audrey C. Talley earlier this year to provide an effective and economical online legal research service tailored expressly to the needs of Philadelphia lawyers.

“We are delighted to be joining with American Lawyer Media and Jenkins Law Library to provide this new service to our members,” Talley said. The Chancellor described palawlibrary.com as “the only real research tool for county law, including Philadelphia County and the other counties in the state. This program fills a pressing need – a need we have long wanted to fill for.

continued on page 5

Pursue Justice, Question Injustice, West Tells Members
by Jeff Lyons

Judge A. Leon Higginbotham Jr always believed that America had the potential not simply to be better but to be the best, Princeton University professor Dr. Cornel R. West told members of the Bar at the June 19 Quarterly Meeting and Luncheon.

West, a friend and colleague of Higginbotham’s at Harvard University, delivered the fifth annual Judge A. Leon Higginbotham Jr. Memorial Public Interest Lecture to a hushed crowd of more than 500 people.

“Leon Higginbotham comes from a tradition that tries to bring together the spirituality of questioning the Socratic method of Athens with the spirituality of compassion and giving and service to others, which is the best of the legacy of Jerusalem,” West said. “Question injustice and pursue justice, justice, justice. That represents the best of A. Leon Higginbotham Jr.,” West said.

“I can see him now, arguing with the younger generation. They’d ask him, ‘Professor Higginbotham, isn’t it the case that the American rule of law has been the kind of tyranny of the majority for the vast number of years in American history? Wasn’t de Tocqueville right, saying there was no serious protection of minorities until very, very late and that was the result not of lawyers but as a result of struggles in the street?’”

West said Higginbotham told the

continued on page 10
Life in the Law a Full-Time Responsibility by Audrey C. Talley

It was the poet James Russell Lowell who asked: ‘What is so rare as a day in June?’

The question was meant to be complimentary. But had Mr. Lowell been around for the June just ending he might have revised his assessment. Still, despite spring’s monsoons, summer has arrived and with it comes the temptation to flee our worldly cares. The beachbeckons. For many this is a time of cool drinks, long walks along the beach and frivolous summer reading.

Being from the South I can certainly understand the lure of summer. In fact, I can almost smell the magnolia blossoms of my youth. But we are all grown up now. And we are welded to a profession that does not easily indulge diversions. Just look around. The law has never been so much in the news and so much a part of our lives. Every time we pick up a newspaper or log onto the Internet or turn on the news we are confronted with a story that is in some way law-related: the Laci Peterson case, some terrorist attack, some summons into a capital trial. There is no news that is not law-related. The law has never been so much in the news and so much a part of our lives.

But none of this is new. In fact, Oliver Wendell Holmes Jr. probably said it best when he noted that “it is perfectly proper to regard and study the law simply as a great anthropological document.” Holmes added that “the law of the life has not been logic; it has been experience.” Holmes came to these conclusions more than 100 years ago but they remain relevant today because they recognize that the law is intertwined with the affairs of individual human beings. For better or worse, the law is indelibly linked to the human condition. This fact would seem to be simple and obvious but amidst the cacophony of life in the 21st century, this is easy to forget.

Day after day we are bombarded with so many stories, images, opinions, observations and seemingly random bits of information that at times it can all seem mind boggling. And summer understandably feeds the temptation to run away. But while we may enjoy a well-deserved respite we cannot truly run away from our shared responsibility for the world that we inhabit and the society we seek to serve. As lawyers, we are called by definition to be social beings. We cannot escape this responsibility. And we must not forget that everything we do affects the lives of others.

Even when the most difficult issues are brought home to us by the most horrific tales we cannot lose sight of our charge to leave things better than they were found to us. “The truths of the law,” Archibald MacLeish, “is to make sense of the confusion of what we call human life, to order it but at the same time to give it possibility, scope, even dignity.” That’s a tall order — but one worth contemplating this summer.

Tell Us What You Think!
The Philadelphia Bar Reporter welcomes letters to the editors for publication. Letters should be typed. There is no word limit, but editors reserve the right to condense for clarity, style and space considerations. Letters must be signed to verify authorship, but names will be withheld upon request. Letters may be mailed, faxed or e-mailed to: Jeff Lyons, Managing Editor, Philadelphia Bar Reporter, Philadelphia Bar Association, 1101 Market St., 11th floor, Philadelphia, Pa. 19107-2911. Phone: (215) 238-6345. Fax: (215) 238-1267. E-mail: reporter@philabar.org.

Medieval Priests
To the Editor:
As a member of the Philadelphia Bar Association and as a former member of the Bar Reporter’s Editorial Board, I was disturbed to read Marc Reuben’s comment in his recent column, “The Hatred of Art and Artists,” about medieval priests who told Adolf Hitler and his followers to hate Jews. I seriously doubt that medieval priests had anything to do with the founding of the Third Reich.

Unfortunately, this is not Mr. Reuben’s first adverse comment about Catholics. A few years ago, he published a comment about Catholics who sell their babies.

Recently I read an in-depth front-page story in the Philadelphia Inquirer about the first father and son on death row in Pennsylvania and one of only a few such pairs in the country. The story, by reporter Oliver Prichard, told a horrifying tale of generations of sexual abuse, and murder, and family dysfunction. The reporter asked: “Was it a fluke that their paths had intersected in capital crime?” Or had they shared the same road all along — a perverse pedigree that extended back beyond Freeman May [the father] to his father, Sidney May, who beat his sons and raped his daughters, and by some indications, back beyond even him?”

Prichard observed: “What emerges from family interviews, police records and court testimony is a generational trilogy of almost unfathomable violence — one that the state intends to enforce — one that the state intends to enforce.”

Merih O. Erhan

Sensitive Issue
To the Editor:
The article, “The Hatred of Art and Artists” in the June 2005 issue of the Philadelphia Bar Reporter became a subject of some criticism by those lawyers who brought it to my attention. Particularly, the sentence, “Hitlerites hated the Jews as medieval priests told them to do,” created some resentment since its authenticity at best is dubious. I am sure the author of the article used this phrase casually and it was not his intention to stir feelings on this sensitive issue.

However, as one of the advisory editors of the paper, I appreciate to members of the Bar who found the sentence not only untrue, but also divisive.

Merih O. Erhan

Reuben Replies
There is a table and chart contained in Raul Hilberg’s complete (and also abridged) book. The Destruction of the European Jews (Holmes and Meier) in which canonical laws of the past 500 years are compared to identical Nazi racial laws. The only difference was that the Nazis eventually decided that the last right of the Jews — to live — should also be taken from them. This information can also be found in Lucy Dawidowicz’s The War Against the Jews (Bantam). Many Catholic clerics from Weimar, Germany were horrified when they saw how the Nazis had revived ancient blood laws, and these clergy were prepared to oppose Hitler and prevent his rise to power. But for the intervention of the papal nuncio, Pizzul (later Pius XII), these clergy would have played a pivotal role in opposing Hitler’s rise. See Hitler’s Pipe, by John Cornwell (Penguin).

Marc W. Reuben

I do not understand the reason for these comments and I would be grateful if the Philadelphia Bar Association would not publish them.

James D. Moran

Sensitive Issue
To the Editor:
I was disturbed to read Marc Reuben’s phrase casually and it was not his intention to stir feelings on this sensitive issue.

Marc W. Reuben

Letters
Tell Us What You Think!
Philadelphia Bar Foundation

Shuster Fellowship Deadline is July 15

Attorneys interested in applying for the Philadelphia Bar Foundation’s Morris M. Shuster Public Interest Fellowship have until July 15 to send in their applications. The program is intended to assist public interest lawyers who have completed five or more years of service, but continue to face large student loan obligations that threaten their ongoing service as public interest lawyers. The foundation will select one Shuster Fellow who will receive a one-time annual fellowship of $5,000 to be applied toward student loan repayment assistance.

Applications for a Shuster fellowship should be made directly to the Philadelphia Bar Foundation. To be eligible for a fellowship, an applicant must be a full-time lawyer at a qualifying public interest organization who has completed five years at that organization and is financially eligible. A qualifying organization is a guarantor or eligible grantee of the Philadelphia Bar Foundation that is principally involved in the delivery of legal services to clients. An applicant is financially eligible upon demonstration that he or she has an annual student loan repayment obligation that exceeds $5,000, and that the annual payment on that debt equals at least 10 percent of the applicant’s annual salary. An annual student loan obligation is the yearly amount required to be repaid by the applicant arising from all student loan indebtedness exclusive to the applicant.

In order that this award be tax-free, the Fellowship shall be in the form of a loan of $5,000 given to the recipient by the Foundation, intended for student loan repayment assistance. At the conclusion of one year immediately following the distribution of these loan funds, the loan shall be completely forgiven by the Foundation upon certification that the Fellow has satisfactorily completed public interest employment at the qualifying organization during that year.

All applications for the 2005 Shuster Fellow must be received by the Foundation on or before July 15, 2005, submitted on application forms provided by the Foundation. The Foundation will acknowledge receipt of all applications. The Foundation shall review all applications and determine that they are timely and that they meet the requirements of the program. The Foundation shall select the 2005 Shuster Fellow by a random drawing from among all qualified applicants who have submitted a timely application. The 2005 Shuster Fellow shall be announced to the legal community and to the media before Dec. 31.

Application Form

The individual submitting this application is to my knowledge eligible for Shuster loan repayment assistance.

NAME

SIGNATURE

For more information, contact Philadelphia Bar Foundation Executive Director Maureen Mingey at (215) 238-2588 or by e-mail at mmimgey@philabarr.org.
Weak Economy Threatens Legal Services

by Gerald A. McHugh Jr.

During the 1990s, legal services and public interest organizations were under political attack from conserva-
tive politicians and right-wing interests who view representation of the poor and community groups as a nuisance. Although it seems long ago, it was in the relatively recent past that sweeping changes in federal legislation required Community Legal Services to create a sister organization, Philadelphia Legal Assistance, to preserve the ability of poor Philadelphians to secure representation in individual cases, while protecting the ability of CLS to continue to attack groups such as the Washington Legal Foundation continue to attack IOLTA in the courts. Hopefully, the recent decision of the U.S. Supreme Court in Brown v. Legal Foundation of Washington will blunt such attacks. This pause in political battles over the future of legal services does not mean that access to representation is secure. The same economic force affecting private enterprise is also taking its toll on legal services. First, because of Pennsylvania’s budgetary crisis, legal services programs funded through the Department of Welfare are expected to see a reduction of at least five percent. Of equal, if not greater significance, is the downturn in interest rates.

Since the Supreme Court’s adoption of a mandatory IOLTA program in Pennsylvania in 1996, IOLTA has served as a critical source of funding for legal services. Deposits being held in attorney trust and escrow accounts and money market funds are losing in the equity market, private equity escrows and trust accounts for short periods of time are pooled, and the interest earned on those accounts is then used to support legal services and public interest agencies. Even though such funds are held for a short period of time, the “float,” when aggregated, can generate substantial sums of money that can be dedicated to public use.

IOLTA revenues are in steep decline for two reasons. First, with decreased economic activity, less money is flowing through attorney trust and escrow accounts. More importantly, a series of cuts in interest rates by the Federal Reserve has dramatically reduced IOLTA revenue. The same anemic rates of return that are impacting savings accounts and money market funds are also affecting IOLTA accounts. As a consequence, IOLTA grants will likely fall by as much as $2 million during the current grant year that began on July 1.

The grim news does not stop there. With foundations suffering significant losses in the equity market, private grants to legal services are also in decline. Because most foundations base their grant-making decisions upon a three-year rolling out average of endowment performance, the lingering effects of a bull market have provided some measure of protection. Because most equity portfolios now show negative performance for a solid three-year period, the foundation giving will also necessarily decline.

At some point, the economy will recover, interest rates will rise, and funding for legal services and public interest programs should become easier. In the meantime, however, the programs must pay rent, pay salaries and stay alive to benefit from any recovery. The challenge to the Bar is clear: although there are endless demands on our resources, and all of us have felt the same impact from the downturn, our sustained commitment to the cause of equal justice is essential.
Women in the Profession Committee

Volunteer Opportunities Outlined

by Jeff Lyons

Representatives from seven public interest agencies visited with members of the Women in the Profession Committee on June 12 to discuss the many volunteer opportunities available to attorneys in the city.

Philadelphia Volunteers for the Indigent Program (VIP), Philadelphia Volunteer Lawyers for the Arts, Womens Way, the Legal Clinic for the Disabled, the SeniorLAW Center, the Center for Disability Law and Policy and The Career Wardrobe were all on hand to discuss their organizations’ missions.

Sheri K. Cole, executive director of The Career Wardrobe (www.careerwardrobe.org), said her organization provides business-appropriate attire to women in transition from welfare to work or beginning a life free from domestic violence.

“If you like instant gratification, we’re the place for you,” joked Cole, who said her organization has served nearly 50,000 women by referral only since 1995. Working in partnership with more than 150 job training programs, domestic violence shelters and other social service agencies throughout the Delaware Valley, The Career Wardrobe provides free interview-appropriate clothing and support services.

Cole said clients get one complete interview outfit for free. “If she gets a job, she receives two more outfits. If we mix and match real well, she can get a week’s worth of clothes out of three outfits.”

Yael Jekogian, development director for Womens Way (www.womensway.org), said the organization raises money and mobilizes community resources to support programs run by and for women that advocate freedom from violence, guarantee equal opportunity, challenge discrimination in all forms, foster economic self-determination and affirm reproductive freedom. She said the group’s staff of eight relies heavily on more than 200 volunteers.

“We’re the incubator for women’s leadership in the region,” she said.

adding that volunteering opportunities are available for people interested in event planning, fund-raising and advocacy.

Brenda T. Narin, associate director of Philadelphia Volunteer Lawyers for the Arts (www.pvla.org), said her organization provides pro-bono legal assistance and basic business counseling to area artists and cultural organizations. Volunteer attorneys work on projects such as negotiating performance contracts for actors, dancers and musicians; preparing by-laws for newly formed nonprofits; negotiating short- and long-term workspace leases and exhibition agreements; securing protection of artwork; and setting up new community-wide arts initiatives. PVLA is in its 25th year of existence and has nearly 500 volunteer attorneys.

Either R. Miller, a staff attorney with the Legal Clinic for the Disabled, (www.magecenter.org) or front_diffranking4596 said the clinic provides free legal services to low-income persons with physical disabilities in Philadelphia and the surrounding counties.

Although housed inside Mage Rehabilitation Hospital, the clinic is not affiliated with Mage. She said only about a third of the clinic’s clients are Mage patients. The clinic’s clients suffer from multiple sclerosis, cerebral palsy, and brain and spinal injuries and often need assistance with insurance issues. One client, Miller said, had a dispute with his condominium association about a wheelchair ramp that was built for his home.

The Center for Disability Law & Policy (www.equalemploy- ment.org) provides advocacy to individuals with disabilities throughout Pennsylvania, according to Jamies C. Ray, managing attorney of the Center’s Client Assistance Program. “We help people find administrative, legal and other remedies to ensure the protection of their rights under the Rehabilitation Act and Americans with Disabilities Act.”

Sharon Browning, executive director of Philadelphia Volunteers for the Indigent Program (www.phillyvip.org), called VIP the “hub of pro bono referral in Philadelphia.”

“Last year, we served more than 1,100 individuals and families in 42 practice areas. I guarantee we have a case that fits your practice area,” Browning told Committee members, adding that CLE credit is available for volunteers who receive training to take on a VIP case.

Marta A. Brooks, an attorney with the SeniorLAW Center (www.seniorlawcenter.org), said her organization is focused on people age 60 and over in Philadelphia. “Our typical client is more than 70 years old, living in a multigenerational family on an income of $600 to $700 a month.”

Brooks said the SeniorLAW Center is involved with legal issues such as wills, living wills, power of attorney, probate and tangled titles. “We also do many outreach programs,” she said.

And when it comes to doing the actual volunteer work, the speakers offered the following advice:

• Don’t be patronizing toward your pro bono clients. Treat them as you’d treat your own paying clients.

• Don’t be afraid to ask for help from the organization’s staff.

• Be honest about how much time you can commit to pro bono work. Don’t volunteer for a lot of time if your work and family life won’t allow it.

• Be an advocate for the organization. Make sure to mention it at receptions, business meetings and other appropriate places.

list\-serve \noun\ An automatic electronic mailing list, allowing users to participate in discussions.

join \verb\ To become a member of a group.

Bar to Host Program at New NCC

by Daniel A. Ciracci

The Philadelphia Bar Association will present the first substantive pro- gram at the new National Constitution Center (NCC) at 525 Arch Street on Tuesday, July 8 at 5 p.m. in the Center’s Kirby Auditorium. The one-hour ses- sion presented by the Association and WHYY will be part of the center’s grand opening and will focus on the topic “The First Amendment in the 21st Century”

National Public Radio’s Michele Norris, host of the popular “All Things Considered” program, will be the moder-ator for the event, which will be videotaped for later broadcast by WHYY TV12. A former correspondent for ABC News and contributor to “ABC World News Tonight,” Norris has also reported for The Washington Post, Los Angeles Times and Chicago Tribune. She joined NPR last year.

Norris will question a panel that includes noted First Amendment expert Floyd Abrams; Marci A. Hamilton, the Thomas H. Lee Chair of Public Law at Benjamin N. Cardozo Law School of Yeshiva University; The New York Times General Counsel Solomon Watson; and Seth P. Waxman, former Solicitor General of the United States.

According to Chairwoman Audrey C. Browning told Committee members, the new partnership “brings together the power of ALM, Jenkins and the Bar association to provide an in-depth research and infor- mation package to our members.” She said she expects that members will respond enthusiastically to the new service.

Palamlibrary.com is an integrated Pennsylvania-focused legal research Web site that provides easy and inex- pensive access to judicial opinions, trial listings, court rules, news archives from The Legal Intelligencer and Pennsylvania Law Weekly and other information.

Additional details of the new pro- gram for Philadelphia Bar Association members will be provided soon. For more information visit www.philadelphia- bar.org.

Bar Reporter / July 2003

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Summer a Time to Reflect, Volunteer

by Melissa A. Schwartz

As many of us plan our summer getaways to the shore, mountains or swim club, we should take a few moments to think about our freedom. July Fourth, arguably one of the best holidays replete with barbecues, fireworks and even an extra day or two out of the office, celebrates our freedom as a country. We all know the story of how we won our independence more than 200 years ago. As part of our independence, we have the right to pursue life, liberty and happiness.

We should take the opportunity this summer to reflect on the freedoms we have and the oath we, as lawyers, promised to uphold and pursue: The freedom and right to freedom offers are taken for granted until someone or something challenges it. We all witnessed the events on a sunny morning in September 2001. Life, as we knew it, has drastically changed in the last two years. Despite the tragic loss of lives, there have been positive effects on the country. The country has renewed its sense of strength and resolve.

Matters Involving Ethical Issues and/or Representation, Consultation

Is a T-shirt showing tanks leaving the battlefields of Iraq at the end of Operation Iraqi Freedom and heading toward the Eiffel Tower emblemized with the words “Next stop: Paris, France” an expression of free speech or unprotected conduct? This was the issue put to Philadelphia elementary school children in the 2005 Michael K. Smith Oratorical Contest sponsored by the Young Lawyers Division.

The contest, which is run by the Executive Committee of the YLD, provides an opportunity for Philadelphia public school students in grades 4 through 8 to present 15-minute mock oral appellate arguments to panels of lawyers and summer associates who volunteered their time to act as contest judges.

The students participate in the contest on a voluntary basis. They are not required to do so and receive no credit for their participation from their schools. The YLD provides each student with a Certificate of Merit for his or her participation. Winning students are also awarded savings bonds toward their future education.

This year’s problem, which was written by YLD Executive Committee member Michael R. Hayes, Monica M. Lawrence and Mary Craine Lombardo, was based upon characters from “The Simpsons.” The problem’s protagonist was Bart Simpson who wore the “Next stop: Paris, France” T-shirt to school on the playground. The problem’s solution was based upon characters from “The Simpsons.”

Casino Night, Golf Outing in July

The Young Lawyers Division and Citizens Bank will host Casino Night on Thursday, July 17 from 6 to 8 p.m. at the Radisson Plaza Warwick Hotel, 17th and Locust streets, from 6 to 10 p.m.

Tickets are $50. Admission is free to Citizens Bank customers who present their ATM card at the door. Heavy hors d’oeuvres, beer and wine will also be available.

The YLD and USI Colburn Insurance Service will hold their annual Golf Outing on Thursday, July 31 at the Philadelphia Cricket Club’s Hootontown course.

Proceeds from the Golf Outing will benefit the Philadelphia Bar Foundation.

The tournament begins with a shotgun start at 1 p.m. Registration begins at 11:30 a.m., during which time a barbecue lunch will be served and the driving range will be open. The event concludes with a buffet and awards ceremony at the club.

A one-hour golf clinic will be held at 4 p.m. for those who can’t fill a round of golf into their schedule. Instruction will be geared toward beginning and intermediate golfers.

The cost is $200 per person, which includes greens fees, cart, all meals and prizes. The golf clinic is $60, which also includes the after-tournament meal. Caddies are available for $40.

Registration is on a first-come, first-served basis. Tickets for both events can be purchased on the Bar’s Web site, www.philadelphiabar.org. Call Stephanie Krzywanski at (215) 238-6345 for more information.

Students Consider Free Speech in Annual Oratorial Contest

by Sheryl L. Axlerod and Nicole Gerson

Is a T-shirt showing tanks leaving the battlefields of Iraq at the end of Operation Iraqi Freedom and heading toward the Eiffel Tower emblemized with the words “Next stop: Paris, France” an expression of free speech or unprotected conduct? This was the issue put to Philadelphia elementary school children in the 2005 Michael K. Smith Oratorical Contest sponsored by the Young Lawyers Division.

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This year’s problem, which was written by YLD Executive Committee member Michael R. Hayes, Monica M. Lawrence and Mary Craine Lombardo, was based upon characters from “The Simpsons.” The problem’s protagonist was Bart Simpson who wore the “Next stop: Paris, France” T-shirt to school under a sweatshirt. He revealed the T-shirt at recess atop the playground jungle gym with a triumphant shout, “Hey, look at me!”

A number of students from the school’s French Club came over to Bart, saw the T-shirt and angrily shook the jungle gym until Bart put his sweatshirt back on. A few days later, the Springfield School District expelled Bart for engaging in “offensive conduct.”

Bart appealed his expulsion to the continued on page 14
Hundreds Attend Federal Bench-Bar Conference

More than 200 attorneys and judges gathered at Asbourne Country Club in Cheltenham, Pa., on June 13 for the annual Federal Bench-Bar Conference, an educational and recreational event for federal court practitioners and judges.

The event was co-sponsored by the Philadelphia Bar Association’s Federal Courts Committee and the Pennsylvania Bar Institute.

Federal Courts Committee Chair Stephanie Resnick, partner at Fox Rothschild LLP, and Committee Vice Chair Rudolph Garcia, partner at Saul Ewing LLP, were planners of the conference.

U.S. District Court Chief Judge James T. Giles and Resnick opened the conference with welcoming remarks. Garcia then introduced “Closing Arguments,” during which New York trial lawyer and actor Henry G. Miller performed some of the more memorable closing arguments of Clarence Darrow. The arguments were then critiqued by a panel of judges and practitioners, including U.S. District Court Judges Jan E. DuBois, Lowell A. Reed, Jr. and Petrese B. Tucker, Roberta D. Pichini, Abraham C. Reich and J. Clayton Undercofler III.


Other highlights included remarks by U.S. Attorney Patrick L. Meehan, who discussed topics of interest to the criminal bar, a presentation of reports and panel discussions with Chief Judge Giles, U.S. District Court Clerk of Court Michael E. Kunz, U.S. Bankruptcy Court Chief Judge Bruce I. Fox and U.S. District Court Chief Magistrate Judge James R. Melinson, Roberta D. Liebenberg, Gregory P. Miller and David T. Sykes; and a session on good and welfare with Chief Judge Giles and Committee Vice Chair Garcia.
Legal Malpractice Rates Are On the Rise

(This article originally appeared in the June 16, 2003 edition of the Pennsylvania Bar News and is reprinted with permission.)

by H. Robert Fiebach

Although we are not nearly in the category of doctors and do not face the professional liability crisis that doctors are facing, lawyers in Pennsylvania and across the nation are nevertheless facing significant increases in their legal malpractice insurance rates. Not only are we facing increased rates, but many lawyers also are being forced by their carriers to reduce their coverage by increasing deductibles, reducing limits of liability or requiring that defense costs be contained within the policy limits.

The Pennsylvania Bar Association has cosponsored (with the Philadelphia and Allegheny County bar associations) a legal malpractice insurance program in Pennsylvania for nearly 38 years. The Pennsylvania Bar Trust and Insurance Fund administers this program. Once our endorsed carrier, Westport Insurance Corporation, notified us of increased rates, we took a number of steps to determine whether or not those rate increases were justified. Westport supplied us with a great deal of confidential claims data; after analyzing that data, we were not convinced that the entirety of the rate increase was justified. Accordingly, we took steps to test the market.

About a year ago – sensing the upcoming rate increases – we asked USI Colburn, our broker of record, to speak to other insurance carriers to test the receptivity of the market for bar-wide programs. USI Colburn reported back to the Pennsylvania Bar Trust and Insurance Fund and the Philadelphia and Allegheny County bar associations’ insurance committees that there were a number of insurance carriers who expressed some interest in bidding on our program.

At this past winter’s meeting, the Trust voted to ask USI Colburn to invite bids from all interested insurance companies. The Philadelphia and Allegheny County bar associations joined in this request so that a statewide invitation was elicited.

We solicited bids from 15 carriers as part of our due diligence process to ensure that the endorsed program was the best overall program available. Several insurance companies actually did submit competing bids. During this time, Westport advised us that while it would not submit a bid, it was interested in continuing the program at the rates and on the conditions that it had announced to us.

The bottom line is that neither of the submitted bids justified a change from Westport. In some instances, the bidding carrier was unwilling to accept all of the policy provisions under the Westport policy. Over the years, the Pennsylvania Bar Trust has been able to negotiate policy provisions that were not found in most legal malpractice policies. These provisions include continuing coverage and a no-hammer clause. Those of you familiar with professional malpractice know that most malpractice insurance policies in most professions contain provisions that permit an insurance carrier to settle a case without the consent of the insured or that force an insured to consent to settlement. Under a hammer clause, if the insured withholds consent to settle, then the insurance carrier cannot settle the case; the insurance company’s risk is limited to the amount it could have settled the case for, and the risk of liability above the settlement amount shifts to the insured. Since the inception of our insurance program 38 years ago, we have had a no-hammer clause in our policy, and Westport has agreed to continue with that provision. In addition, our policy provided that an insured must consent to settle. Simply put, if the insured does not consent to the settlement, Westport cannot force a settlement. Continuing coverage is a policy provision that was more recently negotiated by the trust and is now in the policies for all three bar associations. This provision eliminates the possibility that a claim will be turned down for late notice to an insured who has been continuously in the program.

continued on page 9

Send Us Your News, Views, Photos for Publication

The Philadelphia Bar Reporter welcomes law-related submissions for publication. Articles relating to a specific practice area, commentary, book reviews, and letters to the editors are welcome. Letters must be signed to verify authorship, but names will be withheld upon request. All submissions will be promptly considered by the Bar Reporter Editorial Board. Editors reserve the right to condense for clarity, style and space considerations.

Articles and/or requests for publication may be mailed, faxed or e-mailed and should be directed to: Jeff Lyons, Managing Editor, Philadelphia Bar Reporter, Philadelphia Bar Association, 1101 Market St., 11th floor, Philadelphia, Pa. 19107-2911. Phone: (215) 238-6345. Fax: (215) 238-1267. E-mail: reporter@philabarf.com
Civil Rights Committee

Terror Detainees’ Status Examined

by Jeff Lyons

The classification of fighters captured in the U.S. government’s war on terror involves the “stretching, even tearing” of international law, a Rutgers University law professor told the Association’s Civil Rights Committee.

Beth P. Stephens, an associate professor at the Rutgers University-Camden School of Law, discussed how the government should treat those detained in the war on terrorism at the Committee’s May 28 meeting. Stephens, a former litigator with the Center for Constitutional Rights in New York, recently argued before the U.S. Court of Appeals for the District of Columbia Circuit on behalf of persons captured abroad during the fighting in Afghanistan and held in U.S. military custody at the Guantanamo Bay Naval Base in Cuba.

“The U.S. government chose to view the Sept. 11 attacks as an act of war and declared war on the terrorists,” Stephens said. The advantages to this, she said, are that enemy soldiers can be shot and killed on sight. But enemy soldiers can do the same to Americans. Stephens said not all of the 760 prisoners being held in Cuba were captured on the field of battle. She said some were captured in Pakistan and Bosnia. Two Americans are being held in the U.S. as a result of the war on terrorism. A total of 40 prisoners have been released and taken back to their homelands, she said.

Stephens said the key dispute about the status of the detainees is whether these people committed and act of war or a crime. “The Geneva Convention said isolated and sporadic acts of violence are not war. There is nothing in current existing rules of law that fits al Qaeda,” she said.

“The Geneva Convention says armed conflict can either be international or internal. But the Bush administration says the Geneva Convention does not apply to these combatants and is neither an international or internal conflict,” Stephens said. But then an outcry came from allies and the U.S. military, which sought protection under the rules of the Geneva Convention for American soldiers, she said.

“The administration then changed its mind and said the Geneva Convention did apply; but the detainees in question are not lawful combatants, so the rules of the convention do not apply to them. The government argued al Qaeda is not part of the Taliban army and doesn’t follow the laws or customs of war. The U.S. calls them illegal combatants and says it can hold them indefinitely because they’re not prisoners of war,” she said.

Stephens said the International Red Cross said no such designation exists.

“They say they’re either combatants or civilians,” she said.

Stephens said the camp has recently been opened to journalists for inspection. “One British reporter said he was ‘relatively impressed with the conditions there,’” she said.

“The law enforcement model would have been the way to go with this from the start. If you did that and treated them as criminals, the punishment would be life in prison,” Stephens said.

INSURANCE

continued from page 8

For example, if you are a Westport insured in 2002 and incur a situation that in retrospect should have been reported then to the insurance carrier as a claim or potential claim, but you wait until 2003 to report the claim to Westport when you actually got sued, Westport will not disclaim coverage on any claim or potential claim, but you waited until 2003 to report the claim to Westport.

as a result, the lawyers’ professional liability marketplace is plagued with carriers who have withdrawn from the market either voluntarily or due to failure. Westport, on the other hand, remains committed to staying in this market. Another reason for increased rates is the fact that the casualty insurance industry is in tough times. Since Sept. 11, 2001, it has suffered $40.2 billion in losses, and last year the industry lost money for the first time in anyone’s memory. With decreasing stock market prices, insurance companies have lost $25 billion of surpluses due to unrealized capital losses. Environmental and asbestos claims have also increased significantly, causing problems for the casualty insurance business. Therefore, it must select profitable underwriting in order to remain financially healthy, and that means higher premiums. And finally, the frequency and severity of legal malpractice losses has been on the rise particularly in urban areas such as Philadelphia but also in surrounding suburban counties. The Pennsylvania Bar Trust and Insur- ance Fund is committed to studying the cause of malpractice and to offering lawyers educational programs and firm audits to try to reduce those claims. We also remain committed to offering the best coverage at competitive rates for the Pennsylvania bar. We are hopeful that this latest round of legal malpractice increases will enable us to hold premiums level in the short term, and we will continue to monitor the industry to be sure that our rates remain competitive.

Malpractice insurance policies are not all the same, and purchasing reliable insurance is one of the most important professional decisions that you must make. Buying malpractice insurance based on price alone is one of the worst ways to choose a malpractice carrier. An informed decision can only be made after evaluating the coverage, claims-paying ability and financial stability of the carrier. Through USI Colburn, the Pennsylvania Bar Trust has accomplished this and reaffirmed Westport as the carrier of choice for Pennsylvania lawyers.

H. Robert Fiebach is chair of the Pennsylvania Bar Trust and Insurance Fund.

Photo by Jeff Lyons
Dr. Cornel R. West, the Class of 1943 University Professor of Religion at Princeton University, delivered the fifth annual Judge A. Leon Higginbotham Jr. Memorial Public Interest Lecture.

QUARTERLY
continued from page 1

students that he understood their righteous indignation. "I can understand your rage. If you let rage and bitterness dissolve your soul, you’ll find yourself in the same gutter that the white supremacists have put themselves in. Because you’ll lose sight not just of the humanity of others, but you’ll lose sight of the capacity of human beings to come together through dialogical processes and through the rule of law to impose not just order, but a just order. Not just a hierarchy, but a hierarchy that is accountable to those below," West said.

West spoke passionately for nearly 30 minutes, with a ministerial style. He spoke glowingly of his late friend, saying "He represents the best of the legacies of Athens and Jerusalem and America. A. Leon Higginbotham Jr. took quite seriously the line from Plato that said, ‘the unexamined life is not worth living.’ I think he would add that the examined life is painful. Self-examination, self-interrogation, and self-questioning sat at the center of who A. Leon Higginbotham Jr was," West said.

Judge Higginbotham, West said, had a keen sense of tradition. Quoting T.S. Eliot, West said, "Tradition is not something you inherit. If you want it, you must gain it by great labor. You’ve got to fight for it. You’ve got to sacrifice for it. A. Leon Higginbotham Jr. always acknowledged the degree to which he was indebted to a tradition. He tried to enact the best of that tradition.”

"West said Judge Higginbotham never forgot that his father was a dignified day laborer in Trenton, N.J. He never forgot his mother was an elegant domestic maid who raised white children and went home and raised her own and still preserved her sense of integrity and dignity.

"A. Leon Higginbotham knew that Socrates, like Jesus, never wrote a word. That was not like Leon. He wrote and wrote and wrote and wrote and wrote. How did he do it? Jurist, superb! Scholar, superb! Orator, superb! And decent. And humble. What a combination!" West said.

"Thank God that you are all kind enough to celebrate as well as interro-gate the vision, life and work of A. Leon Higginbotham every year. It’s a beautiful thing, bringing in people every year with various perspectives, but knowing that you have to say something of the Socratic legacy and the questioning of the status quo. You have to say something about compassion and justice, especially as it relates to those whose lives are often stuck in the mud.

"You have to say something about the best of America in terms of its Democratic vision and the negro national anthem of lifting every voice. So that citizens feel that their voices make a difference in the decision-making processes of those institutions that shape and regulate their lives. Voicelessness is a condition that characterizes a lack of democracy. Voices heard, as in a jazz quartet, that great democratic art form, show individuality and community, dialectically intertwined in that democratic expression.”

West said that in Higginbotham’s last text, he said, ‘Let us together attempt to move to the fuller sunlight of justice and equality, which requires unbelievable service, vision, sacrifice and risk.’

‘And recognizing we are part of that same tradition that produced Leon, let us then try to bear witness and pass it on to the younger generation,” he said.

The lecture was inaugurated in 1999 by the Public Interest Section to honor the memory of the late Third Circuit Court of Appeals Judge A. Leon Higginbotham Jr.
A former Pennsylvania Supreme Court justice, a former president of the Common Pleas Court, a former administrative judge of the Family Court, a former president of the American Bar Association, a current member of Philadelphia City Council, two former Bar Association Chancellors, and a former chair of the Board of Governors were among those welcomed into the Association’s Year Clubs at the June 19 Quarterly Meeting and Luncheon.

Each of these honored members of our senior bar is a treasure, and these treasures add to our riches, offering us wisdom, good humor, experience and insight. Just as precedent counts for something in the law, so too does seniority count for a great deal in human affairs. You will recognize the men and women whom I am about to introduce and I know you probably count more than a few valued mentors, friends and partners,” Chancellor Audrey C. Talley said.

Talley also singled out Charles L. Cushmore, one of only a handful of individuals to join the 75 Year Club, having been admitted to practice in 1928. Cushmore, born March 1, 1910, celebrated his 93rd birthday this year. Cushmore, born in 1928, was admitted to practice in 1953. He was appointed to the Pennsylvania Supreme Court, Norma Shapiro, Madeira said. Shapiro is now a senior judge on the Superior Court of Pennsylvania.

"Each of these honored members of our Bar was allowed to enter that high school and graduate there,” he said. “There were barriers to entry to our profession which were being broken down. Chief Justice Horace Stern did a lot to break those down because he hired the first woman law clerk on the Pennsylvania Supreme Court, Norma Shapiro,” Madeira said. Shapiro was now a senior judge on the U.S. District Court for the Eastern District of Pennsylvania.

"We had visionaries in Bob Abrams and Herman Pollack who saw the need for legal services and for adequate and competent representation for the indigent accused of crime. They were early in that cause and it took more than a decade for that to be realized,” he said.

"In the criminal area, our views were less harsh than they are today. Judges had discretion in sentencing,” Madeira said. "We were taught that criminal punishment had goals of deterrence and of rehabilitation,” Madeira recalled. "Our profession believed that they were exempt from certain aspects of the First Amendment. Such things as advertising and marketing were prohibited,” he said. "We have seen a lot of change in our 50 years. We have adapted to some, and some of it improves us. And some of it we will leave to history to see if it improved us. Was it a long time ago? Because it seems like only yesterday,” said Madeira.

The following members were admitted to the Association’s Year Clubs:

50-Year Club
- Leonidas A. Allen
- Warren M. Ballard
- Earle N. Barber
- Norman S. Benson
- Robert F. Blanck
- Judge Edward J. Bradley
- John J. Brennan
- Ralph W. Brenner
- Judge Joseph C. Brown
- Francis X. Diebold
- Park B. Dilks Jr.
- Joseph S. Elmaleh
- Joseph F. Hanagan Jr.
- Joseph F. Foster
- Max Goldfinger
- Maxwell P. Gorson
- Jack C. Gouldhart
- Bernard Granor
- Jon Grossman
- Fidmore S. Harowitz
- Bernard N. Katz
- William A. Kelley Jr.
- Robert Levent
- Frederick A. Levy
- Jerome J. Lipman
- Edward W. Madeira
- Theodore R. Mann
- John S. Manos
- Domenic Masciantonio Jr.
- Audricket S. Minissi
- John Mitchell
- Judge Frank J. Montemanno
- Everett H. Murray Jr.
- George H. Nader
- Herbert L. Ocks
- George J. O’Neill
- Stanton J. Oswald
- A. Charles Peruto
- Edward J. Quinn
- Judge Meyer Charles Rose
- Joseph D. Schein
- Jerome J. Shestack
- Philip Shurman
- Leonard Spear
- John T. Synnestvedt
- Martin Techeny
- Joseph R. Thompson
- Stanton L. Treister
- Nicholas A. Voroneuman
- Robert E. Wachs
- William D. Webb
- and Muntair T. Wright

60-Year Club
- Judge Nicholas A. Cipriani
- John A. Eichman III
- John A. Geisz
- Joseph Sharan
- Craig M. Sharpe
- and Daniel Sherman

65-Year Club
- David Benger
- Morris Chernick
- David Cohen
- Edward I. Cutler
- Harold Sills
- Benjamin B. Solomon
- and Frederick Van Denbergh

70-Year Club
- Herbert G. Marvin

75-Year Club
- Charles L. Cushman

Retired Philadelphia Common Pleas Court Judge Nicholas A. Cipriani, one of the Association’s Year Clubs, is joined by Common Pleas Court Judge Sandra Mazer Moss at a reception before the June 19 Quarterly Meeting and Luncheon.

Chancellor Audrey C. Talley visits with Charles L. Cushmore, a member of the Bar for 75 years.
Tangible Employment Actions Debated

by Wanda E. Flowers

The issue of what constitutes a “tangible employment action” for liability under the Faragher/Ellerth Rule was discussed at a recent joint meeting of the Human Resources and Labor and Employment Law Committees. The meeting was co-sponsored by Wanda E. Flowers, a sole practitioner, and principal of Burke Consulting, joined Diane Loebell, assistant general counsel of Unisys Corporation, at leading a discussion on the implications of Suders v. Exxon, 325 F.3d 432 (2d Cir. 2003), a case decided by the U.S. 2d Circuit that held that active discipline, when proved, constitutes a tangible employment action within the meaning of Ellerth and Faragher.

Burke pointed out that the U.S. Supreme Court did not specifically discuss constructive discharge and that several circuits, including the 2nd and 6th Circuits, have disagreed with the 2d Circuit. Those courts held that constructive discharge is not the same as discharge because there needs to be company ratification of the employment action. According to those courts, the company must be proactive.

In Suders, the court makes it clear that proving constructive discharge is difficult and that the constructive discharge standard remains the same. The 2d Circuit has held that plaintiff-employee may establish a claim of constructive discharge by proving that “the conduct complained of would have the foreseeable result that working conditions would be so unpleasant or difficult that a reasonable person in the employee’s shoes would resign.”

2002-246T Attorney may not engage in direct solicitation by handing out cards at INS hearings to prospective clients.

2002-261T Attorney who wrote will for deceased client may not turn over original to anyone other than named executor.

2002-275T Attorney who represent- ed husband in support matter against former girlfriend might not now repre- sent wife in divorce against husband.

2002-281T Attorney who has been holding escrow funds for client for ten years, with client refusing to claim it, must pay funds to State Treasurer’s office for unclaimed property.

2002-543T Out-of-state lawyer, not licensed in Pennsylvania, may be put on letterhead as long as jurisdictional limitation is noted.

2003-13T Bonus cannot be paid to paralegal for referring in a case; rather, all employees in that class must be treated equally in bonus plan.

2003-41T Attorney must file claim against party now if matters not barred from representing employer in party in divorce seven years ago is not subject to vicarious liability. The term supervisor has been applied to members covered by the collective bargaining agreement who had been delegat- ed the authority to direct the work of other employees covered by the agreement. Moreover, an employer can be held liable for the actions of a supervisi- or who is not the direct supervisor of the claimant. In 1999, the EEOC issued guidance defining supervisory responsibilities. The focus is on the authority of the employer, not the actual title held by the employer. The EEOC guidance can be found on the EEOC Web page at www.eeoc.gov.

Editor’s note: The following are summaries of opinions issued by the Professional Guidance Committee. The committee’s jurisdiction is limited to rendering opinions about prospective ethical conduct by inquirers who are members of the Philadelphia Bar Association. The letter “T” following an opinion number indicates a telephone inquiry.

Summarized by David I. Grunfeld, a sole practitioner, is a member of the Professional Guidance Committee.

PHILADELPHIA

July 2003 / Bar Reporter
New Evidence Rules for Compulsory Arbitration Appeals

by Jeffrey L. Dashevsky

On Sept. 1, a new practice with respect to the admission of documentary evidence at the trial of a compulsory arbitration appeal case will be effective under Pa. Rule of Civil Procedure 1311.1.

The new rule incorporates the concept of Rule 1305, which permits stipulated documents to be admitted into evidence at the arbitration hearing, upon notice by the party offering the documents to every other party accompanied by a copy of the documents. The new procedure is limited to cases in which the "plaintiff stipulates to $15,000 as the maximum amount of damages recoverable upon the trial of an appeal from the award of arbitration." The form of the stipulation is included in the new rule. Once the plaintiff has filed and served the stipulation, the new rule provides that "any party may offer at trial the documents stipulated to under Rule 1305(b)(4) governing the right of the plaintiff to conduct pre-trial depositions of the expert, which will also increase the plaintiff's overall trial costs. Plaintiffs will benefit from the new rule when faced with the situation where the likelihood of the plaintiff's claim resulting in a verdict in excess of $15,000 is nominal based upon the injuries/damages sustained; or where there is difficulty in plaintiff meeting their burden of proof that the injuries/damages were caused by the tort in question, or where faced with the likelihood of having comparative negligence attributed to the plaintiff, thus reducing the net verdict. Defendants will benefit from the plaintiff's opt-in stipulation with the obvious effect of "capping" the potential damages they will ultimately have to compensate an injured plaintiff. In the typical scenario of a motor vehicle collision, many drivers carry only the state's minimum bodily injury liability limit in the amount of $15,000 per person, exposing themselves to a potential excess verdict. The new rule will prevent an excess verdict and thus personal financial exposure from even being a consideration. If the defendant has liability limits greater than $15,000, the insurance carrier will already be saving money, theoretically, having collected premium payments on a benefit amount which they are guaranteed never to have to pay out, based upon the capped damages. While the new rule appears to have inherent benefits to the parties of a lawsuit, the only apparent benefit to the court system is the potential for less time-consuming trials, since there could be fewer witnesses to testify. Unfortunately, the new rule has the potential of causing more cases to enter into the arbitration-appealed trial pools. If the plaintiff opts-in to the $15,000 capped-damages stipulation, the liability insurance carriers virtually have nothing to lose by proceeding with a trial. Though the new rule does not specify the mode of conveyance of the expert's evidence to the consideration of the ultimate fact finder, it will therefore be left to the creativity of the trial attorney to present the evidence in the most advantageous way as an advocate. There will only be a capitation on damages, there is no capitation on advocacy.

The Nominating Committee of the Philadelphia Bar Association has been formed. Committee members are Allan H. Gordon (chair), Mitchell L. Bach, Gabriel L. Beviscapua, David S. Blum, Andrew A. Chiha, Lennard A. Cohen, Karen L. Detamore, Barbara W. Freedman, Nicole D. Galli, Alexander R. Giacobetti, Natalie Klyashtorny, Stanley R. Krakower, Gregory H. Mathews, Robert H. Meek, Carl S. Primavera, Stephanie Resnick, Linda F. Rosen, Joseph A. Sullivan, Audrey C. Talley, Joseph C. Vignola, Michael L. Viola and David L. Weinreb. Association Secretary Sayde Joy Ladov serves as a non-voting member of the committee. The committee has scheduled dates for its next meetings. They are Monday, Sept. 8, at 12 p.m.; Tuesday, Oct. 14, at 4 p.m., and Wednesday, Oct. 15, at 4 p.m. Offices for which candidates are being solicited are Vice Chancellor, secretary, assistant secretary, treasurer, assistant treasurer, and five seats on the Board of Governors, three of which are to be nominated by the Nominating Committee. Each Board seat carries a three-year term. Individuals who wish to be considered for any of the offices should submit a resume of their background and indicate the position for which they wish to run. Materials should be submitted to the Chair of the Nominating Committee, Allan H. Gordon, c/o Mary Kate Nolen, Philadelphia Bar Association, 1101 Market St., 11th Floor, Philadelphia, Pa. 19107-2911, no later than 5 p.m., Friday, Oct. 10.
by James LaRosa and Gary Mintz

How many times has this happened to you? You go on a job interview, you think everything went great, only to find out a week, three weeks or a month later that you did not get the job or even a second interview. Most people have experienced at least once in their lives the disappointment of not being offered a job they were interested in.

Many times, the candidate receives little or no feedback from the employer: Sometimes, the employer does not even contact the candidate to inform them that they will not be offered a position. This lack of information can be very frustrating. Most people would like some feedback as to why they did not get the position. Was it something they said or did or did not say or did not do? Was it a lack of experience? Was it something that they could change or improve for the next time?

Many people are reluctant to inquire into the employer’s reasons. They are concerned with being overly aggressive. Also, most people do not enjoy hearing negative things said about them.

Many career counselors, however, believe it is very beneficial to receive post-interview feedback from the employer. The more information you have, the better prepared you will be for your next interview. Many of the reasons you did not get the job may be things that cannot immediately be corrected, i.e., not having enough trial experience. Other things, however, could be easily corrected. Maybe you did not make proper eye contact or your answers were too long or too short. There may be things that were unique issues to that particular employer and you may not want to correct. Whatever the reasons, having this information will help you better prepare for your next job interview.

Some employers are reluctant to provide post-interview feedback. They may fear possible legal ramifications. Also, many people are simply uncomfortable providing negative feedback if approached properly, however, many employers will provide information that can be helpful on your next interview.

It is suggested that two or three weeks after your interview, follow up with a phone call or even an e-mail. The key is to approach the employer in a way that they do not feel uncomfortable. Simply saying “why did I not get the job?” might make an employer uncomfortable. If you ask specific questions about your interviewing skills and qualifications, however, the employer will be more likely to provide specific and beneficial answers. Also, if you used a legal recruiter to assist you with your job search, see if the recruiter can obtain information from the employer as to their reasons for not offering you the position.

The following are some of the questions you may want to ask following an interview:

• Can you provide me with some of the deciding factors in choosing another candidate?

• Is there anything I can improve on during the interview process that might improve my chances of getting a similar position next time?

• Although I was not right for this position, are there any other opportunities now or in the near future that for which I might be a good fit?

• Can you provide me with any job search advice?

• Are you aware of any firms or corporations that might be interested in a candidate with my background?

• Can I stay in touch with you in case there is an opening in the future?

As suggested, following up two or three weeks after an interview can be very beneficial. If the employer does not respond to your initial request for post-interview feedback, follow up a second time. Again, be polite and explain that your reason is to help you better understand the employer’s decision-making process so that you can improve your interviewing skills and increase your chances on your next interview. If they have not responded after your second request, you should probably move on and hope for better success the next time.

James LaRosa, Esq., and Gary Mintz, Esq., are recruiting partners with Juristaff, Inc., the exclusively endorsed legal staffing agency of the Philadelphia Bar Association. They can be reached at (215) 751-9100, extension 302 or via e-mail at juristaff@juristaff.com. Mintz can be reached at (215) 751-9100, extension 315 or via e-mail at gmintz@juristaff.com.
Gregory Peck – An Appreciation

by Marc W. Reuben

Gregory Peck, Henry Fonda and James Stewart were the three actors who brought everyone to the level of stardom in American cinema. These men were decided Midwesterners, even if they didn’t come from that area in fact. But they all possessed the lanky build and the slightly deliberate drawl that reflected the more thoughtful approach to problem solving, so often attached to the farmers of the plains.

Of the three, Peck caught the brass ring when asked to play the role of Atticus Finch, the moralistic lawyer-hero of the 1962 film “To Kill a Mockingbird.” Stewart had played a lawyer in the wildly successful “Anatomy of a Murder” in 1959, and Fonda had appeared in numerous films about lynching (“The Osho Incident”) and jury matters (“Twelve Angry Men”). But the role of Atticus Finch was the ultimate vehicle through which the common man could be exalted through noble words and action.

In his early career, Peck had rested somewhere between beauty symbol and acting dynamo. His common touch in such films as “The Best Years of Our Lives” (1947) and “Spellbound” (1945) placed him at the top of the Hollywood “A” list, even though he had not yet found his voice. All the film performances he gave in the 1940s reflected nobility and a certain dignity, even when he was playing less-than-noble roles. But his first great performance was as a burnt-out gunslinger in the 1950 film “The Gunfighter,” where audiences could see him combine reluctant heroics with the worldly wisdom of experience. He was wonderful in that movie. His wiseful nobility was pleasantly surprising in “Roman Holiday” (1953) and his performance in the 1956 “Moby Dick” was driven and menacing.

But it was the role of Atticus Finch, a quiet southern lawyer defending a poor black man in a lynch-happy country town that saw him combine nobility of character with the deliberateness of thought in a most successful performance. The role he played in “Mockingbird” was the ideal for any actor. A quiet man versus the mob. The moralist versus slogan-chanters. What made Peck’s performance so great was the manner in which he allowed his audience to join in the thought processes that moved his character. The simple words he spoke were enunciated clearly and quietly, often to a listening child, and in a forthright way that caused any audience to wonder how principals of justice and fairness could not be understood by anyone with a soul.

Roles like that of Atticus Finch are not uncommon. But it takes a certain quality of actor to make both character and script indelible: Peck, who was a Lincolnesque figure, could embrace and stand above his audience at the same time. His imposing build and good looks brought attention to him and his declamation made people listen to him. Most of what he said during his film career seemed to be coming from the mouth of Lincoln, a role he also played. Peck appeared in a number of socially important films at times when the films were tackling subjects not frequently touched in American cinema. “Gentleman’s Agreement” (1947) spoke of rampant anti-Semitism in post-war United States and “To Kill a Mockingbird.” Stewart had played a lawyer hero of the 1962 film “To Kill a Mockingbird.”

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Affirmative Action Ruling Applauded

Chancellor Audrey C. Talley has applauded the decision of the U.S. Supreme Court upholding the flexible affirmative action approach of the University of Michigan Law School.

"Ensuring the effective participation by all segments of society is absolutely critical. It's an important goal," the Chancellor added.

"By reaffirming that race can be considered to help achieve this goal the Court has placed affirmative action where it belongs - among our very highest priorities," Talley said. The Chancellor noted that the Philadelphia Bar Association has long supported affirmative action and that earlier this year it adopted a resolution supporting the University of Michigan Law School in its effort to retain the program. "This decision will help us to build a legal profession that reflects the American society it serves," Talley explained. "It also gives a green light to institutions at every level in both the private and public sectors telling them to continue to pursue well-conceived, carefully planned, flexible affirmative action programs that open the door to all."

Talley said the Philadelphia Bar Association will continue to work with law schools, law firms and other institutions and organizations to help them sustain and increase diversity. "The Philadelphia Bar Association has been doing everything it can to encourage diversity in every way that it can for quite some time. We are now delighted to have this strong, positive signal from the nation's highest court which effectively tells us to continue to work in this direction. Let us all take heed," she concluded.

CONSTITUTION continued from page 5

The program will touch upon key issues such as the right to privacy in the face of national security concerns, free speech in the aftermath of Sept. 11 and freedom of expression on and access to the Internet. The Chancellor noted that as one of a select group of key partners designated by the new Center, the Association has worked closely with the NCC on many of the plans and events leading up to the NCC's grand opening.

The July 8 panel is being sponsored by PNC and Colburn Insurance Service with a live audience of invited guests. PNC and Colburn are helping to underwrite the later broadcast of the program, tentatively scheduled near the Sept. 17 anniversary of the ratification of the Constitution. A committee of Bar Association members including Chancellor Talley, Lawrence J. Fox, Lawrence E. Frankel, Katherine Hatton and Mary E. Kohart planned the panel program, which will be followed by a reception and tours of the new Center.

The NCC will officially open on July 4 with the presentation of the city's Liberty Medal to U.S. Supreme Court Justice Sandra Day O'Connor. Eight days of events and open houses will follow including festivals on Independence Mall, music, fireworks, light shows, outdoor performances, seminars and other opportunities for public participation. Many of the events are free and open to the public.

The National Constitution Center is the first museum in the world dedicated to honouring and explaining the U.S. Constitution through interactive and multimedia exhibits, photographs, film, sculpture, text and artifacts. The NCC was established by the Constitution Heritage Act of 1988. Passed by Congress and signed by President Ronald Reagan, the Act created the Center as an organization and first established building the National Constitution Center as an important national goal.

For a complete schedule of grand opening and other NCC events visit the NCC's Web site at www.constitutioncenter.org or call (866) 917-1787.

Affirmative Action Ruling Applauded

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Make Online Research Time More Productive

by David P. Whelan

The digital law firm library is nearing reality as the Internet gains in importance to legal researchers. Westlaw.com and LexisNexis.com are a Web-based view to almost every primary U.S. legal material. Secondary materials are also available online, including treatises and “looseleafs” from the Bureau of National Affairs (www.bna.com), Commerce Clearing House (www.cch.com) and other publishers. Increasingly, browse free or alternate fee-based Web sites, like Aspen Publisher’s Loislaw (www.loislaw.com) or Versuslaw (www.versuslaw.com), are becoming popular legal research starting points.

Only 46 percent of American Bar Associations members responding to the 2002 ABA Legal Technology Survey started their online legal research at fee-based sites. As with general Internet research, online legal researchers often start with a search engine. A majority of these researchers, again according to the ABA’s 2002 survey, are lawyers. Many start with Findlaw (www.findlaw.com), Cornell’s Legal Information Institute (www.law.cornell.edu) or the federal Firstgov (www.firstgov.gov) sites. These sites provide access to substantial free information, directly or through well-constructed indexes. Online research is not just about the content, though. Sometimes you can make technological improvements to your searching that make the process more efficient.

A Web browser is the software you use to view Web sites, the most common being Microsoft’s Internet Explorer (www.microsoft.com/ie) and Netscape Navigator (channels.netscape.com/ns/browsers/). More than 70 percent of lawyers responding to the ABA’s 2002 survey are using Microsoft’s Internet Explorer Web browser.

There are benefits to using the most popular Web browser, including the ability to use specially customized Web sites and new tools that are embedded in the Microsoft browser. Some Web sites will not appear properly if you use Netscape Navigator or alternative browsers, like Opera (www.opera.com) or Mozilla (www.mozilla.org). On the other hand, Microsoft and Netscape browsers tend to be slower at loading pages and graphics over the same Internet connection than Opera or Mozilla. If you want to do speedy research, or have a slower connection, you should consider using one of the alternate browsers to get more done more quickly. You can also “tweak” your experience in any Web browser by turning off the images on Web pages, so that the fast-loading text is all that you see.

The toolbar is a relatively new research tool. Normally, your Web browser has certain toolbars built-in by default: navigational buttons forward, home, back), function buttons (print, favorites or bookmarks), and the like. You can now add toolbars to your browser to do more while you research. Some provide generic tools, like Merriam-Webster’s dictionary and thesaurus toolbar (www.m-w.com). The two most powerful toolbars for legal researchers are Google’s (www.google.com), and requires Microsoft’s browser) and Findlaw’s (www.findlaw.com, supporting both Microsoft and Netscape).

The Google toolbar changes the way you perform Internet research. Typing a query into the toolbar executes a search on Google, no matter what page you are currently viewing. Search queries are saved and there are other functions to make your results more useful. The highlighter is the highlighter function, which color-codes search terms so as you scan down the page, you can see all occurrences of your keywords.

Findlaw’s toolbar offers the same functionality for drilling into West Group’s Findlaw.com Web site. The toolbar is created and maintained by a third-party and, unlike the Google toolbar, requires submission of personal information. This raises a red flag and, if this was not Findlaw, it might be a dead breaker. You will find other toolbars and browser enhancements available on the Internet. One of the best indexes of these tools is at Web- attack.com (www.webattack.com). If you are not confident about who is distributing the tool, however, it is worth taking a minute on installing it. Keep an eye on your computer’s software firewall (www.zonealarm.com) and, if this was not Findlaw, it might be a dead breaker. You will find other toolbars and browser enhancements available on the Internet.

As lawyers do more work online, they are adding to the database. As lawyers do more work online, they are adding to the database. As lawyers do more work online, they are adding to the database.
Cook It Yourself Deliciously at Kim's

Kim's Restaurant
5955 N. 5th Street
(215) 927-4550

by Skinny D. Bokal

There are times when an attorney, usually chary and decorous, simply desires to try new things, different places and faces; dauntless adventure. Cynically, said aforementioned lawyer should meander toward 5th Street and head north, where Columbian, Chinese, Portuguese and Korean restaurants abound. By entering these enthralling eateries one may gormandize with impunity, for you are unknown to anyone.

You will venture into new appetizing jurisdictions (for a member of the Philadelphia Bar) when you arrive at Kim's Restaurant. Kim's is the oldest Korean restaurant in Philadelphia. It will knock your socks off.

Enter from a packed small-mail parking lot into what first appears to be a diner. But the diner is integrated into the design of a larger armory of varnished picnic tables above each hang huge inverted electric air-exhaust-funnels.

In the middle of each table, just under the funnel, is a removable board, which when eliminated, creates an exhaust-funnels. Lower the electric vent (top red button) about a foot and you're ready for a smokeless “C-1” or “C-3” on the five-page Korean menu.

The C's mentioned are platters piled high with pounds of superbly saw, red, thinly sliced marinated meat (from beef ribs), spiced and sauced for self-barbecueing mid-table.

You are surrounded by brush but helpful waitperson and other staff in street clothes. Boisterous Korean patrons enjoy cooking their meals, while drinking Korean beer from shot glasses or American beer from frosted glasses. They carve joyfully with large, gruff gaffs, hesitating noiselessly and only momentarily to indulge or to bow to guests arriving at their table.

Before you can even begin to barbecue the meat (with careful use of aluminum tongs and wooden chopsticks), servers place eight to 10 three-inch-round bowls of garlic pieces, sliced green unseeded chili peppers, onions, a ground sesame mixture, kimchi, peeled mung bean sprouts, fried tofu, seaweed salad, sliced softened peeled radishes, sticky rice, and mounds of red leaf lettuce, around you. These same persons smile and yell at you in Korean (just as you would do if you were attempting to explain in English to a Korean), gesturing how to place the meat for a minute on the grill, how to turn it over, and how to place what's browned into the lettuce, accompanied with assortments of fillings from the other surrounding bowls. Smile, and don't yell back. And if you intend to use the kimchi as a filler, order three cold beers to have on hand. Trust me on this.

Bulkogi (C-1), a beef rib meat and kalbi (C-3), a beef short rib meat, seem identical to my untrained palette, especially if both are barbecuing simultaneously over the hardwood brilliant-blue-orange charcoal. When the beef has turned caramel, place four pieces of the darkened slices upon a large freshly washed lettuce leaf. Top with grilled garlic, kimchi, sprouts and rice. Roll into a sloppy cigar and bite with gusto. The beef's sweetness emerges at one's first crisp chomp; then the nice clings to your tongue as it begins to undulate, tickled by the mung beans and garlic slices. Finally, as you swallow, the synapses to your brain register the presence of the heated exchange between peppery crimson-hot kimchi and your esophagus. You gurgle. Eyes tear. Nose dribbles. Lungs gasp. Eyebrows are singed when you exhale. Down the fire-pole to quell the smoldering remnants goes a bottle of beer. You may also wish to have a Pilsner within arm's reach. It's a huge Korean pancake filled with scallions. It's ready, willing and available to wipe your lips clean. Otherwise you'll be giving kimchi kisses for days.

Or you may try one of Kim's “house” soups. There's a grandiose bowl of Udon, a bombastic dark amber broth filled with slick slippery lengthy noodles. Your server will appear again, surprising you by brandishing scissors from Snaples with which to cut the aforementioned noodles for easier mouth-fit. She'll smile and yell at you again, so that you use a specially provided long spoon-like utensil, whose top is enveloped in a filmy fliny paper “sanitary cover” (Don't ask). Amidst the now-chopped noodles are demured mussels and clams, teryny former dried shrimp, ten-tacles, mushrooms, cabbage and carrot slices. Enter the Demilitarized Zone of your taste buds.

There are, of course, hundreds of napkins (in holders) at your table, and a plethora of toothpicks. Use at will. And don't miss the steamed dumplings to take home; half-moons of silky pockets made plump by pork filling. All are provided with a dark soy sesame-dipping puddle. They are fabulous with tomorrow morning's breakfast-fasts eggs.

By meal's end, there'll be a slight sweat above your brow, and a notion that you've attended a new world order, an order that gracious restaurateurs are willing to fill. Sticks of Juicy Fruit chewing gum are given gratis as you pay your bill. Remember to bow out.

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CALENDAR OF EVENTS

Note: While the following listings have been verified prior to press time, any scheduled event may be subject to change by the committee or section chairs.

Tuesday, July 1
Philadelphia Bar Foundation Board of Trustees – meeting, noon, 10th floor Board Room.
Municipal Court Committee – meeting, noon, 11th floor Committee Room. Lunch: $7.50.

Wednesday, July 2
Delivery of Legal Services Committee – meeting, 8:30 a.m., 10th floor Board Room.
State Civil Committee – meeting, noon, 10th floor Board Room. Lunch: $7.50.
Legal Rights of Children Committee – meeting, 3 p.m., 10th floor Cabinet Room.

Friday, July 4
Independence Day – Bar Association offices closed.

Monday, July 7
Public Interest Section Executive Committee – meeting, noon, 10th floor Board Room.
Family Law Section – meeting, 4 p.m., 10th floor Board Room.

Tuesday, July 8
Criminal Justice Section Executive Committee – meeting, noon, 10th floor Board Room.

Wednesday, July 9
Civil Rights Committee – meeting, 12:15 p.m., 11th floor Committee Room.

Thursday, July 10
Alternative Dispute Resolution Committee – meeting, 12:15 p.m., 10th floor Board Room.
Lunch: $7.50.

Philadelphia Bar Reporter Editorial Board – meeting, 12:30 p.m., 10th floor Cabinet Room.
Environmental Law Committee – meeting, 12:30 p.m., 11th floor Conference Center. Lunch: $7.50.
Committee on the Legal Rights of Lesbians and Gay Men – meeting, 12:30 p.m., 11th floor Committee Room.

Friday, July 11
Law School Outreach – noon, 10th floor Cabinet Room.
The Philadelphia Lawyer magazine Editorial Board – meeting, 12:30 p.m., 10th floor Board Room.

Tuesday, July 15
Board of Governors Cabinet – meeting, noon, 10th floor Board Room.

Wednesday, July 16
Workers’ Compensation Section Executive Committee – meeting, 10:30 a.m., 11th floor Committee Room.
Workers’ Compensation Section – meeting, noon, 11th floor Conference Center. Lunch: $7.50.

Women’s Rights Committee – meeting, 4 p.m., 10th floor Board Room.
LegalLine – 5 p.m., 11th floor LRIS Offices.

Thursday, July 17
Family Law Section Executive Committee – meeting, noon, 11th floor Committee Room.
Elder Law Committee – meeting, noon, 10th floor Cabinet Room.
Women in the Profession Committee – meeting, noon, 11th floor Conference Center. Lunch: $7.50.

Friday, July 18
Social Security and Disability Benefits Committee – meeting, noon, 11th floor Conference Center. Lunch: $7.50.

Law School Outreach – noon, 10th floor Cabinet Room.

Monday, July 21
Business Law Section Executive Committee – meeting, noon, 10th floor Board Room.
Law, Life and Lunch – noon, 11th floor Conference Center.

Tuesday, July 22
Professional Responsibility Committee – meeting, noon, 10th floor Board Room. Lunch: $7.50.

Thursday, July 24
Board of Governors – meeting, 4 p.m., 10th floor Board Room.

Friday, July 25
Law School Outreach – noon, 10th floor Board Room.

Tuesday, July 29
Criminal Justice Section – meeting, noon, 11th floor Conference Center. Lunch: $7.50.
Compulsory Arbitration Committee – meeting, noon, 11th floor Conference Room. Lunch: $7.50.

Young Lawyers Division Cabinet – meeting, noon, 10th floor Cabinet Room.

Wednesday, July 30
Lawyers Referral and Information Service Committee – meeting, noon, 11th floor Committee Room.

Thursday, July 31
Young Lawyers Division Golf Outing – 1 p.m., Philadelphia Cricket Club, Flourtown, Pa.

Unless otherwise specified, all checks for luncheons and programs should be made payable to the Philadelphia Bar Association and mailed to Bar Headquarters, 1101 Market St., 11th fl., Philadelphia, Pa. 19107-2911. Send Bar Association-related calendar items 30 days in advance to Managing Editor, Philadelphia Bar Reporter, Philadelphia Bar Association, 1101 Market St., Philadelphia, Pa. 19107-2911. Fax: (215) 238-1267. E-mail: reporter@philabar.org.

Justinians Honor Judge Cipriani

Association Chancellor-Elect Gabriel L.I. Bevilacqua (left) and Vice Chancellor Andrew A. Chris (right) join retired Philadelphia Common Pleas Court Judge Nicholas A. Cipriani at a June 10 luncheon at the Union League sponsored by the Justinian Foundation. A scholarship for a third-year student at Temple University James E. Beasley School of Law was established in Judge Cipriani’s name.

Photo by Jeff Lyons
Donald C. Marino, former Chancellor of the Philadelphia Bar Association, has been named special counsel to Philadelphia City Solicitor Nelson A. Diaz.

Ronald A. Kovler, a sole practitioner and vice chair of the Board of Governors, received the Philadelphia Trial Lawyers Association 2005 President’s Award on June 11.

Judge Todd B. Seelig of the Bureau of Workers’ Compensation has been elevated to chair of the Pennsylvania Bar Association’s Young Lawyers Division.

Bennett G. Picker, a partner with Stradley Ronon Stevens & Young, LLP and former Chancellor of the Philadelphia Bar Association, has been elected to serve as a member of the CPR Institute for Dispute Resolution Executive Committee.


Bradley A. Krouse, a partner with Klehr, Harrison, Branzburg & Ellers LLP, has been recognized by the Philadelphia Business Journal as one of its “40 Under 40.”

Joseph A. Dworetzky, a shareholder in Hangley Aronchick Segal & Edell, has been elected to the Board of Trustees and Managers of Moore College of Art & Design.

Harris J. Chernow, an attorney with Chernow & Associates, PC, was co-chair of the American Association of Franchisees and Dealers’ 2005 annual conference in Atlanta on in May.

Michael L. Viola, a partner with Shainberg & Viola, has been elected vice president of Dignity/Philadelphia, the local chapter of Dignity/USA, the nation’s largest organization of gay, lesbian, bisexual and transgender Catholics.

Arline Jolles Lotman, a sole practitioner, spoke on the history of Jewish Law Day during the celebration of the 21st Annual Jewish Law Day on June 2 at Jewish Federation headquarters.

William W. Matthews III, a partner with Klehr, Harrison, Harvey, Branzburg & Ellers LLP, has been elected to a two-year term as president of the 41,000-member LaSalle University Alumni Association.

Thomas G. Wilkinson, a member of Cozen O’Connor, received a special achievement award from the Pennsylvania Bar Association for his work with the Rules of Professional Conduct at the Association’s annual meeting in April.

Nelson A. Diaz, city solicitor for Philadelphia, was presented with the Judge Learned Hand Award on May 14 by the Philadelphia Chapter of the American Jewish Committee.

Marina Angel, a professor at Temple University Beasley School of Law, recently received a special achievement award from the Pennsylvania Bar Association for her work with its Commission on Women.

Alan S. Kaplinsky, a partner at Ballard Spahr Andrews & Ingersoll, LLP, was the chair and course planner at the Pennsylvania Bar Institute Banking Law Update program on April 25. He also was the co-chair at the Practicing Law Institute’s Consumer Financial Services Litigation program held on March 13 and 14 in New York City and May 19 and 20 in San Francisco.

Diana C. Liu, a partner with Wolf, Block, Schorr and Solis-Cohen LLP, has been elected to membership in The American Law Institute.

Ronald A. Sarachan, a partner at Ballard Spahr Andrews & Ingersoll, LLP, served as a speaker at the Pennsylvania Bar Institute’s Environmental Law Forum on April 10.

Rochelle M. Fedullo, a partner with Wilson, Eber, Moskowitz, Edelman & Dicker LLP, was the featured speaker at the 15th annual Center for Forensic Economic Studies Excellence in Litigation Awards dinner. Fedullo spoke about the importance of developing positive, collegial relationships with other lawyers and with the court.

Adam E. Laver, an associate with Klehr, Harrison, Harvey, Branzburg & Ellers LLP, has been elected to the Board of Directors of Temple Beth Zion-Beth Israel.

Barry L. Klein, a partner at Ballard Spahr Andrews & Ingersoll, LLP, has been appointed as an adjunct professor of law at Temple University Beasley School of Law.

Bruce G. Leto, a partner with Stradley Ronon Stevens & Young, has been appointed to the Advisory Board of the Mutual Fund Directors Forum.

Robert J. Coleman, chairman and CEO of Marshall, Dennehey, Warner, Coleman & Goggin, was recently elected to the Board of Directors of Republic First Bancorp, Inc.

David X. Zechandelaa, a partner with Blank Rome LLP, presented “Aviation Case Law Update” at the Aviation Insurance Association’s Orlando 2005 Conference on April 26 to April 29.

Frederick D. Lipman and Robert M. Broder, partners at Blank Rome LLP, took part in a business valuation seminar sponsored by The Greater Philadelphia Senior Executive Group on April 21 in Frazer, Pa.

H. David Prior, a partner with Ballard Spahr Andrews & Ingersoll, LLP, discussed “Securitizing HUD Public Housing Funds” at the spring workshop of the National Council of State Housing Agencies in Atlanta.

Barry H. Genkin, a partner at Blank Rome LLP, has been elected to serve as president of the Alumni Board of Directors of the Smeal College of Business of Pennsylvania State University. He also was a panelist at the college’s roundtable discussion “Corporate Leadership and Ethics – Restoring the Trust” on May 15.

Damon Roberts, an assistant city solicitor, has been elected president-elect of the Barristers Association of Philadelphia. He will serve in this capacity for 2005-2004 and then as president in 2004-2005.

Edmond J. Ghiou, an associate with Ballard Spahr Andrews & Ingersoll, LLP, has been appointed to the Board of Directors of the Settlement Music School’s West Philadelphia branch.

Christopher Scott D’Angelo, a partner at Montgomery, McCraken, Walker & Rhoads, LLP, has been appointed to the faculty of the International Association of Defense Counsel’s Trial Academy.

Robert J. Weinberg, a partner with Pepper Hamilton LLP, has been elected president of the Philadelphia Estate Planning Council, an interdisciplinary organization for professionals involved in estate planning.

Jonathan Segal, Jonathan Wetherley and David Gollin of Wolf, Block, Schorr and Solis-Cohen LLP spoke at a conference for the Pennsylvania Chamber of Business and Industry titled, “Complying with Employment Law Regulations,” on June 11 at the Harrisburg-Hershey Holiday Inn of Grantville. Segal also spoke at Putting People at the Center, the first national conference for nonprofit human resources on June 12. The conference was hosted by Idealist.org.

Thomas Ivory, a sole practitioner, has been elected to a three-year term on the Board of Directors at Northlight Community Center in Manayunk.

Names Are News

“People” highlights news of members’ awards, honors or appointments of a civic or community nature. Information may be sent to Jeff Lyons, Managing Editor, Philadelphia Bar Reporter, Philadelphia Bar Association, 1101 Market St., 11th floor, Philadelphia, Pa. 19101-2911. Fax: (215) 256-8267. E-mail: reporter@philabar.org. Photos are also welcome.

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