The Government Lawyers Committee Is Off and Running

The Government Lawyers Committee is off and running! In just six months, we have accomplished what many believed impossible or, at least, unlikely — we have established a thriving committee within the PBA, which serves as a valuable resource for government lawyers in Pennsylvania and is starting to give government lawyers a voice within the bar. The Committee members accomplished all of the goals set at our first meeting in December and are facing an ambitious agenda in the coming year.

The Committee aspired to make an immediate and impressive impact in the PBA, which serves as a valuable resource for government lawyers in Pennsylvania and is starting to give government lawyers a voice within the bar. The Committee members accomplished all of the goals set at our first meeting in December and are facing an ambitious agenda in the coming year.

The Committee’s accomplishments to date have set the standard but our work is far from complete. In the fall we will be presenting a CLE program on the recently enacted Procurement Code, which impacts not only government lawyers, but also private practitioners doing business with the Commonwealth. We are coordinating a financial planning seminar for government lawyers and are compiling an all-inclusive directory of government lawyers in Pennsylvania. Our members also will be visiting law schools throughout Pennsylvania during the fall recruiting period and presenting a lecture series to future lawyers about the rewards and benefits of government service. Committee members also will be giving of their time to volunteer for such worthy causes as the Special Olympics and the Bethesda Mission.

I commend your participation on the Committee and welcome your suggestions for additional programs, services and activities.

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We hope to spread the word about the Committee’s successes and goals for the future.

By Alexis L. Barbieri and Nicolette Parisi

We were pleased to see so many government lawyers at the Pennsylvania Bar Association’s Annual Meeting in Hershey. Those in attendance were very enthusiastic about the Committee and its activities. The government lawyers’ booth attracted both those in government and others who wanted to learn a little something about the Committee from the newsletter, recruiting brochure and other materials available at the table.

At the meeting, many of you commented positively on the first edition of News & Views and the brochure. The first edition was indeed a challenge and we thank you for your contributions and expressions of appreciation. If you need additional copies of News & Views or the brochure, please contact Jennifer Zimmerman, PBA staff liaison at (717) 238-6715, ext. 286.

We wish to note that in the Spring 1998 issue of of News & Views, Doreen A. McCall authored the “Close Up” article on Chief Counsel Terry R. Bossert, Department of Environmental Protection, and Alexis L. Barbieri wrote the “Close Up” of Chief Deputy Attorney General Susan J. Forney, Office of Attorney General.

In this edition, the feature article focuses on the recent experiences of General Counsel Paul A. Tufano and Attorney General Mike Fisher in preparing for and arguing before the U.S. Supreme Court. This edition also includes profiles of the Hon. Cynthia A. Baldwin of the Allegheny County Court of Common Pleas and Chief Counsel Andrew S. Gordon, Department of Transportation, as well as several other articles of interest and importance to government lawyers.

Also, this edition of the newsletter includes a calendar of events and activities for members of the Committee and their families. During this busy vacation season, we hope that you will be available to participate in some of these projects.

With the aid of our recruiting brochure and News & Views, we hope to spread the word about the Committee’s successes to date and goals for the future. Hopefully, we can continue the enthusiasm generated at the Annual Meeting and encourage other government lawyers to join the Committee.
Subcommittee Reports

What’s Going On

Career Enhancement

In order to increase awareness of the work of government attorneys and the benefit of government service to the members of the Bar, this subcommittee sponsored a Government Lawyers Committee Booth at the PBA’s Annual Meeting. This subcommittee also is preparing a program to take to various law schools in the fall promoting legal careers in government service.

Professional Development

In cooperation with the Pennsylvania Bar Institute, this subcommittee is preparing to take the new procurement code “on the road,” holding CLE programs throughout the state. The three city-tour kicks off with a presentation at the Harrisburg Hilton on Oct. 19. On Oct. 22, the faculty moves to the Wanamaker Building in the City of Brotherly Love. The encore performance will be held at the Westin William Penn in Pittsburgh on Nov. 13.

Members of the Government Lawyers Committee on the faculty list include: Assistant Chief Counsel Gary Ankabrandt, Department of General Services; Chief Deputy Attorney General David DeVries, Office of Attorney General; Deputy General Counsel Thomas Hutton, Office of General Counsel; Inspector General Nicolette Parisi, Office of Inspector General; Chief Counsel Gregory Santoro, Department of General Services; and Assistant Chief Counsel Robert Shea, Department of Transportation. Each presentation will provide those in attendance with six hours of CLE credit. Watch your mail for the PBI registration materials.

The Subcommittee also is planning a two-hour financial planning seminar to be offered in conjunction with the Social Subcommittee’s Sept. 18 Golf Tournament. If you are not ready for Wall Street, join us at the seminar.

Social

The Social Subcommittee has made arrangements to ensure that Committee members and their families have a full social calendar this summer. We have scheduled various social activities throughout the summer, including a Senators game and picnic, a riverboat cruise on the Pride of the Susquehanna, and social hours the third Thursday of every month. The social hours were coordinated with the Office of General Counsel’s Summer Intern Program.

The Social Subcommittee also is pleased to report that we have made great strides in our efforts to raise the image of government lawyers through community service. We put together a team of government lawyers that ran on June 27-28 in this year’s Relay for Life on City Island, the American Cancer Society’s largest fundraiser. Committee members also will volunteer their time this fall for the Special Olympics in Philadelphia and the Bethesda Mission in Harrisburg. If you are interested in participating in any of these worthy events, please contact Megan Consedine at (717) 772-9002 or Suzanne Hueston at (717) 787-9349.

Services to Members

The Committee membership directory has been completed and will be mailed to members this month. While most of the Committee members responded to the subcommittee’s directory survey, we were unable to achieve 100 percent participation. Those of you who missed the chance to take part this time around will have another opportunity when we compile what will be an annual update early next year.

As noted in the spring edition of News & Views, the subcommittee also is working on a directory of all government lawyers in Pennsylvania. Because it is critical to the scope of the undertaking, our first task has been to define who is a “government lawyer.” We have found that there are many lawyers who perform the work of government but who are not principally identified as government lawyers. The consensus of the subcommittee is to include as many of these lawyers as we can to maximize the value of the publication as a resource. We are therefore in the process of contacting a variety of sources that we expect will help us identify all government lawyers.

The subcommittee is continuing to look at other services that might make PBA membership more attractive to government lawyers and would appreciate any comments and suggestions that other Committee members have to offer.

A Few Good Writers Needed

News & Views editorial staff invites members to submit items for publication in the Newsletter.

Please send submissions to News & Views Newsletter, c/o Alicia Campbell Morgan, Pennsylvania Bar Association, 100 South St., P.O. Box 186, Harrisburg, PA 17108-0186 or e-mail: info@pabar.org.
General Counsel Paul A. Tufano’s Experience

By Doreen A. McCall

On April 28, General Counsel Paul A. Tufano had the opportunity to argue the case of Pennsylvania Department of Corrections v. Yeskey before the U.S. Supreme Court. In this case, Ronald R. Yeskey was denied placement in the Department’s motivational boot camp due to his medical history of hypertension. In Yeskey’s suit, he claimed that the Department of Correction’s decision violated his rights under the Americans with Disabilities Act, the Eighth and Fourteenth Amendments, and the Pennsylvania Constitution.

General Counsel Tufano argued that application of the Americans with Disabilities Act to state prisoners is inconsistent with the intent of Congress and violates the Constitution. Tufano explained that Congress enacted the ADA to ensure that disabled persons in mainstream American society have reasonable access to public programs, activities and services. Applying the ADA to state prisons, however, would improperly allow Congress to ignore the sovereign nature of state prison management and alter the usual balance of power between the state and federal governments.

Tufano described his experience and shared his insights on his first oral argument before the Supreme Court.

Q: How much time did you devote to argument preparation?

A: I spent the equivalent of at least several weeks worth of time between reading cases, working on potential questions, and going through mock arguments to get ready for a thirty-minute argument. We went to Washington a week in advance and literally camped out in D.C. for the better part of a week. We worked sixteen to eighteen-hour days preparing for argument. Up until that point, I had been spending many days and nights in my office and weekends reading cases.

Q: Were the mock arguments helpful?

A: Enormously helpful. It helped us see where the weaknesses were in our case and in my argument. It also helped me to focus on my argument a little better. I cannot see how anybody could effectively argue before the Supreme Court without going through at least three, four or five mock arguments with different lawyers on each panel.

Q: What was your reaction when you heard that the Supreme Court had granted cert?

A: We were elated. The Court receives over 7,000 petitions a year and they only grant about a hundred. So the odds are so heavily weighed against you going into it that when you get that notice from the Court that they have taken your case, it is quite a thrill. However, it is not quite as thrilling as arriving at the Supreme Court and walking up those steps, but it was a great day when we got our cert petition granted.

Q: In your opinion, how important is the oral argument?

A: It is incredibly important. I think that some of the justices had not made up their minds and some of them were leaning, certainly, in a particular way. I think the justices look to the oral argument as a way to test some of the theories that the different sides espouse in their briefs.

Q: How did you prepare yourself mentally to argue before the court?

A: That’s a good question. Somebody had lent me a series of tapes of oral arguments before the Supreme Court during the last thirty years and at first I thought that would be helpful because I could hear what it is

(See Tufano’s Experience, on Page 6)
On March 30, Pennsylvania Attorney General Mike Fisher, had the opportunity to argue the case of Pennsylvania Board of Probation & Parole v. Scott before the U.S. Supreme Court. In this case, Keith M. Scott was charged with a parole violation after parole agents discovered weapons in his home. At his parole violation hearing, Scott objected to the introduction of the evidence on the ground that the search was unreasonable under the Fourth Amendment.

Attorney General Fisher argued that the exclusionary rule should not be extended to parole revocation hearings and that parole authorities should not be barred from considering relevant evidence obtained in a search. He also argued that parolees’ diminished expectation of privacy, combined with the important governmental need to conduct searches of their residences, provides the justification for constitutional approval of searches by parole agents without individualized suspicion of wrongdoing by a parolee.

Fisher described his experience and shared his insights on his first oral argument before the Supreme Court.

Q: Could you describe the process that you went through to prepare for oral argument?
A: I reviewed the entire case file, which included the record, all pleadings, briefs and court opinions. It is important to know the entire record because you never know what the Court is going to ask. I also reviewed and tried to digest every relevant case that the Court had decided on search and seizure and probation and parole. I read every case, some more than others and studied each one closely. By oral argument, I was quite conversant on Fourth Amendment law. As a former prosecutor and now as the state’s chief prosecutor, I was fairly conversant on Fourth Amendment law, but I really got a refresher course preparing for oral argument.

Q: Did you participate in moot courts?
A: Yes. We started with a very small moot court in my office and then proceeded to a larger one. The Monday before my argument, we expanded the moot court to include people from outside the office. Then on Tuesday of that week, I traveled to Washington, D.C. to sit in on two arguments before the Court. It gave me a comfort level seeing the interaction between the justices and counsel. Two weeks before my argument, the National Association of Attorneys General held its spring meeting in Washington, which included a reception at the Supreme Court. This year, Justice Ginsberg addressed the group in the Supreme Court chambers and last year Justice Breyer spoke to the group. Therefore, in the course of two years, I have had an opportunity to interact with Justice Ginsberg and Justice Breyer. I felt comfortable walking into the Supreme Court, but I knew it was a big moment. I think every advocate should visit the Court before argument, because if you walk in there for the first time on the day of argument, you may become intimidated when you look up and realize that you are in the Supreme Court.

Q: Do you think that your experience as a former prosecutor and state legislator helped to prepare you for this moment?
A: To a certain degree it did. I had tried cases for a period of five years as an assistant district attorney in Allegheny County where I dealt with a number of Fourth Amendment search and seizure issues. Later when I was in the General Assembly, I continued to be
**Tufano’s Experience**

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like. But, because they were all celebrated cases, which have really shaped the major aspects of the law of this country, it started to overwhelm me a little in the sense that it made me think that this really is the Super Bowl for lawyers; going to the Supreme Court. I tried to read as many oral argument transcripts from the cases that we were relying upon.

I also went to see some oral arguments, and that process ultimately made me feel better about oral argument. On the morning of my oral argument, I woke up – well, I really did not wake up because I did not sleep the entire night before. I tried to, but my mind was just going through a zillion different potential questions, and in the end it was probably good because I was just grilling myself. I was just too wired and I could not fall asleep.

**Q: What surprised you most about the court?**

A: I guess the intimacy; how close you are to the justices. You are physically right in front of them. I do not think that the podium is more than 10 or 12 feet away from the bench. So, you could literally almost reach out and touch them. Even though you are in this incredibly gorgeous and ornate courtroom in Washington, D.C., I felt more comfortable in that setting, arguing there, than I have in many other courts that I’ve argued in. So I was pleasantly surprised by that whole situation, and I was hoping I would enjoy it, but I guess in the end I was surprised that I enjoyed it as much as I did. Again, I am proud of our team because I think we did a good job of preparing and I was literally able to stand very relaxed and comfortable at the podium and engage in a very spirited dialogue with the justices of the Supreme Court. I had always hoped it would be as good as it was, but I was still in the end surprised.

**Q: In your opinion, does arguing before the Supreme Court differ from arguing before other courts?**

A: Well, if you are arguing before, say, an en banc panel of the Commonwealth Court or the Third Circuit or the Pennsylvania Supreme Court, it is very similar in that you are going to have a full panel of judges, or justices in this case, firing questions at you. I think that the only difference is it is the last step in the process. Because, however, it is such an important court, you put yourself through more paces, and maybe in some respects you over-prepare, but the argument itself I did not find different. I have argued before the New Jersey Supreme Court three times, and up until my argument at the Supreme Court, I considered those oral arguments the most enjoyable oral arguments I have ever had.

**Q: How did you feel the morning of your argument?**

A: I did not really eat much. I guess I got out of bed around 5:30 a.m., showered, got dressed, went over my argument outline a couple of times, and waited for my wife to get ready. My wife and I met some of my colleagues and we took a cab to the court. We had a meeting with the Clerk of the Court, who goes over everything and you find out that you are the celebrities of the day. They tell you they have a seamstress available if you need one. They have Tylenol or whatever you need. There are only two arguments that day, so you realize that you are somewhat of a VIP that day. Then they put you into the courtroom about forty minutes before the justices come in at 10:00 a.m. We were the very first argument, and I was the first to argue that day.

**Q: What was that like sitting there waiting for your case to be called?**

A: The courtroom was packed. I was somewhat tense, because you are sitting there waiting for the clock to strike ten o’clock and to hear the gavel go down and the clerk say, “all rise.” However, about thirty seconds before the clock was to strike ten o’clock, I looked down at my shirt and noticed that I had a huge ink stain on the left side of my shirt just below the pocket. It was about as big as my hand. I looked inside my jacket pocket and realized that when I was in the cab that morning and was writing a note on my argument outline, I did not put the cap on the pen before I stuck it in the inside pocket of my brand-new suit. It bled through the liner of the suit and onto my shirt. I was just astonished. So, I turned to my colleague, Syndi Guido, pointed to the stain and said, “oh my gosh, what am I going to do?” Syndi did not show any alarm on her face and very nonchalantly said, “button your jacket, nobody will see it.” I buttoned my jacket, and you could not see the stain. With that, the clerk said, “all rise,” I stood up, and it was showtime.

**Q: What was that like sitting there waiting for your case to be called?**

A: Yes. While we were in the final stages of preparing for the Yeskey argument, we were working very hard on finishing and filing a petition for cert in another case. Some people did not think that we would get our cert...
Fisher’s Experience
(continued from Page 5)

very active in the criminal justice system, especially in
the area of search and seizure.

Q: What was your reaction when you heard that the
Supreme Court had granted cert?

A: When Executive Deputy Attorney General Lou
Rovelli told me that the Court had granted cert, I said
immediately that I would like to have the opportunity
to argue the case. I wanted to argue this case because
the parole system is important to our criminal justice
system. If we cannot adequately supervise our parol-
ees, our option would be to keep inmates in jail for a
longer period of time. It is important that we have a
well-run parole system. That is why I felt so strongly
about arguing the case. It was also an opportunity to
make case law that would be applicable to all other
states in the country.

Q: In your opinion, how
important is oral argument?

A: Oral argument is really your
time to speak to the justices and a
time for the justices to speak to
you and the other justices about
your case. It is an opportunity for you to discuss the
case with the justices before they convene to discuss
the case and their positions. An effective oral argument
can have a great impact on your case.

Q: What, if anything, did you do to prepare yourself
mentally to argue before the Court?

A: I got away from the hustle and bustle of the daily
routine of the office and the obligations that I have as
Attorney General. The week before argument, we went
to Washington and focused on nothing else but the
case. I was very calm throughout it all. I was not really
nervous at all.

Actually, going to Washington and observing oral
argument was very important for me because I realized
that this was no different than arguing before any other
court or tribunal. After having been a member of the
Pennsylvania Senate for sixteen years and the House of
Representatives for six, arguing before the Supreme
Court was not a whole lot different. Although I knew
this was a very significant occasion, in my mind I tried
to say that this was not much different from what I
have been doing all my life. I have had a significant
amount of appellate experience as well as trial experi-
ence in my career. I also have had a lot of public sector
experience, so it made it a little bit easier for me. I think
for an attorney who may not have had the opportunity
to have the public sector or courtroom experience that I
have had over the years, I most strongly recommend
that, in addition to the preparation, the attorney should
go to Washington and watch cases being argued before
the Court if he or she gets a chance. You will see that
you are in the Super Bowl. Arguing before the Supreme
Court is like being in the Super Bowl of law.

Q: What surprised you most about the Court?

A: How thorough they were. At the same time, they
treated you well. Sometimes you had two questions
coming at you at the same time. The junior member
would defer to the more senior member, but all of the
justices were knowledgeable about every case.

Q: What did you do before the argument?

A: On Monday morning, I got up
and took my brisk morning walk
of about 40 to 45 minutes and
was ready to go at 8:30 a.m.
While walking over to the Court,
a reporter from the Philadelphia
Inquirer asked me, “How do you
feel?” and it reminded me that
about 40 years ago my father argued a case before the
Supreme Court. It made me realize that this was
something my dad was very proud of. It was some-
thing significant in his career. I felt as though I was
following in my father’s footsteps, having this chance
to argue before the Supreme Court, and in this case
representing the people of Pennsylvania.

Q: How did you feel right before they called your case?

A: The first case was at 10:00 a.m., so I had to sit there
until 11:00 a.m. Because we were there on a Monday,
the Court handles administration matters first. On this
particular day, the Court admitted a number of attor-
neys to the court. There was a full courtroom that day.
During the admissions process, the attorneys would
approach the bench and say I move the admission of
John Smith or Jane Smith from the State of Missouri.
Then this older gentleman got up and moved the
admission of a whole list of people. I was just sitting
there thinking, I wonder what state they are from. Then
he said, “All are from the Commonwealth of Pennsyl-
va.” I thought, oh my gosh, I have people from the

(See Fisher’s Experience, on Page 9)
Board of Governors Approves Concept of Model Pro Bono Policy

By Diana Lauder Sacks

On June 26, the PBA Board of Governors approved the following recommendation from the PBA Government Lawyers Committee:

The PBA Government Lawyers Committee recommends that the Board of Governors approve the concept of a pro bono policy for governmental units to encourage their attorneys to engage in pro bono activities. The model policy attached is to serve as a resource providing the basic framework for governmental units and their law offices to develop their own pro bono policies. The model policy was carefully crafted to take into consideration the ethical constraints facing government lawyers. The Committee also seeks approval to distribute this model policy to interested governmental units, government law offices and other bar associations.

This is the first step of an aggressive plan by the Committee to give pro bono the emphasis it needs to address the unmet legal needs of indigent Pennsylvanians. The Ad Hoc Subcommittee on Pro Bono Policy, under the leadership of Herb Nurick and Steve Turner, drafted a comprehensive policy statement which would serve as a guide for public sector attorneys to fulfill their pro bono requirements. The subcommittee recognized that the Rules of Professional Conduct of the Supreme Court of Pennsylvania provide that “[a] lawyer should render public interest legal service.” (Pa.R.P.C. 6.1) Beyond these Rules, the ABA and PBA enthusiastically encourage lawyers to render public interest legal service.

The subcommittee has prepared a model policy with the hopes that governmental units will follow this model. It is recognized that the model may have to be adjusted to fit the particular needs of the various units. In conjunction with this, several provisions are followed by comments which serve as matters for the governmental unit to consider for a particular provision.

The subcommittee acknowledges and thanks the Office of Attorney General of Pennsylvania and the City of Philadelphia Law Department for providing their pro bono policies to the subcommittee. These policies formed the basis for the Pennsylvania governmental-unit model.

The Committee will forward the model policy to government law offices across the commonwealth. They will request that the policy be considered and adopted.

Contact Jennifer Zimmerman at (800) 932-0311, ext. 286, if you would like a copy of the model policy.

Tufano’s Experience

(continued from Page 6)

petition granted, but I nonetheless thought it was important to seek cert. We defied the odds, and the court once again granted our petition.

Q: What advice would you give to someone who is currently preparing to argue before the Supreme Court?

A: I think you need to assemble a few people to be your core team. It is not just a matter of preparing for an oral argument; you are also writing briefs simultaneously. It is a logistical nightmare because there is so much research you have to do and so many cases to read. You really need to get organized. Do not waste time. Also, assign someone to the task of making sure everything is being done, because you have tough deadlines to meet. In getting ready for the argument, you need to begin reading cases immediately and writing down questions. You must block out major portions of time; unfortunately, a lot of it is done on the weekends and at night because you still have your other job responsibilities. Do not underestimate how difficult it will be. I think any lawyer would rather walk into the United States Supreme Court over-prepared than under-prepared, because I do not think you could survive an oral argument there if you are under prepared. So, work hard, work early and be very organized. Do all that and enjoy it because you might not get the opportunity again. Win or lose, you can have the most enjoyable experience of your legal career if you are prepared.
Fisher’s Experience  
(continued from Page 7)

Office and friends and family here and I have all these attorneys from Pennsylvania. Isn’t that neat! While they were arguing the first case, I was thinking that this is not bad. I can do this. However, you are never sure. It’s like standing at home plate trying to hit a fast ball, but until you get a chance to do it, you are not sure you can hit it. That was sort of the anticipation of the moment.

Q: How did you feel the moment you sat down?
A: I did save a couple moments for rebuttal, and I had a couple points that I wanted to make, but they were not vital. I thought to myself that the instructions were, if you do not absolutely need to make your point, if it has already been covered, do not get up to give rebuttal. Therefore, I decided not to give rebuttal. I was finished. I knew that we gave it our best. We were as prepared as we could have possibly been. It was great teamwork.

Q: What was your most memorable moment?
A: I think my most memorable moment was getting that first series of questions from Justice O’Connor and basically explaining to her what our case was about and finally having her say, “Okay, I see, I understand.” I thought, “Wow!”

Q: What advice would you give to an attorney who may be preparing to argue before the Supreme Court?
A: Preparation, preparation, preparation and preparation. If an attorney has an interest in appearing before the Supreme Court, I would say go for the challenge if you get the chance. But only do it if you have enough time to devote to the case and to prepare. If your schedule or practice is such that you are not able to commit the time necessary for preparation, you are probably not doing your client or yourself justice if you go there unprepared.

Light News

The Fishing Poles

By Robert J. DeSousa

As an assistant U.S. attorney, jinxes often took months if not years to be resolved. However, one of my more interesting duties was to handle magistrate judge cases once a month before a part-time U.S. magistrate at the Delaware Water Gap National Recreation Area in Bushkill, Pa.

All offenses committed in the park were tried before this U.S. magistrate at the old Bushkill School House in a makeshift courtroom. In any single day, perhaps 30 or 40 cases would be resolved, thus serving as a refreshing contrast to the length of the more normal federal case. The most interesting case I ever had was a case in which two days before fishing season, in a pond that had been freshly stocked with fish, a park ranger came upon two individuals fishing.

As he watched the individuals, in a period of 10 minutes, they pulled out 15 fish. He promptly went up to them, gave them a citation and told them to appear before the magistrate judge. They gave him no trouble, but he noted that they seemed to speak very little English. When they appeared at the hearing, they came with a friend to interpret for them. They stated that they were Polish Nationals who were visiting the United States for the first time, and that they had no idea that they were fishing illegally.

The magistrate judge then asked, “Didn’t you think it was a bit odd that in 10 minutes time you had caught 15 fish and that you were the only ones fishing?” They answered “No.” He then asked, “Well then what did you think?” They answered in very thick polish accents, “Ve thought this is America! Truly the land of plenty. Ve have nothing like this in Poland.” The magistrate burst out laughing and said, “That’s it, case over, I fine you $150.”

At which point both of them looked at each other and said, “Ve only brought $75 so that we could buy a fishing license.” To which the magistrate said, “Strike that, I fine you $75, no fishing license, go back to Poland.” Thus justice was done at the U.S. Magistrate Court in Bushkill, Pa., in the famous case of “The Fishing Poles.”

If you have a humorous work-related story, please submit it to News and Views Newsletter, c/o Alicia Campbell Morgan, Pennsylvania Bar Association, 100 South St., P.O. Box 186, Harrisburg, PA 17108-0186.
Close Up:

Fostering the Desire for Public Service

A profile of Hon. Cynthia A. Baldwin, of the Court of Common Pleas of Allegheny County

By Martin A. Toth

I called Judge Baldwin at 4:30 p.m. thinking that I would be able to interview her at the end of the day, but she was still hard at work. While she serves full-time in the family division of the Allegheny County Court of Common Pleas, she also sits part-time in the civil division and one day a week in the juvenile division. When I asked her to describe a typical day, she chuckled and responded that she never has just a “typical” day.

For many reasons, I soon learned that Judge Baldwin is one uncommon Common Pleas judge. And being elected the first African-American female judge in the Allegheny County Court of Common Pleas is only one of many accomplishments in her life.

Judge Baldwin received her B.A. and M.A. from the Pennsylvania State University (PSU) in English and American Literature, respectively. She received her Juris Doctor from Duquesne University, was a member of its Law Review, and now serves as an adjunct professor. She also teaches in the Widener University School of Law Intensive Trial Advocacy Program.

Judge Baldwin is a member of the PBA Board of Governors and House of Delegates, Board of Governors of the Homer S. Brown Law Association, American Judicature Society, Pittsburgh Chapter of the American Inns of Court and the Matrimonial Inns of Court, as well as the Allegheny County Bar Association.

Despite all of her responsibilities and fulfilling other obligations, Judge Baldwin is very active in the community. She is a member of various boards including Duquesne University Law alumni and the Pittsburgh Chapter of the United Way.

Judge Baldwin has served since July 1990 as a gubernatorial appointee to the Pennsylvania Commission on Crime and Delinquency and is a member of the Pennsylvania Commission on Sentencing. She also has received numerous honors and awards.

Before becoming a member of the court, Judge Baldwin worked in private law firms and for Neighborhood Legal Services, where she received a Reginald Hebersmith Fellow — serving as a “Reggie” — a legal services attorney who received an additional stipend for her agreement to work in the low-paying legal services arena. Judge Baldwin also served in the Office of Attorney General, Bureau of Consumer Protection as the attorney-in-charge of the Pittsburgh Division.

In summer 1994, Baldwin received a Fulbright Scholarship to lecture at the University of Zimbabwe Law Facility. Although I know judges typically have a law clerk or clerks, I just had to ask, “How did you fulfill your judicial responsibilities and still go to Zimbabwe?” She replied, “Simple, I tried cases on Saturdays and then wrote my opinions when I was in Zimbabwe. My law clerk and I faxed them back and forth.”

The following summer, Judge Baldwin was a member of a team sponsored by the ABA, the National Judicial Conference and the District of Columbia Superior Court that conducted judicial education programs in Malawi, Uganda and Tanzania. This summer she will be teaching in Beijing and Hong Kong.

When I asked her to comment on the importance of lawyers in government service, Judge Baldwin was very serious in her response, “Everyone wants to be a corporate attorney and make lots of money. [However], public service should be viewed as the highest service. Lawyers who dedicate themselves to government service do not get enough credit — those are the ones who really want to make an impact on the system and make the system work for the people.”

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Close Up:
Coming Full Circle — From Public to Private and Back Again

A profile of Andrew S. Gordon, Chief Counsel of Pennsylvania’s Department of Transportation

Much of Andy Gordon’s distinguished 20-year legal career has been devoted to government service. The primary focus of Andy’s practice over the years has been litigation at both the trial and appellate levels.

Andy is the chief counsel to the Department of Transportation and has served in this capacity since his appointment by General Counsel Paul A. Tufano in May 1995. As the chief counsel, Andy manages 52 attorneys and ultimately is responsible for all PennDOT legal matters. In addition to these responsibilities, Andy is on the Office of General Counsel’s Hiring Committee, which interviews candidates for legal positions in all executive agencies.

Andy graduated from Boston University, magna cum laude, with a bachelor of science degree in business administration in 1974. He graduated from Dickinson School of Law, cum laude, in 1977.

Andy’s government service began long before he joined the ranks of the Office of General Counsel. He was recruited under the U.S. Department of Justice’s honors program for recent law school graduates to work in the U.S. Department of Justice in Washington, D.C. He was assigned to the criminal division where his duties were to brief and argue appeals in criminal cases. He also prepared briefs in opposition to petitions for certiorari and helped prepare two briefs on the merits in the U.S. Supreme Court.

In January 1981, Andy joined the Pennsylvania Office of Attorney General’s Civil Litigation Section. There he handled a wide variety of state and federal trial and appellate litigation, including civil rights claims, employment discrimination claims and challenges to the legality of different state programs.

From 1983-86, in addition to handling his own case load he served as the appeals coordinator. In 1986, Andy became Chief of the Civil Litigation Section, a position that he held until 1988. During this period of time, his duties included the direct supervision of 32 attorneys statewide engaged in active litigation of approximately 2,300 cases in state and federal courts.

Andy personally handled a number of significant cases, including those involving issues of employment and handicapped discrimination, as well as the legality of gender-based automobile insurance rates, the liability of the Commonwealth to refund more than $500 million in fees to interstate motor carriers and the constitutionality of a ban on bank insurance company affiliations.

While working for the Office of Attorney General, Andy prepared and argued before the U.S. Supreme Court cases involving civil rights issues. Andy also briefed and argued Smith v. City of Philadelphia and Commonwealth v. Lyles, which upheld the constitutionality of the damage caps in the state and local government sovereign immunity statutes.

In February 1988, Andy left government service and joined the law firm of Buchanan Ingersoll as its first resident attorney in the Harrisburg office.

The exciting possibilities with state government after Gov. Ridge took office in 1995 strongly influenced Andy’s decision to return to government practice. One of his law school classmates, Bradley L. Mallory, left private practice to be Gov. Ridge’s Secretary of Transportation and this also influenced Andy’s decision to return to government service.

The years Andy has practiced law in government service have afforded him diverse and challenging opportunities, proving to be more rewarding than he ever anticipated.
The Commonwealth Procurement Code — Revolutionizing the Way the Commonwealth Does Business

by Gary Ankabrandt, Tom Hutton and Greg Santoro

On May 15, Gov. Tom Ridge signed into law Senate Bill 5, the Commonwealth Procurement Code (Code). The Code takes effect 180 days after it was signed into law — November 16, 1998. Its statutory designation is Act 1998-57 and the majority of its provisions will be codified in Title 62 of the Pennsylvania Consolidated Statutes.

For those of you who do not know it yet, the Code will change the way the Commonwealth purchases approximately $4.5 billion annually in goods, services and construction. For the first time, those who seek to do the business with the Commonwealth will be able to refer to a unified and cohesive series of laws and regulations governing Commonwealth purchasing. These new rules have been designed to provide vendors with better notice of contracts, to clarify bid and offer procedures, streamline the contract review process and create a more efficient purchasing system.

What some may tout as a revolution in the way the Commonwealth buys its supplies, services and construction actually has become a reality through what may be more appropriately characterized as an evolutionary process. On its path to becoming the procurement statute of Pennsylvania, several attempts have been forged in legislative sessions to adopt such a law for Pennsylvania dating back to the early 1980’s.

Historical Perspective

After his election as governor in November 1994, then Governor-elect Ridge requested a group of volunteers from the business, government and academic communities to review various aspects of state government, one of which was procurement. This volunteer group produced a report concluding that there was a lack of a unified system of procurement resulting in multiple manuals, few standard forms and different practices from agency to agency. If a vendor wished to do business with the Commonwealth, it was not sufficient to be aware that its customer was the Commonwealth. A vendor also had to be aware of the peculiarities of a particular agency. There were a multitude of manuals and directives such as the Purchasing Manual for supplies and equipment and the Manual for Services for non-construction related services. The report’s recommendation called for a comprehensive legislative change in the basic approach that would finally bring the Commonwealth’s procurement practices into the 21st century.

There are certain changes that will have a dramatic impact on the business of both government attorneys and private practitioners.

The Code’s Impact

While competitive sealed bidding will remain the preferred method of purchasing, state agencies will have flexibility to use other methods of contracting, including requests for proposals, emergency contracting and multiple awards.

The Code authorizes agencies to use advanced technology. For example, the Commonwealth expects, in the near future, to post notices of available contracts on its web page and anticipates implementing a system for solicitation and receipt of bids in an electronic format.

There are certain changes that will have a dramatic impact on the business of both government attorneys and private practitioners.

• There will now be a statutory bid protest procedure. The Code provides the right to protest a solicitation or award of a contract by an actual or prospective bidder, offeror or contractor. For many years, some agencies have had no formal protest procedure while others have had a formal procedure for certain types of procurement but not for others. Under the Code, the head of the purchasing

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Procurement Code
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agency has the authority to settle and resolve a protest. The Code sets forth deadlines for an agency decision, requirements for contents of the decision and notice and staying of the procurement during the protest. Upon exhaustion of administrative remedies, a dissatisfied protester may file an action in Commonwealth Court within 14 days of receipt of a decision. The Commonwealth has waived sovereign immunity in the Code, thus eliminating the necessity for an aggrieved bidder to file a “taxpayer action.”

- The Code also sets forth a procedure for resolving controversies between a Commonwealth agency and a contractor. In order to file a claim with the Board of Claims, the vendor must first file the claim with the contracting officer within 6 months after accrual of the claim. If the controversy is not resolved, the contracting officer must render a decision within 120 days after written request for a final decision or longer if agreed upon. A decision is final and conclusive unless the contractor files a claim with the Board of Claims within 30 days of receipt of the decision. The Code reduces the time period to challenge the adverse decision from six months to 30 days to file a claim in the Board of Claims.

Government lawyers also will have to determine if the Code even applies to a particular situation. The Code does not apply to certain transactions such as investments of funds, contracts between Commonwealth agencies and between the Commonwealth and political subdivisions and medical assistance providers. Once you determine the Code applies, you will bear a certain responsibility for ensuring that your agencies follow the proper procedures for procurement.

With the passage of the Code, it is easy to feel a sense of relief and to proclaim the end of the revolution. Although its passage is a major step in revolutionizing the way the Commonwealth does business, the passage of the Code signals the beginning of change — not the end.

T-shirts Available
The Government Lawyers Committee has t-shirts available with its logo printed on it for $10. To purchase a t-shirt, please contact Jennifer Zimmerman at (800) 932-0311, ext. 286.
In the Spotlight

Government Lawyers in the News

Nominated

Secretary of the Commonwealth Yvette Kane was nominated by President Bill Clinton to serve as U.S. District Court Judge for the Middle District of Pennsylvania. Secretary Kane will continue to serve as Secretary of the Commonwealth throughout the confirmation process.

In Print

David Schreiber, Counsel for the State Employees Retirement System, published an article, “A Forensic Investigation of Hypnosis with a Case of Acquaintance Rape,” which will be featured in the July/August issue of The Forensic Examiner, Vol. 8.

Robert A. Reiley, Assistant Counsel for the Bureau of Regulatory Counsel at the Department of Environmental Protection, wrote an article, “The New Paradigm: ISO 14000 and its Place in Regulatory Reform - Part I,” which appeared in the April 15 edition of the national newsletter The Environmental Counselor. Part II of the article was published in the May 15 edition of the newsletter.

Speaking Out

Howard A. Burde, Deputy General Counsel of the Office of General Counsel; Howard Ulan, Senior Assistant Counsel of the Department of Public Welfare; and Jeffrey J. Wood, Chief Counsel of the Department of Aging, were the featured speakers at a continuing legal education seminar presented by the Office of General Counsel. The topic of the July 30 program was “The Regulation of Health Facilities: Licensure & Beyond.”

On April 1-2, Department of Environmental Protection Chief Counsel Terry R. Bossert and 20 DEP assistant counsels conducted the Environmental Law Forum for the Pennsylvania Bar Institute.

Department of Public Welfare Senior Assistant Counsel Howard Ulan and Assistant Counsel Carol Ulichney presented training sessions to 85 state licensing representatives at the Cross Systems Licensing Project sponsored by the Departments of Public Welfare, Health and Aging. The focus of the day-long training course was on the legal aspects of licensing with special emphasis on enforcement. Assistant Counsel Daniel Fellin assisted Mr. Ulan and Ms. Ulichney in hosting DPW’s version of Jeopardy to illustrate various legal and licensing concepts for the licensing representatives.

M. Dukes Pepper Jr., Assistant Counsel in the Bureau of Regulatory Counsel for the Department of Environmental Protection, recently spoke on air quality issues at a meeting of the Natural Resources and Environmental Law Section of the American Bar Association in Baltimore, Maryland. The focus of the conference was key environmental issues in EPA Region III.

Department of Public Welfare Assistant Counsel Carol Ulichney, at the request of the National Association for Regulatory Administration, conducted a training session in Indianapolis, Ind., for daycare licensing inspectors employed by the state of Indiana, Bureau of Child Development, Division of Family and Children. Her presentations addressed evidence collection and preparing witnesses to testify at a hearing.

Department of Aging Chief Counsel Jeffrey J. Wood and Department of Health Assistant Counsels Lawrence M. Otter and Carol Somerset-Griffie are presenting 18 statewide seminars on recent amendments to the Older Adults Protective Services Act. The seminars address mandatory abuse reporting under Act 13 of 1997, criminal background checks under Act 169 of 1996, and healthcare facilities reporting under Department of Health regulations.

Elected

Department of Public Welfare Senior Assistant Counsel Mary Frances Grabowski was elected to serve as the Treasurer of the PBA Administrative Law Section. She has completed a three-year term as Vice Chair of the PBA Health Law Committee.

Robert DeSousa, Chief Counsel for the Department of State, was elected Secretary of the Tuesday Club by the membership of the PBA Board of Governors.

Appointed

Lawrence Barth, Senior Deputy Attorney General, Charitable Trusts & Organizations Section, Philadelphia regional office, was appointed by the Pennsylvania Supreme Court, through Justice Castille, to the state

(See In the Spotlight, on Page 15)
Government Lawyers on the Run

By Sarah C. Yerger

It was a long, hot 24 hours. Despite the heat and humidity on June 27-28, the Government Lawyers Committee 18-member team, some friends and family members, ran in the American Cancer Society’s Relay for Life, a 24-hour race and the Society’s largest national fundraiser. This marked the first time a PBA Government Lawyers Committee Team participated in this charity event.

The graveyard shift runners on our team took advantage of the cooler temperatures, and their athletic prowess led us to a first place finish in lap totals. We ran/walked 279 laps or 93 miles in 24 hours!

Saturday night’s luminary ceremony was a tribute to those who lost their battle, those who survived and those who are battling cancer today. The ceremony reminded everyone of the importance of participating in the relay. Many members of our team participated in memory of loved ones who suffered from cancer.

At Sunday’s closing ceremonies, our team was recognized for raising $3,500, an amount which was unprecedented for a first-year team. The teams raised a total of $55,000 — which far exceeded the goal of $40,000.

Our team members enjoyed the camaraderie of the relay, and we already are looking forward to next year’s race! Not only did we help in the fight against cancer, but we had a good time doing it. We demonstrated that government lawyers care about and want to give back to the community. It was a successful and rewarding 24 hours!

In the Spotlight
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Supreme Court’s Orphans’ Court Procedural Rules Committee.

Diana Lauder Sacks, Legislative Reference Bureau, was appointed for a third term as Chair of the PBA Committee on the Corrections System. Amy Zapp, Deputy Attorney General, Office of Attorney General, was also appointed for a third term as Vice Chair of the committee.

Pamela F. Cross, Assistant Counsel, Office of the Budget, was appointed Co-Vice Chair of the Minority Bar Committee of the PBA.

Jonathan W. Kunkel, Assistant Counsel of the Employee Claims Section of the Department of Corrections, was recently appointed to the Board of Directors of the Friends of the State Museum.

If you have a news item for In the Spotlight, please submit it to Lesa E. Tressler, Assistant Counsel, Department of Health, Room 825, Health & Welfare Building, P.O. Box 90, Harrisburg, PA 17108.
Stay Tuned

Sept. 18  PBA Government Lawyers Committee seminar “Planning Ahead — Financial Strategies for Government Lawyers” and Golf Tournament Felicita, Harrisburg


Nov. 13  “The New Commonwealth Procurement Code” CLE program, Pittsburgh

Dec. 4  PBA Committee/Section Day Holiday Inn, Harrisburg East

* Please note that members of the Government Lawyers Committee will be meeting for Social Hours after work the third Thursday of every month. Contact Megan Consedine at (717) 772-9002 or Suzanne Hueston at (717) 783-6563 for more information or with suggestions for other events and activities.