The editors asked the leaders of PBA committees and sections to offer thoughts on issues the groups are likely to face in the year ahead. Here are the responses.
Ace was in his York County yard “tending to business” when law enforcement arrived to arrest his owner’s daughter — who did not live there. They did not announce their arrival nor identify themselves. An officer encountered Ace while securing the property. He shot Ace, who reached his owner in the garage, then died. The police said Ace aggressively charged; he was hit behind the shoulder or in the side.

Gabanna wandered from her Luzerne County porch. After a neighbor returned her, she got loose again. Police were called and worked two hours trying to noose her. Because it was a weekend, SPCA and dog warden assistance was unavailable. Officers cornered and shot her; she was put in a trash bag, left beside a dumpster. Her owners learned of her loss through social media.

In Lancaster County, a mastiff was in a pickup truck bed in a parking lot. A police officer engaged in a matter with someone nearby. The dog got excited, jumped out and ran around. After failed Taser efforts, the mastiff was shot. The dog law officer was off duty and the tranquilizer gun was locked up or inoperable.

A vigil and rally were held for Gabanna and the mastiff, respectively, demanding better police training.

These incidents from 2014 are described based on media reports; complete investigations are needed for fairness to involved officers and agencies. No reliable national data exist, but surveys of several cities indicated no significant increase in dog shootings by police. However, traditional and social-media coverage — hence, public reaction — has increased.

In Pennsylvania, Rep. Kevin J. Schreiber, along with 15 co-sponsors, introduced House Resolution 1017; its co-sponsorship memorandum noted publicity of lethal-force incidents. HR1017 calls for a 25-member committee to study whether police should receive training in dog behavior and nonlethal handling and the fiscal impact of such training, noting that the Humane Society of the United States and ASPCA offer free training. The committee would develop recommendations, including law, policy and procedure changes, and, with the Joint State Government Commission, submit a report to the Pennsylvania House of Representatives within one year. As of September, HR1017 was before the House Judiciary Committee. (See www.pahouse.com/Schreiber and www.legis.state.pa.us.)

Nationwide, too many shootings trace to inadequate training. Police agencies should also screen applicants for attitudes toward dogs, and owners should act to reduce risks. Nonetheless, for Keystone State canines HR1017 is an excellent start and is significant to practitioners who represent municipalities, police organizations and dog owners.

American courts have long held that a publication’s implication is tortious only if the publication can reasonably be understood to convey that implication, [that] a reader would reasonably understand that the defendant intended or endorsed that implication and [that] the implication suggests a materially false fact. These well-established rules protect the public and press from being hauled into court to defend accurate statements against baseless claims that they might be understood to convey something they plainly do not mean and that the source never intended. In Pennsylvania, however, recent court decisions involving the torts of false-light invasion of privacy and defamation by implication seem to have placed these rules in jeopardy.

Most notably, in 2012, the Superior Court issued a decision in a case brought by Joan Krajewski, the late Philadelphia councilwoman, who claimed she had been defamed and cast in a false light by newspapers’ opinion columns and editorial cartoons. The court allowed the councilwoman’s claims to stand even though the publications did not include any statements that could “be proven false.” The court apparently reached this decision in Krajewski v. Gusoff based on its assessment of what the publications “might suggest to the average reader,” its finding of “significant indicia of falsity in the implication” and its determination that this “impression” was “highly offensive.” In other words, the newspapers seemingly were
being forced to defend themselves for publishing factually accurate statements based on a claim that the publications might be understood to convey a particular impression merely because the court found that impression “highly offensive.”

Recognizing the confusion created by that decision, the Supreme Court granted the newspapers’ petition for allowance of appeal to address some of the case’s constitutional questions, including the First Amendment limits on the false-light tort. Sadly, the councilwoman passed away the same day the petition was granted, rendering the appeal moot.

Since then the Krajewski decision has cast a dark cloud over the ability of Pennsylvania journalists to report and comment on matters of public concern. In 2014, the Supreme Court was presented with another opportunity to address the questions raised by Krajewski, this time in the form of an application for extraordinary relief filed in response to the denial of preliminary objections in another case involving a newspaper’s reporting on a public official. Although the court unanimously denied the application, Chief Justice of Pennsylvania Ronald D. Castille filed a concurring statement in which he highlighted “the chilling effect” of Krajewski and stressed the importance of the constitutional issues it raised.

In 2015, media lawyers will be focused on whether Pennsylvania courts will apply well-established First Amendment principles to false-light and defamation-by-implication claims or whether public discourse in our commonwealth will be chilled by threats of litigation that other jurisdictions would reject as blatantly unconstitutional.

It strikes me that these words are not unlike those of the lawyer’s oath we take to “support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth and to discharge the duties [of office] with fidelity, as well to the court as to the client, … [using] no falsehood, nor [delaying] the cause of any person for lucre or malice.” At least the mandate is clear, we as CERC attorneys are to be vigilant and forthright as we seek to uphold and defend our constitutions.

The mission statement notes that our committee was formed in 1994 from two separate PBA committees — the Civil Rights and Responsibilities Committee and the Equal Rights Committee. While the latter dealt with issues affecting solely or at least primarily women, the former involved itself with the “protected classes” and Section 1983 actions. CERC is a merger of them and, with the times and growing notions of human decency as discerned by law and/or society, has at times, though not often, expanded its concerns to embrace consider-
Some general words used to define “justice” are moral rightness, equity, honor, fairness and good reason. The search for justice has been an ongoing pursuit of mankind. Most attorneys have heard of trial by ordeal, trial by compurgation or trial by battle. A series of ordinances known as the Assize of Clarendon initiated by King Henry II of England in the year 1166 was the first step away from such trials to an evidentiary model to pursue justice.

Our trust in today’s trial system is based on our belief that the best way to achieve justice is by having opposing parties present the facts and their interpretation of the law to a fact-finder who determines the result. However, we are witnessing an ever-increasing interest in other ways to find justice, which brings with it a movement away from the traditional trial. Many attorneys have heard of restorative justice, problem-solving courts, mediation and collaborative practice, to name a few. The focus of these efforts is more of a holistic, problem-solving approach in the search for justice.

My focus has been on collaborative practice. Pauline H. Tesler, a well-known collaborative practitioner, has described the process in its simplest form as two lawyers and their respective clients signing a binding agreement defining the scope and sole purpose of the lawyers’ representation as helping the parties to engage in creative problem-solving aimed at reaching a negotiated agreement that meets the legitimate needs of both parties. The key to the success of this process is the lawyers’ agreement to withdraw from representation if the process ends prior to resolution. The process is completely voluntary, and it can end at any time with no reason given. Statistically, close to 90 percent of cases that begin the process end with resolution. In one more complex form, a mental health professional is used as a neutral coach and/or a financial professional is used for financial advice. Unlike traditional negotiation, the other professionals participate fully in the settlement meetings.

In 2010, the Uniform Law Commission [also known as the National Conference of Commissioners on Uniform State Laws] promulgated the Uniform Collaborative Law Act (UCLA). In four short years, 10 states, including New Jersey, Ohio and Maryland, have adopted some version of the UCLA. The votes in the legislatures that have adopted this new law have been nearly unanimous in every state. The PBA Collaborative Law Committee has been drafting a proposed Pennsylvania Collaborative Law Act, and you are likely to hear about the effort to bring this legislation to our commonwealth. It is not a replacement of what started in the year 1166, but it is an alternative for parties to use in achieving justice in a more civilized, peaceful, problem-solving fashion.
PBA Diversity Team
By Trent Hargrove, PBA Diversity Officer

The PBA Diversity Team is extremely excited and enthusiastic about several areas of focus and activity in 2015. The team is the result of efforts started under the direction of past PBA Presidents Clifford E. Haines and Gretchen A. Mundorff. In May 2010, a Diversity Task Force was formed to examine the structure of the PBA and provide recommendations for ways to promote, increase and maintain diversity in leadership positions and membership throughout the organization.

The task force, under the leadership of Co-Chairs Samuel T. Cooper III and current PBA President-Elect William H. Pugh V, submitted several recommendations, including the hiring of a PBA diversity officer and establishing a diversity team. These two recommendations were unanimously approved by the PBA Board of Governors on Nov. 17, 2010.

The diversity team works with me to develop and define diversity objectives that are a part of the PBA’s Diversity and Inclusion Strategic Plan and to harness resources and establish forums for enhancing communication among PBA groups with diversity initiatives. The diversity team is committed to working collaboratively with PBA leadership and staff and all PBA-related groups and entities to promote diversity in the PBA through its activities, including the election of officers, the Board of Governors and the House of Delegates; in the composition of committees, sections and task forces; and by participation in meetings, seminars, publications and other educational activities.

With the assistance of PBA section and committee chairs, the diversity team has already identified interested volunteers from each section and committee to serve as diversity team liaisons. These liaisons will assist the diversity team and me in sharing information and educational and outreach materials with PBA section and committee members.

Additional areas of focus include developing a process for selecting the recipient of and presenting a PBA award for outstanding leadership in diversity and inclusion related to membership, leadership initiatives and other diversity and inclusion efforts; interactively engaging the members of the various affinity bar associations; and developing and presenting a continuing legal education course on inclusive lawyering and inclusive practices for 21st century lawyers/leaders.

We are very interested in sharing what the diversity team is doing in 2015 and welcome any opportunity for diversity team participation in meetings, conference calls or events.

Judicial Administration Committee
By Centre County President Judge Thomas King Kistler, Chair

The courts of common pleas and all of those associated with the court, including judges, staff, sheriff’s deputies and lawyers associated with the various offices, are committed to providing constitutional protection and assurance of justice to all residents. We are equally committed to the wise use of limited resources to operate the court in the most efficient manner possible.

A huge cost of manpower, fuel and public safety is involved across the Commonwealth of Pennsylvania in the transportation and relocation of incarcerated prisoners to and from our courthouses for brief hearings or arguments. Only through the increased use of and devotion to videoconferencing and teleconferencing equipment can Pennsylvania hope to surmount this expanding cost.

The exploding rate of incarceration, which continues to be fueled by mandatory sentences imposed by our Legislature, expanding post-sentence filings and an increase in prisoner-filed civil litigation, has resulted in a dramatic increase in the number of occasions when prisoners have to “appear” in court.

In 2008, the AOPC [Administrative Office of the Pennsylvania Courts] began an initiative to install videoconferencing equipment in the trial courts of Pennsylvania. Approximately 500 videoconferencing units have been purchased and installed at an approximate cost of $4.2 million. As of March 2011, studies showed that Pennsylvania courts were conducting approximately 15,700 proceedings by videoconference each month, at a savings to the taxpayers of approximately $21 million annually.
A typical savings would be illustrated through this example: An inmate who is housed at SCI Albion near Erie would traditionally have to be transported to the Centre County Courthouse (204 miles away) by two deputy sheriffs. That would result in a three-hour trip to Albion, a three-hour trip back and the same round trip less than a week later after the hearing was over. The hearing may last five minutes or it may last an hour, but it could have been done by videoconference, preserving the prisoner’s rights to observe the legal process and to confront any witnesses, would have saved more than 816 miles of travel and dozens of hours of sheriff’s costs and would have resulted in a savings to Centre County of approximately $1,132. Not all savings are that dramatic, but in Centre County we have estimated that we save approximately $500, on average, with each use of videoconferencing equipment.

Moving forward, all of Pennsylvania will need to be committed to cost-cutting opportunities, including full use of the very successful videoconferencing technology.

Plain English Committee
By Jan Matthew Tamanini, Chair

The PBA Plain English Committee’s mission to spread the gospel of effective legal communications using plain language throughout the Pennsylvania bar is constant and ongoing. In 2014, our committee members published articles in several PBA committee and section publications on how to communicate effectively in plain language both within the legal community and with our clients. We also presented continuing legal education seminars at several bar meetings around the commonwealth on the benefits of using plain language in your practice.

One of the keys to a healthy legal practice is making sure you’re not being obtuse or ambiguous in communicating with others. The more understandable you make your-