have been in some intimidating situations in my career, both as an attorney and as a lobbyist. I am sure we all have felt, at one time or another, the type of anxiety born from difficult people, difficult circumstances or both. But nothing can give you more strength when facing such situations than knowing you are on the side of the angels.

I am thinking about a particular bill that very recently became law. Here’s the story. The Pennsylvania Bar Association has the unique privilege of oftentimes being the organization at the forefront of advocating for the enactment of uniform laws. The process always involves an analysis of the proposed uniform law by the relevant section or committee of the PBA. The section or committee evaluates the proposal and then recommends to the House of Delegates as to whether the PBA should support, oppose or amend the language. In my 10 years at the PBA, we have always done some significant tweaking of proposed uniform laws when they are introduced in Pennsylvania.

This tweaking inevitably leads PBA into negotiations with other organizations, including the Uniform Law Commission, which, of course, has uniformity as one of its interests. I have participated in some interesting negotiations as a result. On one family law issue a few years ago, we were on a conference call that included attorneys from the Pentagon! PBA insisted on so many changes that there was concern from the commission representative that we would end up with a law that was no longer uniform. But, in the end, all were satisfied.

I am not writing about that family law bill today. It is still a work in progress. This column is about Senate Bill 320, which is now Act 72 of 2020. Act 72 is Pennsylvania’s version of the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA).

There is a lot that can be said about the RUFADAA, and even more that can be speculated on with regard to its history at the commission and the major change in language of SB 320, but I will only recount a few. First, the RUFADAA is the successor of the Uniform Fiduciary Access to Digital Assets Act (UFADAA). It is not unusual for a Uniform law to be revised some years later and then become a Revised Uniform law. However, I think it is probably highly unusual that a Uniform law becomes a Revised Uniform law in just two years, as happened with the digital assets proposal!

If one was to compare the RUFADAA to the original UFADAA, one would notice very significant differences. Some might say that the original was fiduciary friendly and that the revised tilted to the wishes of major technology companies. I have been told by reliable sources that the revisions to the UFADAA came after furious lobbying by the tech industry.

So, when the RUFADAA landed in the Real Property, Probate and Trust Law (RPPT) Section’s lap, the section was concerned that the language was unfair and need important amendments. They drafted a Report and Recommendation that was adopted by the PBA House of Delegates, and your PBA Legislative Department, very ably assisted by the RPPT Section in general, and former section chair Eric Strauss, in particular, began its work on the Hill.

Now we get to the intimidating aspects of this story. The changes to the RUFADAA that the PBA proposed were not — how shall I say this — well-received by the lawyers representing the massive technology companies. Knowing what happened at the Uniform Law Commission, I thought I would be prepared for what might come next. I was not. I was on several telephone conference calls with lawyers from various companies that are household names calling in from Silicon Valley and Manhattan. They had the confidence and, quite frankly, the arrogance of the types of organizations that always get what they want. I kept thinking about David and Goliath! I had steel in my spine, even though I knew there was a possibility that these companies could soon be employing an army of lobbyists, because the changes PBA wanted were fair and very important to individuals and families all over the commonwealth.

Before starting any negotiations, I had already formulated in my mind the arguments I would make to legislators and I was convinced we could stand up to the big tech companies! Eric Strauss
and his colleagues worked on the substance, but I was prepared to fight the political fight if necessary and I was not hesitant to say so, in a polite manner, of course.

I won’t go into the details of the RUFADAA — please see PBA President David Schwager’s “Side Bar” column on Page 2 of this issue — but I will say that the RPPT Section was able to work out a RUFADAA that added balance back into the legislation. I don’t know why other states adopted the RUFADAA without any changes. But in a recent conversation with a member of the Uniform Law Commission, I was informed that they prefer Pennsylvania’s version. That made my day! Well done, RPPT Section and PBA! 😊

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