Carol Tracy to Receive O’Connor Award

The Board of Governors unani-
mously adopted a resolution opposing
the passage of House Bill 741 that would
re-impose mandatory sentencing laws in
Pennsylvania.

Consistent with the Constitution, the
U.S. Supreme Court has regularly held
that sentencing courts must “consider the
widest possible breadth of information
about a defendant” to ensure individual-
ized sentencing. Legislatively enacted
mandatory minimum sentencing regimes
undercut the judiciary’s constitutional
imperative to impose individualized
sentencing.

In the 1980s and 1990s, lawmakers
around the nation began implementing
mandatory minimum sentencing in a wide
variety of cases including cases involv-
ing drug possession and distribution, the
unlawful possession of firearms, and cer-
tain sex crime offenses. Due in large part
to mandatory minimum sentencing, the
Commonwealth’s state prison population
ballooned from 8,000 inmates in 1980 to
its current level of 49,000 inmates, and
its Department of Corrections budget has
ballooned from $200 million in 1980 to
$2.2 billion today.

In 2015, the Pennsylvania Supreme
Court declared that under the U.S.
Supreme Court’s holding in Alleyne v.
United States, 133 S.Ct. 2151 (2013),
mandatory sentencing schemes, including
mandatory minimum sentencing as imple-
mented by the Pennsylvania Legislature,
are unconstitutional where a mandatory
sentence is imposed after a judge rather
continued on page 2
Mandatory Minimums

continued from page 1

than a jury makes predicate factual determinations using a standard of proof of less than beyond a reasonable doubt. Since 2015, the Commonwealth’s crime rate has dropped. HB 741 includes the reintroduction of, among other mandatory penalties, mandatory minimum sentences for drug offenses occurring within 1,000 feet of a school or university or within 250 feet of a playground or recreation center. Large urban areas such as Philadelphia can have as much as 30 percent or more of their geographical mass fall within these so-called “drug-free zones” resulting in a disproportionate impact of these mandatory minimum sentences on minorities and people of color. It has been determined also that HB 741 could cost taxpayers as much as $85.5 million per year.

“This resolution is vitally important because mandatory minimum sentencing was a misguided criminal justice policy from the inception and the Pennsylvania Legislature’s recent effort to bring it back is wrong. Mandatory minimum sentencing did not reduce crime or achieve any of the policy objectives of its proponents” said Jeffrey M. Lindy, a drafter of the resolution along with Angus Love. The Association opposes the passage of HB 741 and any similar legislation re-imposing mandatory sentencing laws in that these laws do not enhance public safety, will disproportionately affect our City’s minority and people of color populations, and will increase the prison population at an extreme cost to taxpayers and to the detriment of individuals who may be needlessly incarcerated, as well as their families and their communities.

The Association authorizes the Chancellor to communicate the content of this resolution to members of the General Assembly, the Governor, state and local public officials, other bar associations, and the public at large, and to take such other action as may be appropriate.

To view the full resolution, visit PhiladelphiaBar.org.

SPRING QUARTERLY MEETING AND RECEPTION

Barristers’ Receive 2017 Sotomayor Award

By Thomas E. Rogers

Kevin Harden Jr., on behalf of The Barristers’ Association of Philadelphia, Inc., accepted the Philadelphia Bar Association’s 2017 Justice Sonia Sotomayor Diversity Award. He dedicated the award to the numerous “trailblazers” of the legal community and beyond. The award was presented at the Philadelphia Bar Association’s Spring Quarterly Meeting at the Loews Philadelphia Hotel on March 29.

The Barrister’s Association of Philadelphia, Inc. was formed in 1950 as a social club organized to address the professional needs and development of black lawyers. Through the organization, they sought to improve the quality of life for Philadelphia’s black community. Barristers were involved in the Liacouras Commission to eliminate racial discrimination in bar admissions, joined in an action against the Philadelphia Registration Commission that helped add 50,000 Philadelphians to the voter registration pool, supported lawsuits seeking to integrate Girard College and testified before the Pennsylvania General Assembly concerning judicial merit selection.

Today, the Barristers’ promote youth awareness in the legal profession, provide scholarships to minority law students, highlight black legal accomplishments and present educational forums and other programming for their members’ professional development.

In his remarks, Harden recognized the work of the late Professor John Mercer Langston. Langston founded the Howard University School of Law in 1860 as a law school for black students in response to discriminatory law school admission practices around the country. He also recognized William T. Coleman Jr., the first black person to serve as a law clerk for the U.S. Supreme Court. Coleman authored significant portions of the briefs in Brown v. Board of Education and, after stints at law firms in New York City and Philadelphia, served as the U.S. Secretary of Transportation and Chairman of the NAACP Legal Defense Fund. Two days after Harden’s remarks, Coleman passed, resulting in national commemoration of the legendary Barristers’ life and achievements.

Harden dedicated the award also to past presidents of the Barristers’ Association and black lawyers who have served as Philadelphia Bar Association Chancellors: Andre L. Dennis, Audrey C. Talley, A. Michael Pratt and Albert S. Dandridge III.

“The Barristers’ Association of Philadelphia, Inc. is their dream,” Harden said.

To close his remarks, Harden quoted Hon. A. Leon Higginbotham, a Barrister who served on the U.S. Court of Appeals for the Third Circuit. Judge Higginbotham, in a tribute to Justice Marshall, added language to the well-known Serenity Prayer to describe Marshall’s legacy.

“God grant me the serenity to accept the things I cannot the change; the courage to change the things I can; and the wisdom to know the difference…but at times, it may be better for the omnipotent one to give men and women the wit and will to continue to plan purposefully and to struggle as best they know how to change things that seem immutable.” Harden explained that the essence of the Barristers is that they are men and women with the wit and will to struggle to change things that seem immutable.

Kevin Harden Jr., president, The Barristers’ Association of Philadelphia, Inc. (center, right); Charles Gibbs, president-elect, Barristers’ (fourth from left); Chancellor Deborah R. Gross (second from left); Immediate-Past Chancellor Guatan J. Alfano (right); Priscilla Jimenez, chair, Diversity in the Profession Committee (second from right); with (left to right) Barristers’ Past Presidents Kevin V. Mincey, Leigh Skipper, Hon. Ricardo Jackson (ret.), Hon. Kathryn Streeter Lewis (ret.); Shabrei M. Parker; Amber M. Racine; and Thomas “Fitz” Fitzpatrick; after the Barristers’ received the 2017 Justice Sonia Sotomayor Diversity Award during the Spring Quarterly Meeting and Reception at the Loews Philadelphia Hotel on March 29.

Mandatory Minimums

Kevin Harden Jr. is presented with an award for his year of service at the Spring Quarterly Meeting and Reception.
Yeoman’s Work: Judicial Commission

The numbers tell all:

- 30 members of the Commission on Judicial Selection and Retention
- 48 candidates for Philadelphia Court of Common Pleas, Municipal Court, Superior Court and Commonwealth Court
- 165 volunteer lawyers and members of the public for investigative teams
- 2,000 hours of time devoted to investigating and rating the candidates

Nearly every Friday afternoon from Jan. 27 through May 5, members of the Philadelphia Bar Association’s Commission on Judicial Selection and Retention, led by Chair Eric Weiss and Vice-Chair Teresa Sachs, are faced with the decision of whether to rate judicial candidates as "highly recommended," "recommended" or "not recommended" for the bench. The Commission’s evaluations are based on criteria such as legal ability, trial experience, temperament, administrative ability, integrity, pro bono and community involvement and devotion to improvement of the quality of justice. This investigative process is no easy task, and a decision not to recommend also must be accompanied by specific criteria.

The Commission is made up of Philadelphia Bar Association Chancellors and leaders of its Sections: judges; leaders of the affinity bar associations such as the Asian Pacific American Bar Association of Pennsylvania, the Hispanic Bar Association and The Barristers’ Association of Philadelphia, Inc.; Office of the District Attorney of the City of Philadelphia and the Philadelphia City Solicitor; the Defender Association of Philadelphia; Community Legal Services; the Philadelphia Trial Lawyers Association; the Philadelphia Association of Defense Counsel; and members of the public. Many Commission members have not met each other before serving, but develop a deep respect and admiration based on the honest and candid discussions throughout the process.

Leading up to the decision by the Commission, an investigative team of four lawyers and a member of the public performs a thorough investigation searching the Internet, reviewing writing samples and interviewing at least 20 individuals who know the candidate, at least eight of whom were not a listed reference from his or her office, asking probing questions. The team then makes a written recommendation to the Commission and a formal presentation to the Commission. During the investigative team’s presentation to the Commission, the investigative team leader is questioned as to the extent of the investigation and the findings. The candidate is then given an opportunity to explain to the Commission why he/she wants to be a judge, how this individual can make a difference and how this person is qualified. The Commission, through its chair, interrogates the candidate. After all are satisfied that there are no remaining questions, the candidate and the investigative team are asked to leave. The Commission then discusses and debases the presentation, and the findings of the investigation, and makes a determination by secret ballot.

All members of the Commission and investigative teams take their responsibilities very seriously. The Commission’s April 13 meeting lasted more than six hours. This dedication was and is remarkable. I truly did not appreciate the seriousness by which all who participate in the Commission and in the investigative teams take their responsibility. While the Commission has many “repeat” and “seasoned” investigators, it makes sure it continues to bring in new participants with fresh perspectives.

Three years ago, under past Chancellor William P. Fedullo’s leadership, the Association decided to add a “highly recommended” rating if a candidate received a highly recommended vote from at least 90 percent of the Commission members. This year, the Commission has learned that such a rating is virtually impossible to achieve. As a result, the Commission will reevaluate the requirements for a highly recommended rating after this season’s candidate review process has been completed.

This year, the Commission’s impact will be strengthened by an initiative led by the Young Lawyers Division. They are leading the charge to organize more than 200 volunteers to distribute the Commission’s judicial ratings to voters at specific polling places across the City of Philadelphia. Lawyers and no lawyers are urged to participate. Please volunteer by signing up at https://goo.gl/forms/6GbBeoan1o2yD322. Specific locations will be targeted and the Commission will work with a consulting firm to analyze data for use in future election years. The Commission will also continue to promote the ease with which voters can access its judicial ratings via a mobile device, that they can refer to when they reach the polls.

As we all know, an educated and interested electorate is crucial to upholding the rule of law. Particularly this election year brings renewed concerns of individuals not voting. Remember for the presidential election, 40 percent of voters did not vote. These numbers have a real chance of increasing this election as the vote is mainly for judicial candidates. And voters need to understand the impact of voting and its lasting effects. For example, as we learned in the Superior Court candidate forum, this court often issues opinions which are the final word on certain topics as appeals are infrequent. Four positions out of 15 are on the ballot and, as a result of the change of the retirement age, and based on the “youth” of the candidates, these new judges will have the opportunity for a long stay. We need your assistance in spreading the word about the hard work of the Commission and its investigators. This is what makes the Association relevant and makes me proud to be a Philadelphia lawyer.
Right to the Cure - Legal Representation of Incarcerated Hepatitis C Patients
Tue., 5/2/17 - 12:00 – 2:15 p.m. (2 SUB)
Hosted by the Civil Rights Committee
This CLE program, presented with the Abolitionist Law Center, will address the scope of Hepatitis C nationally and internationally. The program will then examine the scope of the Hepatitis C epidemic in the U.S. prison system and highlight current litigation which became the basis for the Hepatitis C project. Presenters will detail the litigation steps for representation of these patients. Finally, the program will explore the ways attorneys can become involved.

Issues of Special Education and Complex Trauma in Youth Legal Representation
Tue., 5/9/17 – 12:00 - 1:30 p.m. (1.5 SUB)
Hosted by the Legal Rights of Children Committee
This CLE program examines issues facing youth in the criminal justice system related to special education and the effects of complex trauma. Drawing on their expertise in social work, education and the law, panelists will discuss strategies to enhance youth advocacy, including best practices in engaging youth in crisis and advocating for youth with special education needs.

Avoid Ethical Landmines to Develop a Marketing Mindset and Build a Prosperous Business
Wed., 5/10/17 - 12:00 - 1:30 p.m. (1 ETH)
Hosted by the Women in the Profession Committee
In this competitive legal service landscape, new lawyers must hit the ground running in planning for the growth of their businesses. Yet, there are requisite skill sets and professional ethics rules that lawyers are not taught in law school that must be incorporated into daily marketing activities. Embark upon a successful professional journey by attending this power-packed CLE program.

Financial Planning for Government and Public Service Employees
Thu., 5/11/17 - 4:00 - 5:00 p.m. (1 SUB)
Hosted by the Government and Public Service Lawyers Committee
In this CLE program, Rob Wilson, financial advisor and television contributor will provide general retirement planning strategies. Government and public service attorneys will learn how to manage their 401k, pension or other deferred compensation plans. Join the Government and Public Service Lawyers Committee for wine & cheese immediately following the program.

For questions regarding Philadelphia Bar Association CLE, contact Director of Continuing Legal Education Tara D. Phoenix at 215-238-6349 or tphoenix@philabar.org.
Criminal Injustice: Investigating and Challenging Wrongful Convictions
Fri., 5/12/17 - 12:00 - 2:15 p.m. (2 SUB)
Hosted by the Civil Rights Committee, Criminal Justice Section and the Public Interest Section
This CLE program explores what happens when the basis for a conviction is called into question after trial and when both the prosecution and defense agree that someone is innocent. Panelists will answer the following questions: what is a “wrongful conviction;” how do the Philadelphia District Attorney’s Office and Innocence Project, Defenders Association, as attorneys for the wrongfully convicted, evaluate innocence claims; how is that challenge litigated; what are some of the challenges in that litigation from both sides; as well as, what implications does this have for practicing attorneys and the criminal justice system?

Major Trials Judge Pro Tempore Training
Tue., 5/16/17 - 3:00 – 5:15 p.m. (2.0 SUB)
This CLE program provides the necessary training to become a JPT
For more than 20 years the First Judicial District (FJD) Case Management system has resulted in the timely disposition of civil matters filed in Philadelphia. A necessary and integral part is the Dispute Resolution Center’s Judge Pro Tempore (JPT) program. Service as a JPT is a commitment to the continued effective and efficient case management system. The goal is to assist counsel to narrow the issues, start settlement discussions, assist in a possible non-trial disposition and provide the judicial team leader with a written report. Network and learn more from judges and current JPTs at the wine and cheese reception immediately following the program.

A Power of Attorney is Not “Just a Form”
Thu., 5/18/17 - 12:30 - 1:30 p.m. (1 SUB)
Hosted by the Solo, Small & Mid-Size Firm Management Committee and Probate & Trust Law Section
In this practical CLE program, featured presenter, Timothy J. Holman, Esq, a fiduciary litigator who deals regularly with the damage done by Agents Under Powers of Attorney, will provide guidance regarding issues practitioners must consider when drafting a power of attorney to avoid problems for their clients and their clients’ families and loved ones down the road.

Closing the Deal, Securing the Data - Privacy and Data
Fri., 5/19/17 - 4:30 - 5:30 p.m. (1 SUB)
Hosted by the Cyberlaw and Mergers & Acquisitions Committees of the Business Law Section
This CLE program will highlight the key concerns when considering a target for acquisition; such as, how to assess how they protect their data; what questions to ask and which documents to review. Join and colleagues and continue the discussion at a happy hour immediately following the program.

Pre-Dispute Arbitration Clauses: the Pros and Cons
Mon., 5/22/17 - 12:00 – 1:30 p.m. (1 SUB)
Hosted by the Alternative Dispute Resolution Committee of the State Civil Litigation Section
This CLE program addresses the “hot” topic in the field of alternative dispute resolution, particularly in consumer and nursing home cases, Pre-dispute Arbitration Clauses. More and more companies are inserting these arbitration clauses in contracts. Panelists examine the question, are they a reasonable business technique or unfair forced arbitration?

M&A Outlook for 2017
Tue., 5/23/17 - 12:30 – 1:30 p.m. (1 SUB)
Hosted by the Venture Capital & Private Equity Law and Mergers & Acquisitions Committees of the Business Law Section and presented with Wells Fargo
This CLE program will include a review of the key drivers expected to impact 2017 M&A activity. Wells Fargo’s Lowell Jacobson and Garrett Sion, will highlight the following topics: current state of the M&A market, expectations going forward, trends in valuation and related drivers, the U.S. economy and interest rate expectations for 2017 and beyond, as well as, provide U.S. financial and credit market update.

Fighting for Democracy: Lessons From the Israeli Experience
Tue., 5/23/17 - 4:00 - 5:30 p.m. (1.5 SUB)
Hosted by the Civil Rights Committee
Join the Civil Rights Committee for a wide-ranging conversation with leaders from two organizations at the forefront of defending civil liberties during tumultuous times. This happy hour CLE program will examine background on the threats to democracy and civil society that Israel has faced in the past decade as they relate to the challenges now facing the U.S. Panelists, Sharon Abraham-Weiss, executive director, Association for Civil Rights in Israel (ACRI) and Mary Catherine Roper, deputy legal director, American Civil Liberties Union of Pennsylvania (ACLU-PA), discuss civil liberties problems in both countries and their organizations’ advocacy and legal strategies.

Nonprofit Financials 101: What Board Members Need to Know
Wed., 5/24/17 - 12:30 - 1:30 p.m. (1 SUB)
Hosted by the YLD as part of the Philadelphia Bar Foundation
Board Observer Program
This practical CLE program will cover how to read nonprofit financial statements, give an overview of the audit process and the preparation of required IRS Form 990. The program will cover what questions attorneys serving on non-profit boards should be asking about their organizations’ financial situation.

*Additional courses may be added within the month.

TO REGISTER
Visit the CLE page at PhiladelphiaBar.org
**Help the YLD, Judicial Comm. Spread Ratings**

By Matthew S. Olesh

Serving on the Philadelphia Bar Association’s Commission on Judicial Selection and Retention is one of the more interesting and rewarding “perks” of being chair of the Young Lawyers Division. I have the privilege of sitting on the commission this year, and I find it to be one of the most important functions carried out by the Association. If you are unfamiliar with the commission’s work, it evaluates judicial candidates in order to help voters make educated, informed decisions about candidates for judicial office.

This is no easy task given the thoroughness by which the commission operates – particularly in years like this one where there are a good number of vacancies for the Philadelphia Court of Common Pleas and, thus, a substantial number of candidates who have thrown their hats into the ring. Each candidate who applies for a Commission rating is thoroughly investigated by a team of its investigative division that conducts interviews of the candidate and other lawyers, judges and individuals knowledgeable about the candidates, reviews writing samples, and generally evaluates the candidate’s qualifications to be a judge. This team then makes a report and recommendation to the Commission, that then considers the team’s report in connection with its own candidate interview and votes on the rating to be assigned. It is a detailed and exhaustive process. I am proud to see that YLD members are actively involved both serving on and leading investigation teams this year.

One of the challenges that the commission has historically faced has been the question of how to maximize the impact of its judicial ratings. This year, the commission will be making its most ambitious attempt yet to meet this challenge head-on. Working with Econsult Solutions, an economic consulting firm, the commission will be staffing various polling places across the city with individuals who will hand out the ratings to voters as they arrive to vote in the primary election on May 16. Our hope is that this will accomplish two things. First, we are optimistic that by getting the ratings in voters’ hands as they are about to vote, they will give them immediate consideration and use them as a guidepost by which they make their selections in the voting booth.

Second, and perhaps more importantly, we will be working with Econsult to analyze the impact that this has on the results of the election across polling places in various areas of the city. We will compare polling place results to results in similar locations that are not staffed by a Commission volunteer in order to determine where the Commission’s ratings are most effectively utilized by voters and where they may have less of an impact. By mining the data, we hope to obtain valuable information about how the Commission can most effectively promulgate its ratings in future elections.

This effort is significant and substantial. In order to accomplish it with a sufficient sample size, we will need to utilize 200 volunteers to each take half-day shifts handing out the Commission’s ratings at 100 randomly selected polling places across the city. If you are interested in being a part of this project by taking a half-day shift during the May 16 primary election, please contact me (molesh@chamberlainlaw.com) and let me know.

The Commission has always played an important role in rating candidates for local judicial office. However, these new measures represent a significant step forward in not just rating candidates, but in understanding the impact of the ratings on voters. It is only with this understanding that the Commission can take measures tailored to have a more meaningful impact.

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

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**Gov’t, Public Service Have Their Perks**

By Nicholas S. Kamau

Government and public sector officials are held to standards of conduct different than those of their private-sector counterparts. As seen too frequently in Philadelphia, government officials have been sanctioned for violating these standards that are established to foster impartiality in government services that should be offered in a fair, honest and transparent manner.

The newly revived Government and Public Service Lawyers Committee held its first program of the year on March 15, exploring activities permitted for government and public service lawyers outside of their official capacity and outside of city time (for city employees). The panelists were Jordan E. Segall, staff attorney, City of Philadelphia Board of Ethics; Salena Jones, assistant district attorney and chief, Community Engagement, Office of the District Attorney, City of Philadelphia; Nicholas S. Kamau, vice chair, Government and Public Service Lawyers Committee; Jordan E. Segall, staff attorney, City of Philadelphia Board of Ethics; and Nena M. Carter, assistant chief, East Division, Defender Association of Philadelphia; and Lewis Rosman, senior attorney, City of Philadelphia Law Department.

While many city officials and employees choose to serve the community through volunteering activities, there are several restrictions of which they must be aware. Under both the City Code §20-602 and the Professional Rules of Conduct, city employees must not disclose any confidential information they come into contact with to benefit their financial interest or the financial interest of another. Additionally, pursuant to City Code §20-602(1)(a), no city officer or employee shall assist another person by representing him/her directly or indirectly as his/her agent or attorney, whether or not for compensation, in any transaction involving the city.

Regarding political activity, Segall said that the Board of Ethics Regulation 8 basically restricts city officers and employees from directly or indirectly soliciting, accepting or receiving contributions of a political nature. Attending fundraisers and making donations to a candidate is permissible activity, but organizing, promoting or participating in a candidate is strictly prohibited under the Home Rule Charter.

City employees are permitted to engage in paid outside employment, however conflicts of interest must be avoided, and no official action may be taken to benefit a business interest for which the employee continued on page 10.
Survivor Tells a Story of Perseverance

By Hon. A Michael Snyder (ret.)

In 1939, before the Nazis invaded Poland, the small town of Zarki had a Jewish population of 3,400, more than half of the town’s residents. In 1945, after the war ended, only 27 Jews from Zarki lived to return to their old home. Michael Bornstein and his daughter, Debbie Bornstein Holinstat, wrote a book that tells this story in an incredibly moving fashion titled “Survivor’s Club: The True Story of a Very Young Prisoner of Auschwitz.”

On March 22, the Philadelphia Bar Association and the Louis D. Brandeis Law Society presented a discussion and book-signing with Bornstein and his daughter.

When Zarki was invaded by the Nazis, in September 1939, Bornstein was not yet born. In fact, he was born on May 2, 1940, in the open ghetto of Zarki, eight months after the town was invaded. Bornstein’s parents, Israel and Sophie, also had an older son, Samuel.

Michael said that the town of Zarki was a relatively safe place for Jews before the invasion. Unlike other Polish towns, Jews could own land and businesses, and as a result, the Jews of Zarki did not flee their homes when it was still safe. They thought that the Nazis would be satisfied that they had gained additional land for the Reich and leave the inhabitants in peace. Many believed in the phrase “gam ze ya’avor” or “this too shall pass.” Regrettably, they woefully misjudged the situation.

Shortly after Bornstein was born, the Nazis ordered that each ghetto and town in Poland form a “Judenrat,” a formal council of Jewish leaders. The members of the Judenrat were forced to assist the German army to enforce rules and maintain order among the Jews. Bornstein’s father was selected by the elders in the Zarki Jewish community to be the president of the Judenrat in March 1941. To the Judenrat fell the unenviable role of creating lists of those who would be assigned or extermination camps. The town was burned to the ground in 1942. Still, Bornstein’s father worked to keep as many people as he could relatively safe; some even managed to escape the borders of Poland to find refuge.

Eventually, the Nazis decided that Zarki should be made “Judenrein,” or free of Jews. All of the Jews of the town were either shipped to labor camps, moved to the walled ghettos in Warsaw, or relocated to the concentration or extermination camps. The town was burned to the ground in 1942. Still, Bornstein’s father worked to keep as many people as he could relatively safe; some even managed to escape the borders of Poland to find refuge.

Bornstein’s family was relocated to work at an ammunition factory in Pionki. However, in July 1944, the “safety” of Pionki was taken away and the family, along with all of the other workers in the labor camp, was herded onto a train bound for Auschwitz-Birkenau. Immediately after they arrived, Bornstein’s father and brother were separated from him, his mother and his grandmother. He never saw his father or brother again.

It is true that the story of the Bornstein family is one of pain, horror, devastation and loss. But it is also a story of courage, love, strength, hope and yes, even miracles.

Hon. A. Michael Snyder (MSnyder@adrdri.com) is a distinguished neutral at the Dispute Resolution Institute.
Implications of Civil Procedure Amendments

By Lauren A. Strebel

How have the amendments to the Federal Rules of Civil Procedure impacted practice in federal court the past year? That question was answered by the Federal Courts Committee’s March 15 CLE titled “Amendments to the Federal Rules of Civil Procedure” on March 15. Panelists were Hon. Paul S. Diamond, U.S. District Court, Eastern District of Pennsylvania; Lee C. Durivage, shareholder, Marshall Dennehey Warner Coleman & Goggin, P.C.; and Laura C. Mattiacci, partner, Console Mattiacci Law, LLC. They discussed the amendments to Rules 1, 26(b), and 37 and how courts and attorneys have responded to them.

The amendment to Rule 1 included a new requirement of the parties, as well as courts to construe, administer and employ the Rules in a manner to “secure just, speedy, and inexpensive determination of every action and proceeding.” The addition of the word “parties” to the Rule was meant to encourage lawyers to cooperate with their adversaries throughout the litigation. Lawyers initially lobbied against this amendment because they thought it worked against their obligation to do the best they could for their client.

However, in practice the panelists agreed that lawyers generally cooperate because working with others benefits their client. The judges on the panel admitted it was also up to the presiding judge to set the tone early. If the judge indicates that she/he will not tolerate certain negative behaviors, it encourages lawyers to cooperate. Judges can also foster conversations among parties – for example by being readily available to answer discovery-related questions or by asking plaintiff’s counsel for his client’s demand.

Rule 26(b)(1) was changed to include a new definition of the scope of discovery with a “proportionality” requirement. The panel clarified that idea of proportionality or balancing costs and expenses associated with specific requests was in the Rule before, but no one ever cited to it. Instead, the focus was on if the requested information must first show relevant ESI information is readily available to answer discovery-related questions or by asking plaintiff’s counsel for his client’s demand. Rule 26(b)(1) was changed to include a new definition of the scope of discovery with a “proportionality” requirement. The panel clarified that idea of proportionality or balancing costs and expenses associated with specific requests was in the Rule before, but no one ever cited to it. Instead, the focus was on if the requested information appeared “reasonably calculated to lead to the discovery of admissible evidence.” Now it is clear that parties drafting discovery should consider the costs associated with responding to the requests and those responding should be prepared to identify specific burdens and expenses of responding to the requests if they wish to file an objection.

In amending the Rules, the panel said, the committee also wanted to craft a way to file an objection. The amendments, district and circuit courts varied in how they imposed sanctions for the destruction of ESI. The amendment to Rule 37(e) provides courts with a uniform approach. The party seeking the information must first show relevant ESI should have been preserved, the ESI was lost because the company/person failed to take reasonable steps to preserve it and the lost ESI cannot be replaced through additional discovery. If the court finds that the lost ESI has prejudiced the party seeking it, then it may order measures no greater than necessary to cure the prejudice. However, only upon a finding of intent to deprive the information can a court impose more severe sanctions.

Mattiacci, representing the view of the plaintiff’s bar, said she has noticed since the Rule’s amendment, oftentimes defendant’s ESI is being “deleted” or “missing” or is “not available. For example some companies are automatically deleting emails after three months. Any argument to support a spoliation instruction will focus on the “reasonable steps to preserve” and “intent” language.

Lauren A. Strebel (lstrebel@lssh-law.com), associate at Longsam Stevens Silver & Hollander, is an associate editor of the Philadelphia Bar Reporter.

CLE Topic Idea?
To submit a topic idea for a CLE course or volunteer to be a course planner or presenter, contact Director of Continuing Legal Education, Tara D. Phoenix, at 215-238-6349 or tphoenix@philabar.org.
In Their Own Words: The Urgent Case for Legal Aid

By Thomas A. Brophy

This month I want to open this space so you can hear directly from the highly effective nonprofit legal aid organizations supported by the Philadelphia Bar Foundation. You may know some of these dedicated leaders. They all deserve your attention and assistance.

Urgent increases in client demand for services and potentially significant cuts in federal and state funding are affecting the full range of local legal aid providers receiving Foundation grants. This serious situation will continue and possibly expand over the next several months and beyond. Additional resources and philanthropy are necessary to allow legal aid staffing to expand — and certainly not decline — to protect the basic rights of our neighbors in need on issues ranging from education to employment, from health to housing, from youth to seniors, and from people with disabilities to immigrants.

I hope the following heartrending details about this legal aid crisis will inspire you to contribute to our Special Circumstances Campaign to ensure program continuity and strengthen vital services for people in need. Act now by donating at www.philabarfoundation.org.

The following examples are from leaders of a variety of the 38 organizations that receive support from the Foundation. You can see more from our nonprofit partners on our website.

As always, thank you for getting engaged in safeguarding access to justice for all.

Reggie Shuford, ACLU of Pennsylvania: We can no longer count on support from the Department of Justice, and our work protecting immigrants, Muslims, and other vulnerable communities has expanded greatly. We are committed to moving forward with both our defensive agenda and our proactive agenda for criminal justice reform. This will test our resolve and our resources.

Shira Goodman, CeaseFirePA: We need to react to multiple developments at the state and federal levels. Playing defense against bad policy initiatives makes it difficult to advance a proactive agenda for change. Holding the status quo and not going backward are actually important successes.

Deborah Freedman, Community Legal Services – The proposed federal budget cuts would throw CLS and our clients into an unprecedented crisis. With the federal funding we receive, CLS stops foreclosures, preventing homelessness; helps youth in crisis and abused women access housing; helps families access many different benefits and programs; and allows sick people to receive healthcare and families to avoid hunger.

Deborah Gordon Klehr, Education Law Center: We are finding that districts are not enrolling refugee students into schools and do not provide translation services to families. In addition, some districts, including Philadelphia, are severely underfunded, with large class sizes, teacher shortages and crumbling facilities.

Mary Clark, Esperanza Immigration Legal Services: We have been deluged by calls for help. Parents are seeking to ensure care of their children in the event of an immigration raid; immigrant crime victims are fearful of seeking legal remedies; and lawful permanent residents are rushing to apply for citizenship after living with their current status without worry for decades. We are only scratching the surface.

Meredith Rapkin, Friends of Farmworkers: Immigrant communities are facing new and different legal issues every day, and the requests for help are increasing at a rate that we cannot match with services. The unpredictable legal landscape is presenting challenges for our advocates, who can no longer easily predict the trajectory of a case. We feel challenged on all fronts.

Cathryn Miller-Wilson, HIAS Pennsylvania: Torture victims are terrified of being sent back to the violence they had escaped. Parents are panicked about what would happen, if they got detained, to their U.S. citizen children. Immigrant victims of domestic violence are fearful about getting suddenly picked up and the abuser may be there to collect the children. The national budget proposal confirmed our fears of losing 70 percent of our funding.

Marsha Cohen, Homeless Advocacy Project: Under the new administration, HAP is fearful that its clients, the poorest of the poor, could lose access to benefits including SSI and Medical Assistance, affordable housing and even emergency shelter. If the homeless shelter system dissolves, thousands of mothers and children will be relegated to the streets.

Susan Vivian Mangold, Juvenile Law Center: The leadership of DOJ, HHS, DOE, and HUD are no longer partnering with us on many issues. Reforms such as education rights for youth in foster care are uncertain. Possible harmful actions include the elimination of Medicaid to 26 states, and the denial of services to LGBTQ youth by private providers who accept federal funds.

Linda Peyton, Legal Clinic for the Disabled: Our medical legal partnerships in seven diverse communities in Philadelphia are threatened by proposed cuts to federal funding. In addition, undocumented clients are afraid to apply for benefits their citizen children are entitled to, such as SSI and SNAP.

Margaret O’Sullivan, Nationalities Service Center: Immigrant and refugee communities are uncertain of what the new policy changes mean for their daily lives and are fearful that their families may be torn apart. We have been overwhelmed with requests for information and legal representation.

Laval Miller-Wilson, Pennsylvania Health Law Project: The Affordable Care Act has helped more than a million Pennsylvanians gain health coverage. Congressional opponents of ACA should accept that it has become a fundamental part of our nation’s health care system, work to strengthen it, and cease seeking to undermine it or repeal its key elements.

Mary Studzinski, Pennsylvania Immigration Resource Center: We are seeing a major increase in the need for legal services for immigrants in detention and many requests for family law legal assistance for parents to designate a caregiver.

Marissa Bluestine, Pennsylvania Innocence Project: The small pool of federal funds supporting innocence work is threatened. The attorney general dissolved the National Commission on Forensic Science, putting the initiative within the control of the Department of Justice. The move will lead to reliance on outdated forensic evidence — the same faulty techniques that have convicted half of all exonerated individuals.

Anita Santos-Singh, Philadelphia Legal Assistance: What does the proposed elimination of the federal Legal Services Corporation and related funding mean to the 700,000 eligible Philadelphians living in poverty? Without legal services, battered women would have nowhere to turn for help extricating themselves and their families from abusive relationships, families would lose their housing and the elderly, the disabled and veterans would not be able to protect against the wrongful denial of benefits.

Elaine Petrossian, Philadelphia VIP: Philadelphia faces a civil justice crisis. New pressures on clients, plus potential elimination of legal aid funding through Legal Services Corporation and Community Development Block Grants, may create new threats and new needs for pro bono service.

Molly Callahan, Women Against Abuse: Immigrant victims of domestic violence do not feel safe to call the police and seek court intervention and other services, because they are afraid they will be deported or targeted. This leads to further isolation and victimization. Lawmakers have called for de-funding sanctuary cities like Philadelphia and this creates uncertainty for organizations, such as ours, that rely on federal funding to assist victims.

Thomas A. Brophy (tbrophy@udwgc.com), president and CEO at Marshall Dennehey Warner Coleman & Goggin, P.C., is president of the Philadelphia Bar Foundation.
EEOC Mediation Saves Time, Money

By Annie Kernicky

If you are a labor and employment attorney, chances are you have filed or defended against a Charge of Discrimination before the U.S. Equal Employment Opportunity Commission (EEOC). Mediation is offered by the EEOC as an economical alternative to the traditional investigative or litigation process. In an EEOC mediation, a neutral representative of the EEOC assists the opposing parties in trying to reach a voluntary, negotiated resolution of a discrimination charge.

The Philadelphia Bar Association’s Labor and Employment Law Committee presented a Philadelphia Bar Association CLE titled “Mediating Before the EEOC” on March 24. A panel gave an overview of the EEOC's mediation program, providing practical tips from both the employee and employer sides, as well as an overview about the EEOC's recently implemented electronic filing program. Panelists included Brendan D. Hennessey, volunteer mediator with the EEOC and attorney the Hennessy Law Firm; Stephanie Marino, ADR coordinator at the EEOC; Eric B. Meyer, volunteer mediator and partner at Dilworth Paxson LLP; and Houston Ryan, federal mediator with the EEOC.

Marino began by saying that if mediation is an option for the case, the parties are notified of an invitation to mediate directly through the new online portal, and will no longer receive a paper invitation. Once a notification with an invitation to mediate is received, both parties must select an online option to accept or decline the mediation, she said. Through the new respondent's portal, a respondent can also now access the electronic database on its own and upload its position statement, the deadlines for which will automatically be suspended if mediation is selected, Marino said. She also told attendees that the EEOC will routinely grant 20-day extensions for responses, but it is not capable or allowed to grant a longer extension.

According to Ryan, as a full-time mediator with the EEOC, he has noticed that many attorneys tend to approach an EEOC mediation like a private mediation. While the two mediation processes have similarities — including neutrality and confidentiality — Ryan said that his role is to facilitate the parties to reach their own agreement and will generally not put a number on the case. Marino added that the mediator's role is to be neutral, not to evaluate like a judge, and the EEOC uses a facilitative approach to open dialogue between the parties and uncover what the parties' interests are.

To determine if the case is appropriate mediation, Marino said that cases are triaged at the intake level and placed in three categories. Systemic cases, such as class actions, or other types of hot topics, are as a practice not referred to mediation, nor are charges that on their face may not be credible or have jurisdictional issues, she said. Besides these categories, most the cases filed before the EEOC need an investigation and are referred to the mediation program. Marino also told attendees that mediation is often a great option in employment cases to repair the relationship where the charging party is an existing employee still at the company. From Marino’s perspective, the EEOC’s mediation program is a “no harm, no foul” approach, where the parties can learn something about the case early on, and save time, money and the aggravation of litigation, but the purpose of the program is not for discovery.

Ryan explained that EEOC mediation can be cathartic for the charging party and provides the opportunity to get the claimant's side of the story off his or her chest. From the respondent's side, Ryan said, it can be helpful for the attorney to remind the client that the goal is not to argue the case but to resolve it, and to look at the mediation from a strictly business mindset. Hennessy likewise said that employment disputes are particularly emotional, and reminded that it is alright to show emotion, but getting angry can interfere with the process and patience is key in mediation.

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

Gov’t and Public Service

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The Government and Public Service Lawyers Committee. Within the last year Law Department employees have volunteered their time with organizations including Big Brothers Big Sisters and the Philadelphia Bar Association’s Advancing Civics Education program, and donated funds and goods to many more organizations.

Despite restrictions, the panelists boasted of the job satisfaction and work-life balance offered to government and public sector attorneys. Many of these bright and talented attorneys are attracted to the public sector for altruistic purposes, which in many instances does not end with their official duties.
Imagine being sentenced for a crime that you have yet to commit, where your culpability is based on an algorithm that predicts the commitment of a future crime. While this harkens to the science-fiction movie Minority Report, for many Philadelphia criminal defense attorneys and their clients, this will soon become reality. The Criminal Justice Section hosted a Philadelphia Bar Association CLE titled “From Criminal Conviction to Civil Nightmare” on March 30 that discussed the stigma and barriers associated with a criminal conviction for those seeking employment, education, immigration rights, re-entry into society and fairness in the criminal justice system.

Troy H. Wilson of Troy H. Wilson, Esquire, LLC, moderated the program and discussed the Pennsylvania Risk Assessment Law, or Future Crimes Law, that authorizes a sentencing judge to rely on algorithms to justify adding or abating years of incarceration, regardless of whether the crime was committed. The mathematical algorithm utilizes eight factors, including the individual’s age, gender, and number of arrests, to predict the probability for recidivism. Despite the controversy and potential discriminatory nature of this program, Wilson revealed that Philadelphia is one of the four pilot counties in Pennsylvania to implement it.

Another panelist, Sharon M. Dietrich, litigation director and managing attorney for the Employment Law Unit at Community Legal Services, discussed the employment barriers for those with a criminal record. Dietrich summarized the legal successes in holding Pennsylvania statutes, that placed lifetime bans on employment for those with a criminal record, unconstitutional. She also spoke about that remedies that exist under federal statutes, such as Title VII, and local ordinances such as Philadelphia’s City Fair Hiring Ordinance, to ensure that those with a criminal record will be treated fairly in hiring.

Abel Rodriguez, assistant professor at Cabrini University and former immigration specialist at the Philadelphia Defender’s Association, discussed Pennsylvania and the Third Circuit’s erosion of Padilla v. Kentucky, that required attorneys to warn their client that a conviction may carry a risk of adverse immigration consequences. Rodriguez asked the audience to strive beyond merely giving a warning, but to also conduct immigration research or contact an immigration attorney for more information because ostensibly inconsequential advice to accept a conviction may lead to deportation and/or inadmissibility for their non-U.S. citizen clients.

Additionally, Michael Lee, executive director at Philadelphia Lawyers for Social Equity, guided the audience through the requirements for expungement and pardons of a criminal record, and sealing records from public view through the Limited Access Order. Bryan Quinn, The Law Offices of Brian E. Quinn, spoke about this experience defending health care professionals from losing their licenses due to a DUI conviction, diverting drugs or from attending an innocuous ARD program.

Closing the program, Jhondi Harrell, executive director and founder, The Center for Returning Citizens (TCRC), presented on the challenges faced by formerly incarcerated citizens returning to society. TCRC provides necessary logistic support, assistance, and treatment to lift returning citizens from falling into recidivism, and to guide them to their new life.

Jon-Michael Olson (Jon-Michael.Olson@Phila.gov) is an assistant city solicitor for the City of Philadelphia.
Despite the recent partisan gridlock at nearly every level of government, local leaders can at least agree on one thing: Pennsylvania’s most impoverished families need more support finding quality K-12 education for their children.

Fortunately, as Nicole G. Tell, vice president of development/COO of Children’s Scholarship Fund Philadelphia, said during the Philadelphia Bar Association CLE titled “Directly Invest in Quality K-12th Education,” businesses and even certain individuals can apply to use their Pennsylvania state tax liability to directly fund scholarships through donations to a state-approved K-12 scholarship organization. Depending on their commitment to the programs, these businesses can get up to a 90 percent dollar-for-dollar credit applied to their state taxes.

Article 17(f) of the Tax Reform Bill established two related tax credit programs: the Pennsylvania Educational Tax Credit Program (EITC) and the related Opportunity Tax Credit Program (OSTC). The EITC, launched in 2001, and the OSTC, launched in 2012, are administered through the Pennsylvania Department of Community and Economic Development, that oversees all tax credits in the state in coordination with the Pennsylvania Department of Revenue.

Tell said that a new change to the credit application rules will allow individuals who are employees of a “business firm” to take advantage of the credits by creating a special limited liability company or limited partnership.

It is not surprising that these credits have found bipartisan support. Despite recent economic growth in Philadelphia, the city has the highest rate of “deep poverty,” people with incomes below half of the federal poverty line.
Terminated Post Work Injury, Now What?

By Regina M. Parker

In Pennsylvania, an employee is entitled to workers’ compensation benefits if he or she sustained a disabling injury while acting within the course and scope of employment. However, there are affirmative defenses to this general rule that can be raised by the employer to preclude an employee from receiving benefits. One of the affirmative defenses involves the post-injury firing or termination from employment for violation of an employer’s policy, panel members told attendees during the Philadelphia Bar Association CLE titled “Termination Following a Work Injury,” hosted by the Workers’ Compensation Section on April 7. The panel included Caroline E. Diehl, associate at Thomas, Thomas, & Hafer, LLP and Paul Himmel, senior shareholder at Freedman & Lorry, P.C.

Typically, Pennsylvania is an at-will employment state. The panel explained that unless there is an employment contract or collective bargaining agreement, a worker can be terminated from employment for any reason provided that the termination is not discriminatory in nature or in retaliation for filing a workers’ compensation claim. Employment contracts and collective bargaining agreements dictate when the employee can or will be terminated and therefore supersede the employment at-will doctrine, Himmel said.

In the workers’ compensation setting, termination for cause comes into play in a multitude of situations and can be raised as an affirmative defense to an employee’s claim or reinstatement petition. Diehl said that courts have addressed violation of company policy involving lateness and absenteeism, intoxication or other activity that indicates the employee is intentionally disregarding employer policy. In such instances, when the employee engages in willful misconduct, the termination can be deemed a valid means to preclude benefits, Diehl said. She explained that the employer must prove that the employee was terminated for cause and that the claimed wage loss is unrelated to the injury.

The employee can challenge the affirmative defense by showing that he or she acted in good faith. For example, courts have held that although the employee may have missed work above and beyond the employer’s policy, benefits will be awarded if the employee acted in good faith, i.e., missed work due to the work injury or due to doctor’s appointments. Diehl said that the question of willful misconduct is a question of fact that must be determined by the judge on a case by case basis.

Many employers have in place a mandatory drug testing program that can result in termination from employment. In these cases, if an injury would not have occurred but for an employee’s intoxication or illegal drug use, workers’ compensation benefits can be denied. Himmel cautioned that this is the most concerning defense. He suggested that if there is no indication that the employee was under the influence or intoxicated at that time of the work injury, the termination from continued on page 20

Section Donates to PAWS, Supports Animal Welfare

By Jennifer A. Etkin and Deborah Richman

The Philadelphia Animal Welfare Society (PAWS) is a non-profit organization dedicated to saving Philadelphia’s homeless, abandoned and unwanted animals, and one of the Philadelphia Bar Association Workers’ Compensation Section’s many charitable causes. On March 22, Jennifer Etkin and Deborah Richman, co-chairs of the Section’s Charitable Events Subcommittee visited the PAWS Adoption Center, at 100 N. Second St. in the Old City section of Philadelphia, to deliver multiple bags of cat and dog food, treats, toys and blankets which were donated by the Workers’ Compensation Section members, their office staff, Workers’ Compensation Judges and court employees at the March 10 lunch-and-learn CLE. PAWS works to accomplish its mission in two ways: first by offering low-cost spay and neuter clinics to prevent the birth of unwanted puppies and kittens; and second by maintaining the city’s largest no-kill shelter with multiple adoption locations, special events and a comprehensive foster-care network. Ultimately, PAWS is driven to make Philadelphia a no-kill city where every healthy and treatable pet is guaranteed a home.

Not all of the donations required the purchase of new items. PAWS encouraged and gladly accepted gently used clean blankets, sheets and towels for the cats and dogs so they could rest easy and cuddle comfortably while waiting for their forever homes. Thamara Munoz of Schaff & Young said she cleaned out the closest of her eight-year-old daughter’s old baby blankets. “When I mentioned to my daughter that we were doing a collection for pets she... got excited and started pulling out her old baby blankets. She looked for the softest ones she had.” The donations were accepted by PAWS employee Erica Henn who was impressed by the volume of donations and the generosity of those associated with the Section.

At PAWS, the average turnover for the cats and dogs from entry to adoption/foster is approximately three weeks, a fantastic and maybe surprising statistic. However, PAWS is only able to take some of the thousands of homeless animals out of the city’s animal control shelter to showcase in their boutique-style adoption center in the Old City section of Philadelphia. According to PAWS, nearly 24,000 homeless, abandoned and unwanted dogs continued on page 20
There were cheers and boos in Philadelphia City Council when it enacted the Sugar-Sweetened Beverage Tax, one of the first of its kind in the country. Beverage distributors and retailers publicly blamed the so-called “soda tax” for increased prices and lost jobs, and a group of city residents, city-based businesses and trade organizations immediately filed suit asking that the new tax be declared unconstitutional.

In general, the soda tax is a 1.5 cent per fluid ounce levy on distributors who transfer sweetened (with sugar, artificial sweeteners or other sweeteners) beverages to dealers in the City for resale within Philadelphia.

The plaintiffs have three main arguments: First, they assert that City Council has no authority to impose the soda tax. Pennsylvania municipalities have only the taxing power granted to them by the General Assembly and the city is prohibited from taxing transactions that already are taxed by the Commonwealth. The plaintiffs argue that, by imposing a tax on distributors that can, and will, be passed through to dealers and ultimately to consumers, the soda tax is effectively a sales tax on the retail sale of sweetened beverages, some of which already are subject to Pennsylvania sales tax. Additionally, the plaintiffs argue that – even if it is not duplicative of the sales tax - the soda tax frustrates the fundamental purpose of the sales tax, which is to impose a tax only once in the stream of a transaction on the ultimate retail sale.

Second, the plaintiffs argue that the tax impermissibly requires the recipients of federal food stamp funds to use federal funds to pay state taxes in connection with the purchase of otherwise exempt products (i.e., drinks that are exempt from Pennsylvania sales tax when purchased with food stamps). Consequently, the plaintiffs argue that the soda tax both (i) conflicts with state policy exempting purchases made with food stamps from tax, and (ii) jeopardizes Pennsylvania’s participation in the food stamp program.

Finally, the plaintiffs claim that the Soda Tax violates the Uniformity Clause of the Pennsylvania Constitution that requires the equal taxation of all similarly-situated taxpayers. They claim that by imposing a flat rate of tax based on the volume of beverage without regard to the value of the beverages that are distributed, a distributor of small amounts of high-cost beverages pays less tax than a distributor of large amounts of low-cost beverages, even though the prices of the former are much greater.

After the Supreme Court of Pennsylvania declined to hear the case directly, the Philadelphia Court of Common Pleas ruled in favor of the city, finding that the tax is constitutional and allowed it to go into effect on Jan. 1, 2017. The court first found that the tax was not duplicative of the sales tax because it is imposed on a different transaction – distribution as opposed to the retail sale. Similarly, the court rejected the plaintiffs’ argument that the soda tax conflicts with food stamp policy because it held that federal law only prohibits sales taxes paid directly by assistance recipients, not a tax imposed on distributors. Finally, the court held that the Uniformity Clause allows volume-based taxes and that, as long as distributors selling the same number of taxable beverages are taxed equally, there is no constitutional violation.

The Supreme Court of Pennsylvania again refused to hear a direct appeal of the case, sending the dispute to the Commonwealth Court of Pennsylvania, where arguments were expedited and the court heard arguments on April 5, 2017. The city recently received some outside support in the form of an amicus brief supporting the tax filed by a group that includes the City of Berkeley, Calif. (which recently passed a similar tax), the American Heart Association, and the African-American Chamber of Commerce. The plaintiffs also received outside support urging that the tax be struck down in the form of amicus briefs from 34 members of the General Assembly as well as from organizations representing small business owners throughout Pennsylvania.

The litigation seems destined for the Supreme Court of Pennsylvania, likely sooner rather than later. Until an ultimate resolution, the city will keep collecting the tax.

PRO BONO SPOTLIGHT - SENIORLAW CENTER

‘I’m Glad to See You,’ Improving the Lives of Seniors

A volunteer is defined as a person who freely offers to take part in an enterprise or undertake a task. The most important feature of a true and dedicated volunteer, however, is “passion.” My mother was always helping someone when I was growing up. She did not formally call it “volunteering,” but regardless of who you were, she would help. My siblings and I learned it was always important to help others and we all simply embraced what we grew up seeing. I was introduced to SeniorLAW Center by participating in the PNC Bank Legal Department Pro Bono Program. The first SeniorLAW Center clinic that I attended was perfect, because it fit into my schedule, and it aligned with my passion for helping to improve the lives of our local seniors. I never imagined how much I would value each experience.

We have all heard about a family that has lost a parent or grandparent only to learn, during such an emotional time, there was no will. We have also heard about the grandparent who is faced with permanently caring for their grandchild due to uncontrollable life circumstances. However, do we ever wonder who is there to help seniors their grandchild due to uncontrollable life circumstances.

The most important feature of a true and dedicated volunteer is offers to take part in an enterprise or undertake a task. A volunteer is defined as a person who freely embraces what we grew up seeing. I was introduced to SeniorLAW Center clinic that I attended was perfect, because it fit into my schedule, and it aligned with my passion for helping to improve the lives of our local seniors. I never imagined how much I would value each experience.

For tickets and sponsorship information, please visit www.seniornlawcenter.org or call 215:701.3209.

By Wanda M. Richards

2017 SeniorLAW Center Gala

SeniorLAW Center celebrates the voices of elders and their advocates at its 2017 Gala at The Crystal Tea Room on Wednesday, May 17, 2017, 6-9 p.m. Compelling testimonials, food, drink, live music and celebration, honoring remarkable individuals who have made a profound impact on the lives of seniors and access to justice, including Lawrence J. Beaser, Champion of the Year; PA Commission on Crime and Delinquency, Partner of the Year; Eric P. Sando, Volunteer of the Year.

For tickets and sponsorship information, please visit www.seniornlawcenter.org or call 215:701.3209.

By Wendi L. Kotzen and Christopher A. Jones

By Wanda M. Richards (wanda.richards@pnc.com) is senior counsel in the Treasury Management Group at PNC Bank, National Association.
Balancing Morals With Laws of Armed Conflict

By Caitlin B. Cherkin

Gadi Ezra sat down to write his first paper of his first year of law school at Tel Aviv University, when he received a call to report for active duty in the Israeli Defense Forces. He was to report the very next morning. Ezra, a human rights attorney and former Israeli soldier, reported for duty and embarked on a journey that has impacted his life both on a personal level and in his career in the law. On March 28 Ezra spoke to attendees at an event cohosted by the Philadelphia Bar Association’s Young Lawyers Division and International Law Committee along with the Friends of the Israel Defense Forces Pennsylvania & Southern New Jersey Chapter. He talked about his experience as a human rights attorney and former IDF soldier, focusing on the balance between the dilemmas he faced as a soldier and the standards applied by law in warfare.

Ezra spoke about the laws of armed conflict and their purpose. Based on core principles, the rules provide an effective means for regulating conflict internationally. The rules may put you on the right side of the law, he said, but being in the middle of a war may require subjective analysis of a situation and how to approach it. Ezra’s first-hand knowledge comes, inter alia, from his time fighting in Operation Cast Lead with his unit in the Gaza Strip.

In talking about the most poignant moments of combat during his time as a soldier, Ezra detailed the moments where he would have to apply his own moral standards in the face of war, like deciding whether to trust a Hamas terrorist disguised in an IDF uniform. In complicated situations meant to confuse soldiers in the midst of war, his Israeli Special Forces team faced situations that required them to make calls based not only on the laws of armed conflict, but also on their experience and the surrounding circumstances.

He stressed that there are some situations that cannot always be clearly decided by the law.

His experience has served him well in his legal career. He has developed a unique take on personal standards and applying them in practice. He said that setting a standard for oneself in combat also translates to working as a human rights attorney. The standards one sets for themselves could often differ from the law, but the balance between the two allows one to act accordingly in the complicated situations presented by human rights issues.

Ezra earned three law degrees from both Tel-Aviv University and New York University School of Law. After law school, he headed the Laws of War desk at the Israeli Ministry of Foreign Affairs, advising policymakers and diplomats on humanitarian law, the Israeli-Palestinian conflict, human rights and sanctions on regimes. He was previously selected by Forbes Magazine as one of the most influential leaders in Israel under the age of 30.

Caitlin B. Cherkin (Caitlin@psfamilylawyers.com) is an associate at Previtera & Schimmel.

Capital Punishment Remains Prominent in Pakistan

By Erin Murphy

Pakistan has one of the largest death row populations in the world and has executed approximately 400 prisoners since a moratorium on the death penalty was lifted in 2015. This number can be shocking to lawyers in Western countries, where capital punishment is limited, if not abolished. One such lawyer — Isabel Buchanan, a barrister at Blackstone Chambers in London — spent several years working with death-row inmates in Pakistan, and her experiences were the subject of a March 16 event presented by the Philadelphia Bar Association’s International Law Committee and hosted by Pepper Hamilton LLP on March 16.

Buchanan spoke about how she moved to Pakistan in 2011 at age 23 to serve as a caseworker for Justice Project Pakistan, providing pro bono representation to individuals facing the death penalty. She was the only foreigner on the team and wrote a book about her experiences titled “Trials: On Death Row in Pakistan.”

At the seminar, Buchanan read an excerpt from her book describing the inner workings of the Lahore High Court, that has jurisdiction over the Punjab province. The Justice Project Pakistan team was working on a case before the court involving a man who had been on death row for 20 years. The team was trying to prove he was only 15 years old when the crime was committed, and would have made him ineligible for the death penalty.

Buchanan spoke about the court’s complicated procedures, where records for hundreds of thousands of cases are kept in voluminous paper files. Having the right clerk to assist is essential, and no clerk was better acquainted with the Lahore court than Nasar, the Justice Project’s

continued on page 18
Carol Tracy to Receive 2017 O'Connor Award

By Thomas E. Rogers

Carol E. Tracy, executive director of the Women’s Law Project, will receive the Philadelphia Bar Association’s 2017 Sandra Day O’Connor Award at the Association’s Quarterly Meeting at Hyatt at The Bellevue on June 2.

The award is conferred annually on a woman attorney who has demonstrated superior legal talent, achieved significant legal accomplishments and has furthered the advancement of women in both the profession and the community.

Tracy has lead major legal victories on the national scale in women’s reproductive rights, violence against women and other areas of women’s rights, including serving as co-counsel in the landmark U.S. Supreme Court case Planned Parenthood v. Casey. Her work has broadened treatment for pregnant women dealing with substance abuse and worked with the Philadelphia police department to respond to Operation Rescue’s mission to close women’s health clinics in the city. However, Tracy has made the greatest impact in her work by combating violence against women. As an undergraduate at the University of Pennsylvania, she organized to end campus sexual assault, and after graduation was the executive director of the Women’s Center at Penn. In 2006, Philadelphia Mayor John Street appointed Tracy as cochair of the city’s Domestic Violence Task Force, improving the city’s response to domestic violence. As a board member of Women Against Abuse, the organization named its new women’s shelter “Carol’s Place” in her honor in 2014.

“The Committee received an unprecedented number of nominations this year, and each was incredibly impressive. However, the nomination papers for Carol quickly rose to the top, because it was so exceptional and it was signed by 29 executive directors of public interest organizations and other attorneys who have dedicated their professional careers to pro bono work,” said Jennifer S. Goatsworth, cochair of the Women in the Profession Committee.

Tracy has been the executive director of the Women’s Law Project since 1990. She was executive director of the Mayor’s Commission for Women, City of Philadelphia, under Mayor Wilson Goode (1988-90); after practicing privately (1986-88) and as an assistant city solicitor for the City of Philadelphia (1984-86). Tracy was executive director of the Women’s Center at the University of Pennsylvania (1977-84) and executive director of the Bicentennial Women’s Center (1975-76). She is a graduate of the University of Pennsylvania and Temple University Beasley School of Law.

The Women in the Profession Committee established the award in 1993 to recognize the important contributions that women attorneys in Philadelphia have made to the legal profession. That year, U.S. Supreme Court Justice Sandra Day O’Connor presented the first award to the late Norma L. Shapiro, Senior Judge for the U.S. District Court. The award has since been presented to the late Juanita Kidd Stout, former Justice of the Pennsylvania Supreme Court; Deborah R. Willig, first woman Chancellor of the Philadelphia Bar Association; Professor Marina Angel, of the Temple University Beasley School of Law faculty; Third Circuit Court of Appeals Judge Dolores K. Sloviter (former Chief Judge); U.S. District Court Judge Anita B. Brody; Leslie Anne Miller, first woman president of the Pennsylvania Bar Association; Lila G. Roormberg of Ballard Spahr LLP; the late Judge Judith J. Jamison; Ellen T. Greenlee, former chief defendant of the Defender Association of Philadelphia; former Chancellor Audrey C. Talley; U.S. Court of Appeals Judge Marjorie O. Rendell; former Pennsylvania Superior Court Judge Phyllis W. Beck; Roberta D. Pichini of Feldman, Sheph- herd, Wohlgelernter, Tanner, Weinstock & Dodig; Lynn A. Marks, former executive director of Pennsylvanians for Modern Courts; Roberta D. Liebenberg of Fine, Kaplan and Black, R.P.C.; JoAnne A. Epps, provost and executive vice president of Temple University; Stephanie Resnick of Fox Rothschild LLP; U.S. District Court Judge Cynthia M. Rufe; former Chancellor Jane Leslie Dalton; Pennsylvania Superior Court Judge Anne E. Lazarus; Judge Sandra Mazer Moss (ret.); Catherine C. Carr, former executive director of Community Legal Services of Philadelphia; and Philadelphia Court of Common Pleas Senior Judge Pamela Pryor Denbe.

BOOK REVIEW

Fourth Edition Raises the Bar for Commercial Litigators

The Fourth Edition demonstrates that its 296 principal authors, including 27 distinguished jurists, have remained committed to addressing the most cutting-edge issues in the law and litigation. Keeping with the Philadelphia legal community’s rich tradition of furthering scholarship, the Fourth Edition includes contributions from distinguished federal judges: Hon. Jane R. Roth, U.S. Court of Appeals for the Third Circuit (Coordination of the Litigation in State and Federal Courts); Hon. Paul S. Diamond (Director and Officer Liability) and Hon. Michael M. Baylson (Contracts), U.S. District Court for the Eastern District of Pennsylvania. Further, the Fourth Edition includes works from local experienced and highly regarded practitioners: H. Robert Fiebach and Jennifer M. McHugh (Claim and Issue Preclusion); J. Gordon Cooney Jr. and Joseph B.G. Fay (Class Actions); Mathieu J. Shapiro (Director and Officer Liability); Kelly D. Eckel and Sandra A. Jeskie (Contracts); and Patrick J. O’Connor (Collections). This material is invaluable for all lawyers, irrespective of practice level, practice area, firm size, or position as in-house counsel.

In the past five years, the continued evolution of technology has reshaped the legal profession. Specifically, the advent of the social media platforms such as Facebook, Twitter, LinkedIn and Instagram have become powerful tools in a commercial litigator’s arsenal. However, if these social media platforms are misused, they could negatively affect a case’s outcome and even expose attorneys to potential liability or ethical criticism. Therefore, the Fourth Edition’s new chapter on social media is a must-read for all commercial litigators. Penned by Paul C. Carmin and Alex S. Coll-Very, this chapter explores the discovery, evidentiary, jury and ethical issues, as well as judicial opinions, on the use of information found on social media platforms. Regardless of your own proficiency and comfort level with social media, this chapter will allow an attorney to harness the vast amount of information contained on these platforms and use this information in their clients’ best interests. For example, this chapter explains that attorneys may passively probe “public” content on an opposing party’s Facebook account, but may not contact a party via Facebook if they have retained counsel. Moreover, this chapter highlights that the “skills” listed on an attorney’s LinkedIn profile might conflict with a jurisdiction’s rules on attorney advertising. These practice tips, and more, are summarized in helpful practice guidelines at the end of the chapter.

In closing, the Fourth Edition is a valuable tool for any trial lawyer because it provides a newcomer with an easy-to-comprehend window into a new area of the law, as well as keep a seasoned litigator’s mind sharp. The wait for the Fourth Edition of “Business and Commercial Litigation in Federal Courts” is over, and its purchase is well worth it.

Abraham C. Reich (areich@foxrothschild.com), chairman emeritus, Fox Rothschild LLP, is a past Chancellor, and Mark J. Fanelli (mfanelli@foxrothschild.com) is an associate at Fox Rothschild LLP.
DA Candidates Appear Before Legal Community

By Elisa C. Advani

The race for Philadelphia District Attorney is a crowded race with eight names on the ballot for the municipal primary election: Judge Teresa Carr Deni, Tariq El-Shabazz, Beth Grossman, Joe Kahn, Lawrence Krasner, Rich Negrin, John O'Neill, and Michael Untermeyer. The legal community and the public gathered to get to know the candidates at a Chancellor’s Forum at Moore College of Art and Design on April 4. Kevin Harden Jr., president, The Barristers’ Association of Philadelphia Inc., and member of the Philadelphia Bar Association Board of Governors, moderated the panel and questioned candidates on immigration, the death penalty, civil forfeiture laws, drug crimes, mandatory minimum sentences and victims and witness considerations.

When asked whether the Office of the District Attorney of Philadelphia should provide information about undocumented immigrants to Immigration and Customs Enforcement, El-Shabazz said, “Philadelphia is a sanctuary city and immigration status should not be used to intimidate people or force them into testifying as a witness or taking a deal as a defendant.” Kahn, the son of a Muslim immigrant, said “the current administration is perpetuating bigotry and hatred, and it is not the role of the D.A.’s office to enforce federal law or the current administration’s views.”

Almost all candidates stated firmly that as district attorney they would not seek to enforce the death penalty under Governor Wolf’s moratorium. However, Judge Deni, Grossman, O’Neill and Untermeyer said they would seek it only in the most heinous cases.

About the decriminalization of marijuana, all candidates agreed that prosecuting for small amounts of marijuana is a waste of the city’s resources. Judge Deni, however, said that decriminalization efforts have gone too far when the people who drink alcohol in public can be subject to a much higher penalty compared to that for smoking marijuana in public. “Alcohol and marijuana should carry the same citation; people should not be smoke-
clerk. Nasar had strong relationships with many court officials, and those relationships helped move along cases that would have otherwise been lost to the court’s backlog.

“The court relies on informal knowledge and trust,” Buchanan said.

The Justice Project team ultimately was unable to prove their client’s age at the time of the crime, and he was among the first prisoners executed when the death sentence moratorium was lifted in 2015. In a Q&A, Buchanan discussed some aspects of Pakistan’s legal system that have led to its high rate of death-row inmates.

First, there are a large number of offenses that are considered capital offenses, including blasphemy and drug-related crimes. Further, most defendants are subject to a one-sided trial, where little evidence is presented to exonerate them.

“Most of the witnesses are prosecution witnesses. It is comparatively rare for anyone to call a defense witness, which could be called a failing of the legal system,” Buchanan said.

This situation is made worse because defendants find it difficult to obtain qualified counsel. Buchanan said that defense lawyers are so underpaid that there is little incentive to take on cases. That is why the work of nonprofits like Justice Project Pakistan is crucial.

Buchanan closed by saying that she is still working on matters in Pakistan, though visa issues have prevented her from going back to the country. The lessons she learned during her time abroad have also proven useful in her everyday practice.

“It makes me careful when dealing with international matters with other countries because I’m now keenly aware of how much you don’t know,” she said.

Erin Murphy (murphye@pepperlaw.com) is a marketing writer and editor at Pepper Hamilton LLP.

**Board Seeks to Amend Bylaws Affecting Election Dates**

The Board of Governors unanimously adopted a resolution on April 27 to amend Article IV of the Philadelphia Bar Association Bylaws that set deadlines for Association election events.

Section 406D of the Philadelphia Bar Association Bylaws currently provides that the Board shall determine the date when voting shall commence, which varies from year to year. Various sections in Article IV of the Bylaws set deadlines for election events, such as the notice of positions to be filled, the last day for filing nominations, the scheduling and holding of election forums, the publication of the list of candidates and the drawing of lots for ballot position according to a specified number of days counting backwards from the date that is decided each year for the commencement of voting.

The Board believes that the current method of determining deadlines for important election events causes confusion that may discourage potential candidates from seeking office. It has determined that Bylaw amendments shall be proposed to the members to provide for specific deadline dates for important events in the election of officers and members of the Board.

The Board approved the amendments to Article IV of the Bylaws for submission to the members in accordance with the provisions of Section 1101 of the Bylaws.

To view the full resolution, visit PhiladelphiaBar.org.
Dechert Pro Bono Helps Low-Income Philadelphians

By Geneva Campbell Brown and Amanda Reed

By re-envisioning their firm’s paradigm for pro bono legal aid, two lawyers from Dechert LLP have established a practice group that targets legal issues affecting families living in poverty in Philadelphia. Dechert’s Community Lawyering Clinics (CLC) practice group, launched in June 2016 by associates Geneva Campbell Brown and Amanda Reed, provides legal counsel at legal clinic sites across the city, including courts, shelters and health centers serving low-income Philadelphians. Brown, a corporate lawyer, and Reed, a tax lawyer, conceived, planned and now manage the pro bono practice group, and have built up a roster of more than 25 volunteers, many of whom volunteer repeatedly.

Dechert’s firm-wide commitment to pro bono work has repeatedly placed it among American Lawyer’s and Law360’s Pro Bono Firms of the Year. Yet, in early 2016 Brown and Reed recognized a gap in their office’s pro bono program. They saw a lack of significant opportunities for lawyers to meet clients in the community and provide advice that might have an immediate impact on lives.

The associates envisioned a practice that would provide direct services for all legal matters stemming from issues related to poverty, unlike other pro bono groups that focus on one substantive area of law. This new practice would include occasional case referrals, but consist mainly of regular clinics held at different locations serving varying organizations. By spring 2016, Reed and Brown had developed a detailed plan to bring their vision to reality. Seeking to design a program that would provide a variety of opportunities, they met with leaders of local organizations to identify projects that were impactful and interesting.

The group leaders also worked with the pro bono leadership of Dechert and energetically promoted the program within the firm. They appealed to partners, associates, paralegals and even summer associates to participate in clinics addressing issues such as homelessness, domestic violence, immigration, child custody and public benefits. The leaders also marketed clinics by the core competencies of lawyering, such as interviewing, negotiating, factual development and investigation, and administrative agency practice.

To make participation straightforward and as undemanding as possible, Reed and Brown established regular schedules for clinics. They created a volunteer handbook and web page where participants could sign up for clinics and access links to training videos. They also send out weekly emails, calendar invitations and host trainings that cover substantive and ethical topics and skill-building exercises.

The CLC practice group was an instant success. In the past 10 months, it has assisted 80 clients at 16 clinics. The sites include Philadelphia Legal Assistance’s (PLA) Medical Legal Community Partnership; the Family Court Help Center sponsored by Philadelphia Family Court, the Philadelphia Bar Association Family Law Section, PLA and Women Against Abuse; and one of the Homeless Advocacy Project’s homeless shelter clinics. Starting this June, the group will begin volunteering at the Elder Justice and Civil Resource Center, a court-based initiative that provides services to seniors and others in need of legal assistance and resources.

Clients are not the only ones who benefit from CLC’s work. CLC lawyers hone their interviewing, advocacy and counseling skills, broaden their experience beyond their everyday practice and gain the satisfaction that comes with helping people in need. Dechert also gains as its lawyers expand their skills, form relationships across practice areas and take advantage of more opportunities to advance the firm’s social mission.

Geneva Campbell Brown (geneva.brown@dechert.com) and Amanda Reed (amandareed@dechert.com) are associates at Dechert LLP.

K-12 Tax Credit

K-12 Tax Credit continued from page 12

half of the rate of the poverty line, of any of the nation’s top most populous cities. Approximately 80 percent of the K-8 public schools in Philadelphia are in the lowest 15 percent of performing schools in the state, and approximately 70 percent of Philadelphia school children are unable to read at grade level by the time they reach the fourth grade.

According to Tell, the EITC currently has $75 million in credit funding for scholarships, and an additional $37 million in credit funding for certain enrichment programs, including local theaters, after-school programming and qualified public schools. Meanwhile, the OSTC, designed specifically to encourage scholarship funding to students from families most in need of support, has $50 million in tax credits available.

Applications to take advantage of these programs are approved on a first-come, first-served basis. However, anyone looking for more information should contact the Children’s Scholarship Fund or the Pennsylvania Department of Community and Economic Development.

By Benjamin C. Frommer (bfrommer@lssh-law.com) is an associate at Langsam Stevens Silver & Hollaender.

REMINDER TO REGISTER: MAY 21 PHILADELPHIA BAR ASSOCIATION 5K

Registration is now open for team and individual entries for the 38th Annual Philadelphia Bar Association 5K Run/Walk benefiting the Support Center for Child Advocates, celebrating its 40th Anniversary in 2017, to be held on Sunday, May 21, 2017 at Memorial Hall in Fairmount Park. The start time for runners is at 8:30 a.m. and at 8:35 a.m. for walkers.

Online registration for individuals is accessible through Friday, May 19 at www.PhillyBarCharityRun.com. The deadline for mail-in registration forms, which can also be downloaded from the site, is Friday, May 12. Applications and information for the Caesar Rivié PC-sponsored Legal Team competition may also be obtained online and downloaded at www.phillybarcharityrun.com. The deadline for receiving team registrations is also May 12. Should you have any additional questions regarding team sign-up please contact Michael Berkowitz at mbberkowitz@caesar.law.

The event includes a 5-kilometer (3.1 miles) race and a 5-kilometer walk. Anyone may run or walk as an individual in the Open Competition. Members of the Philadelphia Bar Association will be included, at no extra charge, in the Bar Competition in addition to the Open Competition. There will also be a free 200-yard non-competitive dash for children 5-10 years old sponsored by Buchanan Ingersoll & Rooney PC. The dash will start at 8:45 a.m. Registration for the kids’ dash will be on the day of the event.

The entry fee for the Open and Bar Association Competitions is $35 if your registration is postmarked by midnight May 12; if you register in person on Thursday, May 18 or May 19; or if you register online by midnight May 19. A service fee is added for online registrations. Pre-registration is encouraged, as the entry fee on the day of the event increases to $45.

Individuals can register in person at the office of Caesar Rivie, PC, located at 1635 Market St., 12th Floor, Philadelphia, Pa. 19103 on May 18 and May 19, from 9 a.m. – 4 p.m.

CLE Topic Idea?

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

Unpredictable investment and job markets can wreak havoc on retirement planning. They also complicate the issue of how much life insurance is appropriate for you. For this month’s interview, I sat down with Jacqueline (Jaki) Boyer-Nesbit, J.D., LL.M., senior wealth strategist, PNC Wealth Management, to cut through the clutter and help you determine how much life insurance is right for you.

Mary Ashenbrenner (MA): Is there a clear-cut formula to figure out optimal life insurance coverage?

Jaki Boyer-Nesbit (JBN): Standard formulas — such as buying coverage equal to eight to 10 times your annual income — are inadequate shortcuts. Online calculators are apt to tell you to raise your coverage by $1 million even if you already have insurance. The truth is that life insurance is a personal affair. Two couples may earn equal salaries, but someone with four young children will have different needs than empty nesters with no mortgage and a substantial retirement fund.

MA: Without relying on a standard rule of thumb, is there a more systematic approach to determine one’s life insurance needs?

JBN: To calculate how much coverage to buy, you should try to project your needs as the sum of four major expenses. First, think about the funeral itself. Your age to buy, you should try to project your future educational expenses, and finally, that would be a heavy burden on your surviving family or your children and you don’t expect to make a series of conversions over the years. No matter what you decide, it’s important to keep your life insurance coverage up-to-date with your current situation. Be sure to talk with your insurance provider if you are planning to get married, have a child, buy that new house, or retire.

Changing life circumstances usually call for an update to your overall financial plan, and that often means re-visiting your life insurance needs.

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

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No matter what you decide, it’s important to keep your life insurance coverage up-to-date with your current situation. Be sure to talk with your insurance provider if you are planning to get married, have a child, buy that new house, or retire.

Changing life circumstances usually call for an update to your overall financial plan, and that often means re-visiting your life insurance needs.

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Termination continued from page 13

employment is not a valid defense. Himel said that intoxication or illegal drug use should not preclude an employee from receiving benefits if the injury would have happened regardless of impairment. He stated that judges should review the facts of each case and the timing of the drug screen following the work injury.

In cases involving termination for cause, judges will analyze how soon after a work injury was the employee terminated. To have a valid defense to a claim or reinstatement petition, it is important for the employer to have an employee handbook signed by the employee, policy guidelines, documented history predicting the injury, and a log of attendance or performance reviews. It is imperative to have documentation in support of these defenses.

Regina M. Parker (parkerregina@pnc.com), partners, Thomas, Thomas & Hafer LLP is an associate editor of the Philadelphia Bar Reporter.

CLE Topic Idea?

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and cats enter the city’s animal control shelter. More than a quarter of those animals, over 6,000 pets, do not make it out alive. PAWS is committed to reducing the number of dogs and cats that are euthanized. They do so by offering a spay/neuter and wellness clinic in the Grays Ferry section of Philadelphia and through their Northeast Adoption Center and Low-Cost Clinic which brings their services to communities that previously lacked and desperately needed help.

PAWS’ efforts are entirely privately funded. Due to their successful adoption
When my editor asked if I was up for reviewing a personal chef this month, I jumped at the opportunity. Why not try something that the top 1 percent of this publication’s readership has unquestionably enjoyed? Plus, we were celebrating my younger daughter and our closest friend’s birthdays.

And in return, I got to enjoy one of the 10-best meals I have had in my life – courtesy of Coa Catering. The brainchild of Chef Ted Torres, Coa specializes in upscale Latin cuisine with a serious flair.

Torres, a Bronx native who moved here 20 years ago, was at ground zero with the godfathers of Philly’s Nuevo Latino renaissance – opening Alma De Caba alongside Douglas Rodriguez, working for Jose Garces, then named executive sous chef at the Pyramid Club. After winning the Food Network’s “Chef Wanted” series in 2013, Torres created Coa Catering to take his award-winning talents directly to his customers.

Unfortunately, I had two major challenges for Torres – my finicky older daughter – who only eats 4-5 variations of “food” within the “beige” color scheme; and my aforementioned friend, whose uberte-healthy culinary regimen lies halfway between “extreme paleo” and the “Bobby Sands diet.”

No problem for Torres. He whipped up a 5-course, completely paleo, Latin seafood feast that everyone loved. The first course was steamed little neck clams in a scumptious garlic herb broth with crispy fennel, yucca and plantains. As amazing as the clams and broths were, the fennel and yucca were the tastiest condiments I have ever eaten. My daughters and I also got to have a celebrity chef like Jose Garces right in your dining room. What Torres accomplished in my cozy South Philly space was simply special. Any law firm catering an upscale event should hire Coa Catering; and for you millennial CrossFit attorneys/paleo eaters, have Torres come over. You will be glad you did.

Visit www.coacatering.net for more information.

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

LEGAL ADVISORY UPDATE FROM USI AFFINITY

Malpractice Claims Resolving, Payouts Increasing

Legal malpractice claims have been resolving faster but fewer are being settled with no money paid out, according to the results of an American Bar Association (ABA) study.

In conducting the study, the ABA reviewed malpractice claims trends from 2012 through 2015 in terms of area of law, size of firm, and amount of payments. Reviewers looked at the amount of expenses associated with malpractice claims, including legal fees and other defense costs, and indemnification costs such as settlements or court judgments.

According to the study results, the number of claims with combined expense and indemnity settlements between $50,000 and $200,000 nearly doubled from 4,717 in 2011 to 8,670 in 2015, and the number of claims between $1 and $2 million increased even more dramatically, from 49 in 2011 to 444 in 2015. Claims resolved with indemnity payments in excess of $2 million rose from 21 in 2011 to 76 in 2015, 25 of those resolving for more than $5 million.

However, the number of claims in which no money in expenses or indemnity was paid dropped considerably. While nearly 60 percent of all claims were resolved for no expense or indemnity payment in 2011, in 2015, only 43 percent of all claims were settled for no payout at all.

High Expense Claims Down, High Indemnity Claims Up

The study found that the proportion of claims with high expenses generally decreased but the proportion of claims with higher indemnity costs rose, suggesting that because litigation is more expensive, insurance companies and law firms are more motivated to resolve claims earlier by settling as opposed to defending them in court, even when they have little merit.

The results also showed that malpractice claims against personal injury lawyers were the highest compared with any other practice area in the last four years, passing real estate, which was number one in the 2008 through 2011 analysis. The proportion of claims against family law, trust, estate and probate, collection and bankruptcy, business transactions, and commercial law practitioners increased between 2011 and 2015 as well.

For more information about hammer clauses and your LPL policy, contact Greg Cooke at USI Affinity at 610.537.1446 or Greg.Cooke@usi.com.
May 2
CLE - Right to the Cure: Incarcerated Hepatitis C Patients: 12:00 p.m., 11th Floor Conference Center. Register: PhiladelphiaBar.org.

May 3
Rules and Procedure Committee: meeting, 12 p.m., 10th Floor Board Room. Lunch: $9.

Criminal Justice Section Executive Committee: meeting, 12:30 p.m., 11th Floor Committee Room.

May 4
CLE - Issues of Special Education and Complex Trauma in Youth Legal Representation: 12 p.m., 11th Floor Conference Center. Register: PhiladelphiaBar.org.

Law Firm Pro Bono Committee: meeting, 12 p.m., Ballard Spahr LLP, 1735 Market St., 51st Floor, Philadelphia.

May 5
Philadelphia VIP Board: meeting, 8:30 a.m., 10th Floor Board Room.
Legislative Liaison Committee: meeting, 12:30 p.m., 10th Floor Conference Room. Lunch: $9.

Real Property Section Spring Social: meeting, 12:30 p.m., 11th Floor Committee Room South.

May 6

May 7
City Policy Committee: meeting, 12 p.m., 11th Floor Conference Center. Lunch: $9.

Family Law Section: 12 p.m., Philadelphia Family Court, 1501 Arch St., Philadelphia.


May 8
Orphans’ Court Litigation and Dispute Resolution Committee: meeting, 8:30 a.m., Heckscher, Teillon, Terrill & Sager, PC., 1500 Market St., Center Square, East Tower, 12th Floor, Philadelphia.
CLE - HIV/AIDS and the Criminal Justice System: 1:15 p.m., 10th Floor Conference Room.

May 9
Philadelphia Bar Association of lawyers in the United States.
Stuart W. Davidson, partner at Wil-\lig, Williams & Davidson, has been chosen to serve as an advisory board member for Our Generation Speaks.

Charles S. Marion, partner at Pepper Hamilton LLP, has joined the advisory council of the Salvation Army Kroc Center of Philadelphia.

Steve Masters, president of JustLaws PLLC, was the featured presenter in a recent series of four workshops on zoning law and strategy for civic organizations representing neighborhoods throughout Philadelphia.

John J. Hare, shareholder at Marshall Dennenhy Warner Coleman & Goggin, P.C., was inducted as a fellow into the American Academy of Appellate Lawyers at the Academy’s 2017 Spring Meeting, held April 6 – 8 in Boston, Mass.

Brian J. McCormick Jr., Ross Feller Casey, LLP, was re-appointed to a five-year term on the Philadelphia Board of Ethics by Mayor James Kenney, and confirmed by Philadelphia City Council on February 14. McCormick was originally appointed to the board by Mayor Michael Nutter in December 2012.


Ronald L. Panitch (top), Alan S. Nadel (middle) and William W. Schwarze (bottom), partners at Panitch Schwarze Beltsario & Nadel LLP, have been named 2017 IP Stars by Managing Intellectual Property, a leading source of news and analysis on intellectual property issues worldwide. The IP Stars survey identifies leading intellectual property law firms and attorneys in various jurisdictions to provide deeper insight on the complex and vibrant IP legal arena worldwide.
FOR MORE THAN 30 YEARS, Sidney L. Gold & Associates, P.C. has dedicated its practice to the field of employment law and civil rights litigation. The firm’s attorneys take great pride in serving as both aggressive and compassionate advocates for victims of unlawful discrimination and harassment. As a result, the Martindale-Hubbell Bar Register has certified Sidney L. Gold & Associates as a pre-eminent law firm in the field of labor and employment law. More than 4,500 lawyers throughout Pennsylvania and New Jersey look to Sidney L. Gold & Associates to refer their clients.

With a team approach, the firm’s attorneys represent clients in all aspects of employment law litigation, including all forms of workplace discrimination, sexual harassment, wrongful termination, retaliation, whistleblower, employment contract, wage and hour, and Family and Medical Leave Act claims. A boutique practice with a small-firm atmosphere, Sidney L. Gold & Associates provides personal attention to its clients, who, at the same time, benefit from the experience and expertise of the entire team.

Sidney L. Gold & Associates is proud of its skilled attorneys and is honored by the recognition Super Lawyers® has bestowed upon this year’s recipients.

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