On occasion, I have heard PBA Executive Director Barry Simpson say that when it comes to developing public policy positions, the PBA is a bottom-up, not a top-down organization. I can only assume that he mentions this from time to time to dispel any notion that it could be otherwise. In other words, the PBA membership, not its top leaders, decide what the PBA stands for and against. An interesting story illustrates the truth of that statement in a dramatic fashion.

Carol Shelly is a small firm practitioner in Doylestown who focuses on personal injury and wrongful death actions. She is also a proud PBA member. As you can imagine, some of her caseload includes accidents that involve investigations by law enforcement officials. Automobile accidents, in particular, are often subject to at least a preliminary investigation.

Carol grew frustrated knowing that some law enforcement officials would share investigative materials with litigants and some would not. The rationale for not sharing is a law titled the Criminal History Record Information Act, also referred to as CHRIA. In her frustration, she turned to the PBA and contacted me.

A quick review of the law revealed that the law enforcement officials withholding the information were most likely interpreting it properly. I asked Carol if she would like to pursue the PBA attempting to amend the law. She said yes, so I encouraged her to bring the issue to the Civil Litigation Section. The section reviewed the issue and determined that it could be helpful, in the interest of civil justice, for such information to be available. However, the Civil Litigation Section represents a big tent of civil litigators and thus it insisted that such a change in the law must benefit any party — plaintiff or defendant.

A report and recommendation were drafted, voted upon and adopted by the Civil Litigation Section Council (sections are governed by councils), circulated to sections and committees for comment and then sent to the PBA Board of Governors for review. The board approved the report and recommendation, and then the matter was set before the PBA House of Delegates for its consideration. It is the House of Delegates that is the primary policy-making body of the PBA. It consists of about 400 attorneys from around the commonwealth.

The House unanimously approved the report and recommendation, and it became the official policy of the PBA. At that point, as with every position adopted by the PBA, it then became the duty of the PBA president (in consultation with the executive director and the legislative director) to determine how and when to pursue the policy goals adopted by the House.

PBA has a lot of policy goals — well over 200 have been adopted in the last 12 years! So, as you can imagine, we are not able to pursue all policy goals at the same time, and even the ones we can pursue may not get the same degree of attention. It is a matter...
of both resources and opportunity. As a professional lobbyist, it is my duty to offer my best judgement as to what is possible at any given time. As Otto van Bismark, the famed politician and diplomat, once stated: “Politics is the art of the possible, the attainable — the art of the next best.” Oh, how I wish more people involved in the legislative process understood and applied that nugget of wisdom!

But I digress. Sometimes, by design of the framers of our constitutional republic, the legislative process can be quite slow. For several years the PBA has pursued, on and off again, legislation to amend CHRIA and bring to fruition the goal of the PBA and our member, Carol Shelly. I am glad to report that legislation on this topic, House Bill 2525, whose prime sponsor is Rep. Aaron Kaufer (R-120), also a PBA member, has passed the House of Representatives and is now in the Senate Judiciary Committee. The Legislative Department will do its best to get this bill passed into law.

And to think it all started with one PBA member. So, Mr. Simpson’s point has been proven in spades!

If you have an idea that you think will improve the practice of law, I encourage you to bring it to a section or committee. It is just another way we seek to serve our membership.

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