

## PUBLIC INTEREST

## er Initiative Promotes Second Chances



**RIYA SAHA SHAH** is a staff attorney at Juvenile Law Center. She leads Juvenile Law Center's efforts on juvenile record confidentiality and expungement and has written extensively on the subject.

Before going to law school, Shah was an elementary school teacher through Teach for America.

them expunged.

Since then, Juvenile Law Center's expungement work has taken many different forms. Juvenile Law Center attorneys have filed individual expungement petitions for youth in Philadelphia and throughout Pennsylvania; appealed the constitutionality of expungement denials and policies; advocated for changes in legislation and court rules regarding the confidentiality of juvenile records and expungement processes in Pennsylvania and nationwide; educated youth about the collateral consequences of their juvenile records; advised youth-serving professionals of the expungement process in Philadelphia; and published articles and training materials on juvenile expungement and collateral consequences of adjudications.

Earlier this month, Juvenile Law Center launched the Second Chances Project. This multifaceted initiative includes publication of "Juvenile Records: A National Review of

State Laws on Confidentiality, Sealing and Expungement"—a comprehensive overview of each state's laws on the treatment of juvenile records both while court proceedings are pending and after they have ended. Community Legal Services contributed to the national review, which describes the public

availability and accessibility of juvenile records in each of the 50 states and the District of Columbia. It also examines provisions for the sealing and expungement of juvenile records. The review introduces a set of core principles that policymakers should consider to ensure greater record protection.

Juvenile Law Center also released a scorecard that rates states against the set of core principles and each other. "Failed Policies, Forfeited Futures: A Nationwide Scorecard on Juvenile Records" shows that many states are failing to protect the futures of our youth. States were rated on a five-star scale. No state received five stars; 16 percent of the states received four stars; 55 percent received three stars; 24 percent of states, including Pennsylvania, received two stars; and one state, Idaho, came in last with only one star.

Juvenile Law Center will use the national review and scorecard to encourage policymakers to implement legislative or policy changes at the state or local level that will give young people second chances. Both publications can be downloaded at [www.jlc.org/juvenilerecords](http://www.jlc.org/juvenilerecords).

*Many states make public information about youth involvement with the juvenile justice system and fail to provide opportunities for sealing or expungement of records.*

how the public availability of records has a negative impact on youth and on society. The white paper will give special attention to the egregious practice by some jurisdictions of selling records to for-profit companies that resell them to the general public.

In 2015, Juvenile Law Center is set to release the next component of its Second Chances Project—a white paper that demonstrates how juvenile record information is disseminated, where it goes, and how it ends up on the Internet, where it becomes nearly impossible to remove. The paper will demonstrate

## 'The New Jim Crow' To Be Explored at Annual CLE Day

BY SU MINGYEH

*Special to the Legal*

The Public Interest Section of the Philadelphia Bar Association is set to present its Annual Public Interest Law Day CLE Program on Dec. 10 from 9 a.m. to 4:30 p.m. at the Pennsylvania Bar Institute, CLE Conference Center, Wanamaker Building, 10th floor, Philadelphia. This CLE program will offer six substantive and two ethics CLE credits and will present a wide array of hot topics in public interest law. It will be followed by the Public Interest Section's Annual Awards Ceremony and Reception at the Marriott at 1201 Market St., Philadelphia, in the Independence Ballroom, where the Hon. Louis H. Pollak Award will be presented to retired Judge Edmund Spaeth. The Andrew Hamilton Award will also be presented.

The final plenary session of the Public Interest Law Day, titled "The New Jim Crow in the City of Brotherly Love," will examine the insights of Michelle Alexander's book, "The New Jim Crow," but with a local focus on Philadelphia. "The New Jim Crow" utilizes data and social science research to shine needed light on the crisis of mass incarceration in the United States and the role that racial bias continues to play in our justice system, with disastrous results and consequences for communities of color.

Pennsylvania currently incarcerates more than 50,000 in its state prisons, thus having the sixth largest prison population in the nation. This figure does not include the number of inmates in county jails or federal prisons. As an example, the Philadelphia Prison System currently has more than 8,400 inmates in its custody alone.

This large prison population is a result of massive growth over the last few decades, where the number of people in prison exploded by 40 percent between 2000 and

*CLE Day continues on 8*

legal support services.

Judges Cornelia Pillard and Judith Rogers pressed the agency's lawyer, senior litigation counsel John Coleman, to respond to Pisinski's claims that the agency's enforcement action and investigation would hurt her legal practice.

Coleman said Pisinski wasn't accused of wrongdoing in the enforcement action, and that she couldn't show that she couldn't find

private plaintiffs and state attorneys' general also lodged constitutional challenges to the consumer protection agency's existence. U.S. District Senior Judge Ellen Segal Huvelle ruled in August 2013 that the parties lacked standing to sue.

O'Melveny & Myers partner Gregory Jacobs argued for the private plaintiffs, led by State National Bank of Big Spring, a three-branch bank in Texas. Jacobs said

to the federal Dodd-Frank Act, the law that established the consumer protection agency, as creditors of large financial institutions.

Daniel Tenny, a lawyer with the U.S. Department of Justice, argued for the government.

*Zoe Tillman is a reporter for The National Law Journal, a Legal affiliate based in New York.* •

## Commercial

continued from 5

the reverse may not necessarily be true. The Montgomery County Court of Common Pleas recently dismissed a complaint for declaratory judgment seeking a judicial determination voiding certain restrictions against competition determining that such equity claim was within the scope of the arbitration agreement and, therefore, for the arbitrator to decide.

Arbitration also plays a vital role in the ever-broadening world economy. In 2014, international business is the norm rather than the exception. The courts of the United States and the signatories to the New York Convention on Arbitration have routinely enforced arbitration clauses establishing the parameters of dispute resolution as consistent

with the parties' right to contract. Critically, the arbitration clause can protect a company operating in this country from the many pitfalls, incremental expenses and inconsistencies of litigating in a foreign country or even against a sovereign nation in its own judicial system by selecting a choice of law and a situs of the arbitration proceeding. Such forum selection also provides a certain substantive component not only as to applicable law, but also in the qualification of fact-finders as the roles of qualified arbitrators available for commercial disputes continue to grow. Finally, arbitration may be preferable to litigation in the U.S. district courts as the parties may be granted greater flexibility and input to the development of the schedule of proceedings rather than subject to the rule of the federal judge, who may or may not be familiar with often complex, substantive issues.

Finally, arbitration may also be preferable

in any relationship where confidentiality is key. In some cases, the simple fact of a public filing is of concern. In many others, the factual allegations of a complaint, even if eventually proven unfounded, can be damaging. While an arbitration clause cannot prevent a claimant from filing an initial public complaint in court, an enforceable arbitration clause can bring an abrupt end to the public aspect of the dispute.

The courts remain the preferred forum for dispute resolution in many circumstances. However, with the growing trend of contract enforcement to the terms of arbitration agreements, even a skeptic must admit that the inclusion of an arbitration clause in certain circumstances can provide a substantive advantage and dramatically impact the landscape of dispute resolution to your client's benefit. •

## CLE Day

continued from 7

2011. Corrections spending has increased 76 percent, rising to about \$2 billion a year.

Furthermore, people of color, and specifically African-Americans, are disproportionately represented in the prison population. African-Americans now constitute nearly 1 million of the total 2.3 million people incarcerated in the United States. There are now more African-Americans in prison or jail than there were slaves in 1800.

In "The New Jim Crow," Alexander describes how this mass incarceration today serves the same purpose as pre-Civil War slavery and post-Civil War Jim Crow laws to maintain a racial caste system. Important protection emerged from the struggle of the civil rights movement, such as the Civil Rights Act of 1964 and the Voting Rights Act of 1965, yet much of the promise from the civil rights movement has been eroded through the targeting of people of color by the criminal justice system, where a criminal conviction now stands in the place of where

**SU MING YEH** is a managing attorney at the Pennsylvania Institutional Law Project, where she represents prisoners and other institutionalized individuals on their civil rights claims. She is the chair of the Philadelphia Bar Association's Public Interest Section, and a past Peace Corps volunteer in the Kingdom of Tonga.

race used to be, as a status that locks a group of people into an inferior position by law.

The Public Interest Section's CLE will utilize "The New Jim Crow" framework to draw connections between the high levels of stops, arrests and convictions in Philadelphia and the collateral consequences they produce upon communities of color.

The session brings together experts from civil legal assistance, criminal defense and civil rights to examine these issues, with a focus on employment, housing, civil forfeiture, reintegration and oppressively high levels of poverty. The CLE aims to highlight current developments locally and assess the collective impact these dynamics have on low-income neighborhoods and communities of color in Philadelphia.

Joining the panel discussion will be Tom Innes of the Defender Association of

Philadelphia, Sharon Dietrich of Community Legal Services, Philadelphia journalist and investigative reporter Isaiah Thompson, Pam Superville from the Mayor's Office of Reintegration Services, and Jondhi Harrell of the Center for Returning Citizens. The session will be moderated by co-planners professor Louis Rulli of the University of Pennsylvania Law School and Mary Catherine Roper, senior staff attorney of the American Civil Liberties Union of Pennsylvania.

Immediately following the CLE program, the Public Interest Section will hold its Annual Awards Ceremony and Reception. The awards ceremony, which will begin promptly at 5:30 p.m., will feature the presentation of the Andrew Hamilton Award for distinguished service in public interest law, and the Hon. Louis H. Pollak Award, which will be presented to retired Judge Edmund Spaeth of the Pennsylvania Superior Court, for his decades-long service and work toward the public interest.

Spaeth was a jurist of the highest integrity, intellect, judgment and craftsmanship, with a judicial career spanning about 22 years. The Public Interest Section has selected Spaeth

CLE Day continues on 9

## CLE Day

continued from 8

to receive the Louis H. Pollak Award not, however, for his judicial distinction but for his commitment to public service.

Even prior to being a judge, he joined a legal team that provided representation to eight communists prosecuted in 1953 under the Smith Act for teaching and advocating their unpopular political beliefs. As a trial judge, he successfully mediated the first teachers' strike against the city's public schools, ordered the city of Philadelphia to adequately fund the municipal workers' pension fund, and wrote a landmark 264-page opinion for the three-judge court in *Jackson v. Hendrick* that found that the conditions of confinement in Holmesburg prison of the Philadelphia Prison System violated the

Eighth Amendment's prohibition on cruel and unusual punishment.

Yet his extra-judicial public service was extraordinary. In 1974, while serving on the Philadelphia Court of Common Pleas bench, Spaeth co-founded the Philadelphia Commission for Effective Criminal Justice (known popularly as "the Spaeth Commission"). For its entire five-year life, Spaeth chaired the commission as it worked on improving the criminal justice system and relieving jail overcrowding.

Spaeth also devoted a substantial part of his professional life to teaching, first as an adjunct professor teaching evidence and professional responsibility at the University of Pennsylvania Law School, and later full-time after he retired from the bench. In 1987, he co-founded and led the law school's Center on Professionalism, producing a series of videotapes on professional responsibility that has been used in the United States, Europe

and Asia.

Spaeth also dedicated himself tirelessly to improving the judiciary, even after his retirement. He served as the chairman for Pennsylvanians for Modern Courts, working toward court reforms and merit selection of judges.

In fact, Spaeth was a pioneer of modern courts reform. He was first nominated to a short-term vacancy on the Superior Court by Gov. Milton Shapp in 1973. When that term ended, he ran unsuccessfully in the election, and then to the shock of many, refunded unspent campaign contributions to donors at the rate of 46 cents on the dollar. After he was appointed for a second time to the Superior Court, he then ran again in 1975 and won a 10-year term. He was then elevated to president judge in 1983. At that point, in an exercise of conscience, he decided against running for reelection, sacrificing a job that he loved rather than accept campaign

## Turnpike

continued from 3

with the commission's employment and procurement practices.

Under the agreements, neither defendant needed to admit guilt or pay any restitution,

but will serve two years in the ARD program. Assuming the defendants complete the requirements of the ARD program, the charges will be dropped and their records will be

## Suspension

continued from 1

the court's decision to lift the suspension. While Castille filed a dissenting statement, Stevens did not.

According to Castille, Sullivan asked the court to reinstate his salary and continue paying it until the date when his term would expire, Dec. 31, 2017, as well as order back pay from the starting date of his suspension. Castille said Sullivan wanted to seek separate relief from the CJD's suspension.

"I read the court's action today as essentially deferring to the CJD," Castille said. "I respectfully dissent because I do not believe that the federal acquittal puts an end to the inquiry involving misconduct, either as an administrative matter or as a disciplinary matter, and also because I believe awarding [Sullivan] a three-year unpaid leave of absence is intolerable."

Sullivan, along with Chinatown businessman Robert Moy and Chester County Magisterial District Judge Mark Bruno, were exonerated of all charges against them in the

ticket-fixing case.

Former Judges Michael Lowry, Robert Mulgrew, Thomasine Tynes and Willie Singletary also beat the government's fraud charges, but Lowry, Tynes and Mulgrew were convicted July 23 of making false declarations before the grand jury and Singletary was convicted of making false statements to the FBI.

"Sullivan was administrative judge of the Philadelphia Traffic Court bench during a time when 'fixing' tickets for those politically and socially connected was rampant," Castille said.

He added that the jury in the Traffic Court case, apparently accepted the defense that since the judges received no bribes, there was reasonable doubt as to whether Sullivan broke the law.

But regardless of the fact that there is no law specifically targeted at ticket-fixing, Castille said Sullivan should not be off the hook for disciplinary action.

Castille pointed to the CJD's suspension opinion, in which the CJD said that as Traffic Court's administrative judge, Sullivan was in a position to stop the "errant behavior of its judges."

"The CJD held that 'only an order of interim suspension which removes [petitioner] from the public payroll has any prospect of ameliorating the potential harm to the public's confidence in the judicial system which has been caused by [petitioner]'s alleged conduct which has led to the pending charges against him,'" Castille said.

He added the circumstances of Sullivan's case differ from those of Bruno, who was reinstated to the bench after his acquittal.

"Petitioner—like Bruno—was acquitted of the criminal charges, yet—unlike in the case of Bruno—the CJD did not act either sua sponte or immediately to vacate the order of suspension without pay in petitioner's case," Castille said.

"As a practical matter, the present action is unnecessary because, even after the court's per curiam action, the CJD's order remains in effect," he continued. "Any advantage petitioner may hope to gain is one of perception—and a potent one at that—that this court is content to lay the matter to rest."

However, Castille said the review of Sullivan should be far from over.

"Because disciplinary proceedings are confidential in their initial stages," Castille

## Verdict

continued from 1

restrained, severe incontinence, and several other ailments. According to Colins, Pomroy died Aug. 12, 2010.

treatment options and, knowing those risks, Mrs. Pomroy elected to have the surgery," Panella said. "Furthermore, she performed the

ghth Amendment's prohibition on cruel and unusual punishment.

Yet his extra-judicial public service was extraordinary. In 1974, while serving on the Philadelphia Court of Common Pleas bench, Spaeth co-founded the Philadelphia Commission for Effective Criminal Justice (known popularly as "the Spaeth Commission"). For its entire five-year life, Spaeth chaired the commission as it worked on improving the criminal justice system and relieving jail overcrowding.

Spaeth also devoted a substantial part of his professional life to teaching, first as adjunct professor teaching evidence and professional responsibility at the University of Pennsylvania Law School, and later full-time after he retired from the bench. In 1987, he co-founded and led the law school's Center on Professionalism, producing a series of videotapes on professional responsibility that has been used in the United States, Europe

and Asia.

with the commission's employment and procurement practices.

Under the agreements, neither defendant needed to admit guilt or pay any restitution, but will serve two years in the ARD program.

ticket-fixing case.

Former Judges Michael Lowry, Robert Mulgrew, Thomasine Tynes and Willie Singletary also beat the government's fraud charges, but Lowry, Tynes and Mulgrew were convicted July 23 of making false declarations before the grand jury and Singletary was convicted of making false statements to the FBI.

"Sullivan was administrative judge of the Philadelphia Traffic Court bench during a time when 'fixing' tickets for those politically and socially connected was rampant," Castille said.

He added that the jury in the Traffic Court case, apparently accepted the defense that since the judges received no bribes, there was reasonable doubt as to whether Sullivan broke the law.

But regardless of the fact that there is no law specifically targeted at ticket-fixing, Castille said Sullivan should not be off the hook for disciplinary action.

Castille pointed to the CJD's suspension opinion, in which the CJD said that as Traffic Court's administrative judge, Sullivan was in a position to stop the "errant behavior of its judges."

restrained, severe incontinence, and several other ailments. According to Colins, Pomroy

and Asia.

Spaeth also dedicated himself tirelessly to improving the judiciary, even after his retirement. He served as the chairman for Pennsylvanians for Modern Courts, working toward court reforms and merit selection of judges.

In fact, Spaeth was a pioneer of modern courts reform. He was first nominated to a short-term vacancy on the Superior Court by Gov. Milton Shapp in 1973. When that term ended, he ran unsuccessfully in the election, and then to the shock of many, refunded unspent campaign contributions to donors at the rate of 46 cents on the dollar. After he was appointed for a second time to the Superior Court, he then ran again in 1975 and won a 10-year term. He was then elevated to president judge in 1983. At that point, in an exercise of conscience, he decided against running for reelection, sacrificing a job that he loved rather than accept campaign

Assuming the defendants complete the requirements of the ARD program, the charges will be dropped and their records will be

"The CJD held that 'only an order of interim suspension which removes [petitioner] from the public payroll has any prospect of ameliorating the potential harm to the public's confidence in the judicial system which has been caused by [petitioner]'s alleged conduct which has led to the pending charges against him,'" Castille said.

He added the circumstances of Sullivan's case differ from those of Bruno, who was reinstated to the bench after his acquittal.

"Petitioner—like Bruno—was acquitted of the criminal charges, yet—unlike in the case of Bruno—the CJD did not act either sua sponte or immediately to vacate the order of suspension without pay in petitioner's case," Castille said.

"As a practical matter, the present action is unnecessary because, even after the court's per curiam action, the CJD's order remains in effect," he continued. "Any advantage petitioner may hope to gain is one of perception—and a potent one at that—that this court is content to lay the matter to rest."

However, Castille said the review of Sullivan should be far from over.

"Because disciplinary proceedings are confidential in their initial stages," Castille

treatment options and, knowing those risks, Mrs. Pomroy elected to have the surgery,"

contributions from lawyers who might later appear before him.

Throughout his career, Spaeth was a great proponent of racially integrated schools. He also led a number of civic and charitable organizations, including the Public Interest Law Center of Philadelphia.

David Richman, of counsel at Pepper Hamilton, noted that Spaeth's nomination for the Louis H. Pollak Award "was joined by a half-dozen former chancellors of the Philadelphia Bar Association, a former chancellor of the Pennsylvania Bar Association, three current or former judges, and many other assorted luminaries." The Public Interest Section invites all to join in honoring Spaeth at its Awards Ceremony and Reception.

*Louis S. Rulli and David Richman contributed to this article.*

expunged after the two-year period.

*Max Mitchell can be contacted at 215-557-2354 or mmitchell@alm.com. Follow him on Twitter @MMitchellTLI.*

said, "it may be that the CJD's order remains in effect because a disciplinary investigation or disciplinary charges are presently pending against petitioner; I certainly hope that is the case."

The severity of the misconduct alleged, Sullivan's status as administrative judge overseeing a "culture of corruption," and the fact that the Traffic Court judge's defense never denied the existence of ticket-fixing, Castille said, should all be noted.

"Again, his acquittal of felony charges does not mean that Sullivan did not commit the underlying misconduct on the bench, and the temerity of the instant request: 'Award me back pay and pay me going forward while I do nothing' corroborates, in my mind at least, that there is a serious question of whether he is fit to be a judge," Castille said.

Sullivan's attorney, Henry Hockeimer of Ballard Spahr, did not return a call seeking comment.

*P.J. D'Annunzio can be contacted at 215-557-2315 or pdannunzio@alm.com. Follow him on Twitter @PJDannunzioTLI.*

Mariann Pomroy's consent to do the surgery, Rosato should have still pushed for the saline procedure