As we head into summer and a new bar year, PBA President Tom Golden has asked us to co-chair the Government Lawyers Committee. We are pleased to take on the assignment and to be working together with each other and with you.

Over the past five years, under the leadership of Paul Tufano and Jim Sheehan, the committee has grown dramatically and the activities of our subcommittees are today well-established. There is an additional accomplishment which is not so well-known but which we want to bring to your attention. As government lawyers have become more active in the PBA, we have started to take on significant leadership roles in the association.

(Continued on Page 3)
As you know, your membership in the Government Lawyers Committee has a limited lifespan. Under PBA bylaws, a committee is created or extended at the annual meeting and continues in existence until the next meeting, which this year was held in April.

What this means for you is that your membership expired on April 30. In order to renew your membership, you would have had to return to the PBA the Committee/Section Day notice that you received in the mail with the appropriate box checked. If you inadvertently failed to return the notice, you can still renew your membership by completing the online registration form at www.pabar.org.

Failure to renew your membership will result in your name being purged from the committee membership list. If your name is eliminated from the list, you will no longer receive PBA Government Lawyers Committee notices or this newsletter.

If you no longer receive the newsletter, you could be missing out on important articles and other information affecting government lawyers. For instance, in this issue, we feature an overview of the status of electronic filing in Pennsylvania’s bankruptcy courts.

Please be sure to renew your membership in the committee. Enjoy your summer.

We Need You

Can you help provide a valuable service to your fellow Government Lawyer Committee members? Members are asked to join the team to help prepare the 2003 Government Lawyers Directory. Please contact Services to Members Committee Co-chairs Gerard Mackarevich at gmackarevi@state.pa.us or (717) 787-8790 or Robert Shea at rshea@state.pa.us or (717) 787-5299.
Lunch and Learn Series

MOVING UP: Tips on Career Enhancement

By Judith Gilroy, Assistant Counsel, Governor’s Office of General Counsel assigned to the Department of Labor & Industry

Jessie L. Smith knows a lot about career enhancement. Since her graduation from the University of Pittsburgh School of Law, she has been president of the Dauphin County Bar Association and has been promoted to chief of the Office of Attorney General’s Torts Litigation Section. In addition, she was recently honored as the 2002 Government Lawyer of the Year by the Government Lawyers Committee of the Pennsylvania Bar Association.

During a recent “Lunch and Learn” sponsored by the Career Enhancement Subcommittee, Smith spoke about her experiences as a government lawyer and gave some important tips for those who want to advance in their careers (and that should include all of us). One pearl of wisdom concerned working with others. She stressed the importance of considering the ages and personalities of co-workers.

She also recommended keeping in mind the acronym MOVING UP:

Stay MOTIVATED even in the inevitable frustrating moments and remember why you became a lawyer in the first place;

Be OPEN to others and new ideas;

Make yourself VISIBLE and participate, especially in bar-sponsored activities;

Silence your unnecessary INNER worries;

Improve your NETWORKING and always give others the credit they deserve;

Have the GUTS to tell the truth when it is necessary;

Nurture UNIVERSAL interests outside the law and share them. Surprise people with the UNEXPECTED that goes against the government lawyer stereotype; and

PAY your own way to events that will positively impact your career.

Smith concluded by reminding members of the audience not to take themselves too seriously. What seems like a crisis today will most likely be insignificant tomorrow.

From the Incoming Chairs

(Continued from Page 1)

When you look at the officers, the Board of Governors, the House of Delegates, chairs and vice-chairs of sections, committees, special commissions and task forces of the PBA, each year you will find that there are more government lawyers who are being appointed to leadership positions and who are stepping forward to run for leadership offices.

We all believe that our members have much to offer this association both as members and as leaders. We hope to continue the work of the committee, to find new missions for our subcommittees and to enhance our role as leaders in the association and the profession.

From the Outgoing Chair

(Continued from Page 1)

As David and Alexis begin their term as co-chairs, I encourage all of you to continue working to develop the committee and building upon the strong foundation laid in the five years of the committee’s existence. In recognition of your continued hard work and involvement in the PBA, it is my hope for you that the committee will one day be recognized as a PBA Section.

I would like to take this opportunity to extend my sincere thanks to the subcommittee chairs who have consistently worked hard to improve the committee and advance its goals. I would also like to thank those of you who have participated in committee activities and who have assisted in the various projects we undertook. Without you, the Government Lawyers Committee would not be one of the largest and most active of the PBA’s committees.

Although I am no longer a government lawyer, I take with me fond memories of my time among your ranks. I wish you continued success and hope to see you at future PBA events.
Electronic Filing Begins in Western District Bankruptcy Court

By Deborah Phillips, Assistant Counsel, Governor’s Office of General Counsel assigned to the Department of Labor & Industry

On Feb. 3, 2003, the future arrived in the U.S. Bankruptcy Court for the Western District of Pennsylvania when Case Management/Electronic Case Filing (CM/ECF) went live. On that date, electronically-filed petitions and pleadings were accepted for the first time. Although the electronically-challenged among us anticipated electronic filing with some trepidation, the consensus of even those technophobes is that ECF is a boon to attorneys.

The technical requirements for ECF have been well-publicized and can be found on the Web sites of those federal district and bankruptcy courts already participating, as well as those working on conversion to ECF. The hardware and software requirements do not vary among the various courts. While most government attorneys already have the basic requirements (Internet access and word processing), additional software (usually Adobe Acrobat) capable of converting documents to Portable Document Format (PDF) is required. In addition, a scanner is required if exhibits not already in electronic form are attached to pleadings. Registration of a credit card may be required for the automatic payment of filing fees.

Amendments to procedural rules regarding signatures, filing format and service requirements have been necessitated by the advent of ECF. For example, the Federal Rules of Bankruptcy Procedure have been amended to provide that if a local rule permits electronic filing consistent with technical standards established by the Judicial Conference of the United States, any document filed in compliance with that rule constitutes a “written paper” for purposes of the bankruptcy and federal rules. In addition, service by “electronic transmission” now constitutes adequate service, if requested and authorized.

While the Judicial Conference standards are intended to foster uniformity among the federal courts, the scope and many of the specifics of implementation have been left to the local courts and rules. The local rules for the Bankruptcy Court for the Middle District, for example, provide that documents “may” be filed, signed and served by electronic means to the extent authorized by the court’s published procedures. In contrast, the proposed local rules for the Bankruptcy Court for the Western District state that electronic filing is “mandatory” and that filings shall be governed by the court’s published procedures. In further contrast, the local rules for the Eastern District Court provide that certain cases may be assigned to ECF.

Although not identical to the established or contemplated procedures of other federal courts, those published by the Bankruptcy Court for the Western District are illustrative. Although ECF, as stated above, is “mandatory” by local rule, the court’s procedures provide that only an authorized “Filing User” may file or serve and be served documents electronically. At this time, only attorneys admitted to the Western District, U.S. Trustee staff and private trustees may become Filing Users. The bankruptcy clerk is to provide “reasonable access” to allow those who are not Filing Users to file documents electronically, thereby accommodating the pro se debtor or the occasional bankruptcy practitioner. It is assumed, however, that regular practitioners before the court will become Filing Users.

Prior to receiving a log-in and password as a Filing User, an attorney must take a training course of approximately five hours (which can qualify for CLE credits) and later successfully complete an on-line evaluation to demonstrate competency in use of the system. Registration as a Filing User constitutes a waiver of the right to receive notice by first class mail of any case in which an appearance is entered and consent to receive notice electronically (with the exception of service of a summons and complaint). The user log-in and password serve as the Filing User’s signature on all documents for purposes of Federal Rules of Bankruptcy Procedure 9011. Filing Users also agree to protect the security of their passwords, a wise course in light of that provision.

In practice, ECF should prove no more intimidating than ordering merchandise online. (Users of matter and document management systems will recognize similar features.) After selecting the type of filing (original case petitions, or motions and applications in an existing case), the user is guided through a series of screens, enters requested information or selects from menu options, then is asked to upload the document itself to the system. After completion, a Notice of Electronic Filing, the equivalent of a docket stamp, is displayed, confirming the filing.

Those users participating in a case receive e-mail notification of filings. The e-mail contains a hyperlink to the document itself, providing users with what is referred to as “one free look” at the document. (Subsequent “looks” require a paid subscription to the court’s PACER system.)

While careful attention to detail is required, in its initial stages ECF has proven to be user-friendly. In addition, tips and alerts are provided to users via a newsletter and announcements on the court’s Web site. Those who are very cautious can consult an extensively detailed manual issued with training.

Among the significant benefits of ECF are the savings of time, energy and resources. One result of the advent of ECF is the extension of a filing deadline from 4:30 p.m. to midnight, though reasonable people may differ on whether that is a benefit or a detriment. ■
Six months after the Pa. Supreme Court filed its opinions in Leon E. Wintermyer v. WCAB (Marlowe), ___ Pa. ___, 812 A.2d 478 (2002), the practical effects of the decision on administrative agency law remain unclear. In that case, the court held that “capricious disregard of material, competent evidence is an appropriate component of appellate consideration in every case in which such question is properly brought before the court.”

Prior to Wintermyer, the standard of review of agency findings of fact was the “substantial evidence” test announced in McGovern’s Estate v. State Retirement Board, 512 Pa. 377, 517 A.2d 523 (1986). That test required only that the reviewing court find “substantial evidence” (i.e., “more than a scintilla”) in the record to support the agency’s findings. Contradictory evidence, whether discussed or not by the factfinder, was simply not within the scope of appellate review. An exception, however, had been crafted by the Commonwealth Court where only the burdened party had presented evidence and lost. In this instance, Commonwealth Court, reasoning that substantial evidence review would be impossible, applied a “capricious disregard” standard, as enunciated in Russell v. WCAB (Volkswagen of America), 550 A.2d 1364 (Pa. Cmwlth. 1988).

The Commonwealth Court later divided over the question of whether to apply Russell on an issue-by-issue basis within a particular case. In other words, should the capricious disregard standard be applied where only one party presents evidence on a specific issue, even though the other party introduced evidence on other issues in the case? The Commonwealth Court majority in Wintermyer agreed that the WCAB had properly applied capricious disregard on an issue-by-issue basis, while the dissent argued that because the employer presented testimony on some issues, substantial evidence should have applied as to the entire case.

The Supreme Court’s decision in Wintermyer now allows appellate review for capricious disregard when both parties submit evidence, thereby mooting the analysis set forth in Russell and “clarifying,” if not outright overruling, McGovern.

Another possibility is that the “reasoned decision” requirements in Section 422(a) of the Workers’ Compensation Act, 77 P.S. § 834, (mentioned in the Wintermyer majority and Cappy’s concurring opinions), which direct fact finders to adequately explain their rejection of competent or uncontroverted evidence, might become the standard for all agency adjudications. Ironically, the Commonwealth Court has agreed that a workers’ compensation judge provides an adequate explanation for purposes of Section 422(a) by outlining all of the evidence considered, stating the credible evidence relied upon, and setting forth the reasons for their ultimate determination, and that a failure to specifically explain credibility determinations is not fatal to the adjudication. Daniels v. WCAB (Tristate Transport), 753 A.2d 293 (Pa. Cmwlth. 2000), appeal granted, 563 Pa. 552, 763 A.2d 369 (2000). Accordingly, the Supreme Court’s decision in Daniels, not only can be expected to clarify section 422(a)’s requirements for workers’ compensation cases, but it may afford greater insight of the court’s expectations for all agency adjudications in light of Wintermyer. Stay tuned.
Close Up

Government Lawyer Has Seized Many Opportunities

By M. Catherine Nolan, Assistant Counsel, Governor’s Office of General Counsel assigned to the State Employees’ Retirement System

"Government practice is what you make it. If you have the initiative to develop an area of expertise, government service allows you the opportunity to do it," observes G. Philip Rutledge, chief counsel to the Pennsylvania Securities Commission. Rutledge has that initiative and has built an impressive career of government law practice.

After completing his law degree at The Dickinson School of Law and engaging in post-graduate studies at the Commercial Law Centre, University of London, Rutledge began his public service career with the Pennsylvania Legislative Budget and Finance Committee. That statutorily-created committee is charged with studying the revenues, expenditures and fiscal issues of the commonwealth and its various agencies, including the Securities Commission. It was that job with the Legislature that led him to the Securities Commission where he has served since 1980.

Rutledge fulfills many responsibilities at the Securities Commission, serving as counsel to the commission’s three members and as the principal liaison to other commonwealth agencies. He also provides all of the commission’s policy analysis and legislative and regulatory needs.

Rutledge encourages communication between the commission and the community it regulates. One way the commission has promoted communication effectively is through its Advisory Committee. The Advisory Committee is comprised of 10 private practitioners from across the commonwealth who serve three-year terms on a volunteer basis following appointment by the commissioners. The Advisory Committee meets three times per year — once each in Harrisburg, Philadelphia and Pittsburgh — and provides the commission with valuable comments regarding regulatory and policy issues. The Advisory Committee brings a diversity of perspectives to the table and has proven to be especially helpful to the commission as it considers the potential impact of its regulations and policies.

"The private bar needs to hear from government lawyers.”

Both the Advisory Committee and Compliance Program bring the private and public sectors together for an exchange of information regarding securities issues. Rutledge believes that interaction among members of the private and public bars is important for attorneys in other areas of practice also. He thinks that every attorney should participate in professional organizations and bar associations. “The private bar needs to hear from government lawyers,” Rutledge stated. He notes that communication is helpful to the clients in both sectors. From the public sector client’s perspective, dealing with private industry representatives who are well-informed about the agency’s operations facilitates prompt resolutions. Likewise, private sector attorneys and their clients benefit from knowing how an agency operates. Following agency guidelines leads to faster results. “It’s a real service to the bar for government lawyers to actively participate in professional associations,” Rutledge adds.

“It’s a real service to the bar for government lawyers to actively participate in professional associations.”

And he practices what he preaches. Rutledge is the chair of the Securities Regulation Committee of the Business Law Section of the Pennsylvania Bar Association and is a member of both the American Bar Association and the International Bar Association. Rutledge has taken many other opportunities to develop his expertise in Pennsylvania securities laws, (Continued on Page 7)
Close Up

Government Lawyer Has Seized Many Opportunities

(Continued from Page 6)

including actively participating in the North American Securities and Administrator’s Association (NASAA), and he currently serves as chair of NASAA’s Federal Legislation Committee.

Rutledge also shares his expert knowledge of Pennsylvania securities law with students, teaching at several universities. Rutledge holds an appointment on the adjunct faculty of The Dickinson School of Law of The University of Pennsylvania where he has taught Pennsylvania securities law to second and third year law students for nearly 15 years. He is routinely a guest lecturer in law at the Jesus College, University of Cambridge, England, and the Wharton Executive Education Program at the University of Pennsylvania. Teaching has proven to be another mutually beneficial project. It has given Rutledge the opportunity to take the real world to his students, and he notes that the students, in turn, “keep you on your toes.”

Rutledge often lectures at professional conferences as well. He has presented lectures at international conferences in Malaysia, Canada, Barbados, the United Kingdom and Turkey. Closer to home, Rutledge has served as a course planner and faculty member for many securities-related programs for the Pennsylvania Bar Association.

One of Rutledge’s most notable recent accomplishments was receiving the prestigious Inns of Court Fellowship for post-graduate legal research at the Institute for Advanced Legal Studies, University of London in 2000. The Inns of Court Fellowship, which is offered every two years to two candidates, normally requires six to 18 months of residency in London. Not willing to be absent from the Securities Commission for that long, Rutledge secured a dispensation from the Inns of Court and completed his fellowship in three months. During that time, in addition to lecturing, he completed roughly half of the research and writing for a recently-published book that takes a comparative look at the regulation of delivery of financial services over the Internet in the United States, United Kingdom, European Union and Canada. The book, Rutledge and Haines: Electronic Markets, of which Rutledge was the principal author, was published in October 2001 by Butterworths (London).

While living in London, Rutledge telecommuted to work at the Security Commission’s Harrisburg office. He also attended commission meetings by teleconference — not very different from his usual practice. Rutledge added that he was able to attend to his responsibilities in Harrisburg during the three months he spent in London due, in part, to a great deal of support from the commission and support staff.

Rutledge’s list of publications is extensive and also includes the Compendium on Pennsylvania Securities Laws, a loose-leaf reference text, and articles in numerous professional journals. He has also contributed chapters to The Fiduciary, the Insider and the Conflict (1996, Brehon Sweet & Maxwell) and International Tracing of Assets (1997, FT Law and Tax).

A recognized expert in his field, Rutledge has been called upon to testify in many different forums. In March 1999, he testified before the U.S. Senate Permanent Subcommittee on Investigations regarding “Securities Fraud on the Internet and Current Issues Concerning Online Trading.” He has also testified before various committees of the Pennsylvania House of Representatives and has assisted U.S. Congressional staffers with drafting many pieces of federal legislation.

Despite his impressive list of professional accomplishments, Rutledge says he does not set distant goals for himself. “I don’t pick a point in the future and decide where I want to be by then. That’s just not realistic.” Rather, he says, the drive behind his success is recognizing opportunities and then taking them.

■

“Click on a colleague!”

The 2003 PBA LAWYERS DIRECTORY AND PRODUCT GUIDE is available now.

• Search more than 60,000 lawyers licensed to practice in Pennsylvania, and more.

• Available in two formats: the traditional “phone book” and an online version.

• Online version updated biweekly.

• Includes federal, state and local courts, legal organizations, law libraries, law schools and paralegal and legal secretarial associations.

A one-year license to use the online Directory is $45, plus tax, for PBA members and must be ordered via the PBA Store at www.pabar.org.

(Upon ordering, a subscriber will be issued an individual password to use the electronic database for one year.)

The print version of the Directory is on sale for the summer! The sale price is $25 per book, plus tax, until Sept. 30, 2003. Call the PBA Member Service Center at (800) 932-0311, or visit the PBA store at www.pabar.org.
In the Spotlight

By Erin Verano, Assistant Counsel, Governor’s Office of General Counsel assigned to the Department of State

Honors/Awards

James M. Sheehan, former general counsel, Governor’s Office of General Counsel, now of Wolf Block Shorr and Solis-Cohen LLP, received a Special Achievement Award at the PBA annual meeting in Philadelphia in April. Sheehan was honored for his service as chair of the PBA Government Lawyers Committee.

David J. DeVries, executive deputy general counsel, Governor’s Office of General Counsel, received a President’s Award at the PBA annual meeting in Philadelphia in April. DeVries was recognized for his service as co-chair of the PBA Representation Task Force. This task force worked to address issues, in certain regions of the state, involving representation in PBA governance and other areas of the association.

The Philadelphia Chapter of the American Jewish Committee honored Philadelphia City Solicitor Nelson A. Diaz with the Judge Learned Hand Award at a ceremony in May. Diaz, as a recipient of the award, represents a member of the Philadelphia Bar who fulfills the honorable principles and traditions set forth by Judge Learned Hand, senior judge of the U.S. Circuit Court of Appeals for the Second Circuit. Diaz was also honored by the Pennsylvania Bar Association Minority Bar Committee with a Lifetime Achievement Award in recognition of his many accomplishments as an attorney and judge, as well as for his dedication to the legal profession and minority community.

Marcia L. Telek DePaula, senior deputy attorney general, Office of Attorney General, received an award from the Pennsylvania Commission for Social Justice (CSJ) at its Law and Justice Brunch held at the Omni William Penn in Pittsburgh in April. Attorney General Mike Fisher introduced DePaula, citing her accomplishments as a deputy attorney general with the Bureau of Consumer Protection over the past eight years. The CSJ is the anti-defamation arm of the Order Sons of Italy in America.

Robert G. Cameron, supervising attorney, Governor’s Office of General Counsel assigned to the Western Regional Office of Chief Counsel, Department of Labor and Industry, recently returned from an eight-month deployment to Bosnia with the Pennsylvania National Guard, 28th Infantry Division. Cameron was chief of international and operational law for the Task Force Eagle and Multinational Division. While in Bosnia, Cameron received the Meritorious Service Medal and Joint Service Achievement Medal.

At an Employee Recognition Ceremony in April, the U.S. Environmental Protection Agency (EPA) honored several attorneys and paralegals of the EPA’s Office of Regional Counsel in Philadelphia. Stephen Field, chief of the Clean Water Act branch, received the William T. Wisniewski Human Resources Achievement Award for managerial excellence. Stefania Shamet was part of the team that received EPA’s Gold Medal for exceptional service for strengthening Clean Water Act regulations for West Virginia’s most polluted waters.

The following lawyers and paralegals were members of EPA teams that won Bronze Medals for meritorious service: Neil Bigioni (litigation on ozone non-attainment in Washington, D.C.); Heather Gray Torres and Humane Zia (emergency response and cleanup of Starlight Lane Tire Fire site in Virginia); Stephen Field, Maria Goodine, Lori Kier, Janet Nation and Kerry Nelson (Allegheny Ludlum Clean Water Act litigation team); Cecil Rodrigues and Janet Sharke (EPA response to chemical releases from DuPont plant in W.Va.); Dawnmarie Dominski, Joseph Donovan, Andrew Duchovnay, Robert Hasson, Elizabeth Lukens, Catherine McCool and John Monsees (Metal Bank Superfund site litigation team); Ami Antoine and Hilda Burgos (Metachem cleanup team).

Appointments

Pedro A. Cortés was confirmed by the Pennsylvania Senate as secretary of the commonwealth on May 13. Gov. Ed Rendell had appointed Cortés acting secretary on April 2. Prior to taking the reins at the Department of State, Cortés was the executive director of the Pennsylvania Governor’s Advisory Commission on Latino Affairs.

Attorney General Mike Fisher has appointed Linda J. Williams the chief deputy attorney general of the new Health Care Section in the Public Protection Division of the Office of Attorney General. This section was formerly a unit under the Bureau of Consumer Protection within the Public Protection Division, and Williams was a senior deputy attorney general and the attorney-in-charge of the Health Care Unit.

Pamela F. Cross, assistant counsel, Governor’s Office of General Counsel assigned to the Office of the Budget, was appointed chair of the Pennsylvania Bar Association Quality of Life/Balance Task Force for 2003-2004.

Stephanie F. Latimore, drafting attorney, Legislative Reference Bureau, has been appointed the Pennsylvania Bar Institute’s (PBI) new treasurer.

(Continued on Page 9)
In the Spotlight
(Continued from Page 8)

MaryAnne Wesdock, senior assistant counsel, Environmental Hearing Board, has been named chair of the Environmental Law Section of the Allegheny County Bar Association for 2003-2004.

John Capuzzi, senior deputy attorney general, Torts Litigation Section, Norristown, is the new president of the Guy G. deFuria American Inn of Court in Media. The purpose of the American Inn of Court is to promote the goals of legal excellence, civility, professionalism and ethics. The deFuria Inn was the first in the commonwealth.

Tracy McCurdy, assistant counsel, Governor’s Office of General Counsel assigned to the Department of State, has been appointed prosecuting attorney for the Bureau of Charitable Organizations within the Department of State. Prior to this appointment, McCurdy was a prosecutor for the Bureau of Professional and Occupational Affairs.

Donald C. Marino, former chancellor of the Philadelphia Bar Association, has joined the Philadelphia Law Department as special counsel to the city solicitor. Marino, who comes to the post from a private law firm, will serve as lead counsel in significant litigation at both the trial and appellate levels.

Speaking Engagements
On May 6, Benjamin L. Cox, deputy attorney general, Antitrust Section, Office of Attorney General, was a panelist at the 44th Annual Antitrust Law Institute in Chicago. The Institute examined — with emphasis on basic principles and current developments — the elements of antitrust violations involving competitors, the legality of various restraints on customers and suppliers, current merger risks, federal intellectual property law, competitor collaborations, increased vertical restraint law enforcement and the strategies and priorities of the state antitrust enforcers. The Institute was sponsored by the Practicing Law Institute.

Charlotte Nichols, chief deputy city solicitor, Philadelphia Office of the City Solicitor, addressed the International Municipal Lawyer’s Association about the city’s lead abatement effort to focus on ameliorating the incidents of childhood lead poisoning. Nichols described Lead Court as one of the positive measures Philadelphia has instituted to ensure children’s safety.

On April 9, Christopher Carusone, assistant counsel, Governor’s Office of General Counsel assigned to the Pennsylvania State Police, spoke to the Central Pennsylvania Paralegal Association during their “Lunch and Learn” program at the Penn State Downtown Center, Harrisburg. The topic was advanced legal research techniques using the Internet. On April 11, Carusone spoke to state and municipal police officers participating in Operation Nighthawk, a DUI enforcement program, at the Montgomery County Fire Academy. Carusone updated the officers on Pennsylvania search and seizure case law.

Terry Keating, deputy chief counsel for litigation, Governor’s Office of General Counsel assigned to the Insurance Department, recently gave PBI presentations in Philadelphia and Mechanicsburg on “Enforcement Litigation before the Pennsylvania Insurance Department.”

Chris Doane, assistant counsel, Governor’s Office of General Counsel assigned to the Insurance Department, recently gave two CLE presentations on Act 147 of 2002, also referred to as the Producer Licensing Modernization Act. The first presentation was part of PBI’s 7th Annual Insurance Institute in Philadelphia. The second presentation was at the Pennsylvania Community Bankers Association’s annual Attorneys Clinic in Hershey.

Charlie Howland, senior assistant regional counsel, Region III, Environmental Protection Agency, recently led a panel at the 8th Annual PBI/PBA Environmental Law Forum, held in State College. The topic was addressing terrorism risks in facility emergency response planning.

James A. Donahue III, chief deputy attorney general, Antitrust Section, Office of Attorney General, spoke at The Antitrust Forum, sponsored by the Virginia State Bar Association in April. Donahue spoke in his capacity as vice chair of the National Association of Attorneys General Multistate Antitrust Task Force. Also speaking were Joseph J. Simons, director of the Bureau of Competition for the Federal Trade Commission and Deborah Platt Majoras, deputy assistant attorney general from the Antitrust Division of the U.S. Department of Justice. The Antitrust Forum focused on current enforcement priorities for the federal and state antitrust enforcement authorities.

John Abel, senior deputy attorney general, Office of Attorney General, Bureau of Consumer Protection, along with Tom Wilkinson of Cozen and O’Connor, presented an hour-long CLE ethics program on Frivolous Litigation and the New Pennsylvania Rule of Civil Procedure 1023.1 in Philadelphia in May.

In May, Joseph Witmer, counsel to Commissioner Aaron Wilson of the Public Utility Commission, presented a lecture on the historic development of state and federal authority to regulate public utilities at the NARUC Western Utility Conference in San Diego.

Jonathan W. Kunkle, assistant counsel, Governor’s Office of General Counsel assigned to the Department of Corrections,
Witnessing a Condemned Man’s Final Moments

By Mark Guzzi, Deputy General Counsel, Georgia Department of Corrections (formerly an Assistant Counsel with the Pennsylvania Department of Corrections).

In my capacity as a deputy general counsel to Georgia’s Department of Corrections, I have faced many challenging assignments. However, none has had more of an impact on me than when I was asked to escort a member of the media into the death chamber to witness the lethal injection of death row inmate Larry Eugene Moon.

Moon, 55, was sentenced to death for the Nov. 24, 1984, murder of Ricky Callahan during a two-state crime spree. Callahan, 34, was murdered after driving to a local convenience store to purchase aspirin for his wife. Moon, who was accused of multiple murders, shot Callahan twice in the head at close range.

The following are my observations of the experience.

It was a beautiful spring afternoon in Georgia. The sun was shining, the temperature was 73 degrees. As I drove down the interstate I could not help but appreciate how wonderful it was to be alive, especially considering the fate that lay ahead for Moon.

My assignment as a media escort was simple. I did not even have to utter a word. I sat on a bench no more than four feet from the gurney on which Moon would die. Only a glass wall separated me from the gurney. Six corrections officers (COs) lined three walls of the chamber, hands folded in front of them, eyes fixated on the floor. Off to the left was a curtain behind which stood the commissioner, the attorney general and other officials who had a professional obligation to carry out the sentence. To the right was a bright yellow door through which Moon would pass.

With a nod of the warden’s head, the COs exited the chamber through the yellow door. Thirty seconds later, Moon was escorted into the chamber through that same door. His arms and shoulders were pressed under the firm grip of four COs. I noticed that his eyes darted around the room but never focused on the glass behind which I sat. The COs walked Moon to the gurney and he climbed on as one would climb into bed. He laid his head on the pillow with his arms resting at his sides. Two of the COs began to strap his legs to the gurney — three straps per leg, secured by Velcro. Two COs held his arms to the gurney while two others pressed down firmly on his shoulders. As this process played out, I noticed tears forming in Moon’s eyes. His lower jaw quivered and he appeared to be holding back tears.

Apparently sensing Moon’s anxiety, the warden approached and began to speak to him. I could not hear the conversation, but it clearly had a soothing effect on Moon.

(Continued on Page 11)
Witnessing a Condemned Man's Final Moments

(Continued from Page 10)

back his tears. His jaw was still quivering. The gurney was then tilted forward. It was only at this point that Moon lifted his head and looked at each of the witnesses.

After a few moments, I noticed that the chemicals started flowing into his veins. His breathing became heavy and his eyes began to close. However, I noticed his eyes never fully closed. His skin tone slowly progressed from pink to an ashen and lifeless color.

Then two doctors and the warden entered the chamber. A female physician approached Moon and listened for a heart beat. She turned and faced the warden as she shook her head “no.” Then a male physician made his approach. His assessment was the same. It was over.

I took one last look as I began to exit the chamber. There was only one thing I noticed. There was still a glint of light in Moon’s still partially opened eyes. ■

Note: The article is a reflection of the author’s experience and should not be construed to reflect the opinion of the Pennsylvania Bar Association or the Government Lawyers Committee regarding the death penalty.

In the Spotlight

(Continued from Page 9)

spoke at the Dauphin County Bar Association in April during the Young Lawyers Section Practicum. His session focused on practice before the State Civil Service Commission and the Pennsylvania Human Relations Commission. In addition, Kunkle recently spoke to the fifth and sixth grade classes at Mountain View Elementary School in conjunction with the Pennsylvania Bar Association's Law Day program.

New Additions

Sarah Yerger, deputy attorney general for the Office of Attorney General and her husband, Martin Cunningham, assistant counsel, Governor's Office of General Counsel assigned to the Department of Labor and Industry, announced the birth of their first child, John Walton, on April 15. John Walton (Jack to his friends) was 6 lbs., 4-1/2 oz. and 18 inches long. ■

-- an innovative approach to FREE online legal research -- available exclusively to Pennsylvania Bar Association members.

Anywhere anytime access.
It is fast, easy and accessible from anywhere. Powered by LexisNexis, the leader in legal research, InCite™ gives lawyers online access to state and federal research information, including court decisions, statutes and codes.

More cases and more results.
New Combined Court Searching makes your research easier. And, the InCite library now includes appellate cases for all 50 states for the past five years and all circuit court cases for the past five years.

More research power for less.
You can do even more sophisticated research or access information outside the reach of InCite with special discounts or pay-as-you-go options. Shepardize, find annotations or review more cases outside Pennsylvania.

Easy to start. Easy to join.
Pennsylvania Bar Association members, simply go to www.pabar.org and click on the InCite logo to get started. To join the PBA and access InCite, click on “membership info” to apply online, or call 1-800-932-0311.

LexisNexis is a registered trademark of Reed Elsevier Properties Inc. used under license. ©2003 LexisNexis, a division of Reed Elsevier Inc. All rights reserved.
Stay Tuned

August 1-3, 2003
Young Lawyers Division
Summer Meeting
Rocky Gap Lodge, Cumberland, Md.

November 20, 2003
PBA Committee/ Section Day
Holiday Inn - East, Harrisburg

January 22-25, 2004
PBA Midyear Meeting
The Breakers,
Palm Beach, Fl.

Visit www.pabar.org for more information on these events.