

AT ISSUE

A PUBLICATION BY AND FOR THE YOUNG LAWYERS DIVISION
OF THE PENNSYLVANIA BAR ASSOCIATION

AVOIDING THE 'SMILE AND NOD'

MAKING LEGAL TERMS OF ART MORE ACCESSIBLE TO YOUR CLIENTS

By Elizabeth A. Bokermann

As lawyers, we spend significant time and resources obtaining our legal educations. We learn both the theory and the mechanics of law, and we are introduced to the terms of art that become part of our everyday language. Once in practice, we frequently use these terms of art without thinking twice. We often only realize the breadth of our knowledge when non-lawyer friends or family point out that the "common" words we use are more like a foreign language to them. It certainly is easy to forget how much we actually learned.

The problem with forgetting is that the distinct possibility exists that we will unknowingly alienate our non-lawyer clients. How many times have you looked across the desk at your client and known that you were getting a "smile and nod?" I am sure that it happens to all of us. I am not suggesting that we dumb down our explanations, because that is insulting to both our clients and the hard work that we do on their behalf. On the other hand, I propose that it would be worth it for all of us to examine our practices to determine which terms and phrases we should be ready to explain.

For example, in my practice of family law, I know that my clients understand the term "Complaint." Believe me, they have plenty of complaints about their soon to be ex-spouse. On the other hand, they



often do not understand that terms like "irreconcilable differences" have specific legal meanings. They do not understand that they cannot simply change the legal phrasing because they think that their spouse may be irritated or upset by the use of particular words or phrases.

Similarly, my clients do not, at least initially, understand what words like "pleadings" mean. For most of my clients, their divorce is their first experience with lawyers and litigation. To many of them, "pleading" is something that you do when you are late for an appointment and you need a traffic cop to understand that you thought that the speed limit was 60 mph, not 45 mph. Although all clients eventually understand that when you say "pleading" you basically mean a document that is filed with the court, a preliminary explanation of the term to the client is helpful

and makes the process of litigation less intimidating and overwhelming for the client. Likewise, words like "motion," "serve," "discovery," "contempt" and "process" all have common meanings that are not necessarily comparable to their legal meanings.

More complex terms like "jurisdiction," "venue" and "statute of limitations" may be familiar to clients from their favorite John Grisham novel or an episode of "Law and Order," but clients may have very little understanding of what the terms mean in the legal world. Significantly, these legal terms denote concepts that can make the difference between having and not having a strong case; therefore, understanding a term's impact carries a great deal of importance.

As attorneys, we often must be jacks-of-all-trades. Obviously, we have a duty to zealously and competently represent our clients. This is a role that most of us take seriously. Each day we work to better ourselves professionally and to serve our clients to the best of our abilities.

I also believe that we must work diligently to educate our clients throughout the process. Surely, we can all remember the days of sitting through law school lectures with *Black's Law Dictionary* by our sides. Likewise, we should be a living, breathing dictionary of sorts

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for our clients. By this I do not mean to suggest that we should become insufferable know-it-alls, because, at the end of the day, we do want our clients to like and respect us. Moreover, we want our clients to become good referral sources.

Instead, I suggest that you think about your favorite and least favorite doctors. Certainly experience, intelligence, compatibility and personality are all factors that we consider when assessing our doctors. More than likely, our favorite doctors are also the best at explaining those often scary medical words (that all too often are Latin and end in *-itis*). I would also bet that even if these favorite doctors gloss over words that we do not know, they are individuals that have made us comfortable with asking them questions without fear of feeling inadequate or, worse yet, stupid.

With that, I offer the following suggestions when speaking with your clients:

- Take a few minutes to come up with a list of terms or phrases that arise in your practice frequently, but might be unfamiliar to your clients. Then, develop clear, and even imaginative, ways to explain those words so that you are not caught on the spot trying to create a simplified explanation of a difficult legal concept.
- Start the beginning of each conversation by reminding the client to stop you with questions. It is important to remind even long-time clients, especially when you are entering new legal territory.
- Use your favorite legal words exactly the way they taught you in law school, then pause to explain what the term means. As a basic example, "The first step is to file a Complaint in Divorce. The Complaint is a formal document filed with the court that states your cause of action, in other words,

the reason that you want to go to court. This document often contains specific legal language that must be used."

- Do not insult your client's knowledge. For example, the explanation above would perhaps be appropriate for a client that has never stepped near a courtroom, but perhaps inappropriate for your CEO client that has appeared for multiple depositions.
- Pay attention to your client while you speak. Clients often will make verbal or audible clues indicating that they do not fully understand what you are saying, yet, they never ask their question because they are embarrassed or reluctant. Noticing these clues and acting on them demonstrates to our clients that we care about them and are observant. Many times your clients will not even realize that they had a question until you ask them.

Taking a few moments to implement these strategies within our practices provides benefits to our clients by making legal terms of art more accessible, establishing a good rapport with the client and strengthening the attorney-client relationship. ■



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AT ISSUE

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6 TENETS EVERY YOUNG LITIGATOR SHOULD LIVE BY

By Paul F. Recupero

1. Be Prepared

The old Boy Scout motto holds true. While most young attorneys spend countless hours meticulously organizing the substantive nuts and bolts of their case, they often overlook similarly important procedural details. Review the proposed jury instructions, voir dire questions and verdict sheet you submit to the court prior to trial. On numerous occasions, I have come across submitted instructions that were no longer the law (i.e. substantial factor) and verdict sheets that omitted key issues (such as a defendant's verdict sheet that left out its argument of comparative negligence). While a judge normally won't bind an attorney to what was submitted, sloppiness in this context suggests that the lawyer lacks interest and knowledge in his or her case and certainly makes a poor impression before the court.

Typically, motions in limine are not argued until time of trial. However, if you're the respondent and time permits, promptly file a brief in opposition. Believe it or not, judges and/or their law clerks do read these motions ahead of time. But a judge has little to no opportunity to review a well-crafted responsive brief submitted on the day of trial, when a ruling on the motion must be made immediately.

Small measures like pre-marking exhibit binders, with copies available to the judge and the opposing side, allow the trial to run more smoothly and are appreciated by the court. If you're unsure of a judge's procedure with regard to (for example) how voir dire is conducted, don't hesitate to call chambers. Settling these minor questions in advance will alleviate unnecessary anxiety.

2. Cooperation is Your Friend

Because litigation is by its nature antagonistic, it's common



for an attorney who is zealously representing his or her client to bring hostility into the courtroom. Judges, however, have no patience for lawyers who exhibit a lack of courtroom decorum. Speaking objections in front of the jury generally are frowned upon; call a sidebar if necessary.

Collaboration saves time and stress. If you're only disputing causation, then formally stipulate to negligence. The same goes for smaller matters, such as an agreement as to the amount of medical bills the plaintiff incurred. Eliminating such distractions will allow you to concentrate your case strategy on the issues that count.

In an episode of "The Simpsons," attorney Lionel Hutz unveiled his "foolproof" strategy for representing Homer: "Surprise witnesses! Each one more surprising than the last. The judge won't know what hit him!" Unfortunately, it didn't work for Mr. Hutz, and it won't work for you. Provide the court and the opposing side with a list of your witnesses and the order you plan to call them. It's a professional courtesy, and it aids the court in grasping the scope of the trial.

3. Keep It Short and Sweet

Probably the most common strategic misstep I've observed by litigators is the propensity to examine a witness *ad nauseum*. Make your questions count. Frame your direct to allow your witness to tell your client's story. Highlight the important issues and move on. If something needs clarification after cross, briefly re-direct. Trampling over the same ground, especially simple matters, aggravates juries; they get it already. For adverse witnesses, take whatever victories you can get on cross and continue. Fruitlessly engaging in repeated attempts to lure a witness into a trap that he or she won't walk into makes you look discombobulated.

The same goes for opening and closing arguments. Remember, your job is to present your client's story, so keep it easy to follow. A concise and polished case carries greater weight than one that's lengthy and repetitive. Less is more.

4. Focus on the Facts, Not the Law

Throughout the trial, the judge frequently will instruct the jury

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The PBA Young Lawyers Division Takes It Back to the '80s

2011 Summer Meeting and New Admittee Conference Recap

It was a trip back in time to the 1980s – the decade of pastel polo shirts, gummy bracelets, spandex, lace and neon, and the DeLorean and flux capacitor – at the Pennsylvania Bar Association Young Lawyer Division's 2011 Summer Meeting and New Admittee Conference. This year's conference was held on July 28-30, 2011, at the beautiful Rocky Gap Lodge & Golf Resort, located in Maryland's Rocky Gap State Park in Cumberland, Md. The resort overlooks Lake Habeeb and offers a wide range of activities, including: a Jack Nicklaus signature golf course; indoor and outdoor pools; hiking,

biking and horse riding trails; canoeing and other lake activities; and two on-site restaurants.

The conference, with the theme "*The Future's So Bright, I Gotta Wear Shades*": *How To Increase Your Value Without Increasing Your Hours*, was attended by more than 200 lawyers and their guests and offered young lawyers many opportunities for learning how to make the most out of their legal practice without sacrificing life away from the office. As in years past, the conference started with the YLD Business Meeting during which the YLD Executive Council shared with the young lawyers in attendance

the benefits of being active in the YLD and the PBA. YLD Chair Hope Guy laid out many of her plans for an exciting bar year, and the zone chairs reported on recent caravan events and those planned for later in the year. The conference then turned to kicking off the outstanding CLE offerings aimed at providing young lawyers with the skills they need to succeed in their careers. The CLE offerings for the conference included sessions on social networking and legal ethics, courtroom tips from the judiciary, going green with sustainable practices for the legal office, e-discovery, using InCite (the free online legal research program available to all PBA members) and maximizing a law practice while still enjoying a quality life outside of the office.

The conference also offered "totally wicked" networking and entertainment. Thursday evening's reception and dinner started with a speed networking event that led into a delicious dinner with remarks from Guy and PBA President Matthew J. Creme Jr. and an entertaining presentation from Duquesne University School of Law Professor Mark D. Yochum on pro bono publico service and the lawyer's oath. Following the dinner, conference attendees danced to hits from the '80s and later wrapped up the evening in the hospitality suite. Friday's daytime entertainment included a lunch with remarks from PBA Immediate Past President Gretchen A. Mundorff on dining etiquette to improve a lawyer's ability to impress partners and clients, a golf outing as well as free time to enjoy all the amenities the Rocky Gap Resort had to offer. Friday evening's dinner included remarks from PBA YLD Chair-Elect



July 28-30, 2011

At the Summer Meeting and New Admittee Conference include: (At left) Guerline L. Laurore and Lisa M. Watson strike a pose; (Bottom, from left) Duquesne University School of Law Professor Mark D. Yochum addresses the group; and YLD Chair Hope Guy pays tribute to the weekend's '80s theme.



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**More scenes from the
2011 Summer Meeting and
New Admittee Conference**



Members of the PBA YLD New Admittee class, with PBA President Matt Creme (back row, fifth from left) and YLD Chair Hope Guy (front row, third from left).



PBA Immediate Past President Gretchen A. Mundorff gives an etiquette presentation.



YLD members (from left) Thad Gelsing; Jacob A. Gurwitz and his wife, Jenn (a PBA non-member); Lars Anderson and Robert Datorre.



Attending are: (from left) Aaron Riesmeyer, husband of YLD member Megan Riesmeyer; YLD members Jeff Lawrence, Tyler Hannah and Christopher Reibsome; Sameera Firkel, wife of YLD member Eric Firkel; and YLD members Eric Firkel and Greg Neugebauer.



Robert Datorre (from left), Guerline L. Laureore and Charles Eppolito III during a CLE titled, "Manic Monday – Achieving Success in Your Career without Sacrificing the Rest of Your Life."



Speed networking event



Kevin Skjoldal, Pennsylvania Supreme Court Justice J. Michael Eakin and Roy Galloway.

IF YOU DON'T KNOW ME BY NOW...

By Susan E. Etter, PBA Education and Special Projects Coordinator

We recently returned from two fabulous and productive days at the YLD Summer Meeting at Rocky Gap, Cumberland, Md. Still caught in the trip down memory lane generated by the "Back to the '80s" theme selected by YLD Chair Hope Guy, we wanted to introduce you to the PBA Bar Leadership Institute Class of 2011-2012. So "If You Don't Me by Now," we hope you will get to know each of us over the coming year, and we are looking forward to getting to know each of you. If you couldn't make it to this year's summer meeting, we hope you will attend future YLD and PBA events, and mark your calendars now for next year's summer meeting!

Just a few thoughts from some of us...



I had a fantastic time attending the Summer YLD meeting at Rocky Gap. Not only did I get to meet up with some individuals I've worked with in the past, I've already contacted someone I met at the conference for advice on a case outside my area of expertise. – Lou Kroeck

I had a great time at the Summer YLD meeting and made a few connections, which I hope will last for years to come. As a member of BLI, I feel as if we are fortunate to have three wonderful cheerleaders, Mary, Paul and Susan to encourage us and guide us through our professional development and force us to step out of our comfort zone and step up to leadership opportunities. – Samara Gomez

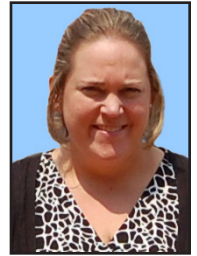


I have been attending the YLD meetings for the last several years, but being a member of BLI allowed me to not only get an inside look at how the PBA works but also allowed me to meet many officers and leaders of the PBA. I strongly encourage all young lawyers to sign up for next year's YLD Summer Meeting, and consider applying for the 2012 BLI class. You will not regret the time you spend at PBA events! – Missy Leininger

The summer meeting was a great experience. It was a time to meet and network with young lawyers across the state and gave all of us who attended an excellent opportunity to be introduced to what the YLD has to offer. – Lars Anderson



I was already able to follow up with one of the contacts I made at the meeting about local procedure and the judge on an out-of-county case on which I am working. – Jill Kelly McComsey



Attending the Summer YLD meeting was a great experience as it allowed me to meet young lawyers from throughout the state, and make contacts and friendships that will remain for a lifetime. – Gerald Shoemaker

It is encouraging to see a group of committed young lawyers interested in learning about the organized bar and intent on making an impact in bar association activities with their ideas and their enthusiasm. – David E. Schwager, BLI mentor, Zone 5 Governor

What is the Bar Leadership Institute?

The Bar Leadership Institute is designed to provide emerging leaders, representing a broad cross-section of the diversity of the PBA membership, with an opportunity to learn about the PBA while actively participating in key meetings. Participation in the Bar Leadership Institute provides numerous opportunities to network with PBA members and leadership and helps build lasting relationships that will serve as an invaluable resource for future success.

The Bar Leadership Institute looks to the future of the organization by developing well-informed, committed leaders who will serve the PBA for many years to come. It familiarizes participants with the day-to-day operation of the association, provides a foundation on governance and policy issues and introduces the participants to PBA staff and resources.

How does it work?

The Bar Leadership Institute engages future PBA leaders in the governance structure by requiring attendance at three key yearly meetings (the YLD Summer Meeting, the November Board of Governors, Committee/Section Day and House of Delegates meetings, and the Conference of County Bar Leaders (CCBL) in February). The costs of attending these three required meetings (rooms, meals provided at the events and registration fees) will be paid by the Pennsylvania Bar Association. Participation in other important meetings and events throughout the year (like the Day on the Hill, statewide mock trial championships, committee/section meetings

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and the Annual Meeting) are also encouraged.

An orientation process introduces BLI participants to an overview of the PBA and the various leadership opportunities that exist within the organization, and each BLI participant is paired with an experienced and committed mentor who is a member of the Board of Governors. Active and engaged participation in the Bar Leadership Institute also provides opportunities for professional development and learning. Participants can earn CLE credits and interact with colleagues who practice law in their areas of interest.

Announcement of the Bar Leadership Institute was shared through the YLD and numerous other PBA leadership groups, county bar associations, the PBA website and the PBA E-News. Candidates had to demonstrate leadership ability, commit to attendance and participation in the required events, be currently licensed to practice law in Pennsylvania, be a member of the PBA, and be age 38 years or younger or have practiced five years or less.

The 2011-2012 class size was limited to 11 lawyers. According to BLI Co-Chair Mary Schellhammer, 39 applications were received. "We were fortunate again this year to have an outstanding group of candidates for the PBA's Bar Leadership Institute," shared Schellhammer. "As difficult as it is to select from so many wonderful candidates, it renews my pride in our profession to read all the accomplishments of these young attorneys. They are very involved not only in the PBA but in their own local communities, while at the same time working to be to be some of the best and brightest attorneys in their areas of practice. Many are actively involved with committees and sections, have already served as faculty for continuing legal education courses and are taking on leadership roles in their local communities. But perhaps one of the most striking qualities I am noticing is the commitment of these busy, young attorneys, who are working to establish themselves and often have young families but still are totally committed to providing pro bono services."

Paul Troy, who also has served as the co-chair of the BLI program last year and again this year, shared how



BLI Co-Chairs Paul Troy (left) and Mary Schellhammer.

pleased he was to see such a diverse group of applicants: "The more inclusive we can be, the better and stronger our profession will be. We have a great group of young lawyers again this year and I am looking forward to watching them get involved. Last year's BLI class was a huge success with many members taking on leadership roles and building relationships that will last throughout their careers. I expect no less from this year's class."

How can I learn more?

Information about the Bar Leadership Institute and resources for anyone interested in learning more about the PBA is available on the PBA website at www.pabar.org/BLI.asp or you may contact Susan Etter, PBA education and special projects coordinator phone 800-932-0311, ext. 2256, or email susan.etter@pabar.org. ■



Pictured are (from left) Paul Troy, BLI co-chair and PBI president; Roy Galloway, BLI class member; and Frank O'Connor, PBA Board of Governor Alumni and Zone 5 delegate to the PBA House of Delegates.



"Girls Just Want to Have Fun": Pictured here sporting the '80s theme of this year's YLD Summer meeting are (from left) Alison Wasserman, BLI class member and YLD Zone 2 chair; Sarah Barnwell, YLD new admittee from Zone 1; and Missy Leininger, BLI class member and YLD representative to the PBA Nominating Committee.

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members that they are the sole fact finders and should follow only the court's instructions on the law. Therefore, it is wasteful for you to attempt to teach legal concepts during your closing. Instead, highlight the facts you presented at trial in a chronological fashion that best relates your client's position.

Attorneys often lose sight of the notion that the law is based on common sense principles. More often than not, jurors follow their gut. Although they may groan when summoned to the courthouse, once selected, most jurors strive to come to the "right" decision. Use your arguments to explain to them why your client's stance is the only one that makes logical sense.

5. Don't Attack the Victim

If you are defense counsel, resist the urge to belittle the victim during cross and in your arguments. It seldom works to your advantage and usually paints you as a bully. Juries view lawyers and judges as part of a complex, unfamiliar system. But they see victims as real people — even those whose positions with which they disagree. By all means, call into question a victim's careless behavior (such as failure to look in a slip and fall case), but never lose sight of the fact that an unfortunate accident occurred ... it just wasn't your client's fault. *Ad hominem* attacks will turn a jury against you.

In one case, the defendant fuel supply company had delivered heating oil through an outside valve to the wrong residence. The pipe had been left open inside, and heating oil flooded the entire basement. The defendant admitted its negligence and paid to repair the basement. The plaintiff homeowner, a collector from eastern Europe, however, lost his assemblage of international vinyl records and countless antiques in the accident. The defendant disputed the alleged financial worth of the collectables. At trial, I watched in astonishment as the defense attorney launched a full scale assault on the plaintiff's character, asserting that he was a liar and belittling his cultural background. The jury, appalled by this attack on a man who had done no wrong, awarded the homeowner \$450,000, which included noneconomic damages for discomfort and aggravation.

6. Preserve the Record

It's the simplest thing to do, yet it carries the most dire consequences if you forget. Because all allegations of error raised on appeal but not objected to at trial are waived, object to every unfavorable ruling that has potential to become an appellate issue. Simply stating "please note my exception to the court's decision" will cover your back. If the judge rules against you outside the presence of the court reporter, politely ask to put your objection on the record. On appeal, the appellate court will review only

the transcripts and filings reflected in the official docket. If you objected but failed to do so on the record, you almost certainly will be out of luck. On appeal, both the appellee and the trial court will raise your oversight as the primary argument to quash your allegation of error, and the appellate court likely will take the simplest route and adopt this rationale.

Occasionally, these oversights create grave misfortunes, such as a plaintiff's counsel's failure to object to the dismissal of a defendant by way of compulsory non-suit or counsel's failure to request a directed verdict on the issue of negligence. Both omissions I have witnessed, and both served as procedural bars to appellate review of otherwise legitimate issues. ■



Paul F. Recupero graduated with honors from Villanova University in 2002 and Villanova University School of Law in 2005. For more than four years he has served as a

judicial law clerk and staff attorney for Montgomery County. During his tenure at the courthouse, Recupero has worked on dozens of jury trials, both criminal and civil, ranging from capital murder cases to multi-defendant class action litigation. Recupero also is actively involved in Philadelphia-area theater, is a regular reviewer for Stage Magazine and has placed as a semifinalist in two national playwriting contests.

2011 SUMMER MEETING AND NEW ADMITTEE CONFERENCE RECAP

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Jacob A. Gurwitz and PBA President-elect Thomas G. Wilkinson Jr., which led into another night of dancing and socializing.

As always, the conference was a great opportunity for young lawyers to learn how to maximize their ability to be successful in the modern legal practice and contribute to their offices and society, as well as enjoy

good times with old friends and make new ones. A special thanks to Guy and Gurwitz and the rest of the conference planning committee for a very informative and entertaining conference. We also thank the PBA staff for their hard work in making sure the 2011 Summer Meeting and New Admittee Conference was a resounding and "totally radical" success. We look forward to seeing all of you at the 2012 Summer Meeting

and New Admittee Conference. Until then, the YLD's meeting and caravan schedule offers lawyers several great opportunities to experience some of the many benefits of active YLD and PBA participation that are packed into the annual summer meetings and new admittee conferences. Check the upcoming events schedule in *At Issue* or on the PBA website for the next YLD event. We hope to see you there. ■

IMPLICATIONS OF THE EXPANSION OF THE CASTLE DOCTRINE

By La-Donna Lawrence

In April, Pennsylvania state House lawmakers approved a measure that would expand the Castle Doctrine, which is an exception to the “duty to retreat” law concerning self-defense. This exception permitted citizens to use deadly force against an attacker within the confines of their home. The reality is that many attacks take place outside the confines of the home. The modern lifestyle exposes citizens to an array of dangers that were less prevalent when the Castle Doctrine was installed, giving rise to the notion that a person should not be restricted to protecting themselves from attacks only within the confines of that space. However, the “duty to retreat” law that compels citizens to retreat before using force against an assailant does have public policy purposes. It is a deterrent from using more than the force necessary when combating an attacker and hinges on the premise that it is more reasonable to retreat if possible than to take a life.

The expansion of the Castle Doctrine in Pennsylvania could very well protect victims of heinous attacks outside their homes from prosecution when they use deadly force on their attackers. While the protecting these victims from prosecution might be the target of the legislation, it is likely that the law will shield the actions of those it did not set out to defend. There could be the result that without a duty to retreat, citizens are essentially given a “license to kill.” People might be more inclined to use deadly force even in situations where the option to retreat is relatively easy. In a gun-carrying state like Pennsylvania, this could give rise to unnecessary killings that become defensible. Road rage disputes, petty feuds and other instances where persons usually choose to walk away from confrontation could become deadly. Moreover, not all persons that face

attacks are law-abiding citizens. With no duty to retreat, the survivor of a duel between criminals who would otherwise be prosecuted could have a viable defense.

Beyond the home or workplace, the “duty to retreat” provides that the defendant must prove that he or she had first avoided conflict and, secondly, had taken reasonable steps to retreat and so demonstrated an intention not to fight before eventually using force.¹ Without a duty to retreat, the self-defense law might be more favorable to defendants than before. It could impact decisions whether to prosecute or bring reduced charges against such defendants. In Florida, a similar expansion of the “duty to retreat” law is being used as a bargaining chip in plea deals.² This too could be the impact in Pennsylvania. Pennsylvania’s no-retreat law would relieve defendants of the burden to prove avoidance of conflict. A defendant would only need to show that he or she had a reasonable fear for his or her life, a standard that is different for everyone. This could pose a problem when the only basis for determining whether such a fear was reasonable will be the self-interested defendant’s version of the facts, since the receiver of the force cannot testify.

Another prosecutorial challenge that could erupt concerns inadvertent killings of third parties. If Pennsylvania residents no longer have a duty to retreat from an attack outside the home, the public is at an increased risk for stray bullets or other causes of death or serious injury from the use of deadly force anywhere it is deemed necessary. The courts will have to grapple with whether the defendant or the attacker that elicited the defendant’s action is to be prosecuted. If Pennsylvania courts mimic what Florida has done, the attacker could be the party

prosecuted reasoning that it was the attacker’s actions that caused the defendant’s response even if the defendant could have fled.³

The doctrine’s expansion might also impact the way suspects in these instances are handled before their cases even enter a Court of Law. After a killing, if the killer asserts self-defense, can an officer arrest and/or bring charges against such an individual? Under the comparable “Stand Your Ground” law in Florida, an individual claiming he or she acted in self-defense cannot even be arrested unless the police has evidence that the person’s actions do not fit within the requirements of the statute.⁴ If the Pennsylvania law adopts similar provisions, the law’s expansion could substantially impact the way such incidents are investigated and prosecuted.

Establishing a “no-retreat” law in Pennsylvania could produce versions of all the impacts discussed above or none at all. In the heat of confrontation, how much consideration does one give to the legal consequences he will face? Do people make the decision to use deadly force based on the current laws of the state or do they use the force they feel is necessary to save their own lives and that of their loved ones? Would courts consider a killing that occurred during combat between criminals during unlawful activity to fall under “no-retreat” self-defense? What would a Pennsylvania court consider unlawful activity and who is a criminal? Is a prostitute who uses deadly force when being attacked by a solicitor a criminal engaging in unlawful activity?

The way the new legislation handles these questions will largely shape the impact of the expanded law. Other states that have implemented similar “no-retreat” standards have not seen a surge in

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PART II: ETHICAL CONSIDERATIONS FOR PENNSYLVANIA ATTORNEYS USING COVERT ADVERTISING ON SOCIAL NETWORKING SITES

By Drew Gray Miller

Editor's note: This is the second in a three-part series. Part 1 can be found in the Spring 2011 issue.

According to a June 2010 survey by Digital Brand Expressions, 75 percent of hiring managers use LinkedIn on a regular basis to research candidates before making an offer; 48 percent use Facebook; and 26 percent use Twitter. An earlier survey by CareerBuilder revealed that online screening of a potential employee could substantially help or hurt that candidate. Reasons employers listed for not granting an interview after viewing an online profile included the candidates: lying about qualifications, showing poor communication skills, making discriminatory comments and posting inappropriate photographs or content about them drinking or using drugs. However, employers hired candidates whose profiles: supported their professional qualifications, reflected strong communication skills and showed that they were well-rounded and presented a professional image. This illustrates two points: 1) You need to use social networking sites and 2) It must be professional.

Article Marketing

Many people use Google to search for attorneys near them. The people who do this tend to perceive the first several websites returned in a Google search as the best, the most trustworthy, etc. If your web page were the first result in a search for "the best real estate attorney in Pittsburgh," you would be perceived as such.

Let's say your name is Stefano Chiado, and you're a relatively unknown Pittsburgh attorney who wants to become recognized as the

best real estate attorney in Pittsburgh. Well, for approximately \$1,000, it is possible to convince the entire world you are, in fact, the best real estate attorney in Pittsburgh – even though you have absolutely no experience in real estate. The way you would accomplish this is by using article marketing.

Article marketing is a relatively new technique, whereby a group of writers are hired by an article marketing company to write several articles and blogs about its client and are given the parameters that certain keywords must be used several times in the articles. These articles are then distributed to many different websites where web crawlers see the keywords and link them to the website listed in the article. This is similar to the "Miserable Failure" *Google Bomb* of 2003, where a numerous amount of people plotted to link the term "miserable failure" to the White House biography of then-President George W. Bush, so that when people typed "miserable failure" into a Google search, the first result was the White House biography of President Bush.

Therefore, going back to the previous example, if Stefano Chiado has several articles written about him being the "best real estate attorney in Pittsburgh" and that people should visit his website, ChiadoLawFirm.com, for more information, then ChiadoLawFirm.com could become the first result in a Google search for "best real estate attorney in Pittsburgh" – even though Stefano Chiado knows almost nothing about real estate law.

In addition, if a Google search of your name yields unflattering evidence, article marketing will help you bury such unwanted material. For example, if a former client writes a blog titled, "Stefano Chiado is the

worst attorney in Pittsburgh," and proceeds to write about Stefano's terrible representation, a search for "Stefano Chiado" could potentially return a link to that blog. Article marketing would not only create positive articles about Stefano Chiado that people could read, but it would also push the former client's blog several pages deep in Google's search results and would probably never be seen by any potential clients.

Is it unethical to utilize article marketing in order to push your web page to the top result of a Google search? As of now, bar associations have remained silent on that issue. An argument could be made from the prior example that since the phrase "the best real estate attorney in Pittsburgh" was not actually used on Stefano Chiado's website, he was not making a misrepresentation. Conversely, a counterargument could be made that he took intentional steps to try and convince people that he was the best real estate attorney in Pittsburgh, knowing all along that he was not, which could potentially become a violation of Rule 1.1 of the Pennsylvania Rules of Professional Conduct, dealing with competence. One fact, however, remains certain: article marketing provides an inexpensive and effective way of getting traffic to your website by making it the top result in a keyword search.

Facebook

Facebook is the world's largest social networking website. It has now become a great way for businesses – and law firms – to reach out to clients. Nearly every major corporation, politician and celebrity has a Facebook page, where anyone in the world can visit it and

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COVERT ADVERTISING

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become a fan by “liking” it. When a person “likes” a page, this activity is broadcasted in the news feed of each of the person’s friends, who could decide to also become a fan. It has become an excellent marketing tool. In fact, when a manufacturer of ski gear recently developed a Facebook page, its e-commerce went from \$0 to \$25,000 in just three months.

The owner of the page has the ability to remove content, so even if a fan does have the ability to post comments, it is possible the owner could choose to display only positive feedback. If an attorney posts a comment on his or her Facebook page every time that attorney won a court case, it would appear as if the attorney never loses a case. Facebook pages also show up in Google searches. Therefore, a potential client could click on an attorney’s Facebook page and see, for example, that an attorney has over 1,000 people who “liked” the page and that this attorney apparently has a track record of winning cases. In addition, there are now businesses who advertise that for a small fee, they will get 1,000 fans for your Facebook page. Interestingly, this is probably seen as “unethical” in Florida but good business sense in Pennsylvania.

LinkedIn

LinkedIn is a career-oriented site that allows you to build your professional networks and even search for job openings. One important feature of the site allows people in your network to “recommend” you or your professional services. Since it is rare that people in your network will go out of their way to give you an unsolicited recommendation, LinkedIn allows you to request a recommendation from people in your network. In fact, LinkedIn won’t consider your profile “complete” until you have received recommendations.

LinkedIn is great for young professionals who do not have a personal website, since a person’s LinkedIn page is usually displayed

on the first page of Google when someone does a search for that person. Included in the “basics” section of your profile is how many recommendations a person has received. Thus, it is completely possible that a potential client, researching various attorneys, could infer that one attorney is more qualified than another because more people have “recommended” one attorney’s services than another on LinkedIn. The question then becomes: are these (usually solicited) recommendations “testimonial” or “comparative or superlative advertising”? Neither the Florida bar nor the Pennsylvania bar has directly addressed this question. As the knowledge and popularity of LinkedIn increases over the coming years, this issue should be addressed by the state bar associations. Until that happens, however, the recommendation feature of LinkedIn offers young attorneys one of the easiest ways to appear more qualified than an older counterpart.

Part 3 of this series will describe how to market yourself using Twitter and YouTube and will conclude by examining potential ethical considerations arising from the use of social networking sites to advertise. ■



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IMPLICATIONS OF THE EXPANSION OF THE CASTLE DOCTRINE

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violence as a result. It appears that much of the impact of no-retreat laws in the country seems to begin at the prosecutorial stage. The impact that is certain in Pennsylvania is the one the proposed law has set out to have, which is to provide a shield for innocent victims who meet their attackers with deadly force as deemed necessary to save their lives. ■

¹ 18 Pa.C.S.A §505(b)(2)(ii)(A); Com. v. Eberle, 379 A.2d 90, 93 (Pa. 1977).

² Zachary L. Weaver, FLORIDA’S “STAND YOUR GROUND” LAW: THE ACTUAL EFFECTS AND THE NEED FOR CLARIFICATION, 63 U. Miami L. Rev. 395, 407 (2008).

³ Sheriff: Law Protects SUV Owner Who Shot, Killed Woman by Rich Phillips, CNN Senior Producer, <http://www.cnn.com/2009/CRIME/04/30/florida.shooting.law/> (last updated April 30, 2009).

⁴ 63 U. Miami L. Rev. at 409.



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TIPS FOR REVIEWING A PHYSICIAN EMPLOYMENT AGREEMENT

By Karilynn Bayus

In many ways, the practice of medicine is similar to a business in any other field. The use of Employment Agreements by a medical practice for its physician-employees is a standard business practice, much like for other non-medical industries. Many lawyers may be asked at one point to review an Employment Agreement by a doctor, whether by a new or existing client of the firm or, as young lawyers, a friend or colleague finishing medical school who now needs to engage an attorney.

There are certain aspects that make a physician Employment Agreement unique and different from that of other fields. Without knowing a bit about the differences in the medical field from the general business world, key provisions may be missed in a review of such a contract. This article highlights a few key points to look for and consider in a physician Employment Agreement with a private practice that are specific to the health care industry.

Malpractice Insurance

Almost every physician Employment Agreement deals with the topic of malpractice insurance for the physician-employee. If it's not addressed at all, this should be specifically added.

It is key to know that there are two basic forms of medical malpractice insurance: occurrence-based and claims-made. Occurrence-based policies will cover all claims that arose during the period that the policy was in place, regardless of when the claim is actually made. Conversely, claims-made policies cover claims made during the policy period (usually the employment period). If a physician's employment with a group, and therefore the

malpractice coverage policy, terminates, often a policy (known as a "tail") will have to be purchased to cover those claims that are reported post-termination that arose during the employment period. This may be an expensive policy.

The contract should state what type of policy is being provided, and



if not, the potential employee should inquire about this point. Lawyers should know that it is becoming rare that a physician is covered by an occurrence policy. Therefore, if the group will be providing claims-made coverage, the contract needs to be clear as to whose obligation it will be to purchase the "tail" after termination of employment. It is much better to deal with this issue upfront, while relations are good, than to try to fight over it post-termination of employment. If it's clear in the contract, the employer or the physician-employee, as applicable, can make preparations for the premium purchase well in advance.

Restrictive Covenants

Non-compete provisions are common in physician Employment Agreements in Pennsylvania. In fact, it is rare to find a physician contract that does not contain one. Almost every physician Employment

Agreement has its own unique "twist" for that employer's non-compete provision.

Many young doctors do not understand the real ramifications of these provisions. It is important for that doctor to understand upfront that non-compete provisions are enforceable in Pennsylvania (subject to the reasonableness of the covenant). This will enable them to prepare properly in the event they later desire to leave their place of employment or if their employment is terminated by the employer.

Employment Agreements may provide for injunctive relief and/or liquidated damages in the event of a breach of the covenant. The doctor needs to understand these ramifications.

One factor that should be looked at by the attorney is the reasonableness of the geographic scope and duration of the covenant. These terms may be negotiable with the employer if there is good rationale for them being unreasonable under the circumstances.

Geographic reasonableness is fact-specific to the location of the practice. The more rural the area, the more likely a larger geographic range will be deemed reasonable by a court. Conversely, in an urban setting, such as Philadelphia, there should be a smaller geographic range. The time period that the restriction lasts also needs to be reasonable. It is not uncommon for a non-compete in a medical Employment Agreement to last one to two years.

Perks

In addition to traditional business employment perks such

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A YOUNG LAWYER'S GUIDE TO OPENING A FILE

By Matthew G. Laver and Meredith A. Kirschner

Most of what attorneys deal with on a daily basis goes beyond the scope of textbooks and academics and involves local procedure that can only be learned through practice and experience. When faced with this work, it is expected that you, as a junior attorney, will seek guidance from the more veteran attorneys in your workplace. Notwithstanding that you have relatively less experience than those attorneys who supervise you, you can impress them by demonstrating your ability to open a new case and build the library of information needed to effectively represent your clients. By obtaining the necessary materials and facts at an early stage of litigation, you can hand the file off to a supervisor at a later time and be confident that the supervisor will be well-prepared for litigation or settlement discussion. The method outlined below comes from a defense perspective but offers pointers that are valuable in all practice areas from varying client perspectives.

When a new file is opened, the first thing to do is to identify all the parties and attorneys involved in the case. We recommend creating a single-page document that shows who all of the parties are, who is their respective counsel and their contact information. Whether you keep a paper file or an electronic file, this information should be readily available, allowing you to answer a phone call from counsel or any other interested party and quickly learn from your index with whom you are speaking and what her position is in the litigation.

Surprising to some, one of the best methods to gather preliminary information about your case is to call the opposition and ask him what the case is about. In many cases, this can be achieved by simply stating the following: "I was just assigned this case, and I don't know much about it. Please tell me what this case is about." You will find that most

people like to be asked for help. If you couch your request properly, the opposing attorney will be eager to impress you with his knowledge of the case. You may be startled by just how much the opposition is willing to share. This can be a great method for learning many of the operative facts and your opposition's intended method of proving his case or defense.

Once you have spoken to opposing counsel, it is time to sit down and speak to your client(s) in depth. Find out exactly how each

The method outlined below comes from a defense perspective but offers pointers that are valuable in all practice areas from varying client perspectives.

of your clients is involved in the litigation and take copious notes. If your client takes a strong position as to the facts or the litigation strategy, write it down and quote him. This will protect you from later misunderstandings between yourself and the client. At this meeting, take time to review the available pleadings and/or pertinent documents, and strive to learn everything there is to know about your client.

Having conducted your initial fact-finding interviews, you should now have enough information to serve discovery on your opponent. Since you should now have a deeper understanding of the facts, you should draft specific interrogatories tailored to your case and the other side's theory of liability. Be as specific as possible with your questions, since that will best assist you in having a greater understanding of your opponent's theory of the case.

The next step in opening your

case is the preparation of an initial report to your client. In this report, you will set forth all the legal issues, a detailed summary of your factual investigation, your assessment of liability and damages and your plan moving forward. This document will serve as a reference at every stage of your case and thus is invaluable.

The first element of your initial report should be a summary of the pleadings and available documents. Incorporate any information you have about opposing counsel, such as whether you have litigated against him in the past and how he presented himself in a courtroom. This portion of your report should include a discussion of venue and any procedural issues that need immediate attention. Describe the court and venue where your case is located, i.e. state or federal, liberal or conservative, etc. If you are able, also include any information you have about the judge to whom your case has been assigned.

Second, your report should incorporate a detailed summary of the factual investigation you have conducted. By this time, you will have interviewed your client in addition to any other relevant witnesses not represented by counsel. You will also have reviewed relevant documents you have obtained. If you have spoken with opposing counsel, include a summary of that conversation. We also suggest that you conduct a thorough Internet search of the opposing party, including any social networking sites, criminal background searches and civil docket searches. Include your findings in this section as well, and note if there are any prior offenses that can be used for impeachment purposes.

You should now analyze the relevant law and potential damages to which your client may be exposed. It is your duty to explain to the client how the legal issues apply to the facts of the case. In addition to citing the

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A YOUNG LAWYER'S GUIDE TO OPENING A FILE

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relevant law, discuss your assessment of liability and the potential defenses available to your client. Immediately thereafter, set forth your projected damages exposure and the potential settlement value of your case. You may need to rely on the expertise of more senior attorneys in your department for this analysis, since it will be based at least in part on past settlement values of cases similar to yours (or verdict amounts, if tried). However, there will certainly be some elements that you can figure out from your investigation, such as potential lost wages, earning potential, the age of the adverse party and other factors that you suspect could affect the value of the case. Be sure to include any demands or offers to date as well.

Your report should conclude with a summary and analysis of everything you have discussed in the previous sections. Include the most important facts that led you to your assessment, your assessment itself and your proposed plan moving forward. Your client will appreciate having a simplified, abbreviated summary of your findings and recommendations at the end of the report for his reference.

By the time you have completed all of the above steps, you will hopefully have received responses to your discovery requests. Make certain to review these responses with your client and help them understand the supporting evidence for your opponent's claims. Be sure to schedule depositions as soon as possible following your receipt of discovery responses.

Discussions regarding settlement will occur at different times depending on the case and may occur prior or subsequent to dispositive motions. No matter when these discussions take place, be certain your client approves the parameters of a potential settlement and has given you authority to move forward accordingly. When conducting negotiations, the following are basic and essential elements of a strong

release and/or settlement agreement:

1. Confidentiality: Make sure opposing counsel understands that a settlement agreement and any amounts therein will be confidential and that he must relay this information to his client.
2. Counsel fees/costs: Make sure your opponent understands that the amount of settlement will include costs and counsel fees.
3. Amount: State in explicit terms the amount of settlement.
4. General release: Make sure your opponent understands that any settlement agreement entered into will include a general release from all liability associated with this matter for your client(s).
5. Liens/other claims: Find out if there are any liens or outstanding claims from outside parties related to this case or any care or treatment that was rendered to any of the parties. Make sure to discuss these liens with your opponent and whether the settlement amount is subject to any of these liens.
6. Unequivocal agreement to settle: If you feel that an agreement has been reached, make sure to conclude your conversation with something unequivocal, along the lines of "we're settled." This may seem obvious, but you would be surprised how many agreements have been broken in the absence of such an assertion.

If a case has settled, send a letter to opposing counsel confirming that

the matter has been settled in full and that the parties have agreed to sign a general release mirroring the agreed-upon terms of your conversation. At this time, you should also send a concluding letter to your client(s) detailing the settlement amount and essential terms of the release. If you have settled for less than the original demand, you may want to remind your client what the initial demand was, highlighting that you have been able to resolve the case for less.

In the event that the matter does not settle, if you have completed all of the above steps, your supervisor will take control of an organized file and a knowledgeable client, and he will possess the necessary information to successfully litigate the case. Although you may lack the experience of some of your colleagues and supervisors, you will undoubtedly impress them and your clients with your thoroughness and attention to detail if you follow the above roadmap. The key is to be well-informed and to make sure your client is well-informed, so you can accurately assess your client's liability and exposure and collaboratively litigate the case to the best of your ability. ■



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DON'T GIVE UP THE ZIP

CALIF. SUPREME COURT DECISION, PA. RAMIFICATIONS

By Louis Kroeck and Andrew Samtoy

Imagine this familiar scenario: You are at a gas station. You want to pay with a credit card, so you swipe your card at the station terminal. The terminal then asks you for your ZIP code. You punch it in, pump your gas and drive away. What could be illegal about that?

In California, part of this transaction is illegal. Earlier this year, the California Supreme Court held that it was a violation of California law for merchants to ask for a customer's ZIP code when completing a debit or credit card transaction. The law, the Song-Beverly Act, California Civil Code Section 1747-1748.7, was passed in 1971 to protect customers from having to give personal identification information when they use a credit or debit card. The relevant section of the statute reads:

- (a) Except as provided in subdivision (c), no person, firm, partnership, association, or corporation which accepts credit cards for the transaction of business shall do either of the following:
- (1) Request, or require as a condition to accepting the credit card as payment in full or in part for goods or services, the cardholder to write any personal identification information upon the credit card transaction form or otherwise.

The purpose of the law, quite simply, was to limit the amount of information that a merchant can collect about a customer, and thus limit the chances of the customer's identity being stolen. The issue before the California Supreme Court was whether ZIP codes were personal identification information and whether the language of the

statute prevented a merchant from collecting the ZIP code of a customer.

The merchants were caught in a Catch-22. If the information was not used to identify the customer, it was not necessary for them to be collecting it in the first place, so they naturally would not go through the hassle of collecting such information. If they were using the information to verify the identity of the customer, they were violating the statute.

The California Supreme Court in

Earlier this year, the California Supreme Court held that it was a violation of California law for merchants to ask for a customer's ZIP code when completing a debit or credit card transaction.

Pineda v. Williams-Sonoma Stores, Inc., 51 Cal. 4th 524, 528 (Cal. 2011), held that a ZIP code was personal identification information since Williams-Sonoma used customized computer software to perform reverse searches on massive computer databases in order to match customer names and ZIP codes with previously undisclosed addresses. By providing Williams-Sonoma with their credit card number, name and ZIP code, customers were also effectively providing Williams-Sonoma with their addresses which were being used for the purposes of marketing and re-sale.

Several states around the country have similar statutes.¹ Pennsylvania's law has an almost identical consumer protection clause:

(a) General rule.--No person who accepts credit cards for the transaction of business shall require the credit cardholder to write on the credit card transaction form, nor shall the person write or cause to be written on the form, any personal identification information, including, but not limited to, the credit cardholder's address or telephone number, that is not required by the credit card issuer to complete the credit card transaction.

While the Song-Beverly Act creates a private cause of action for any affected consumer, Pennsylvania's law specifically leaves enforcement of the statute up to the attorney general or the appropriate district attorney.² From what we can tell, no attorney general or district attorney in the state has sought to enforce this statute against a merchant, and because of the way the statute is written, merchants do not have to worry about class actions from customers.

This is not to say that Pennsylvania merchants should not be worried about enforcement from government attorneys. The situation in Pennsylvania is strikingly similar: If merchants collect ZIP codes from customers, why do they do so? It is almost certainly to identify the customers in some manner.

A ZIP code is clearly personal information used to identify a customer, especially when the merchant can take that information and determine the customer's address. Further, how is a ZIP code necessary to complete a credit card transaction? It is difficult to argue that it is; there are plenty of merchants who allow customers to use credit or debit cards without having to enter their ZIP

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PHYSICIAN EMPLOYMENT AGREEMENT

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as health insurance, retirement plans and vacation/sick time, the physician Employment Agreement should discuss those benefits that are specific to the practice of medicine. If it does not, these should be inquired about and addressed up front.

Some of the more common medicine-specific employment perks to inquire about if the Employment Agreement is not clear include: an allowance of a certain amount of annual funds and time off (apart and aside from vacation time) for continuing medical education; payment of professional society dues, hospital staff fees and DEA registration fees; and stipends or reimbursement for pagers, cell phones and the like for business purposes. Reimbursement for moving expenses may also be provided as well as board certification fees.

Co-Ownership

When a physician is first leaving residency and/or fellowship for private practice, securing a job and not co-ownership (aka, becoming a “partner”) may be the top priority. However, “partnership” is often the ultimate goal in entering a private

practice.

The Employment Agreement may or may not address possible co-ownership arrangements or expectations. Most commonly, if the agreement does address co-ownership at all, it will be in an open-ended and non-binding way. Occasionally, the practice may provide a separate “partnership” letter of intent.

Although the agreement may not address it, it may be worthwhile to recommend that the client talk to his/her potential employer about possible co-ownership. Some things he/she may want to ask are: Will I be required to pay a buy-in? What is the proposed time table for becoming a “partner”? What sort of factors will the employer be evaluating in determining whether I will be offered co-ownership? How will the net income of the practice be divided?

Conclusion

Employment arrangements with medical practices are business arrangements. Yet, the medical field has its own nuances that are important for an attorney to understand when reviewing a physician Employment Agreement.

Lawyers should be aware that

employment arrangements with hospitals and hospital systems, or other health care entities, have entirely their own separate set of issues, which are beyond the scope of this article. This article highlights some of the fundamental medicine-specific areas for young lawyers to be aware of in a “basic” Employment Agreement between a physician and private practice, in order to aid them when asked to review such a contract and to better enable them to give advice to their doctor clients. ■



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DON'T GIVE UP THE ZIP

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codes. Thus, if the matter appeared before a court in Pennsylvania, it would be difficult to argue that this information is required for processing transactions or that it is *not* personal identification information. ■

¹ The Pennsylvania statutory language on accepting additional information is nearly verbatim and is codified at 69 P.S. § 2602.

² See 69 P.S. § 2605(a)



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PENNSYLVANIA ACT 32 IMPLEMENTATION

By Martin DiGiovine

Beginning in January 2012, Act 32 of 2008 will streamline Pennsylvania's earned income tax collection mechanism, creating 69 countywide Tax Collection Districts (TCDs). Philadelphia, which is subject to the Sterling Act of 1932, is exempt from the requirements of Act 32. Allegheny County is segmented into four TCDs under Act 32.

Under Act 32, employers will be required to withhold earned income tax (EIT) from all resident and non-resident employees. The employer must remit all withholdings to the TCD where they are located within 30 days of the end of each quarter. Prior to April 2013, TCDs will remit the taxes to the appropriate taxing jurisdiction within 60 days. After April 2013, all taxes must be remitted to the appropriate taxing jurisdiction within 30 days.

Employers with multiple worksites within the commonwealth of Pennsylvania will have the option of selecting one TCD to remit all of their withholdings to. Also, businesses with headquarters in Pennsylvania have the option to remit their withholdings to the TCD in which the headquarters is located. It will be the responsibility of each TCD tax officer to forward the withholdings to the appropriate TCD in which each employee resides.

Recently, there has been some confusion concerning an informational brochure published by the Pennsylvania Institute of Certified Public Accountants ("PICPA") titled, *Act 32: Guide for Employers*. One of the bullet points included in the brochure states:

At the time of payment to an employee, an employer will be required to deduct the local earned income tax from the employee's paycheck. The applicable tax rate is the greater of the tax rate where the employee is employed or the tax rate in effect where the employee lives. . .

Many employers located in the City of Pittsburgh are interpreting the statement to mean they would be required to withhold a combined total of 3 percent city and school district tax from non-resident (of Pittsburgh) employees. The language contained in the PICPA brochure is paraphrasing the requirement of Section 512 of Pennsylvania Act 32 of 2008, which says:

Every employer. . . shall, at the time of payment, deduct from the compensation due each employee. . . the greater of the employee's resident tax or the employee's nonresident tax. . .

While seemingly saying the same thing, the two paragraphs produce different results when applied to non-resident employees working in the City of Pittsburgh. This is currently causing confusion to employers, practitioners and others as they prepare to implement Act 32 at the start of next year.

Here's the reason for the confusion: With the exception of Philadelphia, Pennsylvania local taxes are generally authorized by Act 511 of 1965, the Local Tax Enabling Act. The tax is levied on wages, salaries, commissions, net profits or other compensation of people subject to the jurisdiction of the taxing body.

With some exceptions, municipalities and school districts subject to Act 511 may, by ordinance or resolution, enact an earned income tax limited to 1 percent. Where both a municipality and a school district impose the tax on the same wage earner, the 1 percent maximum rate is divided evenly between the two taxing districts unless they agree otherwise. Municipalities may also impose a tax on nonresidents employed in their municipality; however, they must grant a credit for any earned income tax levied at the place of residence.

Example 1 - Al is a resident of Municipality A (with a 1 percent EIT rate) and is employed in Municipality B (with a non-resident EIT rate of 1 percent). Al is liable to both Municipality A and Municipality B for a tax equal to 1 percent of his wages. However, because Al receives a credit for taxes paid to Municipality A, he will owe no net tax to Municipality B. **Under Act 32, Al's employer will be required to withhold 1 percent of Al's wages for local earned income taxes. The tax officer in the TCD where Al is employed is required to transfer the tax to the TCD where Al is domiciled. Al must file a final return with the tax officer in the community where they are domiciled to pay any balance of tax or file for a refund.**

There are seven exceptions contained in Act 511 that permit the earned income tax rate to be raised to over 1 percent.¹ This may create a situation in which the non-resident rate in the jurisdiction where the employee works is greater than the EIT tax rate in the employee's home jurisdiction.

Example 2 - Beth is a resident of Municipality A (with a 1 percent EIT rate) and is employed in Municipality C (with a 1.6 percent EIT rate imposed on residents and non-residents, due to their financially distressed pension plan). Beth is liable to Municipality A for EIT of 1 percent and to Municipality C for EIT equal to 1.6 percent of her wages. However because she receives a credit from Municipality C for the 1 percent tax paid to Municipality A, she pays a net non-resident tax equal to 0.6 percent of wages to Municipality C. **Under Act 32, Beth's employer will be required to withhold 1.6 percent of Beth's wages for local earned income taxes. The 1 percent of Beth's tax will be transferred to her home community TCD. Beth will be**

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YLD MEMBERS IN THE NEWS

BIRTHS

Sarinia M. Feinman (Zone 9) of Vetrano & Vetrano in King of Prussia and Kenneth Feinman welcomed a baby girl, Alexis Mia Feinman, on June 6 at 11:42 a.m. She weighed 6 pounds, 14 ounces, and measured 20 inches long.

Robert Datorre (Zone 3), assistant counsel at the Pennsylvania Department of Health & Welfare in Harrisburg, and Elizabeth Catherine Stephens Datorre welcomed a baby boy, Christian, on July 20. He weighed 7 pounds, 15 ounces, and measured 20.5 inches long.

At Issue welcomes submissions from YLD members regarding firm changes or promotions. Members are also encouraged to submit announcements of weddings and births. Please send your news to Maria Engles (Maria.Engles@pabar.org).

PENNSYLVANIA ACT 32 IMPLEMENTATION

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required to file a final tax return.

If that were the end of the analysis of local earned income tax, both the paragraph contained in the PICPA brochure and the applicable paragraph of Act 32 would be accurate. However, the way the City of Pittsburgh and Pittsburgh School District earned income taxes are levied is causing confusion.

Under the authority Act 511 of 1965, the City of Pittsburgh levies a 1 percent earned income tax on residents and non-residents. The City of Pittsburgh does not split this 1 percent with the Pittsburgh School District.

The Pittsburgh School District earned income tax is not levied under the authority of Act 511. Rather, Section 652.1 of Act 14 of 1949, also known as the Public School Code of 1949 (24 P.S. §1-101 et. seq.), specifically authorizes the Pittsburgh School District to levy a 2 percent earned income tax on residents. The statute specifically prohibits the school district from splitting the money with the city and also prohibits the tax from being levied on non-residents. Therefore the Pittsburgh School District has no “non-resident” tax.

Example 3 - Charlie is a resident of Municipality A (with a 1 percent EIT rate) and is employed in the City of Pittsburgh (with a non-resident EIT rate of 1 percent and a school

district resident EIT of 2 percent). Charlie is liable to both Municipality A and the City of Pittsburgh for a tax equal to 1 percent of his wages. However, because Charlie receives a credit from the City of Pittsburgh for taxes paid to Municipality A, he will owe no net tax to the City of Pittsburgh. Additionally, because the 2 percent school district tax is levied only on those who reside within the Pittsburgh School District, it does not apply to Charlie. ***Under Act 32, Charlie’s employer will be required to withhold 1 percent of Charlie’s wages for local earned income taxes. Charlie is required to file a final return with his community TCD tax officer.***

As they prepare to implement Act 32, many employers are interpreting the guidance issued by the PICPA to mean that they must withhold the entire 3 percent of wages from non-resident employees who work within the City of Pittsburgh. As the preceding example illustrates, that is not the case. ■

¹ Earned income taxes also are subject to the overall limits on taxes enacted under Section 320 of Act 511. Not all taxing jurisdictions are limited to the 1 percent limit on the rate of the earned income tax. Other laws and provisions allow the Act 511 limit for earned income taxes to be exceeded under seven circumstances:

1. Home rule municipalities.
2. Financially distressed municipalities.
3. Municipalities with financially distressed pension systems.
4. Municipalities that purchase open space.
5. School districts that have adopted increased earned income taxes under Act 50 of 1998 (53 Pa.C.S. § 8581 et seq.) prior to the repeal of Act 50’s provisions addressing the levy of earned income taxes by Act 72 of 2004 (53 P.S. § 6925.101 et seq.), which itself was subsequently repealed by Special Session Act 1 of 2006.
6. Municipalities and school districts that adopt the provisions of Chapter 4 of Act 511.
7. School districts that adopt Act 1’s provisions to levy or increase earned income taxes.

Martin DiGiovine specializes in tax research at Schneider Downs in Pittsburgh. DiGiovine has advised both nonprofit and for-profit clients regarding the tax implications of various business matters including corporate restructuring, mergers and acquisitions, joint ventures, compensation arrangements, retirement plans, matters of the board of directors, and captive insurance arrangements. DiGiovine is a 2008 graduate (cum laude) of the Duquesne University School of Law, where he served as a senior staff member on the Law Review. Martin also holds BSBA and master of science in taxation degrees from Robert Morris University. DiGiovine is a member in good standing of the bar of the Supreme Court of Pennsylvania and the Pennsylvania Bar Association.

Career Corner



David E. Behrend

The “Career Corner” column, which debuted in the Spring 2011 issue of *At Issue*, helps to answer questions that many Pennsylvania lawyers have concerning their career expectations. Change in the practice of law since the recession started in 2007 may have impacted on one’s career, directly or indirectly – for the recent graduate, associate or partner. I have been fortunate to counsel lawyers at all levels over the past 17 years who have gone through career and or employment changes.

This column raises questions to be answered for the general Young Lawyers Division readership, whether the practice is with a firm, in-house, government or non-for-profit organizations. It is anticipated that the answer to a question will be of significant value to your career thinking.

Please submit a question or questions that you believe would be worthwhile for a seasoned legal career counselor to answer. E-mail your submission to yld@pabar.org with the subject line “Career Corner.”

Q: *I am a recent law school graduate and have passed the state bar of both Pennsylvania and New Jersey. With the job market so tight, my options seem limited, and I have school loans to pay back. Any concrete recommendations for gainful employment?*

A: A potential employer, be it a firm, in-house, government, non-profit or small emerging business (think INC 500), is looking for an individual who can ultimately be of significant “value” to its enterprise or organization.

You need to reflect upon, in both written and spoken word, how you can make a difference and distinguish yourself. Pleading “I just want an opportunity” is not a good enough response and is self serving. Sit down at your computer, and put in concise laser-pointed manner what in your background would help persuade someone to hire you – be it contract, part time or full time at this stage of your start-up legal career.

Examples: Did you have any internships, and what did you accomplish and learn of value to a hiring source? Did you work and pay your way through college while maintaining a solid GPA or attend law school part time while working full time? What proven problem-solving and negotiating skills have you shown of value to an employer? Are you willing to work for a solo practitioner at reduced compensation to get your foot in the door of legal practice? Is there anything in your law school class work that might appeal to an employer – leadership, negotiating skills, etc. – that you believe might make a difference in an interview?

Ultimately, as I do in my practice counseling lawyers, put together a sound strategy to market and package your capabilities, interests, energy and enthusiasm, as well as flexibility and adaptability, the latter being fully capable of multi-tasking. Hiring can often reflect not only your legal knowledge, but also how you fit into an employer’s practice or team. That “60-second elevator speech” is critical to your future employment. The legal labor market you are entering this decade is significantly different from when you entered law school, with an emphasis on technology being a significant efficiency and cost-cutting factor for all legal professionals. Demonstrate how you can make a difference in a comprehensive and concise manner. Maybe with your legal skills, you can even “make a potential employer’s life easier” in this competitive employment environment.

David E. Behrend, M.Ed., director of Career Planning Services for Lawyers in Ardmore (www.lawcareercounseling.com), serves the career needs of Pennsylvania lawyers going through career or employment transitions. To e-mail him questions for “Career Corner,” e-mail him at yld@pabar.org.

MUCH-NEEDED CHANGES TO THE GI BILL

By Jeremiah J. Underhill

This past December, Congress passed a much-needed Post-9/11 GI Bill (S. 3447), and on Jan. 4, 2011, the president signed the bill into law. Now I am always the first person to criticize the government for all those long-winded speeches we see on CSPAN, or 2,000 page bills, or simply posturing instead of acting. Well, this is not one of those times. The new GI bill is a very compact bill by today's standards as it was only a meager 22 pages. I actually was able to read it and understand what it does. Shocking, I know. The new GI bill gives a much-needed update to the way our country provides educational assistance to veterans. It changes everything from: 1) the way funds are distributed to educational institutions 2) the transferability of benefits to a child/spouse 3) how a veteran becomes eligible for assistance 4) the amount of funds available to veterans. The maximum amount available for a veteran is \$17,500 per year for tuition, \$1,000 per year for books, as well as a monthly living stipend based on the Department of Defense Basic Housing Allowance. This new bill really streamlines the system and represents the greatest educational investment in veterans since World War II.

Who is Eligible?

At the bare minimum to start receiving benefits, a veteran must have served 90 days on active duty after 9/11/01. Any veteran who was discharged due to a service-related injury or illness after 30 days of active duty would also meet eligibility for the maximum benefit level. In order to receive full benefits, a veteran must have served a cumulative amount of 36 months of active duty service. Reservists and National Guard members will be allowed to add up active duty months from multiple tours of duty – something they previously were not allowed to do.

Service	Benefits*
36 Cumulative Months	100%
30 Cumulative Months	90%
24 Cumulative Months	80%
18 Cumulative Months	70%
12 Cumulative Months	60%
6 Cumulative Months	50%
90 Cumulative Days	40%
Service Connected Discharge	100%

*Includes tuition, books and living allowance.

Eligibility for Transfer of Benefits

The new Post-9/11 GI Bill allows a veteran to transfer his or her education benefits to a spouse or child. The veteran must qualify for the benefits himself and have served at least six years on active duty. Additionally, a veteran must agree to serve an additional four years, but the child or spouse can start receiving the education benefits prior to the veteran completing the four years of additional service.

Living Expenses

Assistance with living expenses is available for a veteran enrolled full-time in college. A veteran can receive a monthly stipend to aid with living expenses, and the amount of this stipend is determined by a cost-of-living basis for the region of the country where he or she is enrolled. This is similar to the way the Department of Defense (DOD) determines a vet's monthly housing allowance while on active duty.

Additional Assistance

The new GI bill covers the tuition cost of every public educational institution in the U.S. For veterans enrolled in a private college with



tuition greater than \$17,500 a year, there is additional assistance available. These institutions are eligible to participate in a government-matching scholarship program called the Yellow Ribbon Program. Essentially the DOD will match any scholarship the private institution offers a veteran.

When does it start?

S. 3447 activation date is August 2011 and will provide almost 400,000 more veterans with additional educational benefits. This includes 85,000 individual vets in the National Guard who were previously not eligible for any assistance.

Summary

While the new GI bill doesn't satisfy the requests of all veteran organizations, it does take a major step in the right direction. There is always room for improvement with regards to almost any bill. In my opinion, the tuition increases, while robust compared to the previous GI bill, fall short when compared

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BALANCING THE SCALES OF LIFE

LAWYER, SPOUSE, DAUGHTER AND PARENT AND THE MYTH OF MULTI-TASKING

By Mariah Balling-Peck

Often I wish there were more than 24 hours in a day. Often I wish there were more than seven days in a week. The reality is that there is never enough time ... never. Struggling to balance the demands of being a young lawyer while still meeting the demands of my family and child have become a tremendous obstacle as I struggle to get everything on my "to-do" list done – prioritized and all – which never seems to be accomplished despite my best efforts. Why? The phone, e-mails, walk-ins who aren't scheduled for an appointment; and then there is the occasional call that your daughter just knocked her tooth out.

So how do we do it all? This has been perplexing me for the past five years as I struggle to find an elusive balance in my life. Many peers and professionals have informed me that the solution is taking time out for myself every day. Are you kidding me? When? Sure, many of us find ourselves working until late at night with deadlines barreling down upon us like a spring thunderstorm rolls in. Then there is always the inevitable client in crisis if you practice family law. The Tupperware was taken or father was five minutes late for the custody exchange and mother is wondering if she should let the children go because he is most certainly in contempt of the court order. This stuff is real...and happens to me almost every day of my life.

So, I have searched, purchased and listened to some excellent books on time management and what should be called the joke of the century – multi-tasking – because it doesn't exist at all. If I am reading and trying to talk on the phone, then I don't comprehend either of them. Nobody does. If someone out there does, please share this amazing breakthrough with your brethren. Really. In the meantime, it's about



reality and what we can and cannot do.

I thought I would share some of the techniques that seem to have been time-tested and proven. If they are practiced, they can at least make insanity seem sane ... and can help us focus.

- **Priority Management:** Take a minute every day, first thing, to assess projects, tasks and deadlines and prioritize them.
 - Focus On:
 - Goals – short- and long-term personal and professional goals
 - Results – avoid activity traps like getting caught up in cleaning out your e-mail inbox;
 - Priorities in Your Life – how important or urgent is it really? Does the task represent a short- or long-term goal? Who and what is this for?
- **Seven steps to ending procrastination:**
 - Identify the reason why you might be procrastinating on a project
 - Review your priorities
 - Break large, daunting tasks

into small pieces

- Write an action plan and set task deadlines
- Clean your workspace and get it organized [and try to keep it that way. I know it sounds crazy but just put what you are working on in the present in front of you]
- Start NOW
- Take time to reward yourself

In order to practice these techniques I have to ask myself, what is the BEST USE OF MY TIME RIGHT NOW? Once I get started, inevitably momentum builds, and I accomplish what I set out to do. I will tell my assistant not to disturb me. I will hold calls and return them at a designated time. [I am one of those people whose attention can be diverted by such untimely distractions unless it is a true crisis and a good assistant will know this and interrupt you].

We also have to keep in mind that we aren't perfect. Nobody is and nobody is going to ever be. We can only do the best job we can with each day we have with our work, families and ourselves. Yes. Ourselves. I am still working on taking any time for myself without guilt, but I know it's important for me and for you.

The harsh reality is that we are under a great deal of stress, and we need to effectively manage and prioritize to reduce this stress. If we focus on our goals; agree to let others help us; schedule time for checking our e-mail and returning calls so that we can finish our brief, interrogatories, or deposition preparation; and track our priority task list, then we should begin to find our lives moving from the Richter scale to an ebb and flow on most days. There are always going to

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PART III: DEVELOPING RULE OF LAW AND MAINTAINING STABILITY IN A FLUID ENVIRONMENT

By Capt. Michael G. Botelho

Editor's note: This is the third in a three-part series. Part II can be found in the Spring 2011 issue.

Battling Corruption

In late November 2009, Special Operations Task Force — North (SOTF-N) again used multi-level cross-coordination as a tool to enable their Foreign Internal Defense (FID) partner to overcome a significant Rule of Law (ROL) challenge when the 20/5 Iraqi Army Special Forces Platoon (20/5) Iraqi Army (IA), combat advised by United States Special Forces (USSF), detained a suspected terrorist pursuant to a locally-issued warrant. This individual was well known and targeted not only by USSF Iraqi counterparts, but also the Operational Detachment-Alpha (ODA) team and a Brigade Combat Team (BCT) for a number of years. Following the Iraqi's detention of the suspected terrorist and one of his associates, both individuals were transferred to the 20th IA detention facility in Diyala province. Shortly following their detention, the 20/5 IA began receiving significant pressure from various Iraqi authorities and others to release this detainee due to his political connections in the province. As the political pressure increased, it became clear to our Iraqi FID partners and USSF that the suspected terrorist was not going to receive a fair and impartial trial at the provincial level and, in fact, may never make it to trial if released. At USSF and FID partner urging, the Iraqi government requested assistance in transferring the detainee to the Central Criminal Court of Iraq-Karkh (CCCI-K) in Baghdad. Following the request for assistance, members of an ODA, Advance Operations Base (AOB)¹, SOTF-N, Combined Joint Special Operations Task Force – Arabian Peninsula (CJSOTF-AP), a BCT and Multi National Division-North (MND-N) immediately began

significant coordination in order to have 20/5 IA transfer the detainees to the Iraqi Counter Terrorism Service (CTS) forces using the Iraqi 8th Regional Commando Battalion. The Iraqi units escorted both detainees to Baghdad with the ultimate goal of prosecution at the CCCI-K in Baghdad.²

Additionally, reports indicated that the local judge was reluctant to hear the case and intended to nullify his provincial-level warrant. To avoid the devastating local politics, fear and corruption, Iraqi Special Operation Forces (ISOF) personnel worked to acquire a new warrant from the CTS in Baghdad. After coordination, the CTS was prepared to secure both of the suspected individuals upon receipt of the warrant, but Iraqi Special Operation Forces (ISOF) personnel anticipated the warrant process would take up to three days through the CTS. To prevent delay, the USSF Advance Operations Base (AOB) commander assisted ISOF, which is a subordinate unit to the CTS, to coordinate with USD-N to secure a national-level warrant issued via CTS. At the same time, SOTF-N and CJSOTF-AP Judge Advocates simultaneously pursued a national warrant³ through the CCCI-K Court in Baghdad. In a truly combined effort, the Iraqi 8th Regional Commando Battalion (RCB) coordinated with members of the Iraqi Army to ensure both terror suspects were transferred to 8th RCB custody once the Baghdad warrant had been obtained. Again, USSF adjusted to the systemic ebb-and-flow in the Iraqi criminal system coupled with multi-unit coordination from the ground level to the national level, to ensure a criminal insurgent was not running free. There was no model for how this could be accomplished, and numerous avenues were pursued to achieve the goal of long-term detention by means of proper prosecution in the

Iraqi criminal system.

On Nov. 24, 2009, CTS was successful in getting a national warrant, and the AOB and MND-N personnel were able to affect the transfer with their FID partners. Additionally, once custody by the 8th RCB was achieved, the Diyala Operation Center (DOC) commander signed a "CIZA"⁴ requesting USSF assistance to temporarily transfer the detainee to USSF custody. The ODA, AOB and Judge Advocates from SOTF-N, CCCI-K, and CJSOTF-AP immediately began coordination to bring witnesses to Baghdad to provide testimony to ensure the suspects' continued detention. In early December 2009, the ODA again assisted the Iraqis and transported to the CCCI-K six witnesses whose testimony secured a detention order for the long-term detention of the suspects as they awaited trial. This entire effort was unprecedented and involved the collaboration of numerous organizations and units and is at the core of what a Special Operations Force does. In the end, successful execution of multi-level cross coordination enabled the Iraqis to employ flexible solutions which ultimately improved the overall Security and Stability of Iraq in accordance with Iraqi laws and procedures.

In mid-December 2009, a similar incident occurred, but had different results. A suspected terrorist was arrested pursuant to a locally-issued warrant in the Salah ad Din province. Compared to other provinces, Salah ad Din had a much more developed ROL system, and their judiciary did not face as many corruption issues compared to other Northern provinces. Having seen similar issues and having developed the process noted above, USSF and its partnered force were poised to assist with relocating the detainee from the local

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PART III: DEVELOPING RULE OF LAW

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detention facility in Salah ad Din to Baghdad to await a detention order hearing and eventual trial at the CCCI-K. Accordingly, coordination began in much the same way as in the case above. In this case, however, the provincial judge strongly objected based on his perception that the potential movement of the case to CCC-I-K was an encroachment upon the sovereignty of the local province by the Iraq federal government. Once the objection to move the detainee was made, it was immediately clear to SOTF-N legal and the command that this matter had become an issue of provincial-versus-federal sovereignty, which required a shift in the USSF role from actively enabling its partnered force to a more passive role of offering advice when needed. In this instance, USSF adjusted their level of involvement to allow the situation to develop and support the Iraqi criminal process provincially. Ultimately, members of Iraq's provincial and federal judiciary were left to define the limits of federal power according to their constitution.

The cooperation among U.S. Forces and Iraqis in both the first incident above and the incident in Salah ad Din were positive steps forward for ROL because the models for success that Special Forces demonstrated to their Iraqi counterparts were designed to adapt to the fluid and evolving nature of the

issues presented. More importantly, the willingness to cooperate and work through issues speaks volumes of Iraq's desire to ensure their own success, stay the course in fighting corruption and shape their own ROL model. Throughout the deployment, the key to solving the vast majority of the ROL issues was the operational adaptability of the organization and USSF's decentralized operations concept. The Special Forces decentralized operations concept allows all echelons of command and operations from the CJSOTF-AP, SOTFs and AOBs, down to the ODAs to frame the problem and seek solutions at the lowest level first, while at the same time coordinate actions up to very high levels ensuring maximum operational adaptability in order to maintain stability in a fluid environment.

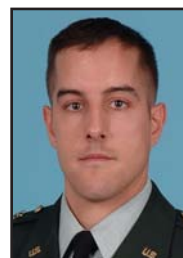
¹ In special operations, a small temporary base established near or within a joint special operations area to command, control, and/or support training or tactical operations: Joint Publication 1-02, *Department of Defense Dictionary of Military and Associated Terms*, 12 April 2001.

² This incident was also significant because the Iraqis, advised by USSF, were working together to take ownership of a sensitive situation which resulted in the successful transfer of a well connected criminal in and among Iraqi units.

³ National-level warrant: Warrant issued from an entity located

in Baghdad, resulting in case prosecution at the CCCI-K, which offers a neutral and detached forum for some provinces facing corruption/fear of reprisal within their judiciary.

⁴ CIZA: Competent Iraqi (IZ) Authority; a document issued by an Iraqi official which requests US Forces take physical custody of an Iraqi detainee for prosecution at the CCCI-K. Legal custody remains with the Government of Iraq. ■



Capt. Michael G. Botelho is currently serving as the 1st Battalion 5th Special Forces Group Judge Advocate. From July 2009 to January 2010, he served as the Special Operations Task Force-North Legal Adviser

during the 1st Battalion's deployment to Operation Iraqi Freedom VII. He was previously assigned to the Office of the Staff Judge Advocate, Fort Huachuca, Ariz., where he served in the following duty positions: legal assistance attorney, administrative/operational law attorney, chief of administrative law and trial counsel. As trial counsel, he was responsible for advising the following Commanders: U.S. Army Garrison, MEDDAC, DENTAC and the 111th Military Intelligence Brigade. He also served five years enlisted as an Airborne Ranger assigned to 1st Battalion 75th Ranger Regiment in Savannah, Ga. He holds a bachelor's in administration of justice from Salve Regina University, Newport, R.I.; and a juris doctorate from St. Thomas University School of Law, Miami, Fla.

MUCH NEEDED CHANGES TO THE GI BILL

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to the escalating costs of tuition in this country. Yes, the \$17,500 does cover the cost of every public college or university right now, but that probably won't be true in just three years. What if a veteran wants to enroll in a private institution whose tuition exceeds the \$17,500 and that institution doesn't participate in the Yellow Ribbon Program? Congress

appears to have been only looking at the next couple of years instead of looking at providing serious educational assistance to veterans for the next 20 years. All in all I'd give the new Post-9/11 GI Bill a "B-plus" grade, and I am pleased that thousands of brave men and women who previously didn't receive any DOD educational assistance will be eligible for benefits this fall. ■



Jeremiah J. Underhill works as a legal research consultant and court-appointed attorney for the Orphans' Court of Dauphin County. He's an adjunct faculty member at Central Pennsylvania College.

WHERE HAVE ALL THE LAWYERS GONE?

LONG TIME PASSING

By Thomas H. Dougherty

“We lawyers must alter our prime axiom - that we are combat mercenaries available indifferently for any cause or purpose a client is ready to finance. We should all be what would term ‘ministers of justice.’ As such, we would have to reconsider and revise a system of loyalty to clients that results too often in cover-ups, frauds, and injury to innocent people. A favorite quotation in the legal profession is Lord Brougham’s declaration than an advocate ‘knows but one person in all the world and that person is his client.’ ‘For him,’ Lord Brougham said ‘the advocate would stand against the world.’ Lord Brougham was wrong. We should be less willing to fight the world and more concerned to save our own souls. As ministers of justice, we should find ourselves more concerned than we now are with the pursuit of truth.”

— Marvin E. Frankel, *American Jurist*, Judge U.S. District Court, *Washington Post*, May 7, 1978

The title may seem a little odd, considering that we live in a society where lawyer ads seem to dominate the late-night airwaves. But the lawyer I seek is the one described by Judge Frankel, the attorney who can put above all else the ethical standards that our proud profession once held as unquestionable. You see, I once knew a few such attorneys, but they are now far and few between. I am not sure what to attribute the disappearance of what now seems like a mystical creature. Is it our law schools and the system in which attorneys are created? Is it our society and the winner take all attitude that dominates our culture, or is it simply an inevitable transformation of a professions that is less like a profession but more just a job?

I was listening to a post-NFL draft show talking about the Carolina Panthers, which had just drafted Cam Newton as the quarterback of the future. The broadcaster, who was a former quarterback, raised questions about the Panther’s overall quarterback status. Of utmost concern to him was the lack of an experienced quarterback in the Panther’s meeting and film room and the fact that the young QBs would not have the benefit of a seasoned veteran to learn how to be a quarterback. It wasn’t that he felt the players on the roster could not play quarterback because they certainly had talent; it was that the young guns did not know what it meant to be a NFL quarterback, something that could not simply be taught in college or in a playbook. Likewise, I have a feeling that too many attorneys coming out of law school are not given the time to develop the skills and traits that were once the backbone of the bar. Surely, newly minted attorneys have the skills. They know the law. They can write a brief and argue the average person into a knot, but do they know how to be lawyers?

I was fortunate enough to have several “real lawyers” in my life as a young attorney. I am a third generation in the profession. For years, I avoided my “destiny” of following in the footsteps of my great uncle, James A. Dougherty, and father, Hugh Bruce Dougherty, by becoming a lawyer. However, once I made the decision to pursue the law as a career, I could not have had better role models. Without knowing it, they had instilled in me the knowledge and belief that being a lawyer and an honest and good person were not mutually exclusive. I was taught that there were certain things a lawyers just does not do, which is compromise his own beliefs, even for money. I learned that although making a good living was part of being a lawyer, it did not

define you as a lawyer.

Regrettably, I was never able to practice with my great uncle or father. However, shortly after being admitted to the bar, I was fortunate enough to have come under the tutelage of Zell Altman. Altman, like my father and uncle, was a “lawyer’s lawyer.” He possessed unbending ethics, a dedication to the law and a compassion for those who sought his counsel. Under Altman, I learned that the lawyer-client relationship was a two-way street. The client chose his lawyer, and likewise, the lawyer chose the client, and neither should compromise his beliefs for that relationship. I learned that not every client that came to see me should be taken in as a client unless I felt comfortable representing him and his cause. I learned that my word and reputation would be with me forever, but clients will come and go. I learned that other attorneys are brothers in the bar, and while we may be advocating different position, we need not be enemies. The law is adversarial enough that we need not make it personal. In those early years of my career, I was able to observe, listen, watch and learn. Undoubtedly, Altman was concerned with billable hours and bottom line but not at the expense of our profession.

I cannot imagine my early years as a lawyer without the ability to call my father for advice or to walk into Altman’s office and receive the wisdom that 50 years of practice had taught him. I cannot imagine not having my great uncle’s steady impression of what a lawyer truly was. Yet, we expect our profession and the high standards it should represent, to continue onto each successive generation without providing the mentors, role models and standard bearers that I was fortunate enough to have experienced.

After 20 years of practice, I sat for

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WHERE HAVE ALL THE LAWYERS GONE?

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and passed the Pennsylvania bar. As I was registering for the Bridge the Gap Course, all of the above came to me. Bridge the Gap, is “[a] program developed by a subcommittee of the Supreme Court of Pennsylvania to assist lawyers in making the transition from law student to law practice. This program includes subject matter and topics relative to the Rules of Professional conduct and was developed by a Subcommittee of the Supreme Court of Pennsylvania.” See *Supreme Court of Pennsylvania Continuing Legal Education Board*. I found it ironic that somehow, after all these years, I need to “bridge the gap.” Understand, I am not complaining and will gladly comply with this requirement but could not help but think of numerous practicing attorneys that I know who could use this course.

In the end, I believe that if we as attorneys would take the words of Judge Frankel to heart, to remember this is a profession, not a job, and that we are indeed privileged to be attorneys, we could again have the profession raised to the admired status it once held. So, while I prepare to take the Bridge the Gap course, I remain thankful to my great uncle, father and mentor Altman for

helping me “bridge that gap” years ago. To all that are entering this noble profession, please take care to protect the integrity that those who came before you held dearly. In the words of Oliver Wendell Holmes, “Every calling is great when greatly pursued.” Pursue the law greatly, remembering that much knowledge does necessarily mean much wisdom. ■



Thomas H. Dougherty is a third generation attorney who currently resides in Palm Beach County, Fla. A native of Greenwich, Conn., he is a graduate of Central Connecticut State University with a degree in business administration and earned his juris doctorate degree, cum laude, from Nova University. Dougherty was admitted to the Florida Bar in 1992 and the Pennsylvania bar in 2010 and possesses more than 20 years of experience assisting clients in various matters including: mortgage foreclosure, civil litigation, family law, probate and estate planning, construction litigation, contract law, real property law, and general business consulting. He currently operates a solo practice in Palm Beach Gardens, Fla., and in addition to his private practice, Dougherty serves as a special magistrate for Palm Beach County.

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be those days that own us; it’s what we do. We need to reward ourselves, win or lose, for putting forth our best efforts. We are important to our families and need to remember that our children need us too. Only through balance and effectively prioritizing what really needs to be done right now and what can wait until tomorrow, can we absolutely start mastering the ownership of time management in our own lives. ■



Mariah Balling-Peck, of Fayette County, Pa., is in the general practice of law, including real estate law, family law, contract law, construction law and estate planning and trusts. Balling-Peck also serves on the Board of Directors for the Fayette County chapter of Dress for Success. Balling-Peck received her undergraduate degree from Valdosta State University in Valdosta, Ga., graduating magna cum laude. She obtained her juris doctorate degree from Duquesne University School of Law in Pittsburgh and was admitted to the Pennsylvania bar and the United States Federal Court.

MARK YOUR CALENDARS!

Upcoming PBA Events

Sept. 15-16, 2011
PBA Workers’ Compensation Law Section Fall Meeting
Hershey Lodge, Hershey, Pa.

Oct. 21-22, 2011
PBA Women in the Profession Retreat
Hotel Hershey, Hershey, Pa.

Oct. 27, 2011
PBA Minority Bar Committee Diversity Summit
Hilton Harrisburg, Harrisburg, Pa.

Nov. 16, 2011
PBA Board of Governors Meeting
Holiday Inn East, Harrisburg, Pa.

Nov. 17, 2011
PBA Committee/Section Day
Holiday Inn East, Harrisburg, Pa.

Nov. 18, 2011
PBA House of Delegates Meeting
Sheraton Harrisburg Hershey, Harrisburg, Pa.

March 30-31, 2012
Statewide Mock Trial Championship
Crowne Plaza Hotel and Dauphin County Courthouse
Harrisburg, Pa.

May 9, 2012
PBA Board of Governors Meeting
Marriott Lancaster at Penn Square,
Lancaster, Pa.

May 9-11, 2012
PBA Annual Meeting
Marriott Lancaster at Penn Square,
Lancaster, Pa.

May 11, 2012
PBA House of Delegates
Marriott Lancaster at Penn Square,
Lancaster, Pa.

EASY WAYS TO KEEP INFORMED OF DEVELOPMENTS IN THE LAW

By Lindsey Bierzonski

It seems counterintuitive. As new attorneys, we just proved that we memorized a sufficient amount of the most recent legal developments by passing the bar exam, right? Nevertheless, despite the many differences between the bar exam and practical law in the real world, laws can change rapidly. As zealous advocates, we owe a duty to clients to stay informed of developments in the law and risk malpractice suits if we do not. Protect yourself by establishing good habits now to constantly learn about modifications to the law and maintain the habit throughout your legal career.

Here's what to do:

- Sign up for the newsletters in your jurisdiction, other jurisdictions and from bar associations.

Every state sends various notices to attorneys throughout the year. Most states now also have some form of monthly or quarterly newsletter, either in paper or e-mail distribution form, with important updates. Find out what media your state uses, and make sure you are on the distribution list. Do the same with any bar associations of which you are a member. Most distribution lists are not only included with your yearly fee, but the summaries included are simplified to concise statements, which make picking out relevant topics much easier. Don't miss signing up for possible distribution lists of neighboring jurisdictions, especially if your law practice is impacted by any federal laws. The other jurisdiction might have included an update on a federal law or case that hasn't directly impacted your own jurisdiction yet, but it can indicate a trend in the law that may affect your jurisdiction.

- Put reminders on your calendar to check federal and state administrative agencies for

news at least once a month.

The rules and regulations of federal and state administrative agencies only go so far. Therefore, if an agency thinks something is important enough to post an update about it on its website, you simply

must be informed about it. Stay on top of any further interpretation of the law by adding a monthly reminder to visit the websites of any agencies within your practice areas. Most agencies have recent news posted on their home pages and update their websites frequently.

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- Sign up for third party legal newsletters and learn what RSS feeds are and how to use them.

If you use Outlook, you have a wonderful tool for getting news updates delivered right to your inbox. Many websites now publish RSS feeds, which, if you subscribe to them, can be delivered automatically to a designated folder in your mail. Jurist, through the University of Pittsburgh, and JD Supra are two great examples of legal news databases that publicize updates in various areas of law. JD Supra can now provide updates through LinkedIn. Find your areas of practice and subscribe to those feeds. Although not directly related to the legal world, Topix is another great news collection source. Although it is a general news source and not specific to legal needs, it pulls articles from numerous sources and has an expansive collection on general news. Search on its website for the name of your jurisdiction, then subscribe to the feed.

- Update or create your infor-

mation on professional networking websites.

Some websites probably already have you listed as an attorney. You usually can claim your profile and fill in further information. Find these websites, like Avvo, Martindale or

LinkedIn, and if possible, connect with and get to know other people in your practice area.

- Don't pass up good opportunities to introduce yourself as an attorney within your area of practice.

Ask acquaintances what they do for a living; chances are they will return the favor. Provide business cards to people who think your area of practice is interesting; you never know who might refer clients your way. Moreover, if you succeed in making an impression on them, when they hear about updates in your area of practice, they may just forward that information to you. Also, find ways to introduce yourself to attorneys and legal staff who are both inside and outside of your practice areas. If you work within a large or public firm, you probably are not making use of all of your available resources and connections.

- Lastly, go to CLEs that focus on your practice areas.

This should be obvious but is worth repeating. CLEs generally provide written materials that go into more detail than the actual live presentation can cover and usually provide updates on the substantive law. CLEs are also great ways to network within your practice area

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ZONE 7 CARAVAN

***Happy Hour at
The Flagship Niagara Plaza
on June 17 in Erie, Pa.***



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and to meet colleagues with whom you should be keeping in touch.

The hardest part sometimes seems to be finding time in your busy day, normally filled by meeting billable hour requirements, to actually read up on recent developments in the law. One thing you can do is make a daily habit of spending at least 15 minutes every day reading legal news. Fifteen minutes is short enough to not significantly cut into your day, but it's long enough to scan headlines and find relevant articles that you can print or save to read at a later time. These 15 minutes can be spent as soon as you get to work

as a way to warm up your brain. It also can be used on a lunch break or at the end of the day when winding down and you want a few minutes of light, easy work before heading home for the evening.

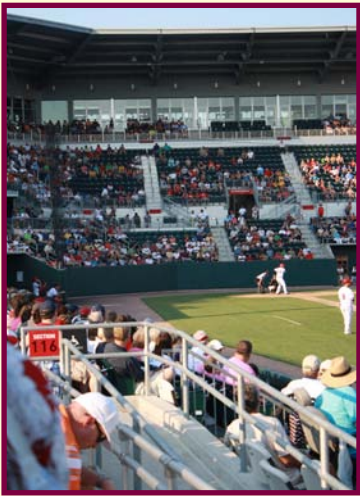
Never underestimate the power of being fully informed about your practice areas. Take the extra time each day to learn something in order to beat your adversaries to the punch. Your clients will thank you for it. ■

Lindsey Bierzonski graduated from Widener Law School in Harrisburg and joined the Artell Law Group in 2010. She practices primarily in litigation, labor and employment law, and corporate law. While at Widener, she was a member of the

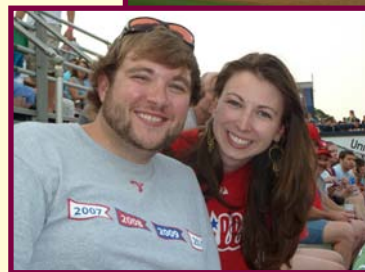


Trial Advocacy Honor Society and was awarded a Certificate of Achievement in Business Planning. She now enjoys advising clients on how to start a business, open new locations, manage employees and more. Bierzonski is also an approved attorney to conduct commercial real estate title searches. She has volunteered to provide free legal services in the Wills For Heroes program, has returned to Widener to judge the annual Hugh B. Pearce Competition, and planned to mentor a student through the Pennsylvania Bar Association's Bar Passage Program on how to best prepare to take the July bar exam.

ZONE 3 CARAVAN



Harrisburg Senators baseball game and picnic at Metro Bank Park on July 17 in Harrisburg, Pa.



Some of the YLD members who attended included, first row, from left: Alison Wasserman, YLD Zone 2 Chair (Lehigh County); Sarah Barnwell (Zone 1); Chuck Eppolito, Chair of PBA House of Delegates (Zone 1); Heather Moyer (Zone 3, Lancaster County). Second row, from left: Hope Guy, YLD Chair (Zone 12); Jacob Gurwitz, YLD Chair-elect (Zone 2, Berks County); Jennifer Engleson Gurwitz; Bernardo Carbajal (Zone 2, Berks County); Matthew Muckler (Zone 5, Luzerne County); Jesus Saucedo (Zone 3, Lancaster County). Third row, from left: Jeffrey Pratz (Zone 2, Berks County); Graham Ross; and Alex Smith (Zone 4, Lycoming County).

Zachary Jones (left) (Zone 1) and Krystle Baker (Zone 1).

Steak and Beer Baseball event at the FirstEnergy Stadium on June 18 in Reading, Pa.

ZONE 2 CARAVAN

SO MUCH OWED TO SO FEW

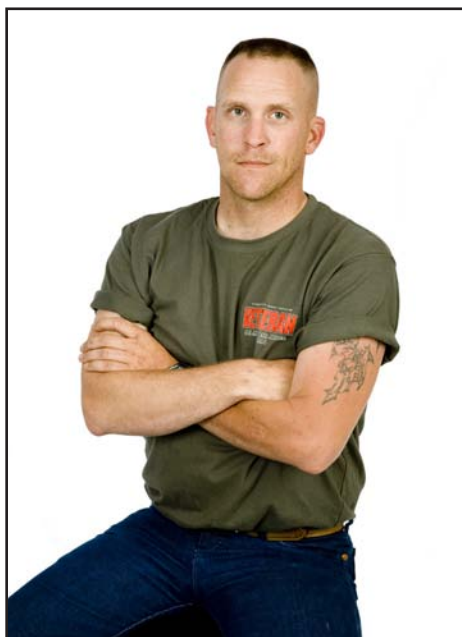
By Warren Crilly

*"Don't you know me?
I'm the boy next door
The one you find so easy to ignore
Is that what I was fighting for?"*

These simple lyrics to a 1984 song by Huey Lewis and the News capture the often empty and hopeless feeling of the men and women in our Armed Forces who return from battle with scars that the rest of us cannot see. This song was written about the dire situation faced by veterans of the Vietnam War and how that particular conflict's lack of popularity caused our country to turn our collective backs on the men who valiantly served in the jungles of Southeast Asia. Fortunately, since that time in the early 1980s, many changes inside and outside the military have led our nation as a whole to look differently on our combat veterans. Or have they?

The strain of war on the individual is something that has been written about eloquently and voluminously for centuries. However, in America today an epidemic has been created by the men and women returning from Iraq and Afghanistan who are being ignored at every turn. The ugliness of modern warfare is perhaps indescribable, and the effect it has on the individual in combat varies widely. Our all-volunteer forces make up less than 1 percent of our population, which means the vast majority of Americans today have little experience with the costs of war. The professionalism and courage demonstrated by our men and women in uniform is well known, but we often turn a blind eye toward the dark side of their sacrifice.

According to the Department of Veterans Affairs, there are in excess of 23 million veterans in the United States, 1.7 million of which served in either Iraq or Afghanistan. According to the Justice Department, 1.1 million veterans were arrested in 2007. In addition to that, the Substance Abuse and Mental Health Services Administration found in 2006



that 1.8 million veterans met the criteria for having a substance abuse disorder, with one in four veterans in the age group of 18-25 categorized as having a problem with alcohol and/or drugs. For many of this age group, the first thing they did after high school was to volunteer to fight in Iraq or Afghanistan. The experience of war takes its toll on these brave young men and women. Those of us who have neither seen the things that these veterans have seen nor experienced the hardships they have endured can never understand the burden they often carry. It is clear that Americans have become keen on "supporting our troops." Tragically, for many of those who labor to protect our way of life, that slogan begins and ends with a magnet on our vehicle.

Very often the kind of individual who volunteers to go and fight to protect our country is the least likely to ask for help. These men and women are prideful and for good reason. They do not want to hide behind a mental illness or substance abuse problem, which many view as an excuse for their crimes. Those of us who have the ability to impact the justice system on a day-to-day basis, especially those of us who are

their peers, young attorneys, owe it to them to do something. We need to speak up for these veterans, wherever and whenever we get the opportunity. We cannot afford to let the lessons of our national experience in Vietnam go unlearned. We owe these fighting men and women not just our gratitude but our attention and our talent. By simply being aware of these veterans among us, we just may avert the shameful experience of Vietnam. There is more at stake than those of us who have not been in combat may realize. There are many men and women out there whose sleep is disturbed every day by the nightmare of their experiences. These veterans need advocates.

According to the National Association of Drug Court Professionals, there are less than 60 specialized Veterans Courts in the entire United States. Pennsylvania has four. Many more counties in the commonwealth have programs for DUI offenders, treatment options for drug addicts and other programs that seek to reduce recidivism and deal with the root problem of crime. Veterans Courts provide the kind of mentorship and coordination with local Veterans Administration services that assure that the young men and women returning home from foreign theaters of operation get the kind of assistance they need.

As young attorneys it is paramount that we learn to recognize the veterans among us and take steps in our community, or even in our individual cases, to address this problem. Asking your clients if they have a military background and encouraging them to seek help from VA resources is a simple way to be part of the solution. If you are more inclined to action, write your local county officials and implore them to develop a specialized Veterans Court. In many counties, this could be done without much expense as the resources and personnel dedicated to specialized Drug Courts or DUI

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SO MUCH OWED TO SO FEW

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Courts could be adapted for veterans. Working pro bono or at a reduced rate for veterans is another way to have a positive impact. It is easy to ignore such a small segment of our population, especially when they do not clamor for recognition or act as if they are entitled to it. This is precisely the reason that young attorneys should be sensitive to this national issue.

As we pause to marvel at the

bravery, skill and determination of the Navy SEALs who swooped into Pakistan to eliminate Osama Bin Laden, we are reminded of the words of Winston Churchill. In August of 1940, in a radio address, the British prime minister said of the RAF pilots who won the Battle of Britain, "Never in the field of human conflict was so much owed by so many to so few."

No matter what kind of attorney or what field we specialize in, we will likely encounter these veterans in

our practice. We owe it to the men and women returning from wars in Afghanistan and Iraq to give them at least as good of a chance to beat their addictions as we give those with substance abuse problems who are not veterans. We can only do that if we are aware of the problem and take an interest in finding solutions. We are the beneficiaries of their service. It is the least we can do. ■

Warren Crilly is an assistant public defender in Blair County.



CALLING ALL WRITERS!

The YLD At Issue editors are now accepting article submissions. Criteria are as follows:

1. The subject matter should be relevant to Pennsylvania young lawyers.
2. Articles should be no longer than 1,200 words in length. Longer articles may be considered to run as a series.
3. All submissions must include a short author biography at the end of the article and must be accompanied by a digital photo (300 dpi resolution preferred) of the author for publication.
4. Electronic submissions (MS Word) are acceptable and preferred. Please transmit electronic submissions to Bill Higgins Jr. at bhiggins@bedfordcountypa.org or to Robert Datorre at rdatorre@state.pa.us.
5. If submitting by mail, a copy of the article may be sent to either of the following individuals: Bill Higgins Jr., Bedford County's District Attorneys Office, 200 S. Juliana St., Bedford, Pa., 15522-1713; Robert Datorre, Pa. Department of Health & Welfare, Health & Welfare Bldg., 625 Forster St., Room 825, Harrisburg, Pa., 17120.

PBA 2012 Midyear Meeting



Caribe Hilton • San Juan, Puerto Rico

January 25-29, 2012

Mark your calendars and watch for more information.