Individual freedoms are the backbone of America, those rights that allow us—*we the people*—to stand tall and affirm faith and conviction in whichever belief system we hold above others. Naturally, in a presidential election year, many of the articles that staff writers pitched focused on heated constitutional and political issues: Our Right to Vote. Right to Health Care. Right to Marry. Right to Education. Right to Bear Arms. As with all public discourse, these issues can unite, but also divide many Americans, inflated by the Freedom to Disagree. Perhaps this freedom, in particular, is the oxygen that allows the embers of dialogue to burn. *Inhale information, exhale opinion. Inhale opportunity, exhale entitlement. Inhale injustice, exhale social change.*

And so, the Winter 2013 edition of *JURIS* developed organically. In this issue, staff writers tackle major state and national issues while offering a local legal perspective. Guided by the insight of law school faculty, prominent local figures and legal scholars, each article offers readers an objective take on some of the most newsworthy events leading us into 2013. From the inspiring tale of Amanda Holt, a young Pennsylvanian who not only challenged the constitutionality of the state’s redistricting plan but also became a “crusading cartographer,” to coverage of the school-to-prison pipeline, a troubling national trend that deplorably promotes incarceration over education, this issue has many highlights. Of all the articles in this issue, none resonate as loudly as Lauren Gailey’s coverage of gun access and the mentally ill. With heavy hearts and overwhelming sadness, the nation watched around-the-clock coverage of the Sandy Hook Elementary School massacre, just 11 days before Christmas. As Americans rally behind the families in Newtown, Conn., dialogue and debate continue over the necessary measures to prevent such future tragedies. With diverging reactions, common ground is not always so common. But where the common good is the ultimate goal, Americans’ right to disagree often lights the path.

In my former life, a short layover of five years between undergraduate and law school, I was a sojourner with a journalism degree, an American living abroad. One of the great opportunities of working for a study abroad program in Italy was the chance to travel: to lose the comfort of familiarity and gain a little perspective on the world and myself. In developing the concept of this issue, my mind raced back to two countries I so fortunately had the chance to visit with friends while living abroad: Egypt and Tunisia. As staff articles filled my inbox, headlines of these North African countries’ political unrest filled my newsfeed, humbly reminding me that the freedom to disagree is not universally accepted.

With great honor and appreciation, I present the Winter 2013 issue of *JURIS*. Please share with us your comments and reactions on Twitter at @JurisDuqLaw or on our Facebook page.

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The School of Law Welcomes New Professors

Wesley Oliver

By Christopher Allegretti

Humble and candid: two of the many words to describe one of Duquesne University School of Law’s newest faculty members, professor Wesley Oliver.

Oliver began his academic career at the University of Virginia for both undergraduate and law school. At first he pictured himself as an engineer, but soon found himself longing for a more social career path. He “stumbled into” law school where he could take pure knowledge and transform it into something useful. Oliver later attended Yale University where he received a master’s of law (LL.M.) and doctor of juridical science (J.S.D.).

Oliver joins an already distinguished faculty, primarily focusing on Fourth Amendment search and seizure issues, while looking to continue his pursuit of debunking the current judicial regulations controlling criminal process.

“It’s not about whether the guy did it,” he said, lamenting over what concerns him. “We put the play on the way the police obtained the evidence.”

As Oliver’s dissertation illustrates, the current rules of criminal procedure, which are rooted in the fears of police excess during the Prohibition Era, do not satisfy today’s concern with wrongful conviction. Oliver suggests that the remedy to the presently backward system is to be concerned with not only the accuracy of the methods used in obtaining the evidence, but also the quality of the evidence presented to the jury.

In addition to teaching courses such as Criminal Process and Advanced Criminal Law: Jail to Bail, Oliver has become a television personality. During the Jerry Sandusky trial, Oliver provided daily commentary for NBC and has been featured on The TODAY Show, NBC Nightly News and its numerous affiliates.

Oliver also hosts a program on the Pennsylvania Cable Network entitled Crime and Punishment, where he and others explore contemporary, regional and national issues in criminal law.

“I truly enjoy the work of taking something that’s complicated and distilling it down in a way that regular people who haven’t been trained in the law can understand,” Oliver said.

When asked about his most exciting case, without hesitation, Oliver said his first murder case. “It was a drug deal that went bad.” After the two men accused of the crime retained representation, they claimed that Oliver’s client was also at the scene.

On cross-examination, Oliver asked one of the men if he changed his story so as not to reflect the truth, but to avoid the electric chair. The man replied, “Yes.”

“It was my most exciting moment in the courtroom, and it didn’t do me any good,” Oliver admitted. Unfortunately, the jury still convicted his client.

Aside from being a distinguished legal mind, Oliver is also a true Southern gentleman. He possesses an encyclopedia-like knowledge of country music and loves old-time country and bluegrass. He boasts seeing Willie Nelson in concert on numerous occasions.

Fast Facts About Wes Oliver

- Favorite TV show: Matlock
- Favorite Food: Sushi
- Favorite Beer: Affligem, a Belgian beer that has been brewed by monks since the eleventh century that was recently acquired by Heineken
- Entrance Theme (if he had one): “Faster Horses (The Cowboy and the Poet)” by Tom T. Hall
- Favorite Whiskey: WhistlePig Vermont Rye
- Latest Hobby: Learning how to play the dobro and writing a novel
As a professor, scholar, intellectual property (IP) consultant, highpointer and first-time dad, Jacob H. Rooksby is a busy man. This year, Professor Rooksby became part of the Duquesne University School of Law’s faculty, and there could not be a more qualified individual for the job. As a man with more degree abbreviations than letters in his first name, Rooksby’s accreditations speak volumes about his character, diligence and commitment to higher education. While at the College of William and Mary, Rooksby pursued Hispanic studies, though he had only considered a minor in Spanish until some encouragement from the faculty. Rooksby entertained thoughts about studying abroad, and although he had participated in a homestay in Spain during high school, it was not until being immersed in Valencia for a semester that the decision to fully commit was solidified.

While at William and Mary, Rooksby developed an affinity for legal issues and politics and decided to pursue a career in law, but the competing desire to teach made a master’s in education all too appealing. Rooksby enrolled at the University of Virginia, and did what any normal academic would do. He entered into two separate yet equally intensive schools of study, and completed both professional degrees simultaneously—a J.D. and an M.Ed.

When asked how he was able to juggle both degrees, Rooksby said, “I took an absurd amount of credits.” Fortunately, his interests complemented one another, and he was able to draw subject matter from each and apply it respectively. While trudging through such intellectual endeavors with such exacting study, one would expect Rooksby had reached maximum capacity with the overwhelming course load.

“The more I have going on, the more I am at equilibrium,” Rooksby said. And for him the work was not overwhelming—it was exhilarating. The trials and tribulations attendant with his academic pursuits served as the perfect training for managing competing obligations and the rigorous demands of being a big law attorney. After graduating law school, Rooksby was offered an associate position at the Richmond office of McGuireWoods LLP. The majority of his work included IP litigation and IP counseling, as well as representing colleges and universities in IP disputes. Rooksby enjoyed private practice, and the knowledge and experience he acquired was immense, particularly in developing his proficiency in legal writing.

“Writing is always this process of revision, and it’s so central to the lawyer’s craft,” Rooksby said. “Every little detail matters because you want to make the best impression possible on the judge, or you’re being paid by a client who doesn’t have the time for grammatical errors or misplaced commas.”

But with an eye still toward teaching, and with little time as an overworked associate to develop the research agenda necessary to become an attractive candidate for a professorship, Rooksby decided to hit the books yet again. He enrolled in the Curry School of Education at his alma mater, the University of Virginia, and pursued a Ph.D. in higher education. All of his hard work and perseverance finally paid off when he was offered an assistant law professor position at Duquesne. Rooksby has certainly been a welcome addition to the faculty, and currently teaches Fundamentals of Intellectual Property and Law and Higher Education.

All things considered, Rooksby maintains that busy students and soon-to-be professionals need to maintain a healthy work-life balance, to utilize incremental progress in moving things forward and to not be overwhelmed by any one task on any one day.

“I always try to push the ball down the court a little bit everyday, in whatever the field of endeavor is,” he said. “Even if it’s carving out 20 minutes to go on a walk, or to work on a project with an extended due date, I always found it the best way to stay on top of things.”

And speaking of the top—in his free time, Rooksby likes to highpoint. Highpointing is the act of climbing to the highest point in each of the United States. There is even a club for that.

“It started on a lark,” Rooksby said. While hiking Mount Mitchell (the highest point in North Carolina) with his wife Susan, Rooksby joked that he wondered where the rest of the high points were. After reaching the top, a gentleman on a nearby bench joined their conversation and asked if they were hikers. In jest, Rooksby told him that they were trying to climb the highest point in every state, and without hesitation, the man pegged them for highpointers. As it turned out, their new acquaintance was the fifth person to highpoint in all 50 states. So, they joined the club, bought the t-shirts and now plan their vacations around highpointing. Rooksby opined that it is a great way to get to know a state, but his favorite part is meeting fascinating people. Rooksby has completed 26 states and plans to do almost all of them, save Mount McKinley.

But for now, Rooksby has reached his own high point through teaching law and relishing in the love of his wife and daughter.
Laurie Serafino

By Amy Coleman

Professor Laurie Serafino has never had a paying client, and she does not intend to start now. In May, Serafino moved her family and her life from the sunny shores of Malibu, Cal., to Pittsburgh to serve as the new Director of Clinical Services at Duquesne University School of Law.

Serafino, a Southern California native, earned her J.D. from Southwestern University in Los Angeles. Previously, she worked as a legal service attorney and in the Los Angeles public defender’s office.

Serafino has also served as appointed private counsel, as Director of Clinical Programs at Pepperdine University and as an accrediting agent at the American Bar Association (ABA).

Serafino’s work as an ABA-site inspector brought her to a Seattle, Wash., conference. There, she met Associate Dean of Academic Affairs Nancy Perkins and Professor Tracey McCants Lewis. It was only after speaking with Dean Ken Gormley that Serafino made the decision to come to Duquesne.

“It was his dedication to the improvement and success of the clinics that made me believe I could make a difference,” Serafino said. “Because of Duquesne’s location, religious mission statement and place in the legal community, the clinics are an excellent opportunity for students to serve their community and learn from experienced mentors.”

Dean Gormley said he looked for an experienced director to “take the clinics to the next level” and make them competitive with other law schools throughout the country.

He found just that. Dean Gormley referred to Serafino as a “dynamo” and a “bundle of energy and enthusiasm.”

“This was her chance to build something new that was going to last,” Gormley said. “So it was really a wonderful situation for someone to come in and start building the program in order to put Duquesne on the map in terms of its clinical program.”

Gormley also said clinical education is important because it directly reflects Duquesne’s mission.

“We very much believe, as a Catholic institution, in serving others,” Gormley said. “On top of that, Duquesne Law School has a long history of service in the community and has a hands-on, roll-up-your-sleeves approach to training its students, and that is what we are good at. This was a unique opportunity to get to create something—that is already strong—but to make it one of the leaders in the country, and that is what she is eager to do. I think the sky is the limit here.”

Serafino is currently in the process of evaluating all clinics to ensure they are running as they should. She also intends to assess any problems and concerns with the department faculty and students.

Serafino hopes to create heightened standards for enrollment in a clinic or externship by lowering the number of students admitted and creating an interview process and waiting list for interested students. She intends to impose a grading scale to ensure full participation of enrollees.

While these measures may seem drastic, they are imposed by the great majority of clinical programs in law schools around the country, Serafino said.

Serafino also wants to create a more welcoming environment for students and other faculty by introducing a more relaxed, informal atmosphere and by bringing the doctrinal faculty into the clinic in order to assist in the learning process.

Part of this environmental change includes expanding the Clinical Programs’ space. Recently, the clinic was awarded a $250,000 grant by the Allegheny County Redevelopment Authority, which will help furnish and buy equipment for a new clinic building on Fifth Avenue, according to the Pittsburgh Post-Gazette.

“Law school is a unique opportunity to try out different fields of law in order to narrow down your likes and dislikes,” Serafino said. “This opportunity also allows for practical writing practice in events that impact people’s lives.”

Now that she is in Pittsburgh, Serafino admits that while she is not a football fan, she believes that Pittsburgh is a very friendly city and loves working at the clinic with Phyllis Karczewski and Professor McCants Lewis.

Coming from the West Coast, Serafino also said she is looking forward to the first snow.

“Since I’m scared to death of slipping on ice, Dean Moriarty took me to Little’s [shoe store], and I bought two pairs of snow boots,” she said. “Of course all of you Pittsburghers find it hilarious to watch the life-long Californian get a taste of cold weather.”
Steven Baicker-McKee

By Jennifer Dickquist

Duquesne University School of Law welcomed Steven Baicker-McKee to its faculty as a Civil Procedure and Energy Law professor. Baicker-McKee, a native of New Jersey, attended Yale University as an undergraduate and received his law degree from Marshall-Wythe School of Law at College of William and Mary. For more than 20 years, Baicker-McKee practiced at Babst Calland in the Litigation Services and the Energy & Natural Resources Groups.

“I started teaching and mentoring at the University of Pittsburgh while I was still a practitioner at Babst Calland and also took a visiting professor position at Toledo prior to being hired at Duquesne,” Baicker-McKee said.

After experiencing other schools, Baicker-McKee was able to transition to Duquesne and remain in Pittsburgh.

“It is a little early to draw distinctions between this school and others,” Baicker-McKee said. “The faculty here is very welcoming, and I have enjoyed the students so far.”

At Duquesne Law, Baicker-McKee will share with students his knowledge of civil procedure, an area where he has risen as a leading expert and author. This specialty developed after a judicial clerkship, where Baicker-McKee found civil procedure confusing and complicated, he said.

Following that experience, Baicker-McKee wrote a handbook as guidance for others. Today, his A Student’s Guide to the Federal Rules of Civil Procedure is a familiar resource to many law students and the Federal Civil Rules Handbook is a primary resource for lawyers.

Currently, Baicker-McKee is working to co-author a civil procedure textbook through West Publishing Company. He additionally co-authors the Federal Litigator, a monthly newsletter published by West that discusses recent cases concerning the federal rules of civil procedure, evidence and appellate practices.

“I am attempting to keep the newsletter the same as previous editions because it has been a successful publication,” he said.

Students in Baicker-McKee’s civil procedure class will have the opportunity to learn and appreciate the practical side of the civil procedure rules, which demonstrate fundamental fairness essential to the judicial process. “Mastery of these rules is a vital aspect of the legal profession,” he said.

In addition to teaching and writing, Baicker-McKee is an avid squash player and will serve as the Tournament Director for the Pittsburgh Open, which is “a squash tournament that brings people from all over the world to Pittsburgh,” he said. He also plays guitar, keeping one in his office for occasional downtime.

Networking with New Law Alumni Committee

By Christina Horton Duty

The Board of Governors of the Duquesne Law Alumni Association is deeply interested in the challenges facing our school’s young alumni. As a new Governor, I have been thrilled to share the experiences of navigating the rough waters of the current legal market. In addition to our existing Young Alumni Committee, the DLAA has formed a Career Development Committee. Headed by Vince Quatrini, L’74, and inspired by his passion and intensive research into the difficulties facing today’s young attorneys, the committee is dedicated to supporting the career development efforts of the law school, current students and recent graduates. One of the areas in which we are focusing our efforts is sharing our experiences through successful networking.

When I was a student, I heard the word “networking” bandied about almost as much as I did the phrase “matter of law.” Learning how to be a successful networker can be just as important to your legal career as mastering the fundamentals of your course work. Thankfully, mastering the art of networking is much simpler than memorizing the ins and outs of the rules of evidence. There are a few key points that I try to keep in mind. The real you is the person with whom someone else wants to speak. He or she does not want to speak to your resume or the person you think you should be. Additionally, be engaged and share your passions. Enthusiasm is contagious and can create a connection. Most importantly, once you make those connections, do not be afraid to follow up. The only risk is a missed opportunity.

Christina Horton Duty, L’10, is a member of the Board of Governors of the DLAA and an associate at Burns White LLC. She is also a proud former Editor-in-Chief of JURIS Magazine.
Core Competencies: Preparing for the Bar

By Terry Falk

“When you get a J.D. from Duquesne, you are capable of practicing law,” said Professor Richard Gaffney. “We want every Duquesne graduate to pass the bar.”

Gaffney is teaching the newly implemented, two-semester bar prep course, Core Competencies for Legal Practice. The course has two goals: To provide students with a running start on bar prep and to reinforce the core competencies students will need to practice law, Gaffney said.

Support for the new course came from both Law School Dean Ken Gormley and the faculty. “Our goal is to provide Duquesne Law students every opportunity possible, so that they will succeed on the bar exam with flying colors,” Dean Gormley said. “The faculty enthusiastically supported this new course because reinforcing fundamental legal principles throughout law school gives students an advantage when it comes to sitting down to study for the Bar Exam during their final year.”

In 2011, Duquesne had the second lowest bar passage rate in the state, with only 78 percent of students passing the bar.

“Meaningful statistics showed a clear-cut correlation between bar failure and course rank after the first year,” Gaffney said. “The concepts you learn in your first year of law school are the most heavily tested on the bar. If you didn’t grasp them then, you’re at risk to fail.”

Duquesne Law requires those who placed in the bottom third of their first-year class to take Core Competencies. However, most of the students enrolled in the course elected to take it.

A total of 163 students are enrolled in the course this year, and many of them are in the top third of their class and are members of the Duquesne Law Review or other student legal journals.

“Students at the top of their class recognize the value of the course because they know it will help them bridge the gap between obtaining their J.D. and getting licensed to practice,” Gaffney said.

“I need all the bar prep I can get,” said Julianne Cutruzzula, president of Duquesne’s Student Bar Association. “And, it isn’t just preparation for the exam itself. It’s preparation for the experience.”

Cutruzzula said that students enrolled in the class get feedback on their work from BarBri exam graders, valuable insights on how the exam itself works and guest speakers who often speak on heavily tested subjects.

“The vast majority of my class elected to take Core Comp,” she said.

The course is a total of four credits, and students meet two hours a week. Gaffney said that in one semester, students will have practiced 200 multiple choice questions and 10 essays, all of which mimic questions and problems that students may face on the bar exam. The students use a text co-written by Gaffney and BarBri exam prep.

Students spend class time going over those problems, as well as learning “tips and tricks to avoid the traps set by bar examiners,” Gaffney said. Gaffney plans to help students prepare for the bar exam application itself, as well as the character and fitness investigation, stress management and financial affairs.

Duquesne is one of the first law schools to offer a for-credit course primarily designed to prepare students for the bar exam, Gaffney said. “This is not meant to replace a commercial bar prep course like BarBri or Kaplan in the summer,” he said. Rather, students who take the class are “ahead of the game” heading into their summer of intense bar study.

According to the Pennsylvania Board of Law Examiners, Duquesne University had a bar passage rate of 85.95 percent on the 2012 exam. Gaffney’s goal is 100 percent, and he said he believes Core Competencies is going to get the job done.

“We are confident that the new Core Competencies offering will allow Duquesne Law School graduates’ impressive bar passage rate to climb even higher,” Gormley said.

“If a student—who wouldn’t have otherwise passed—succeeds on the bar exam, the class was well worth it,” Gaffney said.
Bar Nun: Alumna
Sister Suzanne Susany

By Lanre Kakoyi

JURIS staff writer, Lanre Kakoyi, catches up with one non-traditional Duquesne Law alumna who has found success in the Pittsburgh legal community by merging vocations. Sister Suzanne Susany, a member of the Sisters of St. Francis of the Neumann Communities, was a pastoral minister and teacher at one of the Order’s communities in Ohio before attending Duquesne Law. After her Sister Superior suggested she pursue law school based on her prior experience assisting with immigration issues, Sister Susany embraced the opportunity. Today, she assists the indigent population by working at the Community Justice Project in Pittsburgh and specializing in immigration law.

Did you have any favorite classes at Duquesne Law?
I really enjoyed the classes, though it took me a while to develop the law perspective. I think it took me a little bit longer than most of my classmates because of my background. I admired some of the teachers: Professor Murray in Contracts and Dean Perkins in Property and Environmental Protection. Another person I admired was Professor Willke. I found her to be so supportive, and that was really important when trying something new. She was very positive. I think we need more of that in law school because of its inherent difficulties.

So, would you say your law school experience was successful?
[Laughing] I passed, didn’t I?

What expectations did you have, and did you meet them?
I am not so sure that I had great expectations. Sure, people repeatedly told me that there was going to be a lot of reading, and I knew what I wanted to do upon graduation. I am just grateful to the Lord that I am able to do what I wanted to do. How many law school graduates can say that? To me, that’s like the third miracle of the year!

How do you harmonize your new vocation as a lawyer with your original vocation as a nun?
Achieving harmony is always a problem. Living your faith is always a tightrope because life is not clear. If you look at the tenets of faith philosophically, you would say that they are always clear. But life isn’t. It gets so messy. And I think this situation is the same with the tenets of the law. That is why I think it is important that the law has judges, because of the ability to change the law to fit the unique situation.

In immigration court, the judge can ask the government’s immigration lawyer to consider the discretionary options. There are some things, though, that are not discretionary and you have to follow the letter of the law. It is the same with your faith. What happens where you have two tenets of the faith that are gospel mandates and they kind of end up on opposite sides of what you would do?

For example, practicing Catholics that are active in the Democratic Party are essentially endorsing a party platform that does not conform to Catholic teaching on issues such as life, contraception and abortion. That said, the Republican platform does not do justice to the gospel mandate that we should care for the orphans, poor and needy.

So what are your thoughts on the view that American nuns today are becoming increasingly liberal?
What is “liberal?” If “liberal” means working for social justice, then we have a mandate to do that.

Do you have the opportunity to practice your Catholic beliefs as an immigration lawyer?
Well, you know you cannot go against the law. But often what you can do is, first of all, see whether the law offers any remedy to people, and it often does. Secondly, you treat people with dignity. Thirdly, sometimes, especially in the criminal system, there are very clear injustices done to immigrants. I just read an article talking about how the for-profit prison corporations are counting on the fact that by criminalizing immigration violations, they would be able to put more people in jail. What a terrible thing that you hope to put more people in jail and profit from that!

Looking back now five years, would you do everything again?
Yes, I would.
Family Law Attorneys Change Clients’ Lives, for Better or for Worse

By Emily Shaffer

Everyone has a story. A person winds up with an attorney after coming to a crossroads in his life and not knowing which way to go next. It’s an attorney’s job to put the person back on track, but anything the attorney does affects the ending of the client’s story, whether involved for just one page of the book or for an entire chapter.

That advice came from a wise man: Judge Richard E. McCormick, Jr., a Duquesne University School of Law graduate and a judge in the Westmoreland County Court of Common Pleas. His wisdom rings true in all areas of the law, and it is especially pertinent in family court.

Family law is an area of the law where emotions run high and nobody ever really wins. Its importance is emphasized by the fact that more people will find their stories unexpectedly leading to family court than any other court. The field has a stigma in law school as being easily learned and something to stay away from; however, many students are still drawn to it.

In regard to the highs and lows in family court, Dean Emeritus Nicholas Cafardi said, “No one is ever happy with what he gets, and that’s difficult.” In order to be an effective family law attorney, Cafardi advises students to know how to “dampen down” clients’ emotions to help them deal with the issues.

Therefore, it takes a special kind of person to become a family law attorney. Not only do attorneys have to take on the clients’ personal issues, they also must explain the law in an understandable way, making sure clients realize they may not get what they want. Advocating for emotional clients is essential and difficult. But that is what a family law attorney does—make the transition between chapters more bearable.

Although the emotional aspect of family law may deter aspiring attorneys from the field, it draws others in with the promise of self-fulfillment.

Nicole Vazquez, a third-year student in the Pro Se Motions Clinic, enjoys family law because it allows her “to help others with the most valuable part of their lives.”

Pernille Frankmar, a third-year student heavily involved with family law, recognizes the personal and emotional issues this area involves. “You interact with people in a different way when you are dealing with their personal issues, and to some people this is interesting, and to others . . . well, they run away.”

Family court is not for everyone, but aspiring attorneys should be aware of its importance by realizing that someday a family member or friend will hit a road bump and ask for advice in this area of law. Then, that attorney will become a paragraph or a few words in the client’s story. He may not even be mentioned by name, but he has the ability to make a tremendous impact on the ending, which is both the draw and the danger of practicing family law today.

Clinic Offers Family Law Experiences

By: Gabrielle Carbonara

The Hugo L. Black Law Clinic offers students an invaluable opportunity to experience the many joys and difficulties attorneys in family law face through the Civil & Family Justice Law Clinic. The program allows students to choose from externships at KidsVoice, Neighborhood Legal Services, the Pro Se Motions Project, the Parent Advocates Project and the Allegheny County Law Department.

Students meet weekly for class and have the opportunity to hear from local attorneys working in the family court system. Outside of class, students complete 140 hours each semester at one of the placement options. Students at KidsVoice draft motions, work closely with juvenile clients and, if certified, are able to conduct hearings under the supervision of a licensed attorney. Students at Parent Advocates represent the adult parents of the dependent children represented by KidsVoice. The Pro Se Motions Project gives students the opportunity to experience client intake meetings and to represent indigent pro se litigants in matters involving custody, visitation and paternity. Neighborhood Legal Services gives students a chance to represent clients in general civil matters, such as landlord/tenant disputes, Social Security and disability.

“Participating in a law clinic not only gives you real-life experience, it sets you apart from students who never had the opportunity to interact closely with clients and present cases in front of the court,” said David Leake, a second-year student in the clinic.
HUMAN TRAFFICKING: Local Anti-Trafficking Efforts and Barriers

By Judy Hale Reed

The 13th Amendment banned slavery in 1865, almost 150 years ago. But local professionals have identified several forms of slavery in Pennsylvania. The scourge of human trafficking is modern slavery, where people are treated like property and sold into forced labor in homes, factories or farms, as well as sexual servitude. Federal and state legislation define human trafficking as the movement of persons for purposes of exploitation involving elements of coercion. Five Pennsylvania professionals dedicated to fighting human trafficking through education, awareness, and victim identification and assistance weigh in on the issue.

The victims of human trafficking

“Race and nationality do not matter, and trafficking can happen in any community,” said Krista Hoffman, criminal justice training specialist with the Pennsylvania Coalition Against Rape (PCAR). Hoffman recognizes that there is not just one type of trafficker. “It can be a family member, a small local gang, just about anyone. It’s usually not organized crime,” she said.

Anti-trafficking efforts in Pennsylvania

“The new state law requiring posting the national Human Trafficking hotline (1-888-373-7888) and the Pennsylvania Joint State Government Commission Advisory Committee on Human Trafficking are great,” said Mary Burke, director of the Doctoral Program in Counseling Psychology at Carlow University. Both Burke and Hoffman served on the Advisory Committee.

According to Burke, the benefits of requiring certain businesses to post the hotline will increase victim identification. “[This] will increase services for victims and prosecution of traffickers by having an organized approach. Implementing the recommendations of the Advisory Committee will go even further toward helping the most vulnerable.”

 Trafficking in the Pittsburgh area

Hoffman has seen domestic servitude in a suburban home, while Burke has assisted victims of trafficking who were exploited in restaurants, agricultural work and strip clubs.

“I’ve seen human trafficking in Asian massage parlors, and with runaway minor girls recruited and forced into the sex trade,” said Jeffrey Korczyk, lieutenant commanding officer of General Investigations with the Allegheny County Police Department. “With the new law enforcement task force that the FBI and the Southwestern Pennsylvania Anti-Human Trafficking Coalition are organizing, we’ll have a better picture of what’s going on here, so we can attack it,” Korczyk said.

The difficulty in identifying human trafficking

“It’s important for law enforcement officers to understand the problem, and what indicators to look for in their area,” said Bradley Orsini, a Supervisory Special Agent with the FBI. “We are getting good at working with victims and having a victim-centered approach now because of our training and because we have a licensed therapist Victim Specialist on our team.”

Leah Vallone, supervisor of Crisis Intervention with Pittsburgh Action Against Rape (PAAR) and part-time police officer, agrees. “We’re not recognizing [human trafficking] properly—yet. Some victims are afraid of threats from their trafficker, so they stay in bad situations. But it’s happening here,” Vallone said.

Vallone partnered with Orsini to produce a training video on cultural competency and human trafficking to assist state law enforcement. “Part of the struggle is that we have so many jurisdictions, and it’s hard to reach each one,” Orsini said. Korczyk has observed that human trafficking “keeps the victims in the life when they are moved from city to city.”

“Because they are in a foreign country or foreign city, they feel lost and like no one in the world cares about them,” he said.

Informing the Pittsburgh legal community

“The statutes are on the books,” Orsini said. “We need attorneys to educate themselves and help us protect victims by prosecuting traffickers.” Once law enforcement is better trained to identify victims, then attorneys and courts will see trafficking cases, added Vallone.

“We are training people on the front lines now to identify human trafficking and charge it appropriately. Just because you have not seen it, doesn’t mean it’s not happening in different regions and right next door,” Vallone said.

Of the human trafficking crimes committed in Pennsylvania, many will not rise to the level of federal crimes, Hoffman said. “Prosecutors, legislators and advocates need to realize what’s going on under our noses, because they are not even trying to hide. Traffickers know we don’t care, and that if our prosecutors will not look at this, they will get away with it.”

Hoffman urges prosecutors to be open to training. “When prosecutors get training and try these cases, they win for the victims. Juries are horrified and recognize the wrong that is being done,” she said.

According to Burke, Pennsylvania attorneys and law students are well-qualified to offer unique and critical support to human trafficking victims. “Attorneys in particular are able to offer invaluable assistance to victims through pro bono services.”

For more information and to get involved, visit:

Polaris Project: www.polarisproject.org
Southwestern Pennsylvania Anti-Human Trafficking Coalition: www.swpaahtc.org
REDISTRICTING:
Holt and the Homemade Alternative

By Eric Donato

Reapportionment in Pennsylvania is a fiercely political, closed-door bargaining process that sculpts the electoral landscape for a decade at a time.

In a landmark 4-3 decision earlier this year, the Pennsylvania Supreme Court rejected the fruits of that political process by holding as unconstitutional a reapportionment plan created by state legislative leaders. In so holding, the court reaffirmed its role as a check on the legislature’s reapportionment power, and also gave the state a rare glimpse into the influence one dedicated private citizen can have on state authorities.

The Pennsylvania Legislative Reapportionment Commission [LRC] produces a reapportionment plan every ten years. The LRC is composed of the majority and minority leaders of the state House and Senate, as well as a fifth “neutral” chairman usually selected by the Pennsylvania Supreme Court. Their plan, which redraws legislative districts to account for state population shifts, becomes law unless successfully appealed.

Redrawing the map is more than data-crunching busywork in the state Capitol. It is an opportunity for political gain.

Reapportionment is used by the leaders of the state legislature to strategically position their respective parties for electoral victory. They do this by redrawing districts to encompass unassailable majorities of supportive voters, and to insulate incumbents from potential challengers.

“What trumps even political concern is protecting incumbency,” said Ken Gormley, dean at Duquesne Law School and former executive director of the LRC.

Though the chairman of the LRC is removed “a little half-step from the political process” by virtue of his selection by the Pennsylvania Supreme Court, Gormley said the position lacks the staff needed to counter the parties’ institutional desire to shelter their incumbents.

This partisan-driven process is what produced the reapportionment plan that was ultimately struck down in Holt v. 2011 Legislative Reapportionment Commission.

The decision to strike down the Republican-favoring redistricting plan came as a surprise to many observers precisely because of the process’ political underpinnings. Conservative Chief Justice Ronald Castille crossed party lines to submit the deciding vote.

“I thought it was a really gutsy move on Justice Castille’s part,” Gormley said.
Gormley explained that Castille’s move was likely motivated by a desire to assert the court’s role in the redistricting process. By asserting the court’s authority to declare the plan unconstitutional, Castille sent a message to legislative leaders that the fundamentally partisan redistricting process could nonetheless be checked by the judiciary. Had the court not acted, said Gormley, it ran the risk of becoming a mere “rubber stamp” for the legislature’s redistricting plans.

If the Pennsylvania Supreme Court’s decision drew a line in the sand, then Amanda Holt provided the sandbox to draw it in.

Holt, a Lehigh County piano teacher and graphic designer, challenged the constitutionality of the LRC’s plan last year with her own homemade alternative. The Holt plan proved to be a critical component of the appeal that persuaded the Pennsylvania Supreme Court to step in and flex its judicial muscles.

Holt’s interest in the redistricting process started two years ago when she began to notice the unusual shape of some legislative districts.

“I just got to thinking, well, why do they make districts like this?” she said.

She consulted the Pennsylvania constitution for answers, but discovered that the text seemed to be at odds with her observations.

Article 2, Section 16 of the Pennsylvania Constitution provides that districts “be composed of compact and contiguous territory as nearly equal in population as practicable” and no municipality, like a county or town, be divided “unless absolutely necessary.” Instead, Holt saw a great number of municipalities divided for no apparent reason.

“I have a high respect for our law, and it kind of concerned me to think that it might be being violated here, and I was feeling the adverse effects of having all these excessive divisions,” she said.

At first, Holt gave the LRC the benefit of the doubt, and hypothesized that to accommodate the Constitution’s other requirements—compactness, contiguity and equality of population—the municipal divisions were in fact necessary.

“I felt that the only way to know if that was true was to draw my own statewide map,” she said.

Holt gathered the information she required from the U.S. Census Bureau’s website, and used Excel Spreadsheet and Adobe Illustrator software to craft her plan. She managed to construct a map with about half as many municipal splits while adhering more faithfully to the constitution’s other mandates.

Gormley said that Holt’s work was a vital component of the successful appeal because it demonstrated that there was a viable alternative to the LRC’s plan.

The current reapportionment system is largely a reaction to the United States Supreme Court’s adoption of the “one person, one vote” doctrine through a series of landmark decisions in the early 1960s.

State legislative districts during that time period typically remained drawn along geographically rural lines, despite the country’s increasing urbanization. The state legislatures’ failure to redraw districts based on population changes resulted in gross inequalities that diluted the voting power of city dwellers, thereby marginalizing racial minorities.

Two influential U.S. Supreme Court decisions sought to fix that problem. The combined effect of Baker v. Carr in 1962 and Reynolds v. Simms in 1964 meant that state legislative districts had to have substantially equal populations to pass constitutional muster.

Guided by this federal jurisprudence, the Pennsylvania Constitutional Convention of 1967-68 produced the state’s current constitution. The constitution reworked the reapportionment system to establish the LRC in use today.

Joseph Sabino Mistick, a professor at Duquesne Law School and counsel to the Pennsylvania House Democratic Caucus, relishes the partisan arrangement of the reapportionment process despite its enthusiasm for the status quo during election seasons.

“You need to start out with the notion that political competition is vital to both parties,” he said.

Mistick is an advisor to House Minority Leader Rep. Frank Dermody (D), a member of the LRC who supported the failed redistricting plan.

“"If the Pennsylvania Supreme Court’s decision drew a line in the sand, then Amanda Holt provided the sandbox to draw it in."

Mistick argued that the adversarial character of reapportionment bargaining is a form of political competition that keeps the game fair. He said the process is also checked by elements such as topography, county borders, historically unified communities and even simple caution. These obstacles prevent the LRC from having free reign and from rendering elections completely uncompetitive.

“Neither party wants to be overly predominant because the tables will turn at some point,” he said.

The Pennsylvania Supreme Court’s decision did not jeopardize the partisan nature of the LRC. However, it did force that body to go back to the drawing board and submit a new plan to the court, which is under review now. Though Holt said she didn’t see the new plan as a significant improvement, Gormley expected it to meet constitutional muster this time around.

Regardless, the Holt decision may herald a new era of judicial scrutiny for the reapportionment process.
School-to-Prison Pipeline: Criminalizing the Schoolyard Fight

By Chris Checchio

In Milledgeville, Ga., 6-year-old Salecia Johnson, an African American student, was handcuffed and taken into police custody for having a temper tantrum at school. Charged with simple battery and property damage, Johnson was too young to be prosecuted, so instead was suspended for the rest of the school year.

Jaisha Scott, a 5-year-old Florida kindergartner, also African American, was handcuffed for a similar outburst. Local police ultimately declined to press charges but used a video of Scott’s arrest for training purposes as a positive example of law enforcement practice.

On Oct. 24, federal civil rights lawyers filed a lawsuit against a school district in Meridian, Miss., for operating a school-to-prison pipeline where students have been criminally charged, ordered to appear in court and incarcerated for minor behavioral offenses. In addition to the school district, defendants include local Youth Court judges and the State of Mississippi Division of Youth Services.

The “school-to-prison pipeline” refers to the overwhelming practice of criminalizing student behavior, where students are “pushed out” of their education through suspension, expulsion or transfer to alternative education programs with inferior educational offerings. The practice fails to re-integrate students back into the school community.

“Schools are criminalizing what used to be a schoolyard fight,” said Tracey McCants Lewis, professor of the Bill of Rights, Civil Rights Litigation Clinic at Duquesne University School of Law: “If they get into a minor scuffle, it’s made into assault and battery and now they have a juvenile record.”

According to Matt Cregor, assistant counsel of the education practice for the NAACP Legal Defense and Educational Fund, discipline rates are at all-time highs, double what they were a generation ago.

“The question that we’re trying to answer is who is welcome in our schools? Racial and disability disparities only continue to widen, and that’s in the face of overwhelming information,” said Cregor, who formerly taught fifth through eighth grade in the Bronx.

The Legal Defense Fund works to effect change on the federal level, using litigation as an avenue to challenge exclusionary school discipline under Title VI of the Civil Rights Act of 1964. Together with other legal organizations, including The Dignity in Schools Campaign and The Advancement Project, the Legal Defense Fund is developing legal strategies to address the school-to-prison pipeline.

“Students’ first arrests double the odds of dropouts; first court appearances quadruple those odds,” Cregor said. Because African American and Latino students are far more likely to fall into these categories than their peers, “the line between acceptable and unacceptable behavior is the color line,” he said.

Perhaps what is most distressing, students of color are disproportionately referred for subjective offenses such as disorderly conduct, disrupting public school and defiance, where white students are referred for objective offenses, like smoking and drinking alcohol,” he said.

Gaps in knowledge and awareness of different cultural practices have led to unwarranted or additional discipline as well.

“It seems a lot of times teachers are intimidated and don’t know how to teach or discipline children of other races and call on the juvenile justice system to discipline these students,” said McCants Lewis, who has held talks with community members in Pittsburgh coffee houses and at the Carnegie Library to discuss the pipeline.

Furthermore, students are forced to confront traumatic experiences in low-income communities, such as the death of a family member due to a drug overdose or the incarceration of a parent, creating the need for more school counseling resources.

“Because of that, children are having behavioral and emotional or mental health issues,” McCants Lewis said. “If you have situations where children have underlying mental health and emotional health issues, what will happen to them without an education?”

McCants Lewis believes ignoring this barrier to education is cost-prohibitive. Today, it costs $22,000 per year for a prisoner to sit locked up in the Allegheny County jail.

“We’re taking care of these children when they become adults either way: either pushing them into the pipeline to prison, or if not, paying for them through social services because they didn’t get the help they needed when in school,” McCants Lewis said.
State Rep. Jake Wheatley, a Hill District Democrat and member of the House Education Committee, also has concerns for quality of life after education.

“Not only are the rates of suspensions, or quite frankly the disparate treatment in school resources in neighborhoods, predominantly African American or low income, the bottom line is the quality of academic experience is affecting the realities of these children to be productive citizens moving forward,” he said. “Too many children are leaving our systems and aren’t equipped to compete at a high level once they reach adulthood. Many of those individuals go to their secondary options, which results in driving them into the prison system.”

Wheatley sees solving the pipeline issue as an important discussion of resource allocation in public education, but those efforts have stalled.

“When Governor Rendell came in, we all joined in and turned Pennsylvania to a state that not only invested in child education, but provided resources for really attacking opportunity gaps. We saw our state go from middle of the road [in regards to achievement levels to all subgroups], to one hitting all advancement levels in all subgroups. Now we are reversing that with [the Corbett] administration,” said Wheatley.

Better approaches are available than relying on criminal courts. In Clayton County, Ga., a substantial spike in referrals to juvenile court brought the county juvenile court, school district, law enforcement and other community leaders together to develop protocols that differentiated between discipline matters, handled by school, and safety matters, handled by the juvenile law courts. As a result, court referrals dropped by nearly 70 percent and the graduation rate in the school district rose 20 percent, largely attributed to the use of best practices in training school resource officers and staff in conflict resolution.

More than 12,000 public schools nationwide have implemented positive behavior supports, an evidence-based approach to improving school discipline.

“School discipline data is tracked and has demonstrated reductions in suspensions and disciplinary referrals, and improved attendance, academic achievement and school safety,” Cregor said.

A+ Schools through their “Schools Works” initiative assembled 100 volunteers who conducted interviews with principals and counselors from every Pittsburgh middle school and high school.

“[W]e saw that schools with low dropout rates and low suspensions had strong college and career preparation strategies in place and positive behavior management practices,” Mansour said. “It was the exact opposite of popular belief that more punishment means [fewer] offenses.”

Instead of a hard-line punitive approach to school discipline, districts around the country are successfully adopting restorative justice techniques to school discipline. These techniques require the involvement of the entire school community by bringing together the victim, offender, school officials and additional stakeholders in the school community to discuss the incident and try to make the victim whole.

While no one-stop shop solution will dismantle the pipeline, the power to affect immediate change lies with those who oversee and interact with students every day.

“We are reversing that with [the Corbett] administration,” said Wheatley. “I think the way you get to that is to really rethink our current system.”

Chris Checchio is a third-year law student at Duquesne University. Last summer, Chris interned at the Education Law Center in Pittsburgh through the Summer Public Interest Fellowship program where he worked in part on researching the racial and ethnic disparate impact in public school discipline.
The NFL Is Playing a Dangerous Game

By Ravi Marfatia

Imagine driving a car into a wall at 25 miles per hour without wearing a seatbelt and having your head smash into the windshield. Now, imagine having to go through that type of head-on collision 20 to 30 times a day. This is a reality for players participating in an average NFL practice, and the prime reason why thousands of former NFL players are suing the league.

As of mid-August 2012, there have been more than 135 lawsuits filed by approximately 3,402 former players, including Hall-of-Famers Tony Dorsett and Eric Dickerson, against the NFL. Former players filed an amended master complaint in the Federal District Court for the Eastern District of Pennsylvania claiming that they were unaware of the long-term health ramifications of the sport. Recent tragedies involving former players have also raised questions regarding football-related injuries and their later effects.

Junior Seau, a retired NFL linebacker, committed suicide in May 2012. Reports speculated that Seau suffered from chronic traumatic encephalopathy (CTE), a condition caused by concussion-related brain damage. Dave Duerson, a former NFL safety, took his own life a year earlier. Boston University neurologists confirmed that Duerson suffered from a neurodegenerative disease linked to concussions.

Players argue that the NFL fraudulently concealed long-term effects of head trauma. According to a 2012 Forbes Magazine article, the players believe the NFL had a duty to “take all reasonable steps necessary to ensure the safety of the players, including a duty to advise the players that repeated traumatic head impacts endured were likely to expose them to excess risk of neurodegenerative disorders.”

More specifically, players claim that the NFL willfully and intentionally concealed the risks associated with returning to physical activity too soon after a sub-concussive or concussive injury.

“The NFL did not serve itself well in this case, partly due to the marketability of the big hit,” said Robert Ruck, professor of history at the University of Pittsburgh specializing in the history of sport.

A study published in the journal Neurology presented medical support to strengthen the players’ position, finding that NFL players are three times more likely to develop brain diseases that could lead to death as compared to the general population.

With the pending lawsuits and recent statistics, the NFL’s next move remains unclear. “There can be efforts to implement new rules, new helmets, and to change how one practices,” Ruck said.

The NFL has already taken steps in this direction, implementing new rules designed to eliminate helmet-to-helmet contact during games and fining players who violate this standard. Despite these changes, the NFL filed a 40-page motion to dismiss in late 2012. The NFL asserts that Section 301 of the Labor Management Relations Act (LMRA) governing collective bargaining agreements (CBA) preempts any state law claim. The NFL argues that the court would be required to interpret the CBA, which addresses player safety and the NFL’s authority and responsibility to determine whether the NFL had, and breached, any duty.

Furthermore, the NFL argues that the players’ dispute falls under existing provisions within the CBA, which include player medical care provisions, rule-making and player safety provisions, as well as a specific grievance procedure. The player medical care provisions delegate to the team physicians the duty of advising a player about certain adverse health conditions.

“The NFL can’t just delegate their duties to others. In fact, they have a heightened duty,” said Jason Luckasevic, a personal injury attorney practicing at Goldberg, Persky, and White P.C., who has initiated NFL concussion litigation in Pennsylvania.

The NFL claims that the NFL Players’ Association, individual teams, as well as the NFL itself are all jointly responsible for player safety. Additionally, the grievance procedure in the CBA provides that all disputes are to be reviewed through independent arbitration, preempting the players’ state law litigation.

“The complaint we filed does not mention the CBA,” Luckasevic said. “These claims are not intertwined with the CBA.”

With this lawsuit, players are seeking to educate the future generation, Luckasevic said. “They are looking for their medical care to be taken care of, and they want compensation for their present and future injuries.”

Regardless of the outcome of this litigation, the NFL’s reputation is taking a serious hit. “It will get the attention of the NFL,” Ruck said. “There is a real potential of football imploding as the most popular sport in America.”
Labor Relations in Sports: Behind the Recent Turmoil

By Brian Panucci

For the second time in the past eight years, NHL fans experienced a disruption to their normal 82-game season, much like their brethren in the NFL and NBA, due to labor problems that are becoming an epidemic in the world of professional sports.

The NFL missed only one preseason game during a 2011 lockout; however, the 18-week lockout altered player movement and off-season training. The NBA missed large portions of the 1998-99 and 2011 seasons due to lockouts. While fans may see these work stoppages as players and owners disagreeing about how to divide the money the public spends on their game, much is at stake for all sides in these collective bargaining agreement (CBA) disputes.

“We have to look at the systemic issues within each sport,” Octagon Hockey Agent Allan Walsh said. Walsh represents several high-profile hockey players, including Pittsburgh Penguins goaltender Marc-Andre Fleury. “By definition, a salary cap system encourages lockouts and strikes. When a CBA expires, the owners are emboldened to seek more share of league-wide revenue. It’s the easiest way to fix the revenue disparity between small and big market clubs,” he said.

League commissioners must perform a difficult balancing act by allowing larger market teams to invest in players and creating cost certainty for the smaller market teams to help sustain the overall health of the leagues.

“Unions and owners being able to act as a strong collective voice to prevent what they perceive as unfair working conditions by lockouts or strikes is just a short-term pain that causes longer-term equality and stability,” said Bobby Bartle, L’99, who manages the business operations of the tennis division at Octagon Sports.

Hockey, and specifically the NHL, has a different place in the U.S. sports landscape than the NFL, NBA or MLB. While the four leagues are generally referred to as “the big four” leagues in America, the NHL is clearly the fourth in terms of popularity and revenue.

“The NHL pursued a ‘sunbelt’ strategy of expanding into nontraditional hockey markets in the South,” Walsh said. “The expansion fees were significant and distributed evenly among the owners. It was a great deal. This money grab naturally transitioned into the next money grab. The owners soon realized these nontraditional markets were not self-sustaining,” he said.

“In other words, they needed financial support, either by revenue sharing or artificially suppressing salaries through a salary cap.”

The two major figureheads in the NHL negotiations were NHL Commissioner Gary Bettman and National Hockey League Players Association (NHLPA) Executive Director Donald Fehr. Both have engaged in labor disputes in the past. While Commissioner Bettman received public criticism for the cancellation of the entire 2004-05 season, teams like the Pittsburgh Penguins, Buffalo Sabres and Ottawa Senators had declared bankruptcy during his tenure, and the salary cap implemented when a CBA was finally signed provided an opportunity for those and other struggling franchises to flourish, both on the ice and on the balance sheet.

More than 33 percent of NHL players hail from outside of North America, with a heavy influence from Russia, which houses the second-most popular league in hockey: the Kontinental Hockey League (KHL). NHL stars such as Sergei Federov and Alexei Yashin have chosen to end their careers in the KHL. Even young star players like Nashville’s Alex Radulov have chosen to play in the KHL, partially because, unlike the NHL, the league has no limits on entry-level contracts.

Past CBA entry-level contracts limited the salary of players during their first three years in the league, but included signing and performance bonuses. However, they pale in comparison to the guaranteed money a player could earn in the KHL. During the NHL lockout, more than 150 NHLPA members signed contracts with teams across Europe. The large international presence of top players and well-run foreign leagues creates a unique challenge for the NHL.

Judicially, the NHLPA challenged the lockout in the Canadian provinces of Quebec and Alberta on the basis that its union was not certified by the provincial labor boards and therefore could not be locked out by an employer under the local laws. In all cases, the labor boards ruled in favor of the NHL. If the NHL were to look into replacement players, as the NFL did in 1987 and MLB did in 1995, the Canadian provinces of Quebec and British Columbia would have banned the practice.

With seven teams in Canada, the league is unique to the other three sports, which account for only two Canadian franchises combined (MLB’s Toronto Blue Jays and NBA’s Toronto Raptors). With nearly a third of the league in a foreign country, its challenges include a different set of labor laws and a different currency. The Canadian dollar has strengthened in recent years due to the economic crisis in the United States, giving the seven Canadian teams more of an advantage in attracting free agents.

Fans can only hope the new CBA negotiated between the NHL and NHLPA will restore labor peace for the foreseeable future.
**Veterans Court: Dealing with Soldiers Who Return from War and Turn to Crime**

By Jenna Smith

“Having tried every type of case as a judge, the most rewarding thing that I have ever done is have the opportunity to give back to the community and to thank a population that has done so much for us as American citizens,” said Judge John A. Zottola, current supervising judge of the Allegheny County Veterans Court.

Zottola, a longtime Allegheny County Court of Common Pleas Criminal Division judge and current Orphan’s Court Division judge, was instrumental in the formation of Allegheny County’s Veterans Court in November 2009.

Allegheny County hosts the largest veterans populations in Pennsylvania. According to Zottola, the Veterans Court aims to successfully divert a justice-involved veteran and put the veteran back on the road to recovery. The Court intends to restore a sense of hope in the veteran and his/her family with an eye to protecting the community as a whole, Zottola said. To do so, the court combats recidivism by focusing on recovery.

In Allegheny County, Veterans Court is a post-adjudication court where veterans are intercepted at the Court of Common Pleas level. In all instances, the veteran has been adjudicated guilty by plea or non-jury trial. Nearly all cases are the result of a plea bargain, Zottola said. Because Allegheny County’s Veterans Court intercepts at the Common Pleas level, the veterans have more serious charges and are considered to be at a higher risk of re-offending, Zottola said.

Veterans Court serves as a therapeutic resource for veterans suffering from Post-Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI) and substance abuse, said Keather Likins, a Veteran’s Justice Outreach Specialist at the U.S. Department of Veterans Affairs Pittsburgh, a Licensed Social Worker and a Navy veteran.

“Going back several conflicts, it was always shell shock or combat fatigue, and only in the early 1980s did researchers correlate the same symptoms veterans experience with symptoms that women also were experiencing with assault and abuse,” Likins said. “It was called PTSD for women, but for men it was always shell shock or combat fatigue.”

According to Daniel Kunz, director and supervising attorney of Duquesne University School of Law’s Veterans Court Clinic and Duquesne Law alum, within the next several years, roughly 700,000 military men and women coming back will suffer from PTSD and TBI.

“What we are finding is that individuals diagnosed with these conditions are more likely to exhibit behaviors that are disruptive. They act out aggressiveness,” Kunz said. “It’s difficult for them to transition from what they have been doing in the military back to civilian life.”

The veterans referred to and admitted into Veterans Court range in ages from 20 to 70 and represent many of our country’s conflicts. In order to be admitted into Veterans Court, the district attorney must find the charges and case appropriate. The veteran must have an Axis I diagnosis, including bipolar disorder, depression, PTSD, anxiety and panic disorders, and other types of mental illness. Many of the charged crimes include theft, simple assault, aggravated assault, arson, driving under the influence, possession, domestic violence and firearms offenses, Kunz said.

“The U.S. military trains its soldiers to be violent,” Zottola said. “It should be no surprise that when veterans return from combat, the crimes they commit are violent in nature.”

Moreover, around 75 percent of the veterans face serious substance abuse issues. Substance abuse arises in veterans as a coping mechanism to mask their PTSD, TBI or stress caused from combat, according to Likins.

The Allegheny County Veterans Court team consists of Judge Zottola, who leads the Court as the coach, listener and risk manager. Assistant District Attorney Deborah Barnisin Lange serves as the gatekeeper: Cases will not be admitted into...
New to DU: Veterans Court Clinic

By Jenna Smith

The Duquesne Law Clinic welcomes the newest addition to hands-on clinical training at the Law School: The Veterans Court Clinic, the first of its kind in the United States. In November 2011, the idea of creating a Veterans Court Clinic at Duquesne Law began. Prior to the Clinic, the Allegheny County Office of Conflict Counsel represented the veterans. Now, as part of a clinical curriculum, second- and third-year law students represent the veterans, taking the burden off of the government, Kunz said.

Students in the Veterans Court Clinic gain experience in understanding the therapeutic and problem-solving court philosophy while communicating with the veterans, attending court hearings and writing and filing motions. Students, certified as Legal Interns by the Pennsylvania Supreme Court, also have the opportunity to represent clients before a judge.

Kunz and Deborah Barnisin Lange, adjunct professor and Allegheny County District Attorney, teach the classroom component of the Clinic. During the class, guest lecturers speak to students about veterans’ issues, and the students also learn what services are available to veterans. The Clinic additionally aims to educate students in their understanding of and appreciation for what our military men and women have gone through and what they are suffering from, Kunz said.

“[The clinic] gives the students an opportunity to get some practical experience in the representation of real people who have real issues. But most importantly, it gives students the opportunity to do something positive for a group of people who truly deserve it,” Kunz said.

Feedback from those involved in the Allegheny County Veterans Court, as well as from the veterans, has been positive. “[Veterans Court] is working a lot better now that Duquesne Law has taken over because the students’ only focus are the veterans; they can devote more time,” said Keather Likins, a Veteran’s Justice Outreach Specialist at the U.S. Department of Veterans Affairs Pittsburgh.

In working with the clinic’s students, Veterans Court Judge John A. Zottola recognized the zealous representation of the veterans on the part of the students.

“I take them as lawyers, not law students,” Zottola said.
From the 1850s to 1980s, Pittsburgh was the kind of city people avoided because of its rancid air quality, polluted rivers and lifeless landscape. This reality existed because of a disregard for the environment from the booming coal and steel industries that dominated the region. Residents of the area were willing to tolerate orange rivers and treeless hills in exchange for seemingly endless opportunities to thrive in blue-collar and white-collar positions. However, the steel industry relocated, leaving behind a dirty, polluted and devastated region. Nevertheless, the region emerged from an environmentally dismal past and has developed as a leader in health care and banking. The emergence of the Marcellus Shale industry has brought the region to a critical crossroad: Will the region stay the course and continue to develop thriving service industries, or will it re-emerge as the energy and industrial development center of the country?

Significant development is clearly on the horizon, said alumnus and environmental law professor, Kevin J. Garber.

Imminent development is evidenced, for example, by EQT, who is preparing to develop approximately 300 miles of pipeline for regional distribution purposes, said Natalie N. Jefferis, regional land director for EQT Gathering, LLC in Pittsburgh. An increase of natural gas flow in interstate transmission lines is certain to come in the next few years, pending any issues with capacity. It is possible, and likely, that much more of the Northeast will receive its natural gas from the shale regions instead of across interstate lines that originate as far away as the Gulf of Mexico. This infrastructure will provide many opportunities for companies to build, develop and expand industrial or manufacturing facilities that can consume large quantities of natural gas energy at very low price points.

Future Economic Growth and Regional Geography

“The giant steel mills of our past are not coming back,” said alumnus David J. Laurent, noted labor and energy law expert and shareholder with Buchanan, Ingersoll & Rooney, P.C. in Pittsburgh.

Instead, the region will likely see several small-to-medium-sized operations emerge, such as smaller scale manufacturing plants. The United States Chamber of Commerce predicts the development of natural gas-related businesses will deliver approximately 1.5 million jobs to the shale regions by 2035, thus sparking the development of industrial facilities.
The scorched landscape and smoggy skyline of the past will not return either, Garber said. Environmental regulations enforced by the Pennsylvania Department of Environmental Protection are meant to ensure the region does not sacrifice environmental health for economic gain. However, Garber proposed that the landscape of the Pittsburgh region will see many more fracking well sites develop in the coming decades. While traditional, shallow gas wells require very little square footage, fracking well sites require five-to-seven acres and are sometimes visually obtrusive. In addition to the visual change in landscape, Pittsburghers can expect an increase in industrial noise, not necessarily from manufacturing plants, but from compression stations built throughout the area to move the gas from the well to the interstate pipelines.

Opportunities for the Legal Industry

It is certain that the legal community will play a significant role in planning and developing the region's economic development. This economic boom will present "many opportunities for attorneys to develop as experts in labor law, business planning law and other areas of transactional law" that will influence the direction existing and new businesses go in the future, Laurent said.

Despite the seemingly chaotic and hurried regional growth of the energy industry over the past few years, the next few decades will yield steady and measured growth, said alumnus Kevin K. Douglass, shareholder with Babst, Calland, Clements, & Zomnir, P.C. As the current secretary of the Energy and Mineral Law Foundation, and the author of multiple energy law publications, Douglass predicts that the industry is going to grow in and around Pittsburgh for a long time. Growth will be economically sustainable as evidenced by the long-term growth plans many firms and corporations are implementing.

Environmental law and property law are expected to blur together in ways Garber has never seen. There will likely be many more issues that require heightened awareness of both fields of law, particularly during land leases and transfers. Conflicts will likely arise over the proximity of compression stations to homes, or rights-of-way for pipelines. Furthermore, an increase in the responsibilities of municipal solicitors is expected, as the region's municipalities will likely wade through a myriad of agreements with energy companies and other industrial ventures within their jurisdictions. Garber anticipates that the most litigated issue in the coming decades will be concerning the noise created by a rapidly growing infrastructure of pipelines and compression stations.

Law School & Student Community Response

Duquesne Law is aware of the many opportunities this economic development presents for its alumni and students. This year, the Law School added several concentrations to better prepare those students seeking meaningful employment in this tight job market, including energy and business law.

A group of students took the initiative to independently prepare themselves and their peers by founding the Duquesne Law Energy and Mineral Law Society (EMLS). Co-founder Mike Rush, 3L, said the society was founded because there was a need for a group that provided "a more-focused discussion about energy and its related issues." Rush said the organization filled the gap between the Corporate Law and Environmental Law Societies pertaining to energy law issues. The EMLS covers all areas of energy, but devotes much of its time to educating members about oil and gas laws.
Financial Implications of Marriage Equality
By Cara Murphy

Same-sex marriage holds different meanings and evokes different emotions in Americans. While some view it as the civil rights issue of the 21st Century, others consider the ability of gay couples to marry as a step toward the demolition of the institution of marriage.

The issue of same-sex marriage is often debated in the context of morals, ethics and religion, though the probable financial implications are often overlooked.

It is without question that a number of financial implications will arise if same-sex marriage is nationalized in the United States. Many of these financial implications would be positive, and would not only benefit the couples, but also community businesses and government institutions.

According to the United States General Accounting Office, there are more than 1,100 rights and protections associated with being legally married, many of which confer financial benefits. Through marriage equality, same-sex couples would be able to enjoy the benefits that heterosexual couples have been able to enjoy for years: the ability to file joint tax returns, the ability to be covered by their spouse's health insurance and the ability to avoid paying certain estate taxes.

In October, New York widow Edith Windsor was vindicated when the Second Circuit found that the Defense of Marriage Act (DOMA) violated the Equal Protection Clause when it required her to pay $363,000 in estate taxes after her lesbian partner of 44 years died. Windsor v. United States is one of the cases this term that will require the United States Supreme Court to weigh in on marriage equality.

As of December 2012, Connecticut, the District of Columbia, Iowa, Maine, Maryland, Massachusetts, New Hampshire, New York, Vermont and Washington allow same-sex marriage, according to the Pittsburgh-based Nontraditional Couples & Families Practice Group of Buchanan Ingersoll & Rooney.

While marriage equality has not been adopted in every state, some states and organizations have entitled same-sex couples to certain benefits. For example, New Jersey has allowed for same-sex couples to enjoy some of these benefits, without being married, by recognizing civil unions. Aside from New Jersey, civil unions are currently allowed in Delaware, Hawaii, Illinois and Rhode Island. Furthermore, some insurance companies have adopted their own policies that allow for same-sex couples to obtain the same benefits as heterosexual couples.

Federal data suggests that if same-sex marriages were legalized in every state, and recognized by the federal government, it would positively impact the budget by $1 billion in each of the following ten years, according to the 2004 Congressional Budget Report. While this report acknowledged these numbers lacked the financial impact expected by many, more recent examples of the financial benefits of same-sex marriage seem to show a greater advantage than projected in 2004.

New York is one example of how marriage equality has had a positive financial impact on a state. Since a statute was adopted legalizing gay marriage last summer, it has been speculated that New York City's economy has been boosted by $259 million. Mayor Michael Bloomberg announced this economic boost by stating the influx could be linked to the marriage license fees as well as the weddings themselves.

Although it can be argued that the results seen in New York City may not be mirrored across the county due to New York's unique tourist appeal, even if a small percentage of this economic boost impacted other areas of the nation, it could amount to a significant financial boom for the economy. The wedding industry itself is currently a $40 billion industry nationwide, according to The New York Times.

Currently, there are more than 500,000 households of unmarried same-sex couples, as estimated by the 2010 United States Census. The cost of obtaining a wedding license in the United States ranges from $15 to $80 with most states falling between the $25 to $30 range. With wedding websites such as TheKnot.com estimating the average cost of a wedding to be $27,800 (even more in urban areas), same-sex marriages mean big business and big economic implications.

While there are a number of financial benefits to both individuals and states with the adoption of same-sex marriages, there are still a number of concerns held by government agencies over these benefits. One of the largest concerns involves the tax benefits, which these couples would be able to qualify for and receive. The government is at risk of losing out on a great amount of taxes from same-sex couples if they were to qualify for these tax benefits.

With the amount of concern over the financial stability of the United States, it may be time to think of same-sex marriage outside of the moral and religious realm and examine it on the basis of the financial implications that it may have on the nation. The debate surrounding same-sex marriage as a civil rights issue may have begun with debates on morals and ethics, but it could end with a dollar sign.
Managing Triggers:
Gun Access and the Mentally Ill

By Lauren Gailey

Twenty-five-year-old Michael Schaab had every reason to be optimistic when he arrived at Oakland’s UPMC Western Psychiatric Institute & Clinic just before 7:30 a.m. on March 8, 2012. He was thriving in his role as a geriatric therapist, and he had proposed to his girlfriend on Valentine’s Day. What Mr. Schaab did not know, however, was that a 30-year-old man with a history of mental illness who had exhibited increasingly disturbing behavior in recent weeks, would soon arm himself with two semiautomatic pistols purchased from a New Mexico dealer and make his way toward the hospital.

Hours later, Mr. Schaab was killed, the victim of a shooting rampage in the Clinic’s lobby. The shooter himself was gunned down by police, and seven others were injured.

Other recent mass shootings show similar themes. In Tucson, on Jan. 8, 2011, an attempt on the life of Arizona Congresswoman Gabrielle Giffords left her and 17 others injured and six dead, including a federal judge and a 9-year-old girl. The 22-year-old shooter had been suspended from school due to erratic behavior. He had purchased a nine-millimeter handgun less than six weeks before at a Sportsman’s Warehouse store.

On July 20, 2012, a 24-year-old with dyed-red hair who called himself “The Joker,” stormed into a movie theater, armed with multiple firearms. The worst mass shooting in American history took only minutes, leaving 12 dead and 58 wounded. The shooter’s acquaintances at the University of Colorado suspected that he was mentally ill and dangerous, and he had reportedly met with University mental health professionals.

While the media’s discussion of these shootings focused immediately on gun control, the issue might be narrower.

Restricting access to guns by the mentally ill first requires a definition of what “mentally ill” means in this context. Shira Goodman, Executive Director of CeaseFirePA, a network of communities and citizens advocating for gun violence prevention, said that current Pennsylvania standards are legal, rather than psychiatric, in nature.

A person must have been adjudicated mentally ill by a judge in order to be prohibited from purchasing guns, she said.

In order to promote fairness and protect individual rights, this process relies on specified standards. Wesley Oliver, a Professor of Criminal Law and Procedure at Duquesne University School of Law and a former criminal defense lawyer, explained that the standard for involuntary commitment occurs when an individual becomes a “danger to oneself or others.”

Under this definition, legal intervention before a person experiencing mental health issues becomes a danger is not an option.

Forensic neuropsychiatrist Dr. Lawson Bernstein points out that this legal definition does not account for all severely mentally ill individuals.

“A person who has been committed can’t own a gun,” Pittsburgh-based Bernstein said. He emphasized that those who voluntarily admit themselves into psychiatric treatment—as opposed to those who are involuntarily committed—fall outside the scope of regulation.

Should the law be altered, Duquesne Law Professor Jane Campbell Moriarty suggests that the regulations be carefully targeted.

“First, governments should look at who is committing the violence,” she said. “Most mentally ill people are not dangerous.”

While the subset of people who are more likely to become dangerous may be able to be identified to a reasonable degree of certainty, the problem is “predicting which individuals within that population will act violently,” Moriarty said.

Complicating matters further, there is no correlation between dangerousness and specific classes of psychiatric disorders.

Even among those commonly thought to carry a risk of danger, such as psychosis or personality disorders, the numbers of individuals who act out violently are “miniscule—about one-tenth of one percent,” Bernstein said.

“There is no one-size-fits-all approach” to when reporting a potentially dangerous patient to the authorities becomes appropriate, Bernstein said. He is likewise reluctant to endorse the practice of enforced compliance with medication for all potentially dangerous individuals.

Moriarty agrees that the practice “seems extreme,” and adds that it is fraught with “constitutional implications and issues of autonomy.”

“It’s a delicate balancing act between patient confidentiality, civil liberties and public safety,” Bernstein said.

Oliver believes that this balancing act is made even more complex by the very structure of American government.

“States have always had the power to regulate health matters, but yet the [United States Supreme] Court is now saying that the Second Amendment creates national standards,” he said. The federalism dynamic could change, if the Court curtails “states’ efforts to limit gun ownership and possession by people who have state-defined mental illnesses,” Oliver said.

According to Goodman, the current system, in which a judge makes an appealable adjudication as to whether a person is dangerous, may be the best one available. “I am not sure another process could be designed that would have the same safeguards,” she said.

Our current system “works as well as it can in a free society,” Bernstein said. “It could be tightened—in a more constrained society.”
Health Law: An Emerging Area Infected with National and Local Contentiousness

By Michael McGraw

Health law is one of the fastest growth areas in law right now, and I don’t see that changing anytime soon.

Mirroring the ever-changing industry of health care with its revolutionary advances, the area of health law is entrenched in a period of substantial fluctuation and uncertainty. Whether it is the controversy surrounding national health care reform or disputes among Western Pennsylvania’s two largest health systems and its largest insurer, these issues have left concerned citizens with many questions. As these national and local scenes develop, the Duquesne University School of Law has adapted its offerings within this concentration to meet the rising interest in this growing field.

The predominant national story regarding health law has been the Patient Protection and Affordable Care Act (PPACA) and the United States Supreme Court’s ruling on its constitutionality. The act principally aims to expand Medicaid’s coverage, provide federal subsidies to assist Americans in acquiring insurance, create a competitive insurance marketplace where individuals and small businesses can purchase affordable health benefits and forbid denials of insurance based on pre-existing health conditions.

The methods to reach these goals, however, precipitated lawsuits across the country, resulting in the Court’s June 2012 anticipated decision in National Federation of Independent Business v. Sebelius. Although there are numerous components to the PPACA, two particular aspects presented pivotal legal concerns: first, the so-called “individual mandate,” under which individuals without insurance would be required to pay a penalty when filing their federal taxes; and second, the withholding of Medicaid federal funding to any state choosing not to accept the program’s expanded provisions. In its June 2012 decision, the Court rejected the constitutionality of the “individual mandate” under the Commerce Clause of the United States Constitution, but upheld its validity under Congress’ authority to lay and collect taxes.

“The Court focused on the highly unusual act of requiring a person to buy a product in a market in which he is not a participant,” said Bruce Ledewitz, Constitutional Law professor at Duquesne University School of Law.

“There has never been a case like that before and would never have been a case like this if not for the attempt of the Obama Administration to maintain a private system,” he said.

“In a western-style, universal health care system, this issue would not come up.”

In addressing the federal withholding of funds to states that refuse to accept Medicaid’s proposed changes, the Court ruled that this component exceeded Congress’ power by essentially coercing states to comply with Medicaid’s altered conditions or lose substantial federal funding toward the program. Whereas the current Medicaid program requires states to cover specifically defined individuals, the proposed expansion would additionally require state coverage to all individuals less than sixty-five years of age with income beneath 133 percent of the federal poverty line.

“Although the Court had talked about coercion, it had never before found a statute to be coercive,” Ledewitz said. “This could lead to other decisions in the future, but [Justice Roberts’] decision pointed to the enormous percentage of states’ budgets we might be talking about, 20 percent of a states’ budget for Medicaid, to be so overwhelming as to be coercive, so this may never happen again,” he said.

While the PPACA will undoubtedly remain a prominent national issue, Ledewitz emphasized that the Court will face another consequential decision between religious liberties and the federal government’s mandate that most health care insurance plans must provide contraceptive care to women.

“The Court will have to answer the question about whether the mandate is a violation of the Religious Freedom Reformation Act (RFRA),” Ledewitz said. “If the Court rules that it is not, then all these health providers simply leave the field of employee medical benefits?”

As these transcending issues dominate national focus, divisiveness also exists in Western Pennsylvania among University of Pittsburgh Medical Center (UPMC) (the state’s largest employer), West Penn Allegheny Health System (WPAHS) (operating five regional hospitals) and Highmark, Inc. (insuring over three million Western Pennsylvanians).

Emanating out of this considerable presence has been prevalent conflict resulting in consistent fluctuation mixed with persistent litigation. A brief encapsulation of some recent history provides a representative portrayal of the multitude of legal issues.
WPAHS filed suit against UPMC and Highmark in 2009, alleging competitive concerns. Following this suit, Royal Mile Company, hoping to represent those who had paid premiums to Highmark since 2006, filed suit against UPMC and Highmark in 2010, alleging conspiracy to increase premiums.

Next, in a tactical move, Highmark reached an affiliation agreement with WPAHS in 2011 that would enable Highmark to conduct business in both the health system and insurance realms, similar to how UPMC is a health system and insurance provider. This agreement led UPMC to sue Highmark in 2012, alleging Highmark aligned with WPAHS to take customers from UPMC. However, later in 2012, WPAHS announced the termination of its Highmark affiliation, claiming the insurance provider breached the agreement by demanding WPAHS to file for bankruptcy due to its bond and pension debt. Consequently, Highmark sued WPAHS to prevent it from exploring other potential buyers, resulting in a state of affairs that appears far removed from any pending legal peace.

While this conflict might appear heightened in the Pittsburgh region, it is not a unique situation according to the perspective of Duquesne Visiting Professor of Law John Cogan, who has an extensive background in health law. Cogan has seen analogous battles between health systems and insurers, as he has litigated health law issues in multiple settings; including federal court and administrative hearings, while working for the United States Department of Health and Human Services, and both in private practice and as general counsel for a state agency in Rhode Island.

“I’ve seen big fights between health insurers and health systems before in other places. It is not uncommon. Is [the UPMC/WPAHS/Highmark dispute] worse or bigger or more contentious than others? I’m not sure. They can all get very contentious. The stakes are big. That makes for some serious litigation,” Cogan said.

What is a distinguishing factor to the region is the cost of health care, which makes these ongoing disputes imperative to resolve. Pennsylvania State Senator and Duquesne Law Alumus Jay Costa, Jr. has continued to play a key role in attempting to facilitate amicability among these health care insurers and providers for the benefit of the region.

“The best outcome for the general public, and, I believe, for these health care companies, is to maintain the relatively open access that patients enjoy now, but with an increase in competition in the health care market to keep costs in check,” Costa said. “Currently, although we have access to world-class health care services and facilities, Southwestern Pennsylvanians are faced with higher-than-average costs for health care, and that is a grave concern. Associated with those higher costs are higher insurance rates to cover them.”

Not so ironically, as dissension can quickly comingle with legal involvement, this transformation and discord has presented Duquesne Law School with opportunities to engage this increased focus. To satisfy student interest in health law, the law school has established a health and science law concentration among one of its newly created concentrations, in which students can earn specialized education in specific areas of law. Moreover, the school offers a dual degree option of a juris doctor and master degree in health care ethics.

Additionally, 2013 will see production of the inaugural issue of Duquesne’s newest legal publication, the Duquesne Environmental Health Law Journal, which will focus on health, environmental, public health and environmental health law. The journal’s conception resulted from members of the Duquesne faculty linking two students who independently campaigned for a new journal: Editor-in-Chief Christy Gamble, who has an extensive educational background in health law with a masters degree in epidemiology and doctorate in biostatistics, and Executive Editor Alexis Long, who has a deep-rooted interest in environmental law and an undergraduate degree in environmental science.

“There is no other journal with the same name and unique perspective out there,” Gamble said. “Our journal has a peer review board that consists of distinguished experts in the fields of health, environmental science, including an EPA hydrologist, public health and the law,” she said.

As the national and local landscape surrounding health law evolves, Duquesne is adapting accordingly to this dynamic area of law.

“Health law is one of the fastest growth areas in law right now, and I don’t see that changing anytime soon,” Cogan said.
Immigration Reform: Myths Busted

By Staci Fonner

Heading into a new term under the Obama Administration, immigration reform remains a heated topic, yet many misconceptions about the current efforts for reformation continue.

The Deferred Action for Childhood Arrivals (Deferred Action) passed on June 15, 2012, and provides relief for young immigrants. Since August 2012, the United States Citizenship and Immigration Services (USCIS) has accepted applications for Deferred Action. Although commonly mistaken as a path to a green card or citizenship, those accepted for Deferred Action receive a two-year period free from deportation and the threat of deportation, as well as the opportunity to apply for work authorization and, in some cases, a social security number.

Every immigrant is not eligible for relief. According to USCIS, immigrants eligible for Deferred Action must meet certain childhood arrival requirements, including age, residency, education and criminal background check requirements. Of the estimated 1.4 million children and young adults eligible for Deferred Action, only around 180,000 have applied and around 5,000 have been accepted, according to USCIS. With President Obama’s re-election, these numbers are expected to increase.


National sentiment on Deferred Action and the DREAM Act vary, and some raise concerns about whether these efforts will harm both the U.S. economy and citizens. But, according to a report by the Partnership and the Center for American Progress, passing the DREAM Act could add $329 billion to the U.S. economy. The Congressional Budget Office has reported that the DREAM Act could actually reduce deficits by about $2.2 billion over a 10-year period. Additionally, Deferred Action will have the same economic benefits on a smaller scale, according to the Immigration Policy Center.

Pittsburgh Immigration Attorney and former U.S. diplomat Kamana Mathur said it costs U.S. taxpayers much more to incarcerate and deport undocumented immigrants than it does to let them stay and contribute to the economy.

“We are not only penalizing someone who did nothing wrong but are costing taxpayers money,” Mathur said of eligible Deferred Action candidates.

Mathur believes that many Americans are afraid that incoming immigrants will take jobs away from U.S. citizens. Jamie Englert, an accredited representative at Jewish Family and Children’s Service of Pittsburgh, agreed.

“It’s been my experience that the jobs that undocumented people work are at the very low skill set of things, and they are taking jobs that are available because many people won’t take those jobs here,” Englert said.

According to research conducted by the Immigration Policy Center regarding the economic benefits of granting deferred action to unauthorized immigrants brought to the United States as youth, “If immigrants took jobs away from large numbers of native-born workers, one would expect to find high unemployment rates in parts of the country with the largest numbers of immigrants. However, that is not the case.”

A study by Rob Paral & Associates of Chicago found that the highest unemployment rates existed in counties located in manufacturing centers and rural areas, which tend to have relatively few recent immigrants. The American Enterprise Institute and the Partnership additionally reported that temporary workers—both skilled and unskilled—boost U.S. employment.

While Deferred Action is only a small step in the direction of immigration reform, it is a sign of hope and opportunity for better lives.

“This is the only way of life these people have known,” Mathur said. “They came here before they were 15. Many of them don’t even know they are not Americans until they try to get their drivers’ licenses. To deport them is against what America stands for. America is a welcoming nation, a true nation of immigrants.”
Voter ID Law “Done” for the 2012 Presidential Election

Mary O’Rourke
December 13, 2012

“Voter ID, which is going to allow Governor Romney to win the state of Pennsylvania: done.”

Pennsylvania House Majority Leader Mike Turzai’s comments unknowingly set into motion a hotly contested examination into the validity of Act 18, otherwise known as the Pennsylvania Voter ID Law.

Although infamously and insistently referred to throughout the election, Turzai’s partisan comments surprisingly received only cursory treatment by both courts. Neither the majority of the Supreme Court nor Judge Simpson found them significant enough to discuss in their opinions. Justice McCaffery’s dissent touched upon the question of animus sparked by Turzai’s statements.

“It is clear to me that the reason for the urgency of implementing Act 18 prior to the November 2012 election is purely political,” said McCaffery in his dissenting opinion.

While McCaffery’s statement touches upon the issue of animus, the Supreme Court’s failure to adequately address the consequence, if any, of Turzai’s statements, has left those in the legal community guessing as to whether legislative animus even matters.

The Pennsylvania Supreme Court’s decision is important in another respect. Although the opinion was unsigned, the elected court, which is currently composed of three Democrats and three Republicans, did not split according to party affiliation as many had predicted.

The per curiam order was joined by all of the Republican Justices and one Democrat. Bruce Ledewitz, constitutional law professor at Duquesne University School of Law and a frequent critic of the Court, was surprised when his prediction that the court’s decision would be divided according to party lines was wrong. Ledewitz commended the justices for reaching outside party lines.

“Partisan considerations did not enter into it at all and everyone thought it would. The people of Pennsylvania should be very proud of their judges,” Ledewitz said. “This is a real rebuke to people who say you can’t get non-partisan justice out of an electoral system. I think we did.”

DU Law Grads Offer Advice to Job-Seeking Students

by Eric Donato
October 15, 2012

A five-member panel of Duquesne Law School graduates spoke to students on October 11 about their personal experiences and recommendations for succeeding in the tough legal job market. The program, Beyond OCI – Successful Job Strategies of Recent Graduates, addressed topics that the panel considered vital to breaking into the legal field, including networking, confidence, job hunting and interviewing.

“Market, market, market,” said Bryan Brantley, L’04, “You have to think of yourself as a commodity, you have to sell yourself,” said Brantley, who now does product and consumer litigation work at McGuireWoods LLP.

Marketing yourself is about “making yourself known” during the internships and clerkships that are available during law school, said Robert Fisher, Jr., L’03 and attorney for Edgar Snyder & Associates. Fisher encouraged students to become “visible” on the job by socializing with the attorneys that they work with.
Save the Date

Professionalism in Interviewing: Practical Pointers from the Practitioner

February 20, 2013