

Sustaining Success for Women Lawyers

By Annie Kernicky

THE U.S. SUPREME COURT HAS MADE NEW DEVELOPMENTS in the area of juvenile justice, recently ruling that its 2012 decision banning mandatory life-without-parole sentences for juveniles convicted of murder must be applied retroactively. This important decision granted a new opportunity to release inmates serving life sentences without the possibility of parole for murders they committed in their youth.

Marsha L. Levick, deputy director, chief counsel and co-founder of the Juvenile Law Center, spoke at the Women in the Profession Committee Meeting on Feb. 23 to discuss the recent *Montgomery v. Louisiana* decision, as well as other pressing issues impacting public interest lawyers, particularly in the area of juvenile justice. Not only has the litigation path for children's rights changed tremendously in the last decade, Levick explained, but it has travelled a similar course to that of women's rights, as it has moved from a protective environment to an equal rights framework. Levick opined that the Supreme Court has delivered a "gift" to the children's legal community, by identifying ways that children are different than adults, enabling children's litigation and advocacy to grow.

The *Montgomery v. Louisiana* decision followed a series of others in the 2000s concerning penalties and sentencing of juveniles. In 2005, the Supreme Court eliminated the juvenile death penalty. According to Levick, the

Supreme Court used research to inform the decision, and has continued to rely on that data. In 2010, the Supreme Court ruled that sentencing juvenile offenders to life without the possibility of parole was also unconstitutional, but only for non-homicide crimes. Levick noted that Justice Kennedy authored the opinions and specifically discussed a denial of hope when juveniles are involved.

The next year, in 2011, in a decision that Levick believes will have a far more significant impact on the future, the Supreme Court ruled that a juvenile's age is relevant to the Miranda custody analysis under the Fifth Amendment. Levick explained that the *J.D.B. v. North Carolina* decision is influential because the Supreme Court moved beyond the sentencing arena, and expanded to other arenas where children encounter the law. The 2012 *Miller v. Alabama* decision



Photo by Thomas E. Rogers

Vice Chancellor Mary F. Platt (left to right); Marsha L. Levick, deputy director, chief counsel and founder of the Juvenile Law Center; and Jennifer S. Coatsworth, co-chair, Women in the Profession Committee; at the Committee's meeting on Feb. 23.

came next, where the Supreme Court ruled that automatic life sentences for juvenile offenders violated the Eighth Amendment's ban on cruel and unusual punishment, leading to the most recent retroactivity determination. According to Levick, Justice Kennedy's *Montgomery*

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WORKERS' COMPENSATION SECTION

Hampton Award Luncheon April 15

PENNSYLVANIA SECRETARY OF STATE, HON. PEDRO Cortés, will be the keynote speaker at the Workers' Compensation Section Martha Hampton Award Luncheon on Friday, April 15. Judge Cortés was nominated by Gov. Tom Wolf on January 20, 2015 and confirmed by the Pennsylvania Senate on June 2, 2015. He previously served as Secretary of the Commonwealth from 2003 to 2010. At that time, Judge Cortés was the first confirmed Latino Cabinet member and the longest serving Secretary of State in Pennsylvania history.

The Section is pleased to present the 2016 Martha Hampton Award to Jason Krasno, partner at Krasno, Krasno and Onwudinjo. Krasno has focused his practice on representing injured workers for the past 17 years and has distinguished himself by demonstrating extraordinary professionalism and exceptional advocacy. He is well-known for his charitable contributions to causes involving children, animal welfare and fighting cancer. His commitment to civility and integrity in the practice of law and in his personal interactions has earned him the deep respect of his peers and the judiciary. This award commemorates the service, dignity, professionalism and dedication exemplified by Hampton during her years of practice.

Steve Bertil, a third year law student at the Villanova

University Charles Widger School of Law, will receive the Irvin Stander Award. Bertil is being honored for his zeal for administrative law as shown through his academic course work, employment, internships and school activities.

The Section will recognize Hon. Tina Maria Rago, Workers' Compensation Office of Adjudication; Hon. Geoffrey Dlin (Ret.) and Megan L. Dougherty for their service as co-chairs of the Section in 2015. Additionally, in celebration of the Section's 20th anniversary, it will make a donation to Community Partnership School on behalf of the Section and pay tribute to all of the previous Section chairs since its original inception as a committee in 1979.

Lastly, the Arts in the Court subcommittee will unveil the latest painting in a series of paintings commissioned to celebrate the 100th anniversary of the Pennsylvania Workers' Compensation Act through art.

Doors open for a pre-event reception at 11:30 a.m. at The Logan, One Logan Square,

Philadelphia, Pa. 19103. Tickets are \$55 for section members and \$65 for non-members.

For more information or to register, visit PhiladelphiaBar.org.



Photo courtesy of Danielle R. DeRosa

Danielle R. DeRosa, co-chair, Workers' Compensation Section (left to right); Hon. Tina Maria Rago, Workers' Compensation Office of Adjudication; and David Stier, program director, St. John's Hospice; at the dedication of a new truck for St. John's Hospice on Feb. 29.

2017 Out of Pocket Limits, New SBC Template and Supreme Court Decision

■ By Brian McLaughlin

ON MARCH 1, 2016, THE DEPARTMENT OF HEALTH AND Human Services (HHS) released cost-sharing parameters setting the 2017 maximum annual out-of-pocket limits on non-grandfathered health plans at \$7,150 for self-only coverage and \$14,300 for coverage other than self-only. These limits take effect for the first plan year on or after Jan. 1, 2017. These limits generally apply with respect to any essential health benefits (EHBs) offered under the group health plan. The final regulations established that starting in the 2016 plan year, the self-only annual limitation on cost sharing applies to each individual, regardless of whether the individual is enrolled in other than self-only coverage, including family coverage. As a reminder, the 2016 maximum annual out-of-pocket limits for all non-grandfathered plans are \$6,850 for self-only coverage and \$13,700 for coverage other than self-only.

New SBC Template Implementation Announced.

The Departments of Labor (DOL), the Internal Revenue Service (IRS) and Health and Human Services (HHS) (collectively, the Departments) announced through Affordable Care Act (ACA) FAQ 30 that the new Summary of Benefits and Coverage (SBC) template and associated documents, published by the Departments on Feb. 26, 2016, should be used for the open enrollment period that begins on or after April 1, 2017. As background, the ACA requires an SBC to be provided to plan

participants at time of enrollment. Significant penalties (up to \$1,000) may be imposed for each individual who does not receive this summary. If any material changes are made to the document outside of renewal, the participant must be notified 60 days prior to the effective date of the change. As stated in FAQ 30, the Departments intend to review the comments and finalize the new SBC template and associated documents expeditiously (the comment period closed March 28, 2016). The Departments intend that health plans and issuers that maintain an annual open enrollment period will be required to use the new SBC template and associated documents beginning on the first day of the first open enrollment period that begins on or after April 1, 2017 with respect to coverage for plan years (or, in the individual market, policy years) beginning on or after that date. For plans and issuers that do not use an annual open enrollment period, the new SBC template and associated documents would be required beginning on the first day of the first plan year (or, in the individual market, policy year) that begins on or after April 1, 2017.

Supreme Court Finds State Reporting Law Is Preempted by ERISA.

Vermont established an “all payer claims database” that requires insurers, third party administrators (TPAs) of self funded plans, providers and government agencies to report data on health care costs, prices, quality and use of services to the state to examine health care utilization, expenditures and performance. Seventeen states, including

New York and Connecticut, also have or are developing all payer claims databases (although reporting is on a voluntary basis in some states).

The Court found that Vermont’s all payer claims database does not apply to plans subject to ERISA. In the majority opinion, the Court identified reporting as a principal and essential feature of ERISA and plan administration. Vermont’s requirement that ERISA plans report detailed information about the administration of benefits amounts to a direct regulation by the state of a fundamental ERISA function. As such, the Court ruled such state laws are inconsistent with the central design of ERISA – to provide a single uniform national scheme without interference from the laws of the states. Justice Breyer suggested that the DOL could develop a similar reporting requirement to satisfy the states’ needs.

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Women in the Profession

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v. Louisiana opinion demonstrated how strongly it is felt that children cannot be sentenced the same way as adults, even for the most heinous crimes. Justice Kennedy said that the decision was grounded on the diminished culpability of juvenile offenders, who are, he said, imma-

ture, susceptible to peer pressure and have the capacity to change.

From Levick’s perspective, children have been winning on issues concerning juvenile law because courts are carving out ways for children that do not revert to overly paternalistic and overly protective barriers, but let children keep a right to counsel, a right for their voices to be heard and a right to participate in the justice system. Other timely issues that Levick is currently confronting include solitary confinement and strip searches for youth. Levick

concluded by encouraging all attorneys, women and men alike, to pursue opportunities in the public interest community to continue the fight for equal rights under the law.

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