**PBA NEWS**

**Nominations Sought for PBA 2016-17 Leadership Positions**

The PBA Nominating Committee is scheduled to meet on Nov. 17, 2016 to make nominations for 2016-17 PBA leadership positions of vice president, chair of the House of Delegates, secretary and treasurer. The positions of secretary and treasurer are eligible to serve three one-year terms. The position of chair of the House of Delegates is eligible to serve one two-year term.

To learn more about the responsibilities of the various offices and nominating procedures, read rules 351, Sections 511 through 515 and 914 on the bylaws section of the PBA website. To receive additional details about office responsibilities, contact Kelly Myers, PBA governance manager, at 800-932-0311, ext. 2272.

Interested candidates should send a cover letter and resume by Oct. 17, 2016 to William H. Pugh V, Chair, PBA Nominating Committee, P.O. Box 186, Harrisburg, PA 17108-0186.

**PBI 5th Annual U.S. Supreme Court Roundup, Aug. 24**

*Live in Philadelphia and simulcast to other locations*

See page 16 of this newsletter for details and registration information. The course planner is Hon. D. Michael Fisher, U.S. Court of Appeals for the Third Circuit, Pittsburgh.

**COMMITTEE NEWS**

**“A Step-by-Step Journey Through the Trial of a Federal Case” CLE, Aug. 30**

The Federal Practice Committee of the Pennsylvania Bar Association invites you to join us on Aug. 30 for a CLE journey through a federal trial, to be held at the Hilton Garden Inn Pittsburgh/Southpointe.

Hon. D. Michael Fisher of the United States Court of Appeals for the Third Circuit, and Hon. Maureen P. Kelly, Chief Magistrate Judge for the Western District of Pennsylvania, will preside over this mock trial proceeding that will include an examination of topics such as: appointment of a special master for discovery, ethics issues that can arise during protracted litigation, consent to conduct of proceedings by Magistrate Judge, summary judgment and Daubert motions. This informative two-hour program will include one hour of substantive and one hour of integrated ethics credit.

The program will be followed by a one-hour networking reception with hors d’oeuvres and open bar. (Two drink tickets are included per registrant.)

**Panelists:**
- Hon. D. Michael Fisher, U.S. Court of Appeals for the Third Circuit
- Hon. Maureen P. Kelly, U.S. Chief Magistrate Judge, Western District of PA
- Anne N. John, John & John
- Jeremy A. Mercer, Norton Rose Fulbright US LLP

2 CLE credits, including one ethics credit

Registration Fee: $50
Start time: 4:00 p.m.; Check-in begins at 3:30 p.m. For the registration form, click here.
SUBCOMMITTEES

Reports from the Chairs

Legislative Subcommittee:

Federal Practice Committee members may be interested in a bill that was the subject of a hearing before the U.S. House Judiciary Committee in June. It’s H.R. 2304, the SPEAK FREE Act. (I’ll spare you the convoluted full title they concocted to get that shorthand.) The purpose of the bill is to create a federal anti-SLAPP law. The legislation would create a potentially broad new basis for removal to federal court; it also raises Erie-type issues as to the scope of federal law and issues of Congressional power. Here’s the link to the hearing: https://judiciary.house.gov/hearing/examining-h-r-2304-speak-free-act/

– Professor Arthur Hellman

Contact Information

The chairs of the FPC’s six subcommittees welcome new members, and they invite and encourage all FPC members to join one or more of them. If you are interested in serving on any of the six subcommittees, please contact:

Nominations Subcommittee:
Brett G. Sweitzer, Philadelphia, Defender Association of Philadelphia, brett_sweitzer@fd.org

Educational Programs Subcommittee:
Kathleen Wilkinson, Philadelphia, Wilson Elser Moskowitz Edelman & Dicker LLP, kathleen.wilkinson@wilsonelser.com

Legislative Subcommittee:
Professor Arthur Hellman, Pittsburgh, University of Pittsburgh School of Law, hellman@pitt.edu

Outreach and Diversity Subcommittee:
Jennifer Menichini, Lackawanna, Greco Law Associates PC, jmenichini@callGLA.com

Newsletter Subcommittee:
Susan Schwochau, Pittsburgh, sschwochau@comcast.net

Local Rules Subcommittee:
Marc Zucker, Philadelphia, Weir & Partners LLP, mzucker@weirpartners.com

Welcome New FPC Members!

The FPC continues to grow! On behalf of the FPC, Chair Hon. D. Michael Fisher sends a warm welcome to our newest members:

• Franklin Banfer – Cumberland County, Page Wolfberg & Wirth LLC
• Alyssia Beverly – Philadelphia County (law student)
• Pei-Ching Chang – Out of state (law student)
• Jaskirat Chhatwal – Cumberland County (law student)
• Diana Collins – Luzerne County
• Angela Edris – Cumberland County
• Emily Derstine Friesen – Philadelphia County (law student)
• Samuel Jockel – Indiana County
• Marie Milie Jones – Allegheny County, JonesPassodelis PLLC
• Kellie MacCready – Philadelphia County, Drinker Biddle & Reath LLP
• Craig Rushmore – Cumberland County (law student)
• Joseph Valenti –Allegheny County, K&L Gates LLP

We are delighted that you have joined this vibrant and active committee! We hope that you will enjoy the benefits of FPC membership, which include automatic receipt of four quarterly e-newsletters. Please consider participating in any of the FPC’s subcommittees – see above for subcommittee contact information. You can reach out to Executive Council members with any ideas you may have on how the FPC can best pursue its mission to promote communication and cooperation among members of the federal judiciary and lawyers who practice in federal courts, and enhance the knowledge and professional capabilities of lawyers who practice law in the United States District Courts in Pennsylvania.
FEDERAL PRACTICE NEWS

Save April 19-21, 2017 for the next Judicial Conference

The 73rd Judicial Conference of the Third Circuit will be held in Lancaster, Pennsylvania on April 19-21, 2017. The Third Circuit urges everyone to save the date! See http://www.ca3.uscourts.gov/save-date.

Status of Judicial Vacancies

U.S. Court of Appeals, Third Circuit
• On March 15, 2016, President Obama nominated Rebecca Ross Haywood, Esq. to fill the vacancy created when Judge Marjorie Rendell assumed senior status. The nomination was referred to the Committee on the Judiciary. As of June 30, no additional action has been taken.

U.S. District Court, Western District of PA
• On July 30, 2015, President Obama nominated Judge Susan P. Baxter, Judge Robert J. Colville and Judge Marilyn J. Horan to fill the three vacancies in the United States District Court for the Western District of Pennsylvania. A Senate Judiciary Committee hearing on these nominees was held Dec. 9, 2015. The nominations of Judge Baxter and Judge Horan were placed on the Senate Executive Calendar on Jan. 28, 2016, after being ordered to be reported favorably by Senator Grassley. As of June 30, no additional action has been taken.
• There is one additional vacancy (due to Judge Gibson’s move to senior status).

U.S. District Court, Eastern District of PA
• On July 30, 2015, President Obama nominated Judge John M. Younge to fill the vacancy created when Judge Mary McLaughlin assumed senior status. A Senate Judiciary Committee hearing was held Dec. 9, 2015. As of June 30, no additional action has been taken.
• There is one additional vacancy (due to Judge Restrepo’s elevation to the Court of Appeals).

CASE SUMMARIES

Summaries of Third Circuit and Pennsylvania district court decisions issued between April and June 2016 that involved issues of potential interest to FPC members.

THIRD CIRCUIT PRECEDENTIAL OPINIONS

Weitzner v. Sanofi Pasteur, Inc., 819 F.3d 61 (3d Cir. 2016) (Civil Procedure / Class Action) – In this interlocutory appeal arising out of a Telephone Consumer Protection Act case, the Court of Appeals considered whether an unaccepted Rule 68 offer of judgment in a putative class action, made before the plaintiff filed a class certification motion, mooted the plaintiff’s action (including the putative class claims) and thereby deprived the court of subject-matter jurisdiction. Because the Supreme Court in Campbell-Ewald Company v. Gomez, 136 S. Ct. 663 (2016), held that an unaccepted offer does not make such a case moot, the Court of Appeals affirmed the district court’s order denying defendant’s motion to dismiss.

In re: NFL Players Concussion Injury Litig., 821 F.3d 410 (3d Cir. 2016) (Class Action) – Former players alleged that the NFL failed to inform them of, and protect them from, the risks of concussions in football. The district court approved a class action settlement covering over 20,000 retired players that released all concussion-related claims against the NFL. In a lengthy opinion, the Court of Appeals addressed 95 objectors’ numerous challenges and explained why it was satisfied that the district court ably exercised its discretion in certifying the class and approving the settlement.

In re: World Imports, Ltd., 820 F.3d 576 (3d Cir. 2016) (Bankruptcy) – At issue in this bankruptcy appeal was whether OEC, a provider of non-vessel-operating common carrier transportation services, held an enforceable maritime lien on debtor’s goods in OEC’s possession both for freight charges on those goods and for unpaid charges on prior shipments. The district court and bankruptcy court concluded it did not. After rejecting the debtor’s argument that the appeal was constitutionally moot, the Court of Appeals reversed, concluding that the parties had extended the maritime lien created by operation of law to survive
delivery of goods and thus that OEC had an enforceable lien not only for charges on the goods in its possession but also for unpaid charges on prior shipments. The opinion is also notable for the Court’s reaction to the reliance in briefing and the bankruptcy court’s opinion to language that had no authoritative value (because it was taken from a summary of one party’s position in the syllabus rather than from the language of the Supreme Court).

**U.S. v. Lopez**, 818 F.3d 125 (3d Cir. 2016) (Criminal Law & Procedure) – In yet another case involving a violation of **Doyle v. Ohio**, 426 U.S. 610 (1976), the Court of Appeals vacated the district court’s judgment and remanded for a new trial, concluding that (1) the government clearly violated **Doyle** when, in cross-examination, it repeatedly asked whether Lopez told anyone at an earlier time that he had been framed and then during closing repeatedly invited the impermissible inference that Lopez’s silence and decision to maintain that silence implied that he fabricated his trial testimony; (2) there was a reasonable probability that the **Doyle** violation affected the outcome of Lopez’s trial; and (3) the error seriously affected “the fairness, integrity or public reputation of judicial proceedings” because the case hinged entirely on the relative credibility of Lopez and the testifying police officers, the **Doyle** violation was blatant, and the government’s repeated emphasis of the error in closing argument exacerbated the prejudice from the violation.

**In re: Asbestos Prods. Liab. Litig. (No. VI)**, 822 F.3d 125 (3d Cir. 2016) (Preemption) – In this asbestos case, defendants argued that the plaintiff’s state-law claims were preempted by the Locomotive Inspection Act; the district court agreed and granted their motion to dismiss. The Court of Appeals vacated the district court’s judgment, concluding that the court erred when it relied on information not integral to, or explicitly relied upon, in the complaint in reaching its conclusions. Although district courts may in the proper circumstances transform a Rule 12(b)(6) motion into a summary judgment motion, reversal was still required in this case because the district court failed to properly apply the summary judgment standard.

**Maiden Creek Associates, L.P. v. U.S. Dep’t of Transp.**, 823 F.3d 184 (3d Cir. 2016) (Administrative Law/Statutes [National Environmental Policy Act]) – Developer and township board of supervisors opposed a plan to improve a highway adjacent to a site slated for a shopping center. After PennDOT concluded that an Environmental Assessment and Environmental Impact Statement were not required under the National Environmental Policy Act (NEPA), the developer and board filed an action seeking declaratory and injunctive relief, complaining that the approval of PennDOT’s conclusion was based on inaccurate information. Their initial complaint, however, alleged purely economic injuries — neither alleged that the highway improvement project would harm the environment. The Court of Appeals affirmed the district court’s dismissal of the plaintiffs’ complaint for lack of statutory standing, agreeing that the developer and board failed to allege any “threatened harms to the ‘physical’ environment” and thus were not within NEPA’s zone of interests. The Court also affirmed the district court’s denial of plaintiffs’ motion to amend because the proposed complaint asserted injuries of non-parties without satisfying the criteria for associational standing, invoked injuries that were contingent on remote possibilities, and otherwise failed to bring plaintiffs — whose real interests were economic — within the statute’s zone of interests.

**State Nat’l Ins. Co. v. County of Camden**, ___ F.3d ___, 2016 WL 2990975 (3d Cir. May 24, 2016) (Federal Court Jurisdiction) – Five dates were critical in this appeal from an insurance / legal malpractice case: (1) March 17, 2010, the date the plaintiff’s claims against an attorney were dismissed; (2) April 25, 2014, the date the plaintiff filed a Rule 60(b)(6) motion, which sought relief from the March 2010 ruling; (3) Oct. 14, 2014, the date the remaining parties filed a stipulation of dismissal with prejudice under Rule 41(a); (4) Dec. 1, 2014, the date the district court denied the Rule 60(b)(6) motion; and (5) Dec. 16, 2014, the date the plaintiff filed a notice of appeal. The Court of Appeals dismissed the appeal for lack of jurisdiction because (1) the effect of the stipulation of dismissal – to end the litigation – was automatic; (2) the pending Rule 60(b) motion was, in fact, invalid because it did not seek relief from a final judgment and instead sought reconsideration of an interlocutory order; and (3) the notice of appeal was filed more than 30 days from the stipulation of dismissal; the invalid Rule 60(b)(6) motion did not toll anything and the
fact that the district court took actions after the dismissal ended the litigation did not change that result.  

**Davis v. Wells Fargo**, ___ F.3d ___, 2016 WL 3033938 (3d Cir. May 27, 2016) (Civil Procedure / Federal Court Jurisdiction) – Davis’ numerous contract and other claims against Wells Fargo and insurance company Assurant arose from damage that occurred to his house after Wells Fargo locked him out of it. The district court granted Wells Fargo’s Rule 12(b)(6) motion on claim preclusion and statute-oflimitations grounds, and it granted Assurant’s Rule 12(b)(6) (1) motion because it accepted the company’s argument that Davis did not have standing: a subsidiary – not Assurant itself – was the proper defendant. After affirming the grant of Wells Fargo’s motion, the Court detailed the differences between a Rule 12(b)(6) motion and a Rule 12(b)(1) motion that mounts a factual challenge to subject-matter jurisdiction. Because Assurant’s challenge went to the merits, the district court should not have granted a Rule 12(b)(1) motion on the ground that Assurant was not the proper defendant. Reviewing the record, however, the Court concluded that several of Davis’ claims had to be dismissed under Assurant’s alternate Rule 12(b)(6) motion, which the district court had not considered. The district court’s judgment was vacated in part, with Davis’ breach of contract claim against Assurant surviving.

**Bruni v. City of Pittsburgh**, ___ F.3d ___, 2016 WL 3083776, (3d Cir. June 1, 2016) (Constitution [First Amendment]) – Plaintiffs mounted First and Fourteenth Amendment facial challenges to Pittsburgh’s ordinance establishing at the entrance of health care facilities a 15-foot buffer zone within which people were prohibited from “picket[ing] or demonstrat[ing].” The district court, relying on the analysis and evidence used to deny the plaintiffs’ motion for a preliminary injunction, granted defendants’ Rule 12(b)(6) motion. The Court of Appeals ruled this was error and that it was not harmless. Under **McCullen v. Coakley**, 134 S. Ct. 2518 (2014), Pittsburgh had to justify its regulation of political speech by describing the efforts it had made to address its interests by substantially less-restrictive methods or at least show that it seriously considered and reasonably rejected those methods. Such a showing is rarely possible at the pleading stage. The Court thus vacated the judgment as to the plaintiffs’ First Amendment claims. Because the Fourteenth Amendment Due Process claim was simply a recasting of free expression claims, the Court affirmed its dismissal.

**Free Speech Coalition v. U.S. Attorney General**, ___ F.3d ___, 2016 WL 3191474 (3d Cir. June 8, 2016) (Constitution [First & Fourth Amendments]) – Plaintiffs mounted First and Fourth Amendment challenges to statutes and accompanying regulations that obligated producers of visual depictions of “actual sexually explicit conduct” and of “simulated sexually explicit conduct” to maintain records of the age of the performers in those depictions. The Court of Appeals initially (1) affirmed the district court’s rejection of the plaintiffs’ First Amendment claims applying intermediate scrutiny; and (2) vacated the district court’s judgment regarding the plaintiffs’ Fourth Amendment claims, concluding that the applicable regulation was unconstitutional as applied. After granting rehearing in light of **Reed v. Town of Gilbert**, 135 S. Ct. 2218 (2015), and **City of Los Angeles v. Patel**, 135 S. Ct. 2443 (2015), the Court of Appeals concluded that (1) under **Reed**, strict scrutiny applied because the statutes’ restrictions depended entirely on the content of speech; (2) given Reed’s language, the case was not one to which the secondary-effects doctrine applied; and (3) given the similarity between this case and the provisions at issue in Patel, the inspection provisions of the statutes and regulation were facially unconstitutional. The Court remanded the case so that the district court could determine whether the statutes survived strict scrutiny.

**Roberts v. Ferman**, ___ F.3d ___, 2016 WL 3361493 (3d Cir. June 17, 2016) (Civil Procedure) – After multiple attempts to obtain four days of lost trial transcripts failed, the district court ordered the parties to follow FRAP Rule 10(c) to recreate those transcripts so that the court could rule on Roberts’ post-trial motion. Asserting futility, Roberts failed to even attempt to comply, and the district court later dismissed his post-trial motion. After clarifying the holding of **Lehman Brothers Holdings, Inc. v. Gateway Funding Diversified Mortgage Services, L.P.**, 785 F.3d 96 (3d Cir. 2015), the Court of Appeals rejected the argument that Roberts had forfeited his claims on appeal by failing
to abide by FRAP Rule 10(b). The Court next held that a district court does not abuse its discretion in dismissing a post-trial motion because a party chooses not to comply with an order to recreate the trial record. Rejecting Roberts’ remaining arguments, the Court affirmed the district court’s judgment.

EASTERN DISTRICT OF PA OPINIONS

Wilson v. City of Philadelphia, ___ F.Supp.3d ___, 2016 WL 1392250 (E.D.Pa. Apr. 8, 2016) (Civil Rights-$\S$ 1983) – Wilson’s initial conviction was set aside when the Post-Conviction Relief Act court held that the prosecution violated Batson at Wilson’s trial. He was retried and eventually acquitted of all charges. Wilson then filed suit against the District Attorney’s Office (DAO), the City of Philadelphia, and a number of former Philadelphia police officers, alleging violations of his constitutional rights. Ruling on the defendants’ motions for summary judgment, Judge G. Pappert held that (1) the DAO was not entitled to sovereign immunity; (2) although Wilson failed to establish a policy of discriminating in jury selection for purposes of his Monell claim against the DAO, he did come forth with sufficient evidence to survive summary judgment on his claim that the DAO had a custom of racially discriminating in jury selection; (3) Wilson’s Monell claim against the City, in which he alleged that the City’s policies, customs or failure to train its officers with regard to Brady obligations violated his due process rights, failed because Wilson did not establish an underlying constitutional violation; and (4) Wilson’s malicious prosecution and intentional infliction of emotional distress claims failed. As a result, the City’s motion was granted and the DAO’s motion denied to the extent it sought judgment on Wilson’s Monell claim based on a custom of racial discrimination in jury selection.

Crayola, LLC v. Buckley, ___ F.Supp.3d ___, 2016 WL 1461204 (E.D.Pa. Apr. 14, 2016) (Venue) – At the heart of several of Crayola’s claims against Buckley, its former Arkansas-based employee who took a job in Arkansas with a competitor, was the allegation that Buckley had, before quitting, accessed Crayola’s confidential information on his laptop computer and copied it to a flash drive for use at his new job. Buckley sought dismissal for lack of personal jurisdiction, for improper venue, for failure to join an indispensable party or, in the alternative, to transfer venue to the Western District of Arkansas. Judge E. Smith focused on venue, and concluded that, because virtually every event or omission giving rise to Crayola’s claims took place in Arkansas, venue was improper. Given the nature of the claims and the underlying facts, the court rejected that the Pennsylvania location of the data allegedly copied while Buckley was in Arkansas was enough to keep the case in Pennsylvania. The court also concluded that even if venue was proper, transfer to the Arkansas court was in the interests of justice.

Ferguson v. U.S., ___ F.Supp.3d ___, 2016 WL 1555811 (E.D.Pa. Apr. 18, 2016) (Bivens claims against private individuals) – Following her return from a vacation, Ferguson, an African-American U.S. citizen, was seized, detained, searched and forced to endure nonconsensual medical procedures. She filed a 14-count complaint against the United States, customs agents, a hospital and numerous hospital workers as a result. The hospital workers sought dismissal of the Bivens claims against them on the ground that they were private individuals. Judge A. Brody denied the motion, concluding that Ferguson’s allegations, if proved, pointed to the type of federal employee actions needed to satisfy the “close nexus” test for federal action. As the court described, “Ferguson’s allegations, if true, chronicle a harrowing saga, in which Hospital doctors, nurses, and federal officers worked together to deprive a citizen of her rights by detaining her for hours, violating her bodily integrity, and subjecting her to medical procedures absent any apparent medical need. The [customs] Officers not only transported, guarded, and observed Ferguson while she was in the care of the Hospital Employee Defendants, but also conferred with the doctors and nurses to admit her to the Hospital, search her body, and involuntarily commit her in order to administer medication and perform invasive medical procedures against her will and without a warrant.” The denial was without prejudice to raise the issue at summary judgment.

Fraudulent joinder – Declining to decide whether the fraudulent joinder doctrine can be applied to a diverse, in-forum defendant, Judge T. Savage granted Boomerang’s motion to remand because the removing defendant’s arguments in favor of fraudulent joinder centered on defenses to the merits of plaintiff’s claims (e.g., contending that the in-forum defendant did not have authority to make decisions). Because such defenses could not be considered in determining whether jurisdiction existed, the removing defendant failed to meet its burden to show that Boomerang lacked a good faith intention to prosecute its claims and pursue a judgment against the in-forum defendant.

Monfared v. St. Luke’s University Health Network, ___ E.Supp.3d ___, 2016 WL 1613806 (E.D.Pa. Apr. 22, 2016) (Arbitration) – After describing the standards applicable to motions to compel arbitration, Judge J. Leeson determined that the arbitration clause in Monfared’s employment agreement was ambiguous. Applying the rule that ambiguities were to be resolved in favor of arbitration, Monfared’s claims that she was discharged in retaliation for her opposition to the discriminatory behavior of defendants’ management personnel had to be arbitrated. The court also concluded that the arbitration agreement’s language regarding punitive damages had to be severed from the rest of the clause as it was inconsistent with Title VII. Language regarding cost-splitting was severed to the extent that it prohibited an arbitrator from awarding costs to the prevailing party under Title VII. As to Monfared’s argument that the arbitration clause was unenforceable because of her inability to pay costs, the court ruled that she was entitled to discovery on the costs of arbitration and her ability to pay those costs.

United States v. Werdene, ___ F.Supp.3d ___, 2016 WL 3002376 (E.D.Pa. May 18, 2016) (Fourth Amendment / Fed. R. Crim. P. 41) – To access a particular child pornography website, visitors had to use particular software that concealed their IP addresses. After identifying and arresting its operator, the FBI assumed control of the website and sought a warrant to use a Network Investigative Technique (NIT), which was activated whenever a user logged onto the website and caused the user’s computer to reveal its IP address to the FBI. Werdene, who was identified through the use of the NIT, sought to exclude evidence of his possession of child pornography that was subsequently seized from his home (with a different warrant issued in the E.D.Pa.). Judge G. Pappert denied Werdene’s motion, concluding that although the magistrate judge in Virginia lacked authority under Fed. R. Crim. P. 41 to issue a warrant covering computers outside the E.D.Va. (e.g., Werdene’s computer in Pennsylvania), the violation of Rule 41 was not of constitutional magnitude because Werdene had no reasonable expectation of privacy in his IP address. The non-constitutional violation of Rule 41 did not offend concepts of fundamental fairness or due process. Even if Werdene’s constitutional rights were violated, the court concluded that the good faith exception to the exclusionary rule precluded suppression.

Armstrong v. Wes Health Systems, ___ F.Supp.3d ___, 2016 WL 3027759 (E.D.Pa. May 26, 2016) (Age discrimination / Sham affidavit) – Pro se plaintiff’s argument opposing summary judgment included an assertion based on personal knowledge she contended was evidence of alleged age discrimination. Although the assertion was not in an affidavit, Judge C. Rufe, in light of the plaintiff’s pro se status, declined to disregard it for that reason. The assertion, however, was contradicted by plaintiff’s deposition testimony, and thus, applying the sham affidavit doctrine, was ultimately not considered. After examining whether the plaintiff proffered sufficient direct or indirect evidence of age discrimination, Judge Rufe granted the defendant’s motion for summary judgment.

U.S. v. Fattah, ___ F.Supp.3d ___, 2016 WL 3574645 (E.D.Pa. June 7, 2016) (Statements against penal interest) – During Rep. Fattah’s criminal trial on charges of bank fraud and false statements to a financial institution (among many others), Judge H. Bartle admitted a phone conversation between Fattah’s wife and an insurance company representative. The November 2012 conversation regarded changing automobile coverage for a Porsche for the winter months, during which it was going to be stored in a garage. In January 2012, in the course of attempting to obtain a loan from a bank, Fattah and his wife provided
that bank with documentation showing that they sold the same Porsche to another defendant. In this subsequently-filed opinion, Judge Bartle explained why he ruled that the phone conversation was admissible as a statement against penal interest under Fed. R. Evid. 804(b)(3).

MIDDLE DISTRICT OF PA OPINIONS

_Nittany Outdoor Advertising, LLC v. College Township_, ___ F.Supp.3d ___, 2016 WL 1393400 (M.D.Pa. Apr. 8, 2016) (Civil Procedure / Local Rules) – On May 20, 2014, the court held in this First Amendment challenge to a local signage ordinance that the plaintiffs were not entitled summary judgment on their amended ordinance claims because they failed to show “that the amended Ordinance’s regulation of billboards ...and freestanding signs...is content based and favors noncommercial over commercial speech.” More than a year later, relying on _Reed v. Town of Gilbert, Arizona_, 135 S. Ct. 2218 (2015), the plaintiffs filed a Rule 54 “Motion to Revise” and a second partial summary judgment motion, requesting that the court reconsider its May 2014 ruling and enter judgment in their favor. Judge M. Brann denied both motions, concluding that (1) the Motion to Revise – filed more than 400 days after entry of the May 2014 order – was time-barred because Local Rule 7.10 required filing within 14 days; and (2) the second motion for partial summary judgment – which required the May 2014 be vacated in order to “raise” the issue again – could not be considered in light of the above untimeliness.

_Becker v. Carbon County_, ___ F.Supp.3d ___, 2016 WL 1393396 (M.D.Pa. Apr. 8, 2016) (Civil Rights - § 1983/Wrongful death claims) – The estate of a detainee who died in custody after allegedly suffering heroin withdrawal symptoms filed claims under § 1983 and under state law, including survival and wrongful death claims. Defendants sought dismissal of the wrongful death claims, arguing that neither the Supreme Court nor the Third Circuit authorized a wrongful-death cause of action predicated on a § 1983 claim and that civil rights violations cannot serve as the basis of a state law wrongful-death action. Judge A.R. Caputo, after reviewing § 1983, § 1988, and the different approaches taken by courts that had addressed the issue, denied the motion, concluding that plaintiff’s wrongful-death claims could not be said to be foreclosed as a matter of law.

_Mocek v. Pleasant Valley Sch. Dist._, ___ F.Supp.3d ___, 2016 WL 1553440 (M.D.Pa. Apr. 15, 2016) (Title IX Sex Discrimination) – Parent of a female member of the high school’s wrestling team brought a Title IX action against the school district and individual officials, administrators and wrestling coach, alleging direct sex discrimination and sexual harassment. Judge J. Munley granted certain defendants’ motion for summary judgment, concluding that (1) because under applicable regulations, wrestling is a contact sport excluded from Title IX’s protections, summary judgment was warranted on the direct sex discrimination claim; (2) plaintiff’s evidence did not rise to the level of sexual harassment under Title IX; incidents were sporadic, and coaching staff statements, although vulgar and inappropriate, were not aimed at her because of her sex; and (3) plaintiff did not plead facts supporting that she gave notice of the alleged discrimination to the officials of the school district.

_Watson v. Witmer_, ___ F.Supp.3d ___, 2016 WL 1623998 (M.D.Pa. Apr. 25, 2016) (Civil Rights - § 1983/Pleading) – Based on his parole officer’s identification of him from surveillance camera still photographs, Watson was arrested and imprisoned for nearly a month. Watson filed federal and state-law claims stemming from his alleged false arrest, urging that probable cause to arrest was wanting because of patent physical differences between the perpetrator and Watson. Police department, police, and township sought dismissal under Rule 12(b)(6) of all claims. Judge C. Conner granted the motion in part and denied it in part, concluding that (1) allegations supported a plausible inference that the police may have lacked probable cause at the time of arrest (applicable to both federal and state-law claims); (2) Watson’s pleadings were sufficient to make out an equal protection claim, a failure to train claim, and a claim for racial discrimination under § 1981; and (3) defendants were not entitled to qualified immunity at this stage of the litigation. The motion was granted as to the police department because it was not a separate entity subject to § 1983.
Soriano v. Sabol, ___ F.Supp.3d ___, 2016 WL 2347904 (M.D.Pa. May 3, 2016) (Habeas Corpus) – On July 24, 2015, the petitioner was taken into custody by the DHS and placed in removal proceedings at York County Prison. Applying the balancing test described in Chavez–Alvarez v. Warden York Cty. Prison, 783 F.3d 469 (3d Cir.2015), Judge M. Mannion concluded that, under the circumstances, petitioner’s nine-month detention without a bond hearing had been for an unreasonable amount of time in violation of due process. The court therefore granted the § 2241 petition for writ of habeas corpus and ordered that the petitioner be provided with an individualized bond hearing before an immigration judge within 30 days.

R.L. v. Central York Sch. Dist., ___ F.Supp.3d ___, 2016 WL 2342089 (M.D.Pa. May 3, 2016) (First Amendment – Student off-campus speech) – On the same day that school administrators received two communications regarding a bomb present in the high school at which R.L. was a ninth-grader — communications that triggered, among other things, an evacuation of the school and a search by bomb-sniffing dogs — R.L. published a post on his Facebook page that read, “Plot twist, bomb isn’t found and goes off tomorrow.” After he was suspended for this action, his parents filed a § 1983 suit alleging violations of R.L.’s free speech and due process rights. The parties filed cross-motions for summary judgment. Assuming that Tinker’s substantial-disruption test applied to off-campus student speech, Judge J. Jones III held that the defendants did not violate R.L.’s free speech rights when it disciplined him for publishing his Facebook post, and that the defendants were entitled to summary judgment on the plaintiffs’ First Amendment claim. As to challenges to the school policy used to discipline R.L., the court granted summary judgment in favor of defendants on plaintiffs’ Fourteenth Amendment claim that R.L. had insufficient notice that his behavior was prohibited, given other policies in the same handbook, and their claim that the policy was void for vagueness. The court, however, ruled that the policy was substantially overbroad to the extent it regulated more speech than was permissible under Tinker. Finally, the court held that the school superintendent was entitled to qualified immunity.

Gallo v. Colvin, 2016 WL 2936547 (M.D.Pa. May 13, 2016) (Social Security) – Judge M. Brann rejected the magistrate judge’s recommendation that the Commissioner’s denial of Gallo’s application for supplemental security income benefits be reversed, and he instead affirmed that denial, concluding — contrary to what the magistrate judge had found — that the ALJ had not relied on a single state agency non-examining medical opinion and had not conflated Gallo’s physical impairments of neurogenic and vascular thoracic outlet syndromes.

Sutton v. Chanceford Township, ___ F.Supp.3d ___, 2016 WL 2865191 (M.D.Pa. May 16, 2016) (First Amendment – Zoning) – After their application for a “special exception” to open an adult-oriented, bring-your-own-beverage cabaret featuring nude female dancers was denied, plaintiffs filed a federal complaint challenging on First Amendment and Takings Clause grounds the township’s zoning ordinance regarding adult-oriented businesses. Judge Y. Kane denied the defendants’ Rule 12(b)(6) in part, concluding that (1) defendants had not, at this stage in the litigation, demonstrated that plaintiffs’ allegations, taken as true, entitle them to no relief on their First Amendment claims, and (2) although alleging that the denial of their application had imposed a substantial negative economic impact on them, plaintiffs failed to plead sufficient facts to make out a regulatory takings claim. The court also dismissed without prejudice those legal theories that the plaintiffs mentioned but did not develop, because “mere recitals of constitutional elements are insufficient to survive” a Rule 12(b)(6) motion.

Balon v. Enhanced Recovery Company, Inc., ___ F.Supp.3d ___, 2016 WL 3156064 (M.D.Pa. June 2, 2016) (Statutes [FDCPA]) – Balon, who owed $798.67, challenged as false, deceptive, and misleading language in a debt-collection letter that stated that “any indebtedness of $600 or more, which is discharged as a result of a settlement, may be reported to the IRS as taxable income pursuant to the Internal Revenue Code 6050 (P) and related federal law.” The offer to settle was for $638.94 and, as a result, could not have been reportable. Judge W. Nealon, finding Velez v. Enhanced Recovery Company, LLC, 2016 U.S. Dist. LEXIS 57832 (E.D. Pa. May 2, 2016),
persuasive, denied the defendants’ Rule 12(b)(6) motion, concluding that Balon stated a plausible claim that the statement was misleading or deceptive under § 1692e(10) of the FDCPA.

_Talarico v. Skyjack, Inc._, ___ F.Supp.3d ___, 2016 WL 3227262 (M.D.Pa. June 13, 2016) (Tort – Duty to recall/retrofit) – In this strict liability, negligence and breach of warranty action arising from the death of the plaintiff’s husband after he fell from a scissor lift, Judge M. Mannion granted the defendants’ partial motion to dismiss claims that relied on an alleged duty to recall or retrofit. The court rejected plaintiff’s contention that the Pennsylvania Supreme Court’s decision in _Lance v. Wyeth_, 624 Pa. 231, 85 A.3d 434 (2014), supported the existence of such a duty.

_A.C. v. Scranton Sch. Dist._, 2016 WL 3227259 (M.D.Pa. June 13, 2016) (Civil Rights – ADA, RA) – Plaintiffs filed this action alleging that their minor son, A.C., was discriminated against and denied his right to a free appropriate public education by defendant school district due to his disabilities in violation of the Americans with Disabilities Act and § 504 of the Rehabilitation Act. New Story, a private school that provided special education to students and with which the district contracted, was also named as a defendant. Ruling on motions to dismiss and a motion to strike, Judge M. Mannion granted the school district’s motion to dismiss as to federal claims pre-dating April 8, 2013 (two years prior to the filing of the complaint), but denied the district’s motion to strike allegations pre-dating April 8, 2013 because they were relevant and material of claims that occurred within the two-year statute of limitations. The court denied the district’s and New Story’s motions to dismiss the plaintiffs’ Rehabilitation Act and ADA claims based on allegations occurring after April 8, 2013, and denied New Story’s motion to dismiss all claims against it.

**WESTERN DISTRICT OF PA OPINIONS**

_Rhodes v. Avis Budget Car Rental, LLC_, 2016 WL 1435443 (W.D.Pa. Apr. 12, 2016) (Tort [Causation/Gist-of-the-Action]) – Rhodes filed breach of contract and tort claims, alleging that he suffered injury when he was pulled over and handcuffed after a police officer determined that the registration for the car he had rented from the defendant had expired. Magistrate Judge R. Mitchell declined to grant Avis’ Rule 12(b)(6) motion on gist-of-the-action grounds, but agreed with Avis that, considering the nature of the expired-registration offense, it was completely unforeseeable that the alleged expired registration could lead to Rhodes being handcuffed, detained and physically injured, as alleged. As a result, causation was lacking. Concluding that amendment was futile, the court granted Avis’ motion.

_EQT Production Company v. Terra Services, LLC_, ___ F.Supp.3d___, 2016 WL 1435448 (W.D.Pa. Apr. 12, 2016) (Contribution/Common-law indemnity) Naming only Terra as a defendant, EQT sought damages stemming from leaks in a natural gas well site constructed, in part, by Terra; Terra filed a third-party complaint seeking contribution and common-law indemnity from two other contractors involved in the construction. Trumbull, a third-party defendant, sought dismissal of Terra’s claims and of the cross-claims of the other third-party defendant. Judge N. Fischer concluded that (1) Terra had not stated a claim for common-law indemnity because “if Terra’s negligence contributed to the [leaks] in any way, common law indemnity is unavailable. If it did not, Terra would prevail against EQT and not have any liability for Trumbull to indemnify.”; and (2) Trumbull’s potential liability to EQT, if any, would be contractual in nature and thus Terra’s third-party claims, which had to be grounded in tortious conduct, failed for that reason as well. Because the same considerations applied to ECI’s cross-claims, the court granted Trumbull’s Rule 12(b)(6) motion.

_Neuberger, Quinn, Gielen, Rubin & Gibber, P.A. v. United States_, ___ F.Supp.3d___, 2016 WL 1670008 (W.D.Pa. Apr. 21, 2016) (IRS summons enforcement) – IRS was examining transactions of two limited liability companies that generated millions of dollars of income tax losses for two tax years. Neither of the companies had its own bank accounts. Instead, all funds paid to or on behalf of the companies went through the attorney trust account of an attorney and his firm. The IRS sought enforcement of two summons issued to PNC; law firm sought to quash the summons. In an opinion that details the burdens on
the IRS and on parties challenging the IRS’ attempts to enforce a summons, Judge D. Cercone concluded that the government made out a prima facie case for enforcement, and that the law firm failed to rebut that case.

*Rabner v. Titelman*, 2016 WL 1613444 (W.D.Pa. Apr. 22, 2016) (Indispensable parties/venue) – Non-party grandmother living in California was the direct beneficiary of two trusts. She had given durable power of attorney to two of her sons under California law. Two of her grandchildren sued her sons – their uncles – claiming breach of contract. Uncles sought Rule 12 dismissal on various grounds; Judge N. Fischer focused on Rule 12(b)(7) and 12(b)(3). The court concluded that a durable power of attorney did not give either uncle the capacity to act as the grandmother’s attorney-at-law, and that in addition to the grandmother, numerous individuals and entities were necessary parties. Because joinder of the necessary parties would defeat diversity, the court concluded the case had to be dismissed, without prejudice, for lack of subject-matter jurisdiction. In the alternative, the court ruled that the case had to be dismissed for improper venue, given a “substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated” outside of Pennsylvania.

*Broadcast Music, Inc. v. George Moore Enterprises, Inc.*, ___ F.Supp.3d ___, 2016 WL 1639907 (W.D.Pa. Apr. 25, 2016) (Default Judgment) – BMI alleged willful copyright infringement; defendants failed to answer, to act after the clerk entered default, and to respond to plaintiff’s motion for a default judgment under Rule 55(b). Judge K. Gibson concluded that (1) entry of default judgment was proper; (2) granting BMI’s request for a permanent injunction was warranted; (3) although the requested statutory damages would not be awarded, an award of nearly three times the unpaid licensing fee would serve to punish defendants’ willful conduct and to deter future misconduct; and (4) defendants had to pay attorney fees and costs.

*Bootington v. Percheron Field Services, LLC*, 2016 WL 2758293 (W.D.Pa. May 12, 2016) (Third party discovery) – In this putative class action involving FLSA claims, plaintiffs sought numerous sanctions for defendant’s failure, in violation of Rule 45(a)(4), to provide plaintiffs’ counsel with notice and a copy of the subpoena prior to defendant’s service of subpoenas on named and opt-in plaintiffs’ mobile phone carriers. Judge K. Gibson, finding that the defendant’s violation of Rule 45 was not in bad faith, granted plaintiffs’ motion in part. Relief granted included, among other things, an order quashing all subpoenas without prejudice, precluding defendant from using any documents obtained in response to the subpoenas issued in violation of Rule 45, and commanding that defendant destroy all documents obtained in response to those subpoenas.

*Bauer v. Pennsylvania State Board of Auctioneer Examiners*, ___ F.Supp.3d ___, 2016 WL 2958236 (May 23, 2016) (*Younger* abstention) – Bauer, an attorney, alleged that the State Board violated state and federal law by issuing citations and fines for auctioning, on behalf of his clients, toy trains on the internet without a state auctioneer license. Judge N. Fischer focused on the Board’s contention that the court should abstain under *Younger* and concluded that (1) the proceedings before the Board were plainly quasi-criminal in nature within the meaning of *Sprint Communications, Inc. v. Jacobs*, 134 S. Ct. 584 (2013); and (2) the state proceedings were ongoing, judicial in nature, implicated important state interests, and provided an adequate opportunity to raise Bauer’s constitutional claims.
Because Bauer would not be entitled to monetary damages if he prevailed in his appeal from the Board’s decision and because his Sherman Act claim was independent of his constitutional claims, Judge Fischer granted the Board’s Rule 12(b)(1) motion in part – abstaining from hearing Bauer’s claims for injunctive and declaratory relief, and staying the case as to Bauer’s claims requesting monetary damages.

*Columbia Gas Transmission, LLC v. 520.32 Acres, ___ F.Supp.3d ___, 2016 WL 3021417 (W.D.Pa. May 24, 2016) (Settlement agreement enforcement)* – Gas company’s motion to enforce a settlement agreement with owners of property, which concerned the company’s right to use that property to construct an upgraded pipeline facility, was granted, Judge M. Hornak concluding that (1) there was an enforceable settlement agreement reached at a pre-trial conference; and (2) on the day of that conference, the property owners unequivocally agreed before the court that all had been settled to their satisfaction. The court rejected the property owners’ contention that because they did not get, in the final typed-up agreement, all that they had initially wanted (their wish list being known to their lawyers), their lawyers did not have authority to enter into the settlement agreement.

*Grkman v. 890 Weatherwood Lane Operating Company, LLC, ___ F.Supp.3d ___, 2016 WL 3057656 (W.D.Pa. May 31, 2016) (Arbitration)* – After Grkman’s father passed away, he brought an action against the operator of the skilled nursing facility where his father resided for several months, asserting survival and wrongful death claims and alleging that the defendant’s negligence in caring for his father caused complications that led to his death. Defendant sought dismissal on various grounds, urging that when his father became a resident of the facility, Grkman had signed, on behalf of his father, an agreement that required that any controversy or dispute related to the father’s care and treatment while a resident/patient had to be submitted to binding arbitration. Judge A. Schwab denied the defendant’s motion, concluding that (1) when Grkman signed the agreement on his father’s behalf, the father waived the decedent-father’s right to a jury trial with respect to a survival claim; (2) the father never possessed the right to waive a jury trial with respect to the son’s claim for wrongful death, and thus he could not contract away that right; (3) Grkman’s signing on his father’s behalf did not waive his own rights; and (4) applying Pennsylvania state law – which the agreement required be applied – the wrongful death claim and the survival claim could not be severed from another. As a result, both claims were to be tried before a jury.

**From Around the Web**

Tom Wilkinson notes that you can find articles from the *Federal Lawyer* magazine on the Federal Bar Association’s website. Recent articles include:

- “The Potential ‘Impact’ of Texas Department of Housing and Community Affairs v. Inclusive Communities Project On Future Civil Rights Enforcement and Compliance”
- “The Special Needs Doctrine and Reduced Expectation of Privacy Under the Fourth Amendment”
- “Incentives Matter: The Not-So-Civil Side of Civil Forfeiture”
- “You Have The Right To Understand Miranda”
- “A Proposal for the Next 50 Years”
- “The Curious and Questionable History of FISA”


If you know of articles, sources, sites, blogs, or other locations of material you think other FPC members would find interesting, insightful, useful, or just plain humorous, please forward the location information to Susan Schwochau at s.schwochau@comcast.net.
How Important is the Fourth Amendment Exclusionary Rule Today?

By Brett G. Sweitzer**

Background
Fremont Weeks ran an illegal lottery out of his home. He also had a day job, and while he was there, police unlawfully broke into ‘Weeks’ house and seized papers that were ultimately used to convict him in federal court. The Supreme Court threw out the conviction as based on unlawfully seized evidence. The year was 1914, and the modern-day exclusionary rule was born.¹

The exclusionary rule prohibits the use by the government, in its case-in-chief, of evidence derived from a search or seizure that violates the Fourth Amendment. Despite its adoption by a unanimous Court in Weeks, the exclusionary rule would soon come under sustained fire. As Benjamin Cardozo, then sitting on the Court of Appeals of New York, famously—and derisively—summarized the rule in 1926: “The criminal is to go free because the constable has blundered.”² By then, a majority of state courts had rejected the Weeks exclusionary rule, and in 1949 a divided Supreme Court declined to force the rule on the states as a matter of due process.³ Twelve years later, in a landmark case of criminal procedure, the Court reversed course and concluded that the exclusionary rule applies in both federal and state courts because it is essential to securing the Fourth Amendment’s protections.⁴

Rationales for the Exclusionary Rule
But does the exclusionary rule remain essential today? Opinions on that question turn in part on the rationale for the rule. Weeks drew on basic notions of the rule of law: permitting the use of unconstitutionally obtained evidence would approve the government’s unlawful conduct, thereby reducing the Fourth Amendment to “a form of words.”⁵ A closely related rationale focuses on judicial integrity: courts must not become “accomplices in the willful disobedience of a Constitution they are sworn to uphold.”⁶ Yet another rationale focuses on maintaining public trust in the legitimacy of the criminal justice system: when a police force is permitted to “profit from its lawless behavior,” there is a “risk of seriously undermining popular trust in the government.”⁷

From early on, though, an important—if perhaps more modest—rationale for the exclusionary rule has been to deter police from violating the Fourth Amendment by removing the incentive to do so. This can be understood as a “rule of law” rationale as well, but one grounded in basic concerns about limiting constitutional violations, rather than in broader concerns about public trust and dirty government hands. Beginning with the Burger Court in the 1970s, deterrence was promoted as the most important rationale for the exclusionary rule, even as the rule’s efficacy in achieving it was pointedly questioned by some members of the Court.⁸ That trend has only grown, to the point that Supreme Court majorities today routinely refer to deterrence as the “sole purpose” of the exclusionary rule, and require “appreciable” deterrence to justify suppression—and, even then, only when the deterrent benefit outweighs the social cost of excluding evidence in the particular case.⁹

The Rule in Retreat
The focus on deterrence has led to severe pruning of the exclusionary rule, such that suppression is no longer ordered when police are deemed to have relied in good faith on warrants, statutes, judicial opinions, or court and police records that are later deemed defective.¹⁰ Nor does the rule apply to the use of evidence in civil enforcement, grand jury, parole revocation, habeas corpus or deportation proceedings, or for impeachment in criminal cases.¹¹ In all of these situations, the rule has been held to have too little deterrent impact to justify suppression of evidence. And some would prune even further, limiting the exclusionary rule to cases of outrageous police misconduct—which they view as infrequent given the modernization and increasing professionalism of police forces.

** Assistant Federal Defender, Chief of Appeals, Federal Community Defender Office for the Eastern District of Pennsylvania. The views expressed are entirely his own.
Time for Revival?

Does it matter that the exclusionary rule appears to be vanishing? Certainly it does if one cares about the non-deterrence rationales for the rule. And given other developments in Fourth Amendment law, public trust and perceptions of the integrity of the police and the courts appear to be at a low point. Stops of civilians are now upheld, regardless of their actual reason, so long as police can point to some technical violation of the law that may have occurred. That holds true not just when the law has not in fact been broken, but even when police are mistaken about what the law prohibits in the first place. And most recently, the Supreme Court has held that stops with no basis whatsoever will be upheld if it turns out, after the fact, that the person stopped has an outstanding warrant—perhaps for an unpaid parking ticket or alimony obligation. In other words, police may now “verify your legal status at any time.” And it is no secret that minorities are disproportionately singled out for such scrutiny, sometimes with tragic results:

For generations, black and brown parents have given their children “the talk”— instructing them never to run down the street; always keep your hands where they can be seen; do not even think of talking back to a stranger — all out of fear of how an officer with a gun will react to them.

But even if the justification for the rule comes down to deterrence, that does not dictate a narrow exclusionary rule. One might reasonably conclude, for instance, that appreciable deterrence is achieved from the exclusion of evidence in collateral proceedings. And one might reasonably think that police can and should be deterred from making their own judgments about the legality of a search or seizure when that determination could easily be made by a neutral magistrate through the warrant process. Or that police departments can and should be deterred from keeping shoddy records or providing inadequate training. Moreover, there is reason to doubt the efficacy of the other main deterrent mechanism, civil suits for damages, given the barriers of qualified immunity and access to the courts.

Question/Issue

Application of the exclusionary rule has increasingly become an exercise in weighing its cost and benefit to society: the cost is said to be extraordinarily high, as the guilty sometimes go free, and the benefit often marginal under a narrow conception of deterrence.

Is that the proper analysis, or should a broader inquiry be made, taking into account the exclusionary rule’s other rationales? What about the social costs of not excluding unlawfully obtained evidence, and corresponding benefits of doing so, which are now being overlooked? And ultimately, should the exclusionary rule remain on its current trajectory of decline, or should it be revived to address the challenges our society faces today?

5 Weeks, 232 U.S. at 391-92; Mapp, 367 U.S. at 648.
8 Calandra, 414 U.S. at 347; Bivens v. Six Unknown Named Agents, 403 U.S. 388, 415 (1971) (Burger, C.J., dissenting) (asserting that thinking the exclusionary rule deters Fourth Amendment violations is a “wishful dream”).
15 Id. at 2070 (Sotomayor, J., dissenting).
16 Id.
Thank You

A sincere thank you to the following Federal Practice Committee members for their work and contributions to this edition of the PBA Federal Practice Committee newsletter:

- **Kevin H. Conrad**, White and Williams LLP, Center Valley
- **Nancy Conrad**, White and Williams LLP, Center Valley
- **Hon. D. Michael Fisher**, U.S. Court of Appeals Third Circuit, Pittsburgh
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- **Susan Schwochau**, Pittsburgh
- **Brett G. Sweitzer**, Defender Association of Philadelphia, Philadelphia
- **Thomas G. Wilkinson, Jr.**, Cozen O’Connor, Philadelphia

A special thank you goes to **Susan Etter, Esq.**, Pennsylvania Bar Association, who continuously provides invaluable assistance.

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PBA President Sara A. Austin has appointed the following people to lead the PBA Federal Practice Committee:

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**Hon. D. Michael Fisher**

U.S. Court of Appeals
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**Co-Vice Chair:**

**Melinda Ghilardi**

Federal Public Defenders Office, Scranton

**Co-Vice Chair:**

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OYEZ! DELVE INTO THE SUPREME COURT’S MINDSET

You’ll learn about important rulings on issues such as affirmative action, voting rights, abortion rights, free speech and public unions; the Affordable Care Act’s contraception mandate and religious freedom; as well as updates on habeas and criminal law.

AVOID READING THOUSANDS OF PAGES

Let the experts fill you in on the essentials and how they will impact your practice as well as our culture and society. Let our panel do the heavy lifting to get you the critical facts and parse the analysis so you take away the most relevant information and know why it matters.

HEAR FROM AN ALL-STAR PANEL ON THE 2015 TERM’S MOST SIGNIFICANT DECISIONS

Take advantage of this unique opportunity to listen to vigorous discussion amongst scholars and practitioners as they elucidate the Supreme Court’s October 2015 term.

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