YLD Explores Separation of Powers

Kay Yu Accepts Sotomayor Diversity Award

By Thomas E. Rogers

Immediate-Past Chancellor Deborah R. Gross and Justice Sonia Sotomayor Diversity Award recipient Kay Kyungun Yu spoke to the importance of diversity and justice in their remarks at the 2018 Spring Quarterly Meeting and Reception. The event was held at the Loews Philadelphia Hotel on April 17.

“Last year was a truly special year for me and for the Philadelphia Bar Association,” Gross said. During her year as Chancellor, she promoted a platform of... 

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YLD Explores Separation of Powers

Top (left to right): Kandis L. Kovalsky, associate, Kang Haggerty & Fetbroyt LLC; Chancellor Mary F. Platt; Michaella Tassinari, chair-elect, Young Lawyers Division; Chancellor-Elect Rochelle M. Fedullo; Mayor Jim Kenney; Hon. Marlene F. Lachman, Philadelphia Court of Common Pleas; Hon. Sandra Mazer Moss (Ret.); Hon. Annette M. Rizzo (Ret.); and Melanie J. Foreman, associate, Marshall Dennehey Warner Coleman & Goggin, P.C.; at Law Week's Fairy-tale Mock Trials at City Hall on May 4. Above, left: Leonard Impagliazzo IV and Bansri Mehta McCarthy, associates, Morgan, Lewis & Bockius LLP, at Law Week's Legal Advice Live! at the Central Branch of the Free Library of Philadelphia on May 2. Above, right (left to right): Candice Kearney, associate, Bennett Bricklin & Saltzburg LLC; Chancellor-Elect Fedullo; Sozi Pedro Tulante, lecturer, University of Pennsylvania Law School and former Philadelphia City Solicitor; Tiana K. Kalogerakis, associate, Kang Haggerty & Fetbroyt LLC; and Tassinari; at Law Week's Lawyer for a Day program on May 3.
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#MeToo’s Impact on Harassment in the Legal Profession

By Mary F. Platt

It is not surprising that the #MeToo movement has caused the media to focus this year on lawyers accused of sexual harassment. The media like to publicize violations of the law by persons who know the law. Sexual harassment, however, is not new to law firms or other legal workplaces. When I began practicing law in 1979, women lawyers were just starting to enter the profession in larger numbers. As more women lawyers became employed in offices run by men, sexual harassment of women lawyers became more commonplace.

Women lawyers either left their jobs or remained silent about unwelcome sexual advances and verbal harassment because they wanted to be respected for their professional skills and assumed that lodging complaints would harm their careers. It is gratifying that women lawyers today no longer tolerate sexual harassment, and thanks to the #MeToo movement, women lawyers are speaking out and employers are stepping up to stop harassment. For this reason, I convened a Chancellor’s Forum CLE at the Philadelphia Bar Association titled “#MeToo for Legal Practitioners” to discuss anti-harassment training and best practices for preventing sexual harassment and responding to sexual harassment complaints. The Forum was cohosted by our Women’s Rights and Women in the Profession Committees, Catherine F. Barbieri and Amal M. Baso, cochaired by the Women’s Rights Committee, served as course planners and moderators of the Forum. Panelists included Pamela Cowlney, deputy director of compliance for the Philadelphia Commission on Human Relations; Elizabeth A. Malloy, member at Cozen O’Connor; Brian McGinnis, associate at Fox Rothschild LLP; Lisa Swiatek, deputy city solicitor in the City of Philadelphia Law Department; Deborah Weinstein, founder and president of The Weinstein Firm, LLC; and Jacqueline M. Woolley, associate at The Ezold Law Firm, P.C.

The panel discussed the need for legal employers to create a culture in which employees respect one another by establishing a gender and sexual orientation-neutral policy that addresses sexual harassment and inappropriate conduct by persons in the workplace and third parties. They emphasized that a policy is not enough, and that an employer must establish procedures for enforcing its policy. This program was covered in the May 2018 edition of this newspaper.

In an effort to stop many types of harassment in our profession, the Association passed a resolution in October 2016 urging the Pennsylvania Supreme Court to adopt ABA Model Rule 8.4(g), which prohibits conduct that the lawyer “knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law.” On May 2, 2018, the Disciplinary Board announced that it intends to recommend to the Pennsylvania Supreme Court a revised version of ABA Model Rule 8.4(g) and set June 12, 2018 as the deadline for comments. The Board’s proposed Rule 8.4(g) states:

It is professional misconduct for a lawyer to:

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(g) in the practice of law, by words or conduct, knowingly manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based on race, sex, gender identity or expression, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation (except employment discrimination unless resulting in a final agency or judicial determination). This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these Rules.

The Disciplinary Board substituted “in the practice of law” in the ABA Model Rule on the ground that the ABA Model Rule’s language included “bar association, business or social activities,” which made the Rule “susceptible to challenges related to constitutional rights of lawyers, such as freedom of speech, association and religion.” The Board also excluded employment discrimination unless it resulted in an agency or judicial determination of discriminatory conduct, stating that “existing agencies and courts are better able to deal with such matters.” While I commend the Board for responding to requests for a new Rule 8.4(g), our Association continues to support adoption of the ABA Model Rule.

It is certainly time to end this scourge, but in doing so, we need to ensure that efforts to eliminate sexual harassment do not result in backlash that discourages hiring, working with, mentoring and sponsoring women lawyers, and inviting women lawyers to events that will help advance their careers. As Sheryl Sandberg stated, “So much good is happening to fix workplaces right now. Let’s make sure it does not have the unintended consequence of holding women back.” The same concern applies to those who are subject to the other types of harassment covered by proposed Rule 8.4(g). In addition to eliminating harassment of all types, we must resist any backlash and make our workplaces more diverse and inclusive.

Mary F. Platt (mplatt@finemanlawfirm.com), attorney at Fineman Ker frederik Harris PC, is Chancellor of the Philadelphia Bar Association.
In connection with this year’s launch of the Senior Lawyers Committee-YLD Mentoring Program, I am interviewing some of our esteemed mentors for quick takes on their careers. This month, I am thrilled to share my interview with Hon. Sandra Mazer Moss (Ret.) – enjoy!

Hon. Sandra Mazer Moss (Ret.) – B.A., J.D. Temple University. Former deputy city solicitor; retired judge, Philadelphia Court of Common Pleas; distinguished neutral, Dispute Resolution Institute (adrri.com); 30 years of service as a trial judge; founder and first supervising judge - Complex Litigation Center. Past chair of the Association’s Women’s Rights Committee and member of other Association Committees; current elected member of the Association’s Board of Governors.

Vincent N. Barbera (VB): What drew you to the practice of law?
Judge Moss (JM): When I was 8 years old, I watched a movie with my dad featuring a woman judge who brought all the parties together. I said to my dad, “I want to be like her. I want to be a judge.” He said, “She’s an old maid. And, if you become a judge, you will be an old maid, too.” The day I was sworn in as a judge, I said to my dad, “Today I am a judge and I sure am not an old maid!”

VB: What was your first legal job and how did you land it?
JM: My first legal job was as a law clerk to a judge in Philadelphia. I landed the job simply by writing a letter, sending my CV and going for an interview. It sounded too good to be true; and it was. Two months into the job he told me that if I didn’t sleep with him, I would never practice law again in Pennsylvania. I took my chances and resigned. I was lucky enough to find another judge who believed in me and offered me a “real job” as his law clerk.

VB: If you could give one piece of advice to yourself as a first-year lawyer, what would it be?
JM: Be flexible. Keep an open mind. You may want to be a criminal lawyer but only get offers from civil firms. When an opportunity comes, take it.

VB: How did you strike a balance between life inside and outside of the office?
JM: I tell all my mentees, “You can have it all, just not all at once.” Some days I was an exemplary wife and mother but an average judge. Some days I was an outstanding judge but an average wife and mom. To strike a balance, one must compromise by putting the effort every day where it is most needed and hope for the best.

VB: Being a member of the judiciary is a great honor, but carries with it awesome responsibility. What motivated you to pursue a seat on the bench?
JM: What motivated me to become a judge was a desire to leave the world, at least my small piece of it, a little bit better because of my decisions on the bench. When I put on my robe each day, I knew that I had a chance to make a difference in the lives of those who appeared before me.

VB: Best piece of professional advice you’ve received (and who shared it with you)?
JM: The best piece of professional advice I received was from then-Divisional Deputy City Solicitor Steve Saltz, when I was serving as the first woman litigator in Major Trials. I accused him of profiling because he kept assigning me cases involving widows and deceased children. He said: “Yes, in a way I am profiling you. A...
Throughout the year, the Philadelphia Bar Foundation engages in an intense effort to discover ways to maximize the delivery of civil legal aid to those in need. As I have discussed before in this column, we are currently approaching law firm fundraising with a new donation structure in mind—a Unified Approach to Giving.

This approach requests an annual commitment from law firms of a one-time gift that provides support to the Foundation for the whole year. There are many reasons why this is beneficial, and we hope that all Philadelphia law firms, large and small, will support us in this model.

At this point in 2018, six months into the year, the Foundation is proud to announce that we have received more than $200,000 in pledges from our Unified Giving partners. We are extremely thankful for those who have participated in this effort to-date:

- Ballard Spahr LLP
- Blank Rome LLP
- Boni, Zack & Snyder LLC
- Cozen O’Connor
- Dechert LLP
- Drinker Biddle & Reath LLP
- Duane Morris LLP
- Duffy + Partners
- Eisenberg, Rothweiler, Winkler, Eisenberg & Jeck, P.C.
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- Fox Rothschild LLP
- Gay & Chacker
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- Kline & Specter, PC
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- Marshall Dennehey Warner Coleman & Goggin, PC
- Morgan, Lewis & Bockius LLP
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- Raynes Lawn Hehmeyer
- Saltz, Mongeluzzi, Barrett & Bendesky, PC
- Schnader Harrison Segal & Lewis LLP
- White and Williams LLP
- Wilson Elser Moskowitz Edelman & Dicker LLP

During this transition year as we move into the Unified Approach to Giving, which is a departure from an event-based fundraising model, we will be holding our 30th Annual Golf and Tennis Classic on Monday, June 11 at the Union League Golf Club at Torresdale. It is shaping up to be a terrific event with some new features, including an afternoon golf clinic. Most of the firms that have contributed to Unified Giving have been especially generous in supporting this golf and tennis event as part of their pledge.

Many firms have also specified financial support for our 2018 Access to Justice event as part of their pledge. This year’s event will be held on Thursday, Nov. 8, and we will have more details soon.

Our community’s involvement and support in these events is appreciated and I look forward to joining you there.

The Unified Approach to Giving does not influence individual contributions, which are a substantial part of the Philadelphia Bar Foundation’s revenue through the year. Every individual donor who gives a gift to the Foundation is valued. There are many worthy organizations to donate to in Philadelphia, and we appreciate each gift we receive in every amount.

And so, with a great start should come a great finish. We will continue to make additional efforts to increase the amount of Unified Giving pledges received to provide unrestricted grants to our nonprofit partners who serve low-income individuals and families in Philadelphia with the civil legal assistance needed to address crucial problems affecting their lives.

The Philadelphia Bar Foundation is grateful for all the support we receive, every year, and especially as we move forward in this new partnership model with our supporters. Thank you for your service to us and to our nonprofit partners.

Thomas A. Brophy (tabrophy@mdwcg.com), shareholder at Marshall Dennehey Warner Coleman & Goggin, P.C., is president of the Philadelphia Bar Foundation.
Left: Tae Koh, father of 2018 Edward F. Chacker Essay Contest winner, Andrew Koh (left to right); former Chancellor Edward F. Chacker; Chancellor Mary F. Platt; Hon. Joel H. Slomsky, U.S. District Court for the Eastern District of Pennsylvania; Melanie S. Carter, associate, Blank Rome LLP; Andrew Koh, student at St. Joseph’s Preparatory School and winner, 2018 Edward F. Chacker Essay Contest; and Robert H. Bender Jr., secretary, Young Lawyers Division; at the Law Day naturalization ceremony sponsored by the Philadelphia Bar Association at the U.S. Courthouse on May 1. Right: Sixty-five people from 34 countries became U.S. citizens at the ceremony.

Judge Moss

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woman can often cross-examine a sympathetic plaintiff better than a man. Always be yourself and go with what works best with your personality, litigation style and your gender.” I took his advice and applied it throughout my career.

VB: What have you found to be the most rewarding aspect of the practice of law?

JM: Settling cases. I have always believed that settlement is more beneficial to the parties than a trial–both emotionally and financially. As a judge, I worked tirelessly to resolve cases. Today, as a mediator/arbitrator, I work hard to find solutions everyone can feel comfortable accepting. If I succeed, I feel I have brought positive change to a litigious society, one case at a time.

VB: What is one little known, unique or interesting fact about Judge Sandra Mazer Moss?

JM: I wrote an editorial in college taking on Teamsters leader Jimmy Hoffa, accusing him of abusing his power. He tried to have me expelled. Ultimately, I was saved by the university’s lawyers who threatened to file suit on my behalf—my introduction to courageous litigators.

Vincent N. Barbera (barberav@whiteandwilliams.com), associate at White and Williams LLP, is chair of the Young Lawyers Division.
equal justice and diversity. "Members rose to support legal nonprofits, judicial independence and the rule of law." Her initiative, “Take Action Philly,” is a partnership with the city and several legal services nonprofits that support a diverse population of Philadelphians. The first TAP convening focused on immigrant rights and the need to protect them. Naturalization clinics were launched and continue into this year.

Gross also helped get the Equal Justice Center off the ground and has continued to be a part of its development with the Philadelphia Bar Foundation. She said that it should break ground in the fall of 2018 and doors will open to the community in 2021.

The 2018 Justice Sonia Sotomayor Diversity Award was presented to Yu, member at Ahmad Zaffarone LLC. She served as president of the Asian Pacific American Bar Association of Pennsylvania and was chair of the Philadelphia Commission on Human Relations from 2009-2013.

“It is crucial to recognize the interdependence of the law, diversity and democracy,” Yu said. She was inspired to become a citizen by her mother, the family’s sole income earner, who immigrated from Korea. When Yu finished law school, she was naturalized. She thanked her family in the Philadelphia legal community for supporting and guiding her in her career, and APABA-PA for paving the way for her appointment to the Commission on Human Relations. Yu said that “Diverse groups of thinkers outdo individuals thinking alone.”

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JUNE CLE/CJE COURSES

June 2018 Probate & Trust Law Section Quarterly - Advanced Health Care Decision Making
Tue., 6/5/18 - 12:30 - 2:30 p.m. (1 SUB/1 ETH)
Loews Philadelphia Hotel, 1200 Market St., Congress Room, 4th Floor
Hosted by the Probate & Trust Law Section
This CLE program will address the following: legalities and realities of appointing a health care agent, setting out the client’s wishes in an advance directive or living will and the legislative and judicial history in Pennsylvania of the individual’s right to choose how they will and will not receive health care. The speakers will offer practical guidance using illustrative role plays to assist attorneys in navigating this extremely important conversation.

VIDEO ENCORE: How to Handle the Construction Worker Misclassification Case
Fri., 6/8/18 - 12:30 - 1:30 p.m. (1 SUB)
In this VIDEO ENCORE CLE program, panelists will present a “nuts-n-bolts” analysis of litigating a case involving the Construction Workplace Misclassification Act from both a claimant and employer perspective. Hear guidance regarding the distinction between employees and independent contractors under the Act.

Mon., 6/11/18 - 12 - 3 p.m. (2 SUB/1 ETH)
If you missed the live program, attend this video encore to receive guidance from representatives from the Department of Licenses and Inspections, the Zoning Board of Adjustment, and the City Planning Commission! Zoning and land use in Philadelphia are ever-changing. In this comprehensive video encore, attendees will hear about the current state of the inner-workings of the Philadelphia zoning process from those who interpret and enforce the rules and regulations. Panelists will guide you through a tour of zoning including process, strategy, appeals and other critical considerations that influence the success of a proposal.

VIDEO ENCORE - #MeToo for Legal Practitioners: A Chancellor’s Forum on Sexual Harassment
Tue., 6/12/18 - 12 - 2 p.m. (1 SUB/1 ETH)
Attend this video encore to hear best practices for prevention, training and response to allegations of sexual harassment.
The current #MeToo movement has sparked renewed interest in the perennial problem of sexual harassment and gender-based violence in the workplace. The law requires employers to prevent, and to address allegations of, harassment and retaliation, including

For questions regarding Philadelphia Bar Association CLE, contact Director of Continuing Legal Education Tara D. Phoenix at 215-238-6349 or tphoenix@philabar.org.
sexual harassment, but many workplaces do not understand their legal obligations. Hear experienced panelists address creating equitable work environments in which employees are able to report and employers are able to respond appropriately to violations of workplace policies and the law. This Forum, the first program in a series of programs addressing the #MeToo movement, will focus on sexual harassment prevention policies in the legal workplace, anti-harassment training and the obligation to and process of promptly addressing allegations of sexual harassment at work.

2018 Federal Bench-Bar Conference
Fri., 6/15/18 - 8:45 a.m. - 1:30 p.m. (3.5 Total credits - 2.5 SUB/1 ETH)
Ritz-Carlton Philadelphia, 10 Avenue of the Arts, Grand Ballroom
Hosted by the Federal Courts Committee
This half-day annual conference offers in-depth CLE discussions on legal and practice topics important to the federal court practice community in the Eastern District of Pennsylvania. The following topics will be addressed this year: Recent Developments and Best Practices in Class Actions and MDLs; Report on State of the Courts in the Eastern District of Pennsylvania; Hot Topics in Federal Courts - Including Transfer, Removal, Staying in the Eastern District, Aggregate Litigation and New Special Courts; and Handling Federal Court Discovery Disputes and Deposit Disruptions - Court's Expectations, Ethics and Civility. This conference is historically attended by the many federal practice leaders and members of the judiciary of the Eastern District of Pennsylvania and offers an excellent opportunity for education and networking.

Pennsylvania Tax Treatment of Digital Assets
Mon., 6/18/18 - 12:30 - 2:30 p.m. (2 SUB)
Hosted by the Tax Section
Digital revolution descended upon us and states now must explore the taxation of digital assets. This CLE presentation will examine questions that arise in Pennsylvania in the treatment of digital items for tax purposes. Our panelists will identify some of the tax issues that may surface in the consideration of assets from a digital environment.

Best Practices in Settlement Conferences before United States Magistrate Judges
Tue., 6/19/18 – 12:30 - 1:30 p.m. (1 SUB)
Hosted by the Labor and Employment Committee
This CLE program, featuring United States magistrate judges, will examine settlement conferences involving labor and employment cases. The judges will discuss best practices and offer guidance to practitioners to achieve a successful outcome.

Giants of the Business Bar: A Conversation with Ann C. Mulé, Associate Director, John L. Weinberg Center for Corporate Governance, University of Delaware
Tue., 6/19/18 - 6 - 7 p.m. (1 SUB)
Cozen O'Connor, One Liberty Place, 1650 Market Street, 28th Floor
Hosted by the Business Law Section
This Business Law Section event recognizes legal giants impacting the practice of business law in Philadelphia and beyond, and serves as a learning and networking opportunity. Ann C. Mulé is a former chair of the Business Law Section and a recognized leader in the corporate governance field, whose expertise and insights have helped to shape the governance landscape for companies, boards of directors, shareholders and many other governance constituencies. In this CLE program, Mulé, along with detailing some of her practice experiences, will address the most significant changes in, and the importance of, corporate governance in the capital markets today.

The Changing Cy-Près Landscape
Mon., 6/25/18 - 12:30 - 1:30 p.m. (1 SUB)
Hosted by the Philadelphia Bar Foundation
Recently the U.S. Supreme Court agreed to address this issue to provide clarification. Will the court confine its focus to Cy Pres-only settlements or more broadly address class settlements that include Cy Pres distributions of settlement funds unsolicited by class members? This CLE program will examine the particulars of the Cy Pres doctrine and what counsel must consider when structuring a Cy Pres distribution.

Legal Considerations of Cryptocurrency and Blockchain
Tue., 6/26/18 - 12:30 - 1:30 p.m. (1 SUB)
Ballard Spahr LLP, 1735 Market St., 48th Floor
Co-hosted by the Business Law Section Banking & Commercial Finance, Cyberlaw and Securities Regulation Committees
This luncheon CLE presentation will examine significant legal considerations surrounding cryptocurrency and blockchain technology. The following issues will be examined: securities law, banking law, tax considerations as well as, data privacy and security requirements.

What You Should Know About Pre-Dispute Arbitration in the Elder Law Setting
Wed., 6/27/18 - 12:30 - 1:30 p.m. (1 SUB)
Hosted by the Elder Law Committee
In the role as adviser, fiduciary or guardian, it is important to understand what factors to consider and what action to take when presented with an agreement containing a Pre-Dispute Arbitration clause. This CLE program will address, among other issues, the effects of the pre-dispute arbitration clause on the rights of the person and legal recourse available to the person entering the contract, the impact of the Federal Arbitration Act on pre-dispute arbitration clauses in nursing home agreements and practical tips on what guardians, practitioners and family members should do if asked to agree to pre-dispute arbitration.

The Who, What, Where, When and Why of Jail Detainers
Thu., 6/28/18 - 12:30 - 2:45 p.m. (2 SUB)
Hosted by the Criminal Justice Section
This CLE will examine the multiple ways a client may be held in custody via a detainer as well as, who should you contact for information, how to get the underlying legal matter listed, how to get the hold lifted and what programs are available for probation and parole detainers.

Is Good Health and Well-Being Our Ethical Obligation?
Fri., 6/29/18 - 12:30 - 1:30 p.m. (1 ETH)
Co-hosted by the Professional Responsibility and Wellness Committees
This ethics CLE presentation will explore whether well-being should be included in the definition of competence under Rule 1.1 of the Rules of Professional Conduct or whether it should be referenced solely in the Comments to the Rules. Panelists will address the responsibilities of partners, managers and supervisory attorneys and judges to put in place measures to ensure the well-being of their subordinate lawyers and judges.

*Additional courses may be added within the month.

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The Board of Governors unan- mously adopted a resolution on May 31 opposing the implementation or utiliza- tion of risk assessment tools at time of sentencing. In 2010, the Pennsylvania Risk Assess- ment Law mandated the Pennsylvania Commission on Sentencing to develop a risk assessment tool to be used by judges at the sentencing stage of a criminal pro- ceeding. In spring 2018, the Sentencing Commission released a public comment on proposed risk assessment tools which categorizes defendants as "typical risk offender," "high risk offender" and "low risk offender" using as risk factors age, gender, and past criminal history. The tool proposed by the Sentencing Commission over-predicts the risk of future criminal conduct because, in designing the algo- rithm, recidivism was defined to include mere arrests and technical violations of parole or probation conditions as opposed to actual criminal convictions. The sentencing proceeding is one of the most important stages of a criminal case and due process requires that every sentence be based on highly individualized factors including the specific circumstances of the crime and the specific history and characteristics of the defendant being sentenced. There is a current trend in criminal justice policy to develop predictive assessment tools (often called risk assess- ment tools) to guide or inform decisions about pretrial detention, prison classifica- tion, sentencing, and parole and probation supervision. Developers of risk assessment tools conduct a statistical analysis of large, aggre- gated data sets of criminal behavior over time, attempt to identify "risk factors" that correlate with future criminal conduct and then develop an algorithm that calculates an individual's statistical likelihood of future criminal conduct on the basis of the number of risk factors that apply. Such risk factors, which often include age, gender, past criminal history, education level, mari- tal status, and employment status, can serve to exacerbate racial disparity and punish poor and minority defendants based not on their actual acts but on their socio- demographic characteristics. Proponents of the resolution argued that any classification that includes age and gender raises Equal Protection concerns. During the sentencing process in particular, due process is offended when an individual defendant's term of imprisonment is based on possible future misconduct, as extrapol- ated from other people's past behavior. The Sentencing Commission reports using risk development data from 2004 to 2006 in which black offenders had base recidivism rates that averaged 11 percent higher than the base recidivism rates of white offenders. This is inconsistent with a March 2018 report from the Philadelphia Reentry Coalition which, in breaking down recidivism rates by race in Phila- delphia, found that black offenders had the lowest recidivism rate at 32.5 percent, followed by Hispanics at 35.7 percent and whites at 39.8 percent. The difference in these reports raises the question of whether there is an inher- ent racial bias in the data set used by the Sentencing Commission. Categorizing a defendant as typical, high or low risk on the basis of a "scientific" tool will serve to discourage judicial discretion and judicial consideration of individualized mitigating and aggravating factors such as a defen- dant's family support; a defendant's drug, alcohol and mental health characteristics; comments by the victims of the offense; and other circumstances and factors spe- cific to the defendant and to the offense of conviction. Such tools are contrary to the require- ment of individualized sentencing and the requirement that individuals be punished on the basis of their own unique circum- stances rather than on the basis of predicted behavior extracted from the history of other people. Such tools also have ques- tionable predictive accuracy and can serve to exacerbate racial disparities already pres- ent in the criminal justice system. More- over, the particular tool released in Spring 2018 by the Sentencing Commission violates Equal Protection and Due Process principles and allows for sentences to be imposed on the basis of crimes that have yet to be, and may never be, committed. The Board of Governors authorized the Chancellor or the Chancellor's designee to communicate the position of the Philadel- phia Bar Association to the Pennsylvania Commission on Sentencing, the Supreme Court of Pennsylvania, the Governor, the General Assembly, members of the legal profession and the community; and to take appropriate action to effectuate the resolution. To view the full resolution, visit PhiladelphiaBar.org.

Board Opposes Proposed Risk Assessment Tools

The Board of Governors unani- mously adopted a resolution on May 31 opposing House Resolution 4508, the Promoting Real Opportunity, Success, and Prosperity Through Education Reform Act or "PROSPER Act," or any similar legislation that would eliminate or dismantle the federal Public Service Loan Forgiveness program and income-driven repayment plans, or that would limit access to federal graduate loans to an amount less than the full cost of graduate education. Eighty percent of law students take out student loans to attend law school and, in addition to incurring an average of $30,000 in undergraduate debt, graduates of public law schools further incur an aver- age of $88,000 in loan debt and graduates of private law schools further incur an aver- age of $122,000 in loan debt. In 2003, the American Bar Association Commission on Loan Repayment and Forgiveness issued a comprehensive report which documented that public service legal salaries have not kept pace with student loan debt or private sector salaries, and that high student loan debt bars many law school graduates from pursuing public service careers. The ABA report recommended that loan repayment assistance programs should be created by the federal government, states and law schools to enable law school graduates to take and remain in public service legal jobs. In 2007, President George W. Bush and a bipartisan Congress created the federal PSLF program to enable public sector employers to attract and retain skilled profes- sionals, including lawyers, by allowing public service employees to earn forgiveness of the balance of their federal loans after at least 10 years at a qualifying employer and 120 months of paying at least 10 percent of their income on an income-driven repayment plan. PSLF helps individuals with significant student loan debt to afford lower paying jobs as public defenders, prosecutors, civil legal aid attorneys, court personnel and other public service occupa- tions, ensuring that Americans have access to essential legal services. The 2017 National Legal Aid and Defender Association survey report of employee and employer participants in PSLF determined that PSLF has signi- ficantly enhanced access to justice by improving both the quality and availability of legal representation for low-income Americans and that the elimination of PSLF would harm our communities. The NLADA survey report also found that 81 percent of employees who were aware of PSLF at the time they took their current job hoped having been significantly influenced by the program's promise, with 51 percent indicating they were not likely or certain not to have taken their positions had PSLF not existed; and 71 percent of top executives at participating employers considered PSLF to be a highly important tool for retaining experienced staff and almost two-thirds believed it is important for attracting new hires. The NLADA survey report found that 87 percent of employees indicated that qualification for PSLF would make them much more likely to accept a particular opportunity in the future, and more than half would be very certain or likely to leave their jobs if PSLF did not exist. President Trump's Fiscal Year 2019 bud- get blueprint includes a proposal to elimi- nate PSLF; and in December 2017, the U.S. House of Representatives advanced a Higher Education Act reauthorization bill, the PROSPER Act, that would eliminate PSLF. The PROSPER Act would also eliminate IDR plans and would cap federal graduate school loans at $28,000 annually, which would dissuade many diverse and low income students from pursuing a legal education, including those interested in a public service career. On April 11, 2018, the leadership of the American Bar Associa- tion, the Philadelphia Bar Association and 47 other state and local bar associations gathered in Washington D.C. to urge members of Congress to oppose the elimi- nation of the PSLF program. The Board of Governors authorized the Chancellor, or his or her designee, to com- municate the Philadelphia Bar Association's position on H.R. 4508, or on any similar legislation, to the President, members of Congress, the legal profession, the media, and the public, and to take such other action as may be necessary to effectuate the resolution. To view the full resolution, visit PhiladelphiaBar.org.
Hon. Denise E. Krass, Workers’ Compensation Office of Adjudication, was the recipient of the Workers’ Compensation Section’s 2018 Martha Hampton Award, in memory of its namesake whose reputation as mentor, educator, friend and advocate is held dear by the Section. Andrew C. Warren, a 2018 graduate of Temple University Beasley School of Law, received the Irvin Stander Award, named for a Philadelphia judge who was well known for his prolific writings and teachings on workers’ compensation and zoning law. The Section presented these honors at its annual Awards Luncheon at the Ritz-Carlton Philadelphia on April 10.

Hon. Audrey Beach, Workers’ Compensation Office of Adjudication, introduced Judge Krass, highlighting her many accomplishments, including receiving her undergraduate degree with highest honors; graduating cum laude from Villanova University Charles Widger School of Law; and her 20 years as a workers’ compensation judge – during which time she has placed the utmost importance on fairness. Judge Beach said that “[Judge Krass] allows lawyers to litigate their cases fully; she will read every word and turn every page of evidence…Not everyone will agree with her decisions, but her commitment to truth and knowledge of the law are beyond reproach.” Judge Beach added that “Judge Krass cares only about elevating the practice of workers’ compensation law, adjudication, and the Workers’ Compensation Section.”

Judge Krass described her curious mind as young adult, fascinated by spies and investigation that inspired her career in law. At the luncheon, she was joined by her mother and husband, as well as her daughter, who is presently studying linguistics, via Skype.

The ceremony included keynote speaker, James R. “Fitz” Fitzgerald, a criminal profiler, forensic linguist and former FBI agent. Fitz began his career as a police officer in Bensalem, before being recruited by the FBI. He is known for his use of forensic linguistics to identify and convict the Unabomber, Ted Kaczynski, and his work was the subject of Discovery Channel’s 2017 “Manhunt: Unabomber” mini-series. In honor of Fitz’s law enforcement background, the Section collected donations during the luncheon for the Police Athletic League of Philadelphia, which offers sports and other programs to the city’s youth. A signed copy of the latest edition of Fitz’s memoir titled “A Journey to the Center of the Mind” was included with each luncheon registration.

James R. “Fitz” Fitzgerald signs copies of his memoir at the Workers’ Compensation Section’s Awards Luncheon at the Ritz-Carlton Philadelphia on April 20.

The 2018 Irvin Stander Award recipient, Andrew C. Warren, received a scholarship from the Section in recognition of his excellence in the study of workers’ compensation law while a third-year law student at Temple. In law school, he participated in a flagship course taught by Samuel H. Pond, founder of, and Taylor J. Cohen, attorney at Pond Lehocky Stern Giordano, focusing on the practitioner’s perspective. Judge Irvin Stander founded the first law school course on workers’ compensation at Temple. Today, in addition to Temple, Drexel University Thomas R. Kline School of Law, Duquesne University School of Law, Penn State Dickinson Law and Villanova University Charles Widger School of Law all offer workers’ compensation courses.

The Section congratulates Judge Krass and Warren for their accomplishments, and thanks its members for their continued support.
Future of Cannabis in Pa. Far From Hazy

By Elisa C. Advani

Several states in the U.S. allow cannabis for medicinal and recreational use despite its conflict with federal law. In a memo earlier this year, Attorney General Jeff Sessions directed the Department of Justice to return to the rule of law and enforce the Controlled Substances Act by prosecuting marijuana activities. The CSA dates to 1970, but long before that, in 1850, cannabis was included in the United States Pharmacopeia. At a Philadelphia Bar Association CLE cohosted by the Business Law Section’s Medical Marijuana and Hemp Subcommittee and the Criminal Justice Section titled “Medical Marijuana in PA Is Here to Stay” on April 13, attendees learned about Act 16, the PA Medical Marijuana Act. Panelists included Thomas J. Innes III, Defender Association of Philadelphia; Justin S. Moriconi, cochair of the Subcommittee; Kathryn M. Palladino, Law Offices of Craig B. Bluestein, P.C.; Sarah K. Allen, Defender Association of Philadelphia; Alexander F. Guminiski, associate at Sommer Law Group, P.C.; and Liam J. Reilly, chief of the pretrial unit in the Philadelphia District Attorney’s Office.

Cannabis is a Schedule 1 drug and rescheduling petitions have been unsuccessful. With no medical use under federal law, state laws are drafted to circumvent this conflict. “It’s a balancing act,” said Innes, “Per the DEA, there can be no prescription for cannabis, so instead the doctor will write a recommendation.” While state laws do not shield you from the federal law, Innes said that “some recent DOJ statements allude to its lack of resources to prosecute…. Congress has extended the Rohrabacher-Blumenauer amendment which prohibits the DOJ from using federal funds to interfere with state medical marijuana programs.”

Although Pennsylvania legalized medical cannabis in 2016, it was not until February of 2018 that it was first available.

Basics of Preparing Life-Planning Documents, A to Z

By Mary LeMieux-Fillery

There is value in the skills necessary to prepare and execute basic life planning documents, including simple wills, living wills and financial and health-care powers of attorney. The Barristers’ Association of Philadelphia, Inc. and SeniorLAW Center cohosted a Philadelphia Bar Association CLE titled, “Life Planning for Philadelphia Seniors” on April 17. The program was a training for volunteers participating in the Barristers’ April 21 Annual Life Planning Clinic. The panels were SeniorLAW Center’s Wendy E. Bookler and Joanna Jarzebowska.

The panels provided a comprehensive discussion and review of the four template documents that each volunteer might prepare for a client at the clinic includingsimple wills, living wills, health care and financial powers of attorney. They discussed the law and the legal requirements that applied to each of the documents to explain how the documents conform to state legal requirements. Volunteers were guided through the process of gathering information to complete the templates for simple wills. The panelists then reviewed the forms with the volunteers and explained the common drafting clauses to ensure that all volunteers would be prepared to assist clients at the clinic. Next, templates for living wills were discussed. Living wills govern planning for end stage chronic, progressive and other fatal illnesses and medical conditions. The panels then turned the discussion to health care and financial power of attorney documentation. A health care power of attorney provides an agent with the authority to make health care decisions for the client. It takes effect when a physician determines that the client no longer has the capacity to make their own medical decisions. Financial powers of attorney were also covered. They allow for an agent to manage a client’s finances under the same conditions. A discussion of legal capacity wrapped up the program. Volunteers at the clinic would need to assess a client’s capacity to execute necessary documents. Essentially, the client would need to have the capacity to understand why they were at the clinic, what they were doing by executing the documents and the legal ramifications. Volunteers were encouraged to advise clients to share the documents with families and doctors.

To calm any potential concerns, the panelists said that all volunteers would be paired with someone at the clinic experienced in life-planning for seniors, and that all documentation would be reviewed for accuracy and completeness before submission.

PHILADELPHIA BAR ASSOCIATION CLE - BUSINESS LAW, CRIMINAL JUSTICE SECTIONS

PHILADELPHIA BAR ASSOCIATION CLE - BARRISTERS’ ASSOCIATION, SENIORLAW CTR.
False Claims Act, Looking Forward for 2018

By Thomas E. Rogers

In 2017, 670 cases were filed under the False Claims Act, which imposes liability on those who try to defraud government programs. To address recent trends in these lawsuits brought under the act, the Federal Courts Committee hosted a Philadelphia Bar Association CLE titled “The False Claims Act in 2018: A Brave New World?” on April 18. Panelists were Hon. Gene E.K. Pratter, U.S. District Court for the Eastern District of Pennsylvania; Charlene Keller Fullmer, deputy chief - affirmative litigation in the U.S. Attorney’s Office for the Eastern District of Pennsylvania; and Marc S. Raspanti, partner at Pietragallo Gordon Alfano Bosick & Raspanti, LLP. Meredith S. Auten, Co-chair of the Committee, moderated.

The panel framed the discussion around two game-changers, the United States Supreme Court’s 2016 decision in Universal Health Services, Inc. v. United States ex rel. Escobar and a recent Department of Justice memorandum on treatment and conditions for dismissal of False Claims Act suits. In Escobar, the Supreme Court decided that materiality must be alleged with some detail, and a finding of materiality should turn on whether the government was aware of misconduct, but continued to pay for services.

Raspanti talked about the evolution of the False Claims Act landscape over the last few decades. During the 1990s, cases were generally about government defense contracts. However, the majority today involve the health care industry. Fullmer said that whistleblower suits regarding off-label drugs produced by pharmaceutical companies have made up the bulk and often involve Medicaid and Medicare systems. She has seen close to $4 billion in health care lawsuits in the last 10 years. However, there has been a decline, Fullmer said, as pharmaceutical companies have put measures in place to minimize illegal conduct.

The court’s interest is in the government’s relationship to the case, Judge Pratter said. It must consider whether the government intervenes, or maintains the case. She said that in the past, if the government didn’t intervene, cases withered away. She said that has changed, though. The government intervenes in only 20-25 percent of cases, and parties move cases forward. However, parties keep the government informed even if it declines to intervene. However, the recent Department of Justice memo was discussed which indicates if the government declines to intervene, the case should be dismissed, but Fullmer said it is perhaps a consideration of how to proceed after Escobar.
Transforming Your iPad Into a Practice Must-Have

By Thomas E. Rogers

Technology has become more acceptable in the courtroom as tablets and other devices have become more secure, and legal practitioners have started to cut down on paper. Mark J. LeWinter, attorney at Raynes Lawn Hehmeyer, presented a Philadelphia Bar Association CLE titled “Paperless Chase: iPad Best Practices for Lawyers” on April 24. The program was cohosted by the Solo and Small Firm Management Committee, State Civil Litigation Section and the Brehon Law Society.

By itself, an iPad is not very useful for trial work case management. Along with password protecting their device, users should set up a cloud account like Box.com or Dropbox Business. These secure cloud resources allow users to upload files from desktop and download directly to their iPad wherever there is a signal. Users will need to make sure that the courtroom or other venue will allow tablet use and has the necessary audio-visual equipment, if the user cannot supply it themselves.

LeWinter discussed several apps that will transform an iPad from a tech toy into a serious business tool for lawyers in and out of the courtroom. The TrialPad app is a one-stop-shop for lawyers. “Don’t limit yourself to thinking this is just for trial,” LeWinter said. At $140, LeWinter said that it is not a cheap option, but it can be used for trials, depositions, mediations or anything else where you will need to present exhibits and evidence. It requires a short learning curve, 3-4 hours according to LeWinter.

Upload documents, photos, videos and more from desktop to a cloud program and securely download those files directly to TrialPad. In the app, users can name and tag exhibits, redact text, highlight text and generate a “laser” pointer to present in court and elsewhere. The app also gives users the ability to create and edit video on-the-fly. LeWinter used the example of showing in court, using the video functionality, how an absent safety device could have prevented a worker’s fall. TrialPad will also generate reports on all files stored for an individual case. Additionally, the app will only show the presentation area on the output device, not the actual file structure.

Other apps, like iAnnotate and TextMap also maximize the iPad for business. iAnnotate, which also will pull files from a cloud program, is useful for document review. With a smart stylus, like the Apple Pencil, users can read, annotate and share PDFs. It will save each mark-up as a new document, preserving the original. TextMap will download transcripts for easy summarization, annotation, coding and more to distill pieces of testimony.
Implications of, Tips for Support Contempt Actions

By Lee A. Schwartz

Support contempt actions are instituted once a payor, for what can be a multitude of reasons, falls behind or fails to pay his or her support or alimony obligation through the Pennsylvania Child Support Program or some other agreement. Punishment mechanisms are statutorily in place if necessary to respond to these issues, but the court’s primary concern is having the payor pay his or her obligation.


The panel began by discussing procedural aspects of support contempt actions, to be complied with before the factual issues of a support contempt can be addressed. These include ensuring proper jurisdiction and venue, checking the docket to be sure there is, in fact, an active support order and ensuring service of the contempt petition.

A petition for contempt can be filed by the payee at any time, or by the court’s domestic relations section. Should a payor fail to appear for the hearing, the court may issue a bench warrant as provided by the Pennsylvania Rules of Civil Procedure.

The failure to pay, alone, is not a sufficient reason for a contempt order to be entered. The panel said that the court spends a substantial period in a hearing assessing the “ability to pay” by the payor. They will be questioned on their income and expenses and will be provided an opportunity to respond to any inquiries about their ability to pay. Since one’s freedom is always an issue (one possible punishment for the willful failure to pay can be incarceration), legal counsel is provided by the payor’s own private counsel or by the court.

Pitfalls to this process can include failure to serve the payor, or respondent; relying on “failure to pay” as the only reason for filing a contempt; failing to provide hard copies of exhibits to be introduced at trial; failing to question a respondent as to how much they are able to pay at the hearing; or failing to ensure that the payor actually received the contempt petition before the hearing.

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The young couple in front of us has not made a dent on the agenda items we neatly wrote on the white board in a small windowless room at the Good Shepherd Mediation Program in Philadelphia. Instead of going down the punch list of items, like custody and child support for the couple’s children, or figuring out how the mother will support herself once the couple finalizes their pending divorce, my co-mediator and I are talking about space. We are nowhere near anything that would make it into the parties’ final divorce settlement agreement. Yet, we are exactly where we need to be.

This is the second divorce mediation session for this couple. We ended the first session with a draft framework of issues we needed to discuss for this couple to divorce after several years of marriage. At the end of the first session, the couple seemed relaxed and clear about where we are going next. Today, both appear tense. The woman’s red and puffy eyes show that she was crying. The man is avoiding his soon-to-be ex-wife’s gaze.

My co-mediator and I tune in. We do not just tune in to the couple’s words, but we go far beyond them. As we intently listen to the couple, we observe and reflect their feelings and their energy. We ask questions to discover what is truly important to them – their values and their deepest, most fundamental needs.

It turns out the woman feels judged (she initiated the divorce) by her husband’s family. The husband and wife both are overwhelmed with well-meaning but heavy-handed projections, advice, and interference from family and friends. With our guidance, the couple realizes that they both need space. We are helping them to draw a detailed picture of what each of their version of “space” would look like.

Deep, emotional and transformative conversations like this are why I volunteer as a mediator at GSMP.

Courts and lawyers value efficiency, predictability, and rationality. As settlement satisfies all three values, it is the ultimate goal and crowning achievement of civil litigation. In fact, mediation in the context of litigation is the primary tool for the achievement of this goal. What is left out from settlement discussions are intangible issues like people’s feelings, their need for closure, and their desire to be heard and understood. In my view, it is a myth that we can neatly separate people’s emotions from the rational power of the law.

There is no such myth at GSMP. That is why the goal of mediation there is not settlement, but understanding. The skilled mediators at GSMP are trained to listen deeply to the disputants, not to fit them into some legal theory or push toward settlement, but to see, understand and honor them as human beings. Ironically, when there is understanding, when people feel that they have been heard and their emotions have been honored, settlements take care of themselves. Indeed, settlements (in the legal sense) are the most common, persistent and consistent side effects of true resolution.

That is why we were talking about space with the divorcing couple. Space had nothing to do with their divorce settlement agreement, but it had everything to do with them as human beings. As we were talking about space, my co-mediator and I were holding space for the two people in front of us. Holding space for people in conflict to have difficult conversations with each other is what mediations at GSMP are about, and this couple reached a mutually satisfactory agreement. However, they did not settle; they resolved their disputes.

Henry Yampolsky is the founder of Yampolsky Law, PC.
The Solo and Small Firm Management Committee raised money to help 50 Central High School students afford a ticket to their prom. The Committee raised $3,000 and presented a check during the prom at the Reading Terminal Market on April 27.

Pictured: Maureen M. Farrell, chair, Solo and Small Firm Management Committee (second from right), with Ku Yoo, partner, Chang & Yoo, LLP (left to right); Greg Gorski, Gorski Law PLLC; and Shabrei M. Parker, of counsel, Mincey & Fitzpatrick, LLC; at the Central High School prom on April 27.
The SeniorLAW Center celebrated 40 years of protecting the legal rights of seniors at its 40th Anniversary Gala at the Loews Philadelphia Hotel on May 19. Past Chancellors were honored for their support of SeniorLAW Center and its mission.

Pictured: Past Chancellor William P. Fedullo, chair, board of directors, SeniorLAW Center (left to right); past Chancellor Abraham C. Reich; past Chancellor Francis P. Devine III; Chancellor-Elect Rochelle M. Fedullo; past Chancellor Lawrence J. Beaser; and past Chancellor Kathleen D. Wilkinson; at the SeniorLAW Center 40th Anniversary Gala on May 19.
Counsel needs to advise the respondent to bring as much funding as possible on the day of the hearing. A good-faith payment of a sufficient amount will likely keep a respondent out of jail. The main purpose of a support contempt hearing for all parties is to get a respondent “back on track” and resuming their regular payments.

Counsel also needs their client to bring supporting documentation of inability to work for health reasons and to bring proof of their expenses. There is the possibility that a respondent will be punished by imprisonment, fines or probation. Also, the court can freeze or seize assets, enter a payment plan for the payor and intercept tax refunds.

The panel offered tips, including resolving the matter before it goes to court, conduct title searches for property owned by respondents and observe trials.

Lee A. Schwartz (Lee@schwartzjordan.com) is an attorney/mediator/collaborative lawyer at SchwartzJordan Law Group LLC.

Cannabis

continued from page 13 on the market,” said Palladino. Medical cannabis is available in the form of pills, oils, topicals and tinctures. She said it recently became available in dry leaf for vaporization, “The dry leaf does not need to be processed as much, and patients will be able to get it at a more affordable price.”

In Pennsylvania, the law lists 17 conditions for which a patient may be treated with medical cannabis, including autism, PTSD, cancer, HIV/AIDS, seizures, and severe chronic pain. With the wide array of potential patients, other areas of the law must evolve to afford protections to state-compliant cannabis patients. Palladino said DUI laws are evolving to recognize that the mere presence of THC in the blood does not prove impairment. Reilly said that “the burden is on the prosecution to show that the patient was impaired and not safe while driving.”

Probation is another area of law that is adjusting to accommodate medical cannabis. “An individual on probation must obey all federal and state laws, but in Arizona the Supreme Court held that an individual on probation who is a law-abiding medical cannabis patient,” said Palladino. In Philadelphia, “The DA is not asking for violations of probation based on marijuana or THC tests and may even stop testing for it altogether,” Reilly said.

Another important consideration and protection for cannabis patients involves the right to own a firearm. Federal law prohibits people from having access to both medical cannabis and firearms. Dominski said that “in Pennsylvania, since Jan. 5, 2018, patients no longer have to choose between owning a firearm or treating with medical cannabis.”

Protections for cannabis patients extend into the workplace as well. Employers are still allowed to enforce intoxication-free workplace policies but they may not discriminate on the basis of being a medical cannabis patient.

Elisa C. Advani (eadvani@paworkinjury.com), associate at Martin Law LLC, is editor-in-chief of the Philadelphia Bar Reporter.

Family Law

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Lee A. Schwartz (Lee@schwartzjordan.com) is an attorney/mediator/collaborative lawyer at SchwartzJordan Law Group LLC.
Tax Reform and Philanthropy

By Mary E. Ashenbrenner

For the majority of Americans, the tax overhaul has altered or reduced many of the financial incentives for making charitable donations. For this month’s interview, I sat down with Anne B. Hennessy, CAP®, senior resident, PNC Center for Financial Insight, to discuss the implications of the new tax law on philanthropy in the U.S.

Mary Ashenbrenner (MA): What is the biggest change in the tax law that could have an impact on philanthropy in the United States?

Anne Hennessy (AH): Simply put, the Tax Cuts and Jobs Act is anticipated to result in the elimination of the charitable deduction for approximately 90 percent of U.S. taxpayers, who will likely choose to take the standard deduction. The Tax Policy Center estimates 91-95 percent of taxpayers will take the standard deduction while the Joint Committee on Taxation estimates over 90 percent will. However, charitable giving is rarely driven solely by the desire to trim tax bills. In fact, most individuals and families give for a variety of reasons and support organizations in whose missions they believe.

MA: Are there different implications for wealthy individuals and families?

AH: For donors who do itemize, the tax rules for charitable giving remain complicated. Tax benefits vary depending on the form of contribution. For example, cash, appreciated stock, or artwork come with their own set of rules, which vary based on the organization donated to. Additionally, there are limits to how much is tax deductible in a given year. To gain a clear understanding of how the new tax laws affect specific situations, we recommend that individuals speak with their tax advisors.

MA: Are there any new tax benefits on charitable donations for those families that itemize?

AH: The act contains a few provisions that may encourage charitable giving by individuals who itemize. It raises the limit on cash contributions for those who itemize from 50 percent to 60 percent of adjusted gross income. This benefit expires after 2025. There is no change for noncash gifts. Additionally, the Pease limitation on itemized deductions for higher income individuals has been repealed.

MA: What are the implications regarding estate taxes?

AH: Those with estates in excess of the new estate tax exemptions of $11.2 million for individuals and $22.4 million for couples may continue to benefit from strategies maximizing estate tax deductions and minimizing the value of their estate. Those with estates that fall within the exemptions should note this provision expires after 2025 and that the estate tax could be amended again prior to 2025. Since 2001, the estate tax has been amended over 30 times.

MA: What are some of the ways that families can support their favorite charities?

AH: There are a number of strategies and vehicles that can be employed to make charitable gifts. Changes to the tax laws do not affect any of the nontax reasons for using these strategies. For example, donor-advised funds, charitable lead trusts, charitable remainder trusts, private foundations, charitable gift annuities, and IRA charitable rollovers are ways that donors may achieve their philanthropic goals while potentially receiving tax benefits at the same time.

MA: How might the new tax law affect non-profit organizations that rely on charitable contributions?

AH: There is concern in the nonprofit community that the new tax law will result in reduced contributions in 2018. The Tax Policy Center sees a reduction in charitable giving of $16-24 billion annually due to fewer taxpayers itemizing, while The Joint Committee on Taxation predicts a decline of at least $13 billion annually. It’s important to note that since 1976, charitable giving increased in current dollars every year except 1987, 2008, and 2009.

MA: What advice do you have for individuals who want to give back to their community but need assistance in figuring out how to go about it?

AH: We recommend that clients try to understand why they give. They should determine what specifically drives them to support certain causes and organizations. For instance, are they looking for opportunities to share family values and leave a legacy? Are they seeking a tax deduction? Or do they make charitable contributions for a combination of reasons? Now is an ideal time for clients to discuss their philanthropic goals and motivations to determine how best to support causes and organizations meaningful to them.

Mary E. Ashenbrenner (maryashenbrenner@pnc.com or 215-585-1041) is a senior vice president with PNC Wealth Management.

The PNC Center for Financial Insight is PNC’s dedicated center of thought leadership that serves as a knowledge resource for clients in conjunction with their PNC advisors. Its purpose is to deliver relevant, actionable strategies that support clients’ wealth management objectives.

Changes to the federal estate and gift tax exclusion amount are set to expire in 2026. Prior to making a gift, you should consult your professional tax advisor. Under the new law, the Treasury is called upon to prescribe regulations as may be necessary or appropriate to clarify the implications as a result of differences between the basic exclusion amount in effect at the time of the decedent’s death and at the time of any gifts made by the decedent.

Careful consideration of existing requirements regarding reasonable compensation should be involved in the decision-making process. In addition, practical concerns, such as an employer prohibiting their employees from changing their employment status, may limit the ability to change the nature of income.

This article is for general information purposes only and is not intended to provide legal, tax, accounting or financial advice. Individuals should consult their tax advisor to understand how these recently enacted tax reforms affect them.

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A Meal Fit for a Royal This Side of the Pond

By Lee A. Schwartz

So, it is a special occasion and you and your significant other, or trusted companion, are looking for a carnivorous splurge. You are debating the issue of the “best steak in town.” Choices abound, as Philadelphia has a wealth of excellent choices. If you are of a mind-set to spend in the $40-50 range for a hunk of sublime beef, where does one go?

Certainly, in the top echelon of the beef emporiums, Barclay Prime, at 237 S. 18th St. in Philadelphia, would be right there. The steaks are spot-on, the service is exceptional and where else do you have your choice of steak knife?

There are several items, from the Barclay Prime Cheesesteak, made with Wagyu ribeye, foie gras, onions and truffle cheese whiz on a fresh-baked sesame roll, that is a real splurge at $120 (hey, it is served with a half-bottle of champagne) and the Colossal Shrimp Cocktail ($26), for those with especially deep pockets.

Other items more in-line with traditional spending, which are excellent, are the Chopped Salad ($14) with baby gem lettuce, crispy vegetables, olives, feta and herb vinaigrette, as well as the traditional Wedge salad, served with bacon and Point Reyes bleu cheese.

For dinner, there are a host of choices, both beef and fish. I chose the 14-ounce NY Strip ($49), a prime steak dry-aged to 28 days, cooked to medium-rare and done perfectly. The meat absolutely melts in your mouth and each bite is as wonderful as the last. This is also available in a 20-ounce version ($59), which is dry-aged for 40 days.

My trusted companion chose her usual, a perfectly cooked 12-ounce Filet ($59), also prepared as ordered and just an absolute pleasure to eat. On a previous visit we had the Ribeye ($58), 18 ounces of marbled beef that is also a real treat and absolutely delicious.

There are a number of fish options. One interesting and unusual choice is the Wild Dover Sole ($63), flown in fresh each day from Great Britain. The Jumbo Lump Crab Cake ($42) is a wonderful choice, too.

Numerous sides abound, as the mains are served à la carte. We favor the Creamed Spinach and the Kennett Square Mushrooms, but there are several potato options and other vegetable choices.

Desserts are very special. We enjoyed both the Warm Deep-Dish Cookie and the Rocky Road Brownie (each $12), but you cannot go wrong with either one.

The wine list is long and deep. You can bring your own bottle for a $35 corkage fee.

Lee A. Schwartz (Lee@schwartzjordan.com) is an attorney/mediator/collaborative lawyer at SchwartzJordan Law Group LLC.
David L. Ladov, partner at Obermayer Rebmann Maxwell & Hippel LLP, moderated a panel for the Family Law Institute session titled “Mirror... Predicting Equitable Distribution & Alimony Awards.”

Shabrei M. Parker, of counsel to Mincey & Fitzpatrick, LLC, and Gina Maisto Smith, member at Cozen O’Connor, have joined the board of directors of Support Center for Child Advocates.

Joseph R. Pozzuolo, shareholder at Pozzuolo Rodden, P.C., taught a seminar to the graduating medical, physical therapy and occupational therapy students at Sidney Kimmel Medical College of Thomas Jefferson University on March 30.

Theodore “Ted” Simon, of the Law Offices of Theodore Simon, was the dinner chair for the 60th anniversary of the National Association of Criminal Defense Lawyers, “Foundation of the Defense Celebrating NACDL at 60,” that honored the role of criminal defense lawyers, in New York on April 20.

James C. Schwartzman, partner at Stevens & Lee, was appointed by Governor Tom Wolf to be a judge on the Pennsylvania Court of Judicial Discipline.

William F. Kerr Jr., partner at High Swartz LLP, was appointed to the board of directors of Habitat for Humanity of Montgomery and Delaware Counties, Inc.

Brenda H. Gotanda, partner at Manko, Gold, Katcher & Fox LLP, was elected to serve on the Board of Directors of ThinkTech Hawaii.

Riley N. Ross III, owner of Ross Legal Practice, LLC, was appointed chair of the Pennsylvania Bar Association’s Civil & Equal Rights Committee.

“People” highlights news of members’ awards, honors or appointments of a community or civic nature. Email news to Thomas E. Rogers, senior managing editor, Philadelphia Bar Reporter, at trogers@PhilaBar.org.

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