In Memory of William H. Nast

Dedication
We dedicate this issue to the memory of William H. Nast Jr., who passed away on October 8, 2013. The following includes a number of tributes to and remembrances of Bill, which were graciously provided by several of his friends and colleagues, along with a biographical sketch of him. Together, we hope they offer a sense of his unique and unforgettable character to honor his life and many achievements.

Biographical Sketch
William H. Nast Jr. practiced law in Harrisburg and was a graduate of Dickinson College and the University of Michigan School of Law. From 1968 through 1991, he was employed as counsel to and, during 1990 and 1991, as director of the Joint State Government Commission, the Pennsylvania General Assembly’s bipartisan research agency. In those capacities, he drafted or assisted in developing numerous statutes, including the Commonwealth Attorneys Act; the Uniform Condominium Act; the Adoption Act; the Probate, Estate and Fiduciaries Code; the Eminent Domain Code; and the Commonwealth Procurement Code. He taught Legislation and Administrative Law courses and lectured to lawyers and others on legislative process and procedure. He served on the Pennsylvania Bar Association’s Bylaws, and Professionalism Committees and the Family Law; the Real Property, Probate and Trust Law; and the Administrative Law Sections. He was largely responsible for the existence of PBA’s Statutory Law Committee, and in that setting, and many others, advocated tirelessly for the codification of Pennsylvania’s statutory law. On the national level, he was also the co-reporter for the Uniform Law Commissioners project on the Uniform Statutory and Rule Construction Act. Locally, Bill was a long-time member of the James S. Bowman Inn of Court and the first government lawyer to be president of the Dauphin County Bar Association.

Tributes and Remembrances

Lawrence Feinberg
I had the privilege of serving under Bill for ten years at the Joint State Government Commission from 1981 until his retirement from the commission in 1991. About a year before his retirement, Bill remarked, “Death is not that big a deal when you have done everything you want to do and have seen everything you want to see.” Bill wanted to, and did, do a lot and see a lot, and his drive to do and see more, with his beloved wife Lucille, no doubt helped keep him alive for many years while fighting severe illnesses.

As counsel to the Joint State Government Commission, he was called upon to give objective advice on a wide variety of matters. He took his responsibility to be objective very seriously. He would often remind us that nobody had elected him or us. Yet Bill was not a “neutral point
At times, statutes require maintenance. To some extent, the maintenance is similar to tidying a residence. It is usually not the most convenient task, but when finished, there is a difference that suggests improvement in the neated space. At the statehouse, statutory maintenance occurs regularly with the ongoing consolidation effort, and the 2013–2014 legislative session was no exception.

The most significant example of this effort came in the area of boroughs and incorporated towns. It was the product of a two-step process that began with Act 43 of 2012. This act saw the repeal of 11 other laws relating to boroughs and incorporated towns. Like many other consolidations, the substance of the statutes was relocated to a single statutory place alongside other provisions with the same subject matter. In this instance, the General Assembly transferred the repealed provisions into the then unconsolidated Borough Code. As a result, a person researching this area of law can now find the bulk of its statutes without consulting a dozen separate laws.

The General Assembly consolidated statutes in a number of areas in its current session. In doing so, the legislature afforded the citizens, lawyers and judges of this commonwealth, along with many others, greater efficiency in using the reorganized legal provisions.

The second phase of the borough consolidation took place when the General Assembly passed House Bill 1719 that was approved by Governor Corbett earlier this year. The act repealed the Borough Code while adding nearly all of its substance to Title 8 of the Consolidated Statutes. In drafting the bill, subsection headings were added to the legislation. These headings often make a difference in pinpointing a specific provision within a section by giving the reader a sense of a subsection's contents. This may conserve time in researching a statute with lengthy sections like the former Borough Code.

Three other significant statutory consolidations took place in the current session. The first was in House Bill 1128 that codified the provisions of the Motor Vehicle Sales Finance Act and the Goods and Services Installment Sales Act into Title 12. During the consolidation process, the legislature simplified some provisions to a certain degree. For example, antiquated terms like “thereunder” and “hereinafter” were removed to enhance readability with an eye towards making the revised provisions easier to grasp.

The second addressed laws dealing with declarations and notaries public. Statutes on these subjects were consolidated in Act 73 of 2013. The act repealed nine different statutes along with a provision of the Administrative Code. These provisions were replaced with a chapter for each subject in two consolidated titles. Compared to the repealed material, the contents of the new chapters may be discovered more easily since the titles of the Consolidated Statutes each contain an index with references to relevant sections of law by topic.

The last was seen in the area of nonprofit corporations with the passage of Senate Bill 304. This enactment completed the codification of the Nonprofit Corporation Law into the Business Corporation Law that began with the enactment of the Business Corporation Law in 1988. The legislative branch also took this opportunity to give the laws more internal consistency, which may help ascertain its intent when interpreting either statute.

In short, the General Assembly consolidated statutes in a number of areas in its current session. In doing so, the legislature afforded the citizens, lawyers and judges of this commonwealth, along with many others, greater efficiency in using the reorganized legal provisions. This is not only a tangible benefit to those who are impacted by the statutes but also an improvement to this commonwealth’s body of statutory law. Both prospects make the maintenance performed by the General Assembly worth the effort.

John Lavelle is a drafting attorney with the Legislative Reference Bureau.

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1 For a list of the substantive changes that were not part of the continuation of the repealed Borough Code in 8 Pa.C.S. Pt. I, see section 4(3) of House Bill 1719 (2013).
3 The act of December 21, 1988 (P.L.1444, No.177).
serious mental illness, usually defined as schizophrenia, major depression, bipolar disorder, obsessive compulsive disorder, panic disorder, post-traumatic stress disorder and borderline personality disorder, affects between four and five percent of the American population. While treatment modalities have improved greatly in the past 100 years, many individuals with mental illness still struggle to find needed services, frequently resulting in their incarceration in county jails and state prisons.

In recognition of these continuing struggles within the mental health and criminal justice communities, 2013 House Resolution No. 226 directs the staff of the Joint State Government Commission to conduct a study "of all aspects of Pennsylvania's mental health system and report back with specific recommendations for amendment and improvement, particularly as to how criminal defendants with mental illness are addressed by established procedures, policies and programs." The results of this study were published in May 2014 in a report entitled "Mental Health Services and the Criminal Justice System in Pennsylvania."

By the 1940s and 50s, Pennsylvania had almost 20 state mental hospitals. Most of these institutions were built in the period 1870-1920, with the last new hospital built at Haverford in Delaware County in 1964. Originally intended to provide quiet living in rural settings, many institutions had farms and workshops that provided an early form of vocational therapy. However, problems developed with overcrowding, frequently transforming asylums as places of refuge into warehouses, where mentally disturbed people were locked away and forgotten. The forced labor assignments at farms and in workshops without financial compensation became viewed as a form of peonage. Forced medical treatment and excessive use of restraints were challenged as violations of patient civil rights. The development of psychotropic drugs in the 1950s helped promote and encourage the idea that with appropriate medication, many persons with mental illness could function in the community. Personal liberty could be restored to all but those with particularly intractable mental disorders. Since the early 1980s, the Commonwealth has closed or transferred to other usage all but six of its state mental hospitals.

Deinstitutionalization of persons with mental illness did not and does not cure mental illness. Persons continue to need a variety of psychiatric and psychological supportive services and frequently need assistance in finding housing and employment. Psychotropic drugs only work if they are taken as prescribed. And while they can allow an individual to function "normally," they are not a panacea and are usually accompanied by side effects that are far from benign. As with non-psychotropic medications, some people stop taking medication as soon as they start to feel better. In physical medicine, such behavior has contributed to the rise of antibiotic-resistant bacteria. In mental health, this can lead to the recurrence of symptoms, psychological deterioration and ultimately re-institutionalization. Additionally, families of persons with mental illness need advice and support.

Younger persons with serious mental illness, born since the deinstitutionalization movement began and who were not subject to institutionalization in state mental hospitals, rely heavily on community mental health resources. When there are insufficient resources and a person with serious mental illness begins to experience active symptoms, their lack of treatment frequently results in interaction with the criminal justice system. Many people who might have received treat-
Treatment of Mentally Ill Persons in the Criminal Justice System

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ment in a state mental institution 70 years ago find themselves in a county jail or state prison, where the state and local corrections systems are expected to provide treatment for them — a role for which they were not designed. It is particularly ironic that three former state mental hospitals, Lawrence Frick, Retreat and Somerset, were closed and then reopened as State Correctional Institution (SCI) Cresson, SCI Retreat and SCI Laurel Highlands, respectively.

A recent study found that in 2004-2005, there were three times as many persons with serious mental illness in jails and prisons than in hospitals in the United States. The study found Pennsylvania to have two persons with mental illness in prison for every one person in a psychiatric hospital or unit. In many ways, jails have become the new state mental institutions. This is not a phenomena restricted to Pennsylvania: “Today, our largest mental hospitals are our jails. The jail at New York City’s Rikers Island functions as the nation’s largest psychiatric facility. Los Angeles jails — not its hospitals — are California’s largest providers of mental health care.” The City of New York Department of Correction recently revealed that the proportion of inmates at Rikers Island with a diagnosed mental illness has grown from 20 percent to 40 percent over the past eight years.²

The principal directive of the Pennsylvania Department of Corrections (DOC) is corrections. Treatment of mental illness among inmates is one of several ancillary services DOC must provide for the welfare of its inmates. Serious problems developed at SCI Cresson regarding the treatment of prisoners with mental illness, leading to a statewide U.S. Department of Justice investigation into allegations of violations of the Americans with Disabilities Act and the civil rights of prisoners, in particular their 8th amendment protection from cruel and unusual punishment. SCI Cresson is shuttered once again, and DOC has begun a massive overhaul of its internal mental health system and will require an additional $10 million in mental health staffing expenditures alone.³

As the Pennsylvania Department of Public Welfare slowly decreases the populations of its state mental hospitals, with the goal of institutionalizing only those persons with serious mental illness who cannot safely function in the community, DOC is requesting more and more budget increases to fund a mental health system within its facilities, a role it was never intended to fulfill. Community mental health services, the system best equipped and designed to assist the greatest number of persons with mental illness in the community, continues to experience financial difficulties.

Nationwide, state mental health budgets have been declining. Despite Pennsylvania’s ranking as second in per capita expenditures for mental health services nationwide, counties, after several years of streamlining programs and attempting to improve efficiencies, have begun to reduce program and service capacity at the local level and to eliminate programs and services due to insufficient funding.

Community mental health services are considerably less expensive than supporting persons with mental illness in state hospitals or correctional institutions.

Community mental health services are considerably less expensive than supporting persons with mental illness in state hospitals or correctional institutions. The cost savings to the state mental institutions and the corrections system can then be used to help maintain and finance those county programs.

The report and the accompanying proposed recommendations support the following conclusion: the most cost-efficient and humane way to avoid the institutionalization of persons with mental illness, whether in a state or private mental institution, county jail, or state prison, is to support a robust system of community mental health services, with an emphasis on intercepting and diverting persons with serious mental illness before they become involved in the criminal justice system. While the report acknowledges that there are some people whose illness is so intractable that involuntary commitment and treatment are necessary, and that there are others who are criminals who happen to have mental health issues, the vast majority of people suffering from mental illness function better and are capable of contributing to society if they are supported in the community.

Yvonne Llewellyn Hursh is an assistant counsel with the Joint State Government Commission, the central research agency of the Pennsylvania General Assembly.

1 Amanda Pustilnik, quoted by Allen Francis, M.D., “Prison or Treatment For the Mentally Ill,” Psychology Today, March 10, 2013.
Joint State Releases Report on Administrative Law

By Lawrence G. Feinberg

On July 28, 2014, the Joint State Government Commission presented a report to the General Assembly entitled “Reforming the Administrative Law of Pennsylvania.” The report was prepared in response to 2011 House Resolution 247, which directed the Commission “to study and make recommendations to the General Assembly on the practice of administrative law before the commonwealth’s hearing boards.”

The report recommends the adoption of a revision of the Model State Administrative Procedure Act (MSAPA) by the Uniform Law Commission. The revision proposes to establish a central hearing panel, known as the Office of Administrative Hearings, that would conduct the due process hearings and render the decisions for all Pennsylvania administrative agencies.

The current statutory law relating to administrative adjudications is the Administrative Agency Law, a bare bones enactment of 32 sections that is clearly inadequate to the requirements of our populous and industrialized commonwealth. Sixteen of those sections deal with interpreters for the deaf or hearing impaired. Most of the remaining sections are brief and uninformative. A complete revision of the commonwealth’s statutory law relating to this topic is therefore clearly necessary.

The Commission approached this task by assembling a volunteer working group comprised of experts on administrative law and statutory drafting. The members of that group included Judge P. Kevin Brobson of the Commonwealth Court, Linda Barrett of the Office of General Counsel, Jack Krill, Vince Deliberato of the Legislative Reference Bureau, Dean John Gedid of Widener University School of Law, and Ray Pepe. The working group devoted the bulk of its effort toward a line-by-line redrafting of the Model Act into the proposed Administrative Procedure Act (APA).

The proposed APA is intended to do two things. The first is to set forth comprehensively and in adequate detail rules for agency due process adjudications that will promote fair and efficient handling of cases. These rules govern such matters as notice of agency actions and the right to be heard, the conduct of the hearing, presentation of evidence, creation of the record, and appeal within the agency and, upon the final agency decision, to Commonwealth Court. The APA ensures that the employees within the agency who prosecute a case are not the same as those who decide the result, and that, with carefully crafted exceptions, all parties have an opportunity to be heard at all discussions with adjudicators relating to the case.

The second and most important feature of the proposed APA is the establishment of an independent central hearing panel that would conduct the hearings and render decisions in administrative cases, taking the place of the adjudicatory bodies within the respective agencies. This step is consistent with the aim of assuring both actual fairness and the appearance of fairness. In other words, when employees of an agency decide the outcome of an administrative case, there is at least the appearance of unfairness because the agency acts as judge in its own case. Even where the agency scrupulously maintains the separation of prosecutorial and adjudicative roles, it is likely that the in-house adjudicator will feel pressure to rule for the agency. If instead the case is decided by an administrative law judge that is independent of any agency, the result will appear to be fairer and will likely be fairer in reality. For these reasons, 28 of our sister states have established central hearing panels. No state that has adopted a central hearing panel has reverted to an agency specific system.

The statute establishes the Office of Administrative Hearings under the management of a Chief Administrative Law Judge (ALJ) and gives him or her the power to hire subordinate ALJs and other staff; it further provides the qualifications, powers and duties of ALJs.

The report includes a discussion of a controversial issue that emerged in the drafting of the MSAPA, namely, whether the head of the agency involved or the ALJ should have the final decision making authority within the agency. The legislation proposed in the report follows the Model Act by placing that authority with the agency head in order that the agency will retain full control of — and accountability for — its own policy.

This Joint State Government Commission report may assist the General Assembly in addressing needed reforms to administrative procedure in Pennsylvania.

Lawrence G. Feinberg is a senior attorney with the Joint State Government Commission, the central research agency of the Pennsylvania General Assembly. He is a former chair of the Statutory Law Committee.
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William H. Nast Tributes

of view” kind of guy. He was a man of passion and intellect, and on proper occasions, he did not hesitate to let his opinion be known.

He had a deep commitment to the craft of statutory drafting. At one PBA meeting, a feminist group gave a set of reform proposals. Bill was emphatically not a feminist. Yet he offered to help them draft their proposals in the correct style and form because no matter what he felt about the merits, the form had to be right.

Bill was passionate about the legal profession, and he insisted that those working under him join and be active in the local and state bar. He left behind two continuing markers testifying to that devotion: the James S. Bowman Inns of Court and this Statutory Law Committee.

Along with his passions and interests, I will miss his learning, intellect, courtesy and wit, and that unique something that made him a memorable character.

Lawrence G. Feinberg is a senior attorney with the Joint State Government Commission, the central research agency of the Pennsylvania General Assembly. He is a former chair of this Statutory Law Committee.

Judge Keith B. Quigley

Thank you for the opportunity of contributing my brief tribute and remembrance to Bill and sharing it with Bill’s circle of friends.

Bill Nast could speak with us grunts in the trial trenches of Common Pleas. He was equally at home in the world of scholarly writing, drafting cutting edge legislation and contributing to the betterment of the profession.

He was an inspiration to me, a joy to spend time with, especially in the company of respected others whose views on matters frequently differed from his own.

In short, Bill was a practical lawyer, a scholar and, above all, always a true gentleman. He was my good friend. I miss him and always will.

Judge Keith B. Quigley is a visiting Senior Judge of the Commonwealth Court of Pennsylvania. He is formerly District Attorney of Perry County and President Judge of the Common Pleas Court of Perry and Juniata counties.

Diana L. Sacks

Mr. Nast was a gentleman and a scholar — a man with old-world manners but who was also outspoken in his convictions and beliefs. There were people who did not understand him and that was their loss. His true friends who respected him and enjoyed his company stayed with him for years. And, toward the end, he acknowledged their friendship and loyalty.

I met Mr. Nast in 1985 (and I always referred to him as Mr. Nast) as a recent older graduate of law school. He was gracious enough to allow me to join the staff of the Joint State Government Commission and also encouraged me to take the bar exam. He supported my admission to the Pennsylvania Bar, and his name appears on the Supreme Court of Pennsylvania certificate that hangs on my wall.

Mr. Nast was always interested in the four attorneys who worked for him and encouraged us to attend statutory law seminars in other states in order to improve our knowledge. In addition to the scholarly aspect, he also liked to take us to social events, which included trips to Gettysburg, ice hockey games and meals at different restaurants. Mr. Nast’s many other interests included a half-ownership of a Harrisburg restaurant; he really enjoyed fine dining. He also liked to travel, and one regret expressed before he passed away was that he had not been able to visit “those damned pyramids” in Egypt.

If he had not been so gravely ill at the time, I think he might have been able to summon the will and energy to do so.

When Mr. Nast retired from the Joint State Government Commission, I lost touch with him, seeing him only occasionally at Pennsylvania Bar Association functions. Although ill, he continued to be involved in statutory law, which was his passion. I met up with him last spring and he wanted to re-visit some of his favorite restaurants and invited me to accompany him. We had long conversations about many things and I learned a lot about Mr. Nast. I wish he had had more time, and I, and others, will sorely miss him.

Diana L. Sacks is an attorney in Harrisburg, Pennsylvania.

Mary (Maisie) Benefield Seiverling

My first introduction to Bill Nast was as a professor at Dickinson School of Law for the class in Legislation under Judge Woodside. What an eye opener! I learned about the real life processes in Pennsylvania, something I never learned as a political science major at Penn State.

A few years later, Bill and I each contributed a chapter to Judge Woodside’s treatise on the Pennsylvania Constitution.

When I joined Roy Zimmerman’s Attorney General’s Office, I needed to become intimately familiar with the Commonwealth Attorneys Act (CAA). The report of the Joint State Government Commission was the most valuable asset I found to further my knowledge of the CAA. Copies of the “Nast” report are still cherished by those litigating the CAA.

My friendship with Bill ripened over our years together on the PBA Statutory Law Committee. His fervor for codification inspired me.

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Bill never forgot his Bloomsburg High School ('52) roots and was always ready to share his time and intellect with those with links to Bloomsburg, the only incorporated town in Pennsylvania.

His kindness, generosity and spirit are missed.

Maisie Benefield Seiverling is an attorney in Hershey, Pennsylvania. She graduated from Bloomsburg High School in 1968.

Bill Nast’s particular interest, one that he pursued throughout his life, was training and mentoring young lawyers. As counsel to and director of the Joint State Government Commission, he took particular care not only to train young law staffers in legislative drafting and research, but also to analyze Pennsylvania and U.S. Supreme Court cases with them. He was instrumental in founding the Bowman Inn of Court, the purpose of which is mentoring young lawyers in government law. He always made himself available to discuss a problem with fellow lawyers, young and old, even as his health was failing.

William H. Nast Jr. gave unstintingly of his legal talent in pro bono activities throughout his legal career. He represented numerous indigent criminal defendants. It is some measure of his commitment to representation in our legal system that at one point he participated in an eight-week-long criminal trial involving a riot at the Lewisburg Penitentiary.

Bill Nast was accomplished in areas other than the law. As a law clerk for Judge Woodside on the Superior Court, he travelled to Pittsburgh and roomed near to the Carnegie Museum. During frequent visits to the museum, he was captivated by Impressionist and Cubist art. For the rest of his life he studied, enjoyed and collected modern art. Bill was an excellent chess player who competed regularly in a chess club; he also participated in the state chess finals on at least one occasion. He was a gourmet who brought French food to Harrisburg as a partner in the excellent French restaurant, Au Jour Le Jour. He and his wife, Lucille, went so far as to take a “Three-Star French Restaurant” tour in France, where they ate supper at a different three-star restaurant every evening.

With the passing of William H. Nast Jr., we have lost a friend and mentor to the legal and the larger community. He was learned and freely shared his expertise and knowledge about legal and other matters. His contributions have been exceptional. We are all better for having known and loved Bill Nast. We will miss him.

John L. Gedid is a Professor Emeritus of Law and the Founder and former Director of the Law and Government Institute at Widener University School of Law’s Harrisburg campus, where he previously served as Vice Dean. He is a former chair of the Statutory Law Committee.