Ninth Circuit finds
California’s Proposition 8 unconstitutional

By Linda J. Olsen

By using their initiative power to target a minority group and withdraw a right that it possessed, without a legitimate reason for doing so, the People of California violated the Equal Protection Clause. We hold Proposition 8 to be unconstitutional on this ground. We do not doubt the importance of the more general questions presented to us concerning the rights of same-sex couples to marry, nor do we doubt that these questions will likely be resolved in other states, and for the nation as a whole, by other courts. For now, it suffices to conclude that the People of California may not, consistent with the Federal Constitution, add to their state constitution a provision that has no more practical effect than to strip gays and lesbians of their right to use the official designation that the State and society give to committed relationships, thereby adversely affecting the status and dignity of the members of a disfavored class. The judgment of the district court is AFFIRMED.

Perry v. Brown, 671 F.3d 1052 (9th Cir. 2012).


Continued on Page 5

Montgomery Bar Association’s first openly gay president

By Helen E. Casale

Donald J. Martin may have been born in Philadelphia and may live there currently, but there is no doubt he is a Montgomery County native. Montgomery County is near and dear to his heart. At the age of seven he moved to Abington and lived there until he went off to college. He graduated from the University of Pennsylvania and immediately thereafter headed off to Chicago to attend the University of Chicago Law School.

“I was hooked on being a lawyer somewhere midway through law school,” he said. He chose Chicago to get away from home, but it did not take long for him to make his way back to Montgomery County. After graduating from law school, he came back home and was hired by one of the largest law firms in the county at that time, Waters Fleer Cooper & Gallagher. It was 1973, and Donald Martin did not know that some almost-40 years later he would be president of the Montgomery Bar Association and the first openly gay man to lead the organization.

As an associate at Waters Fleer, Martin worked with the business and litigation group and even did some criminal work. He gained valuable experience and met some very good friends and colleagues that he would stay close with throughout his career. He worked for Waters Fleer from 1973 to 1979.

Continued on Page 7
Editor’s note: Every edition of Open Court features a member of the Gay & Lesbian Rights Committee. This edition features longtime member Jonathan Vipond III. He is a co-managing partner and health care law shareholder at the Harrisburg office of Buchanan Ingersoll & Rooney P.C. With a self-deprecating chuckle, Vipond referred to himself after 40 years of practice as an “OGM” (Old Gay Man), but the undersigned observes Vipond should more appropriately be referred to as a practical idealist who is obviously committed to the values of our profession.

Profile: Jonathan Vipond III

By Sharon R. López

He was a self-described idealist. His idealism sprang from his Vietnam War “activist” generation in the late 1960s and the messages of support and opportunity he received from his caring family, teachers and schools and thoughtful mentors. One of Jonathan Vipond III’s first mentors, former United States Congressman Joseph McDade from Scranton, taught him by example to value public service when he spent the summer of 1966 as an intern in McDade’s Washington office. After Andover and Williams College, Vipond entered Penn Law School, which also underscored the importance of public service and a lawyer’s role in promoting justice.

Continued on Page 8

Committee Chair Chatter

By Leo L. Dunn

Our committee launched a very ambitious project to enumerate the benefits that heterosexual married couples receive under state and federal law that are not available to same-sex couples. The project includes an update on the status of same-sex marriage nationally and a legal analysis of same-sex marriage under the Pennsylvania Constitution. We hope to have the project completed by spring 2014 or perhaps sooner.

The project is broken down into five phases. Phase I is following the format of the New York City Bar Association’s similar report done in 2004. At this point, we have identified the following areas of law to report upon:

A. Duty to support one’s spouse financially
B. Insurance law
C. Employment benefits and retirement planning
D. Impact of marriage on federal income tax benefits
E. Parental responsibilities during marriage
F. Property and financial interests
G. Federal transfer taxes
H. Torts and civil procedure
I. The Family and Medical Leave Act
J. Public benefits

Continued on Page 5
Pennsylvania General Assembly forms LGBT Equality Caucus

By Kathy J. Bloom

Pennsylvania has a long way to go in terms of recognizing human rights based on sexual orientation and gender identity, but Sen. Daylin Leach (D-Montgomery County) and several of his colleagues in Pennsylvania’s House and Senate are trying to change that. Leach and other members of the general assembly formed the Pennsylvania LGBT Equality Caucus (“Caucus”) in December 2011 to educate legislators regarding issues facing lesbian, gay, bisexual and transgender citizens and to advocate for equality. The idea for the Caucus came at the suggestion of Equality Pennsylvania, formerly known as the Center for Lesbian and Gay Civil Rights. The Caucus is co-chaired by Leach, Rep. Dan Frankel (D-Allegheny County) and Rep. Babette Josephs (D-Philadelphia) and is surprisingly bi-partisan. The Caucus’ mission statement is as follows:

The mission of the Pennsylvania LGBT Equality Caucus is to promote lesbian, gay, bisexual, and transgender (LGBT) equality. The bi-partisan LGBT Equality Caucus will be comprised of Members of the General Assembly who are strongly committed to achieving the full enjoyment of human rights for LGBT people in the Commonwealth and around the nation. By serving as a resource for Members of the General Assembly, their staff, and the public on LGBT issues, the Caucus will work toward the extension of equal rights, the repeal of discriminatory laws, the elimination of hate-mongering violence, and the improved health and well-being for all regardless of sexual orientation or gender identity/expression.

According to Leach, the Caucus members meet and strategize to examine what bills to promote, who to talk to, who is sympathetic and who is not. Other members of the Caucus are Sens. Jim Ferlo and Lawrence Farnese, and Reps. Josh Shapiro, Brendan Boyle, Kevin Boyle, Joseph Brennan, Tony Payton, Tina Davis, Michael McGeehan, Matthew Bradford, Vanessa Lowery Brown, Timothy Briggs, Ronald Buxton, Mark Cohen, Pamela Delissio, Lawrence Curry, Eugene DePasquale, Michael O’Brien, Michael Gerber, James Roebuck, Matthew Smith, Steven Sanarsiero and Michael Sturla.

The LGBT Equality Caucus is a platform to advocate for marriage equality and for LGBT-inclusive anti-discrimination legislation in employment, housing and public accommodations. While it is commonly known that Pennsylvania does not have laws supporting same-sex unions or marriage, it is not so well known that someone can still be fired because of his or her sexual orientation or gender identity and that a person or couple can be denied a hotel room or be evicted from his/her or their apartment because of it. The Caucus members are trying to change this by taking their message for equality to municipalities to pass anti-discrimination laws. They determined a grass roots approach is more effective, and they are working to accomplish this – one municipality at a time. As more municipalities pass LGBT-inclusive anti-discrimination laws, pressure is increased on the surrounding communities to do the same. There are now 28 municipalities in the commonwealth with LGBT-inclusive anti-discrimination laws since the recent passage of Abington Township’s ordinance in April of this year. Leach equated this movement with the civil rights movement of the 1960s and stated, “It is a marathon, not a sprint.”

Leach attributes a lack of understanding to opponents of the Marriage Equality Bill. He and the other members of the Caucus are trying to convince colleagues that “nothing bad happens” when same-sex couples are allowed to marry or enter into a civil union. In a series of debates, the senator argued that there was no impact or effect on the institution of marriage for traditional opposite-sex couples after same-sex marriages or civil unions were legalized in other states. Eight state governments (along with the District of Columbia and the Coquille Indian Tribe) legally support same-sex marriage: New York, Massachusetts, Connecticut, Iowa, Vermont, New Hampshire, Washington and Maryland. Civil unions or domestic partnerships were legalized in Colorado, Delaware, Hawaii, Illinois, Maine, Nevada, New Jersey, Oregon, Wisconsin and California. Four of the six states bordering Pennsylvania (New York, New Jersey, Delaware and Maryland) now have laws legalizing status for same-sex couples. Leach believes “other legislators have no reason not to support it.”

Leach quoted Dr. Martin Luther King, “The arc of history is long, but it bends toward justice...” and then added, “There will be continued and increasing victories when the political winds shift. Right now, the majority in the House and Senate do not recognize the humanity of gay people.” The senator and other members of the Caucus will continue to debate opponents and use the platform to spread the message for marriage equality, anti-discrimination laws and all other issues effecting LGBT citizens, “even if that means going municipality by municipality.”

Kathy Bloom, a partner at Bloom Peters LLC, focuses her practice in family law and real estate transactions primarily in Montgomery and Bucks County. Bloom is experienced in resolving high-conflict divorce and custody issues but prefers collaborative law, where she helps families through mediation and parenting coordination, instead of litigation. Bloom is an active member of the Montgomery Bar Association and serves on multiple PBA committees, including Gay and Lesbian Rights, Women in the Profession and Alternative Dispute Resolution.
Don’t filter me!  
First Amendment protects student access to LGBT websites

By Roberta Jacobs-Meadway

Students in public schools that search the Internet for information about lesbian, gay, bisexual and transgender (LGBT) rights often are prevented from accessing the information because schools filter and block access to legitimate websites with their filtering software by filtering for the word “sexuality.” The American Civil Liberties Union (ACLU) believes public schools’ use of such filtering software may violate the First Amendment because the filter eliminated access to positive LGBT sites but allowed access to negative LGBT sites. The ACLU launched a campaign called “Don’t Filter Me!” The ACLU filed a complaint in U.S. District Court for the Western District of Missouri seeking a preliminary injunction on behalf of plaintiffs, Parents Families and Friends of Lesbians and Gays Inc. (PFLAG), et al against the Camdenton R-III School District as part of the “Don’t Filter Me” campaign initiated by the ACLU and ACLU of Missouri. The ACLU filed the motion for the injunction on Aug. 15, 2011, and United States District Court Judge Nanette K. Laughrey entered a final consent decree on April 6, 2011, directing the school district to proactively monitor the “sexuality” filter so that LGBT supportive websites would not be excluded from view. Attorney fees were ordered in the amount of $125,000.

In its response to the ACLU’s preliminary injunction motion, the school district argued it would be burdensome to disable the filter, but if someone complained, then a particular site could be reviewed and unblocked, if the content was not pornographic, obscene or otherwise “inappropriate.” The ACLU asserted that the district’s position was not responsive to the genesis of the issue: the fact that the filter, directed to matters of “sexuality,” characterized anything negative about LGBT persons as “religious” content, and matters pertaining to “religion” were not blocked by the filter.

The effect of the “sexuality” filter was discriminatory, since students were blocked from access to sites that addressed LGBT issues in a positive manner, including anti-bullying issues. The positive sites were generally filtered out unless a parent or student complained. However, access was not blocked to sites that were homophobic, whether or not some of the content might be inappropriate. Amicus briefs were filed in connection with the preliminary injunction applica-

Continued on Page 6
Ninth Circuit finds Calif.’s Proposition 8 unconstitutional

Continued from Page 1

Cal. 2010). The Ninth Circuit’s decision comes almost two years after California denied marriage licenses to two same-sex couples. The Ninth Circuit decision is long, thoughtful and well-written, but exceedingly narrow. In addition to affirming the district court decision on the grounds that Proposition 8 is unconstitutional on equal protection grounds, the Ninth Circuit decision also affirmed, by a unanimous 3–0 decision, Judge James Ware’s holding that Walker was not obligated to recuse himself from the case because he is gay.

Walker’s lower court ruling held that a ban on same-sex marriage violates both due process, because gay couples are denied the fundamental right to marry, and also violates equal protection by treating gay people differently from straight people for no legitimate reason. The Ninth Circuit affirmed on narrower grounds, holding that California “had no rational basis for limiting the designation of ‘marriage’ to opposite sex couples” and that “Proposition 8 singles out same-sex couples for unequal treatment by taking away from them alone the right to marry.”

The Perry decision is considered to be exceedingly narrow because it focuses only on the equal protection violation caused by the taking away of an existing right for no other reason than to discriminate against gay people. The ruling is California specific. According to Ari Ezra Waldman,¹ “[T]here is one legal and at least three strategic reasons for a narrow holding.”²

- Because the Ninth Circuit could decide the case on narrower grounds, the court had no reason to decide broader issues; or
- The Ninth Circuit may be anticipating possible reactions from the Supreme Court; or
- The Ninth Circuit is playing for time – the narrow holding specific to California is a stop-gap measure meant to provide a gay marriage victory without a lot of political and sociological disruption; or
- The Supreme Court takes the case and reverses, opening the door to a broader decision in the next round.

A reversal by the Supreme Court would send the case back to the Ninth Circuit where the Supreme Court’s instructions would be assessed, and depending upon the grounds for reversal, the Ninth Circuit could issue the broader decision following Walker’s ruling. Nevertheless, Perry creates helpful precedent on this very controversial topic, and future decisions will almost certainly look to the Perry decision declaring the California ban on same-sex marriage unconstitutional as a basis for similar rulings.

On Feb. 21, 2012, proponents of Prop 8 petitioned for en banc review by the Ninth Circuit Court of Appeals.³ According to Chris Stoll of the National Center for Lesbian Rights, “[I]t usually takes months for the en banc reconsideration to be completed. ... It is really almost like starting the whole appeal all over again.”⁴ That is because the Ninth Circuit has more than 20 active judges and has adopted a “limited en banc” procedure in which all the active Ninth Circuit judges vote whether an en banc consideration will be granted. If a majority of the court supports the en banc consideration, then the chief judge of the circuit and 10 randomly selected appellate judges from the circuit will hear the en banc appeal, which can involve briefing and oral arguments. A stay barring any same-sex marriages from taking place in California remains in place pending the outcome of any appeal.

The opinion of the Ninth Circuit holds that “Proposition 8 simply could not have the effect on procreation or childbearing that Proponents claim it might have been intended to have. Accordingly, an interest in responsible procreation and childbearing cannot provide a rational basis for the measure.” Perry v. Brown, 671 F.3d 1052 (9th Cir. 2012). Proponents have, nevertheless, included in their request for an en banc rehearing their belief that:

Continued on Page 6

Committee Chair Chatter

Continued from Page 2

K. Rights and duties upon the incapacity of a spouse
L. Rights to the assets of a deceased spouse
M. Right of a surviving spouse to occupy housing
N. Right to claim decedent’s remains and to make anatomical contributions
O. Domestic violence and access to the courts
P. Bankruptcy
Q. Requirement of divorce and annulment to dissolve marriage
R. Judicial determination of support and property rights upon dissolution of the marriage
S. Post-separation rights and obligations with regard to children
T. Criminal law and spousal privileges
U. Immigration status of spouses

Our call for volunteers was extremely successful. In fact, any additional volunteers are now being asked to focus on Phases II and III, rather than Phase I. Phase IV will be doing conclusions and recommendations, and Phase V will be pulling it together and getting it e-published.

We are looking forward to creating a great educational reference for the lesbian, gay, bisexual and transgender (LGBT) community. If anyone knows of other areas that need addressed or you want to volunteer to help, please contact me at leo@leodunnlaw.com.

Leo L. Dunn has a solo estate planning practice in Harrisburg, focusing on the needs of the lesbian, gay, bisexual and transgender community. Dunn also works for the Commonwealth of Pennsylvania in a non-legal capacity and serves as an adjunct professor at Widener University School of Law’s Harrisburg Campus.
Ninth Circuit finds Calif.’s Proposition 8 unconstitutional

Continued from Page 5

the majority opinion by the smaller panel conflicts with every state and federal appellate court decision – including binding decisions of the Supreme Court and the Ninth Circuit itself – that has upheld the traditional marriage laws under the federal Constitution as rationally related to the state’s interest in responsible procreation and child-rearing.1

Some analysts believe it is possible that the narrowness of the holding might make it easier for the Supreme Court either to take the case and summarily affirm or to simply deny review. While a summary affirmance or denial by the Supreme Court would probably be considered to be a victory for California – the stay would be lifted and same-sex couples could once again marry in California – it would have little direct implication on other states and other cases. Questions still remain. Will this be the proverbial “shot heard round the world” providing other states with the impetus to take positive action and pass laws overturning their Defense of Marriage Acts and permitting same sex marriage? Or will it be “much ado about nothing” because in its current form, it affects only the state of California? Or, might it be the personification of chaos theory – the flap of the butterfly’s wing causing an effect far beyond the Ninth Circuit and the state of California? The answer is not yet clear.

Stay tuned; there is certainly more to come. ■

1 Waldman is a 2005 graduate of Harvard Law School. He practiced in New York and clerked for a federal appellate court in Washington, D.C., before joining the faculty of California Western School of Law in San Diego. His research focuses on gay rights and First Amendment issues.

Don’t filter me!

Continued from Page 4

tion, including one filed in opposition to the motion on behalf of the Alliance Defense Fund. The Alliance Defense Fund identifies itself as a religious liberties organization with a goal of “protecting religious liberty and traditional values” relying on First Amendment grounds.

The contest, as it would be framed by the school district and its allies, would be in the context of protecting religious expression from encroachment as well as protecting “children from exposure to inappropriate sexual materials on the Internet while they are at school.”

What is not stated explicitly by any of the parties is that any decision on filtering software and the nature of its use is of limited impact in determining what information students have access to. The school district’s initial position conveys a concerning message about the school district’s level of commitment to dealing with bullying, respect and providing a safe learning environment again marrying in California, it would have little direct implication on other states and other cases. Questions still remain. Will this be the proverbial “shot heard round the world” providing other states with the impetus to take positive action and pass laws overturning their Defense of Marriage Acts and permitting same-sex marriage? Or will it be “much ado about nothing” because in its current form, it affects only the state of California? Or, might it be the personification of chaos theory – the flap of the butterfly’s wing causing an effect far beyond the Ninth Circuit and the state of California? The answer is not yet clear.

Stay tuned; there is certainly more to come. ■

1 Waldman is a 2005 graduate of Harvard Law School. He practiced in New York and clerked for a federal appellate court in Washington, D.C., before joining the faculty of California Western School of Law in San Diego. His research focuses on gay rights and First Amendment issues.

Don’t filter me!

Continued from Page 4

tion, including one filed in opposition to the motion on behalf of the Alliance Defense Fund. The Alliance Defense Fund identifies itself as a religious liberties organization with a goal of “protecting religious liberty and traditional values” relying on First Amendment grounds.

The contest, as it would be framed by the school district and its allies, would be in the context of protecting religious expression from encroachment as well as protecting “children from exposure to inappropriate sexual materials on the Internet while they are at school.”

What is not stated explicitly by any of the parties is that any decision on filtering software and the nature of its use is of limited impact in determining what information students have access to. The school district’s initial position conveys a concerning message about the school district’s level of commitment to dealing with bullying, respect and providing a safe learning environment for all students. By seeking to be able to release access to certain websites only after a complaint is lodged, the school district set a tone of resistance, if not hypocrisy.

On March 14, 2012, the parties attended a mediation and subsequently came to a tentative agreement on a consent judgment. The judgment as proposed would preclude the use of the subject filter, which was found to be set by an unidentified person in England who categorized matters so that anti-gay sites would be termed “religious” and so not subject to being filtered out, while gay-friendly sites, including Supreme Court decisions, would be termed as dealing with “sexuality” and filtered out.

On April 6, the consent judgment as proposed was entered by Judge Nanette Langhrey, pursuant to which she ordered the school district to provide copies of the list of filtered websites to plaintiffs’ counsel, so monitoring may continue for at least another 18 months.

The consent judgment represents a clear victory for the plaintiffs, and the flaws identified in the blocking software provide a clear warning, as well as guidelines to districts that rely on such methods to restrict student access to information on the Internet. ■

Robert Jacobs-Meadway focuses her practice on trademarks, trade dress, unfair competition and copyright issues and includes licensing and litigation in the federal courts and before the Trademark Trial and Appeal Board. She has served as mediator in numerous trademark and copyright disputes. She is a member of Eckert Seamans’ Intellectual Property, Intellectual Property Litigation and Appellate Practice Groups. Jacobs-Meadway has served on the board of directors for the Greater Philadelphia Chapter of the ACLU.
Montgomery Bar Association’s first openly gay president

Continued from Page 1

In 1979, he decided to open up his own office. Doing so was a challenge, but worth it, for Martin. It allowed him flexibility with respect to his lifestyle, and he was then able to practice the type of law he wanted to practice, which was litigation/appellate work. “It allowed me to be me, and I prefer to be me,” he said.

He works directly with other firms who are appealing matters involving litigation, including business matters, family and even criminal. He knew this type of practice was only conducive to either a big firm environment or for a solo practitioner. Martin did not think the big firm environment was for him. He liked being in the suburbs. He knew the people and the lawyers of Montgomery County and was most comfortable there. He opened up his first office on the sixth floor of One Montgomery Plaza in 1979. He shared office space with his mentor, Jean Green. He stayed in One Montgomery Plaza until 1985, when he moved his office, along with Green, into the building that he now owns, at 22 W. Airy St., Norristown.

Martin’s involvement in the Montgomery Bar Association first began when he was at Waters Fleer. The firm encouraged him to get involved, so he volunteered for Legal Aid. He served on several different committees and always remained active. He chaired the Lawyer Referral Committee. During his involvement with that committee, the Legal Access Program was started. He also was actively involved in the Appellate Practice Committee until such time that it ceased existing. Martin then served as a director from 1983 to 1985.

Martin took his time deciding whether or not he wanted to move into a position of leadership with the bar. Many of the members encouraged him to do so, but there was no doubt that he was hesitant because he was a solo practitioner, and serving as president of one of the largest county bar associations in Pennsylvania was a demanding position. He waited quite a while before making the decision to go into a position of leadership. He decided to do it a few years ago, because he figured, “If I don’t do it now, then I will be too old to do it.” He is currently serving as the president of the Montgomery Bar Association. And while he might be an older president than some of his predecessors, he was glad he waited. Martin is enjoying his presidency very much and feels as though this is the perfect time in his life to be serving in such a role.

This year, his major goal is promoting diversity in the Montgomery Bar Association. “I want to tell people that the Montgomery Bar Association is a good place to be if you consider yourself diverse,” he said. He has worked hard to facilitate a welcoming environment for all attorneys throughout the county. As for his sexual orientation, Martin stated that no one ever gave him any difficulty being gay throughout his career and especially as a member of the bar. He always felt supported.

His other big project this year is promoting community service. “Lawyers spend their careers standing up for other people, so we need an organization looking out for lawyers and for the people they protect,” he said.

When asked how his sexual orientation has impacted his career, Martin said in the early 1970s it was not very popular to be gay in a law firm. He remembered that when he was at Waters Fleer, there was a fight occurring in Florida about a gay person being excluded from the Florida bar. He met his partner, Richard Repetto, in 1979, and they have been together ever since. They have resided together at 25th and Pine Streets in Philadelphia since 1989.

As for his biggest mentors throughout his career, he stated that Green was the most influential person for him along with Bill Pugh IV, Nancy Wentz and Mason Avrigian.

Martin recognizes that we have come quite a long way, and so has he. He is proud to say he was the first to dance with his same-sex partner at the Pennsylvania Bar Association Midyear Meeting, and he was the first openly gay man to be president of the Montgomery Bar Association. A huge accomplishment for the bar association and for Don!  ■

Helen E. Casale concentrates her practice on all aspects of family law. She is also known as an expert in issues that same-sex couples face, including legal dissolution of civil unions, second parent adoption, custody and support issues. Casale is a fellow of the American Academy of Matrimonial Lawyers. Her commitment to diversity was recognized by Gov. Edward G. Rendell in 2005, when she was appointed to serve on the Interbranch Commission for Gender, Racial and Ethnic Fairness, of which she is currently vice chair.

Tobits Update

The last issue of this publication outlined the status of Cozen O’Connor, P.C. v. Tobits. As noted in that issue, oral argument was set for March 12, 2012, relative to numerous issues, including the constitutionality of both the state and federal Defense of Marriage Acts (DOMA). No decision has been issued by Judge C. Darnell Jones II of the U.S. District Court for the Eastern District of Pennsylvania. Oral arguments can be heard at http://eqcf.org/hearing/Hearing.html.

It is also noted that the footnote contained in the prior article is incorrect. A letter was received from Cozen O’Connor following publication. The letter stated that the Cozen plan had a choice of law provision, which required that Pennsylvania law be applied to the retirement plan. As such, it would have made no difference if the action was filed in Illinois as the plan is governed by Pennsylvania law, and the state DOMA issue would need to be adjudicated in any event.
Profile: Jonathan Vipond III

Continued from Page 2

and the public good. Vipond was hired as the first law clerk for first President Judge James S. Bowman of the newly established Commonwealth Court of Pennsylvania in late 1970. The 1968 Constitutional Convention had created that new statewide court to hear matters involving the public and government. Judge Bowman, as a delegate to the convention, had been one of the active authors of the new Judicial Article of the Pennsylvania Constitution, and Vipond assisted in the drafting of the later enacted Judicial Code and the movement to a unified judiciary. Judge Bowman, also a former state legislator, was another one of Vipond’s mentors who encouraged such public policy involvement. These mentors led him to value helping and nurturing others in the profession and affecting public policy. “One of our responsibilities as lawyers is to listen, to act and to transfer learning from experience and acquired ‘wisdom’ to others who are in need or are coming up along the way,” he said. Thus began a career and perhaps a calling.

Vipond continued his zeal for public service and ran successfully for the Pennsylvania House of Representatives from his native Lackawanna County in 1972. Vipond still values that time in the state legislature and the solid friendships gained there after nearly 40 years. Vipond was then appointed as counsel to the Court Administrator of Pennsylvania, as chief counsel for the Pennsylvania Department of Welfare under Gov. Dick Thornburgh and as deputy assistant for public liaison under President Ronald Reagan. His successive public sector jobs gave him a greater appreciation and understanding of public health law and policy development, including medical assistance and the need for parity between medical and behavioral health care benefits and coverage. He began in private health care practice in 1985 and seeks, both professionally and as a community volunteer, to improve the well-being, stability and lives of others. Today, Vipond serves clients in regulatory and reimbursement matters who are autism, mental health and substance abuse services providers, community health centers, home health agencies, county human services agencies, managed care organizations and other health care services providers. Vipond also volunteers with a variety of advocacy organizations, community foundations and arts and human services agencies, including those helping persons living with HIV/AIDS. He chaired the United Way of the Capital Region’s 2008 campaign and continues on its board. For 10 years, he was on the board of The Foundation for Enhancing Communities and chaired its AIDS Advisory Fund.

Vipond believes lawyers should participate fully and “vigorously and wisely advocate” for fairness and non-discrimination, whether in the legal profession or in the larger community. While Vipond does not believe he individually has been the victim of any covert or overt discrimination (but to the contrary has been very blessed, advantaged and fortunate), he understands that others have suffered unfair prejudice and arbitrary treatment. Vipond states, “There is no present or historic basis or reason for any non-merit discrimination in the legal profession. We should be a neutral and indeed welcoming hiring venue, seeking the most able and the most active. We should reach out to make sure that we are inclusive in our hiring and dealings, not only because it is the right thing to do, but we should be the professional standard-bearers in all communities.” By this standard, Vipond practices inclusive good citizenship as to gay and lesbian colleagues and friends and hopefully to all.

Vipond never “came out” as a gay man in daily life or in the legal profession but rather simply let the natural process of recognition and acceptance by co-workers, neighbors and friends occur, which he hopes was based upon his humor, fairness and quiet conscientiousness. He never felt impeded but rather supported by his friends and colleagues in making their own determinations based on his open but traditional lifestyle and the very visible co-presence since 1985 of his partner. Vipond recalls he and his partner, Tim, were welcomed at college and community events and firm retreats together since the late 1980s. The firm leadership was practical and accepting. When younger gay and lesbian lawyers ask for his advice and help in addressing the professional “risks” based upon sexuality, he quickly notes that he is courteously dismissive of such concerns. Vipond believes any real or perceived professional obstacles do not exist at his law firm and are largely dissolving at other firms as well. He practically advises young professionals to “be open and affirm your selfhood and abilities” and that “gays and lesbians have strengths and weaknesses and are ‘good or bad’ like everyone else, nothing more and nothing less.”

When asked about the continuing political opposition in some quarters to legalized same-sex marriage, Vipond states, “I don’t understand logically or legally how anyone rational could oppose the affirmation of a shared and deep commitment to one another in a marriage. When we are talking about ‘family values’ and love and loyalty, how could any fair-minded person argue with or challenge these wonderful ‘families’ and our values?”

Vipond married his partner of 27 years in Massachusetts, where they also reside, in 2006. Despite some personal uncertainty about actually “marrying,” he soon recognized that their marriage and the “ceremony” were tremendously meaningful personally and for Tim, as well as their siblings and families and a wide array of diverse friends. The wedding ceremony was chronicled in the New York Sunday Times and generated many congratulatory calls and notes from old and new friends. “On a personal and ‘political’ level, our modest message was sent and well-received and perhaps advanced the recognition of just equality for the LGBT community as we stand resolutely together as to such simple and good fairness.” Tim and Vipond were honored together in 2010 by the United Way with its annual Humanitarian Award for their combined community service. Vipond is a long-term member of the PBA Gay & Lesbian Rights Committee and more recently returned to active participation because of committee Chair Leo Dunn’s reinvigorating ideas for expansion and inspired leadership. Vipond expects to continue his membership and his professional activity as long as there is a need to advocate for such equality. Vipond hopes that the PBA will continue and expand its role as a strong agent of change for this significant ongoing issue.

Sharon López is the managing partner at Triquetra Law, a boutique Lancaster law firm dedicated to appellate, civil rights and employment law advocacy for workers.
Married on Paper

Continued from Page 4

clause, such as a retirement plan or IRA, it is critical to name one’s partner as beneficiary. These benefits pass outside the will (unless made payable to one’s “Estate”) and provide an opportunity to transfer property at death outside the legal mechanism known as “probate.”

5. **Power of Attorney.** Although we cannot imagine our own sudden incapacity, there is such a possibility, and in such event, it is prudent for anyone to name another as power of attorney to take care of such matters as banking, paying bills or handling financial affairs. A Pennsylvania Power of Attorney form will cut through any recalcitrance on the part of banking and investment companies and designate exactly who is in charge.

6. **Health Care Power of Attorney.** Speaking with a doctor on behalf of a loved one and making critical decisions regarding care or nursing home placement may require a health care power of attorney. LGBT partners need a health care power of attorney to compel health care providers to share important medical information with them and to provide the authority to make decisions.

7. **Health Care Power of Attorney for Children.** Where there are children, particularly where there has not been a second parent adoption, partners should consider a health care power of attorney for minor children. The natural parent can sign a health care power of attorney on behalf of his/her minor child in favor of his/her significant partner, or anyone else he/she cares to entrust, in the event he or she is incapacitated for a period of time and unable to perform such seemingly minor tasks as taking a sick child to the doctor.

8. **Adoption.** The right to meet school teachers, speak with doctors, inherit, provide legal guardianship and care for a minor child can best be guaranteed through a second parent adoption procedure. Seek a family law attorney for advice on second parent adoption of minors.

9. **Living Will.** I can only say two words that should convince you to have a living will – if that is your inclination – Terry Schiavo. Recall that Schiavo, a young woman, fell into a permanent condition from which she would not recover and that her husband fought with her parents over who had the right to make end-of-life decisions. For anyone having an interest in end-of-life issues, a living will is essential.

10. **Agreement addressing property and support.** Given that partners in LGBT relationships may not have the same access to court should their relationships fall apart, it is with greater concern that partners consider setting down in writing the terms of their own pre-relationship agreement or prenuptial agreement.

Legal documentation can address many life issues that are of importance to all families and partnerships. Matters of inheritance, guardianship, legal ownership and rights to property and support can be protected and provided for through advance planning.

Phyllis Horn Epstein, a partner in the Philadelphia firm of Epstein, Shapiro & Epstein PC and current PBA treasurer, practices in the areas of tax law, estate planning and corporate transactions. She can be reached at Phyllis@eselaw.com.

---

**Upcoming PBA events**

- **Family Law Section Summer Meeting**
  July 12-15: The Hotel Hershey, Hershey

- **The Solo/Small Firm Conference**
  July 17-18: Omni Bedford Springs Resort, Bedford

- **Young Lawyers Division Summer Meeting/New Admittee Conference**
  July 27-29: Rocky Gap Lodge & Golf Resort, Flintstone, Md.

- **Workers’ Compensation Law Section Fall Meeting**
  Sept. 13-14: Hershey Lodge, Hershey

- **7th Annual Diversity Summit**
  Oct. 26: Omni William Penn Hotel, Pittsburgh

- **PBA Board of Governors Meeting**
  Nov. 14: Holiday Inn East, Harrisburg

- **PBA Committee/Section Day**
  Nov. 15: Holiday Inn East, Harrisburg

- **PBA House of Delegates Meeting**
  Nov. 16: Sheraton Harrisburg Hershey, Harrisburg