



WBA Welcomes Commonwealth Court to Westmoreland County

History was made on Wednesday, June 7, 2000, as the state's Commonwealth Court visited Greensburg for the first time to hear arguments on a number of cases from western Pennsylvania counties. In honor of this occasion, the Westmoreland Bar Association hosted a welcoming reception for the Commonwealth Court at the Mountain View Inn in Greensburg on June 6.

The three-judge panel, composed of The Honorable Bonnie Brigance Leadbetter, The Honorable James R. Kelley, and The Honorable William J. Lederer, conducted its business in Courtroom No. 3 of the Westmoreland County Courthouse as part of the court's 30th anniversary commemoration.

The Commonwealth Court is one of two intermediate appellate courts established by the Constitutional Convention of 1968. The Commonwealth Court judges usually hear arguments sitting in Pittsburgh and other larger cities in the state. As part of its anniversary, the court has been going to smaller towns. "We wanted to sit in Westmoreland to

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(From left to right) President Judge Charles H. Loughran, WBA President Diane E. Murphy, Commonwealth Court President Judge Joseph T. Doyle, Executive Director Diane Krivoniak and Commonwealth Court Judge James R. Kelley.



The Honorable Bonnie Brigance Leadbetter, The Honorable James R. Kelley and The Honorable William J. Lederer sat in Westmoreland County on June 7, 2000.

President's Message

Giving Credit Where It's Due

by Diane E. Murphy

I wanted to write this article while all my memories and thoughts of this year's Bench/Bar Conference were still vivid. Believe it or not, my recollection is fully intact, despite rumors to the contrary.

I arrived late on Thursday and used all my so-called presidential powers to clear up the skies and calm the weather. Too bad I really



don't have the kind of divine power to influence the forces of nature. Just as I cannot accept credit for the weather, I cannot take credit for the

many congratulations I received on what a success the 2000 Bench/Bar Conference turned out to be at The Wisp Resort in Deep Creek, Maryland.

To give you an idea of how this all evolves, the conference actually begins with a planning committee which discusses ideas to improve and expand on the previous experi-

ences. Taken into account are the comments made by the attendees, both their likes and dislikes. Likewise, comments from the non-attendees as to why they do not attend are considered. It is actually important to listen to everyone because that is the only way we can make the Bench/Bar Conference experience as enticing and appealing to as many members as possible.

The committee breaks up into sub-committees that take responsibility for all the separate facets and organization of activities. Planning for next year's event actually begins immediately at the conclusion of this year's. The location is selected and booked, and contracts are prepared to lock in the terms. Multiple meetings are held throughout the year to report on the progress of the committees.

The members of each committee are invaluable. They volunteer their time and are very dedicated to their tasks. The majority of the committee members remain from year to year, thereby maintaining a continuity of ideas and services crucial for planning purposes. I want to

thank our Bench/Bar Committee for their time and efforts.

However the common thread that makes it all come together year after year is our highly competent and professional executive director, Diane Krivoniak and the WBA staff, Cathy and Julia.

I have never seen three people work so hard, get so much done and make the end result seem so effortless. Their attendance to the multitude of minute details really smooth out the edges and make the conference the ultimate success it really is.

I extend my sincere gratitude and congratulations to Diane, Cathy and Julia. Their splendid efforts are what gives us the chance to relax and have such a fantastic time.

So from all of the members of the WBA and especially those who did attend the conference this year at the Wisp, thank you ladies for being there and thank you for being with us all year round.



Mission Statement

The Westmoreland Bar Association continues a long-standing tradition of fostering excellence in professional service by its members to their clients and to the general community while engendering respect, civility and camaraderie among the members of the bench and bar.

WBA Visits Antietam Battlefield

by Judge Daniel J. Ackerman

On a picture-perfect weekend at the end of April, WBA members, spouses and friends met at Hagerstown, Maryland, and from there embarked on a tour of the Antietam battlefield.

On September 17, 1862, the Army of Northern Virginia under the command of Robert E. Lee, and the Army of the Potomac under George B. McClellan, met on rolling Maryland farmland in the vicinity of Antietam Creek, near the hamlet of Sharpsburg. The battle, which took place that day, frustrated Lee's first attempt to bring the civil war north of the Potomac River, and resulted in the bloodiest day in American history (23,000 casualties).

Our day-long tour by bus and on foot took us to every part of this famous battlefield, and with permission of the National Park Service, to areas not generally open to the public. Our knowledgeable



guides were Don Rigone and Judge Irv Bloom, both serious students of the Civil War, who bridged the gap of 138 years with feeling, intimate detail and occasional humor.

But all was not study. Lunch found us at the prestigious Bavarian Inn in Shepherdstown, West Virginia, across the Potomac River below Sharpsburg, and after dinner, at the Sheraton Inn in Hagerstown, rousing Civil War songs were heard accompanied by

the talented Jerry Yanity on the piano.

In addition to me and those already mentioned, WBA members in attendance were: Jim Conte, Robert King, Morrison Lewis, Ernie Long, Rabe Marsh, Bruce Tobin, John Ward and Judge Jay Ober.

It was a fine outing and we all returned with a renewed and increased appreciation of the price paid to preserve our nation.



▲
"Baruch atuh Adonai ..."

And it is for this reason that Don was chosen group leader.



▲
Despite his best efforts, Don could not make the man's headache go away.

Remembering Gary F. Selway

by Wm. Jeffrey Leonard

Gary F. Selway, who passed away on March 11, 2000, earned the respect of the members of the Bench and Bar because of his meticulous trial preparation and enthusiastic representation of his clients. Gary's superior intellect, tireless preparation, and high degree of motivation made him a formidable adversary.

I worked with Gary every day for the past 15 years, and I saw those traits and skills exhibited on a daily basis. For those reasons, and many more, I admired Gary as a person and a lawyer. I often wondered about the source of his motivation and energy which enabled him to practice at such a high level of proficiency. I believe it arose out of his natural love and concern for his fellow man. He genuinely cared for and about his clients and their causes.

The compassion that Gary showed his clients no doubt sprang from his own life experiences, beginning at an early age. His father died at the Battle of Iwo Jima during WWII in 1945, when Gary was only two years old. His mother died of cancer when Gary was 12.

He was living on his own by age 17, working to support himself while he finished high school. He joined the Marines to obtain benefits of the GI Bill, which enabled him to afford and complete college. After college, he worked for a Pittsburgh law firm during the day to support his family, and attended Duquesne Law School at night.

The lessons he learned while struggling to overcome these challenges were applied to the practice

of law. Gary's ability to sympathize with his clients gave him the energy to champion their causes, unpopular though they may be.

Gary was a staunch civil libertarian. For many years, he volunteered his services as a lawyer to the American Civil Liberties Union. He was troubled by the changing make-up of the United States Supreme Court. He decried what he felt was a steady stream of opinions which slowly eroded the Constitutional rights of defendants in criminal cases.

Although the focus of Gary's practice changed over the course of his career, his concern for and representation of society's underdogs did not. For a time, it seemed that Gary specialized in defending priests who had been charged with criminal sexual misconduct. The last five years of his practice were primarily devoted to representing the mentally ill.

He was instrumental in forcing the mental health system to strictly comply with the Mental Health Procedures Act to ensure that the mentally ill were not deprived of their liberty and involuntarily committed without due process of law. It was this commitment to the protection of individuals' rights which became Gary's hallmark.

The following quote by American lawyer and writer Clarence Darrow was prominently displayed on the bulletin board in Gary's office and echoed his philosophy: "To be an effective criminal defense counsel, an attorney must be prepared to be

demanding, outrageous, irreverent, blasphemous, a rogue, a renegade, and a hated, isolated and lonely person ... few love a spokesman for the despised and damned."

Gary had the courage necessary to practice this philosophy.

Gary had a wonderful sense of humor and was genuinely friendly. He would often captivate and entertain friends and acquaintances with stories of his youthful exploits

and always-eventful vacations. His storytelling would often create a much-needed diversion from the hectic and stressful practice of law.

Gary was also generous to a fault. I'll never forget the time he took a young lawyer under his wing. This young law

student had recently graduated from an out-of-state law school, passed the bar exam and moved into Westmoreland County intending to open a law practice with little more than his "shingle" and naive enthusiasm. Gary generously offered the use of his office, secretarial services, law library, photocopier, and assigned a dozen or more active cases to the young lawyer. He asked nothing in return.

When I think about the obstacles that Gary overcame in his youth in order to survive, I understand how he became such a driven and successful lawyer. With his passing, the legal community has suffered a great loss, as did all of us who knew Gary. He will be missed.



Jury Trial Verdicts

JANUARY/FEBRUARY TRIAL TERM

Out of 121 cases set for trial, 47 settled; 32 were continued; 1 was discontinued; 1 moved to Arbitration; 1 will be summary jury trial; 1 was a mistrial; and 7 were tried to a verdict. Although plaintiff verdicts led by a slight margin, each reflected very low awards of damages.

RYAN BRENNAN, A MINOR, BY HIS PARENT AND NATURAL GUARDIAN, LINDA MONAHAN V. LEVEL GREEN ATHLETIC ASSOCIATION AND PENN-TRAFFORD SCHOOL DISTRICT NO. 3198 OF 1997

Cause of Action: Negligence

While trying out for little league, plaintiff caught his upper lip on metal wire protruding from the top of the outfield fence. Damages included laceration of right upper lip and permanent scarring.

Plaintiff brought this negligence action against the defendants for failure to maintain and repair the fence, failure to inspect and failure to provide reasonably safe premises. The school district maintained that the field was in the possession and control of the athletic association through a lease agreement. Defenses were raised under the Recreation Use of Land and Water Act, the

Political Subdivision Tort Claims Act and Claims Against Local Agencies Act. The athletic association was not represented at trial.

Plaintiff's Counsel: William R. Caroselli, Susan A. Meredith, Caroselli, Spagnolli & Beachler, Pgh.
Counsel for Defendant Penn-Trafford School District: Michael L.

Fitzpatrick, The Daniel F. LaCava Law Firm, P.C., Carnegie.

Trial Judge: The Hon. Gary P. Caruso

Result: Verdict for Plaintiff in the amount of \$5,000. 100% causal negligence attributed to Defendant Level Green Athletic Association.

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Inn of Court Changes Name to Honor Ned J. Nakles, Sr.

At a Naming Ceremony held on May 19, 2000, the Westmoreland

American Inn of Court changed its

name to the Ned J. Nakles American Inn of Court in memory and in honor of Ned J. Nakles, Sr., who passed away last

May. Over 150 guests attended the formal affair held at Seton Hill College in Greensburg.

The evening included speeches and tributes from Ned's friends,



colleagues and fellow Inn members, and concluded with a portrait dedication and remarks from Ned J. Nakles, Jr. The portrait is hanging in the Westmoreland Bar Association headquarters.

An active member of the Bar since 1967, Ned was a charter member of the Westmoreland American Inn of Court since its founding in 1995. He shared the vision of the American Inns of Court, and was instrumental in promoting legal excellence, professionalism, civility and ethics not only among members of the



▲ Ned Nakles, Jr., unveils the portrait of his father, Ned Nakles, Sr., which now hangs in the WBA headquarters.

Bar, but also among his many other friends and acquaintances.

Jury Trial Verdicts *continued from page 5*

RHONDA E. WHITE V. MINDE S. CUP NO. 2493 OF 1997

Cause of Action: Negligence—Motor Vehicle Accident

Plaintiff was stopped at the red light in the left turning lane when struck by Defendant's car. Damages included bodily injuries, pain and suffering, impairment of wages and/or wage earning ability in excess of first party coverage and medical bills in excess of first party coverage.

The defendant, in New Matter, raised contributory/comparative negligence, assumption of the risk, the statute of limitations, and the Pennsylvania Motor Vehicle Financial Responsibility Act.

Plaintiff's Counsel: Daniel Joseph, George & Joseph, New Kensington.

Defendant's Counsel: Christopher M. Fleming, Jacobs & Saba, Gbg.

Trial Judge: The Hon. Daniel J. Ackerman

Result: Verdict for Plaintiff in the amount of \$3,000.

KATHLEEN L. MYERS AND ROBERT G. MYERS, HER HUSBAND V. BETH A. MAXWELL, M.D., AN ADULT INDIVIDUAL; AND GYNO ASSOCIATES, INC., A PENNSYLVANIA PROFESSIONAL ASSOCIATION NO. 7030 OF 1998

*Cause of Action: Negligence—
Medical Malpractice—Loss of Consortium*

The plaintiff's medical malpractice action arose from an alleged delayed diagnosis of breast cancer by defendant. The radiologist's report from a 1992 mammogram identified two small calcifications in the right breast and recommended a sixth-month follow-up mammogram to rule out the remote possibility of malignant type calcification. Results of this report were not communicated to the plaintiff by the defendant. The breast cancer subsequently spread and is believed to be terminal. Her husband claimed loss of consortium.

The defendant contended she was unaware of the radiologist's recommendation for follow-up study because she read only the summary portion of his

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To-Wit: The Big Kahuna, Part I

by S. Sponte, Esq.

It's been thirty years, count 'em, thirty years now that I've been Shepardizing my clients and their various causes safely through the minefields of justice. Although I'm not usually the introspective sort, that's a long time by anyone's count, and I consequently find myself of late thinking a lot about my career and what it is I've learned, if anything, in so much time.

Well, one thing I've learned for sure is that I'm not nearly as smart as I might have previously thought, else I'd never have done this for thirty, count 'em, thirty years.

Another thing I've learned is that this is a tough way to make a buck if you do it right and, for me at least, it takes a lot more than just the need to make a living to do it for so long. You see, I have done quite well by my clients' miscellaneous misfortunes and I am long since past the point of needing to work to put food on the table. That I yet continue to soldier on is for reasons pretty much unrelated to the prerequisites of sustenance.

From the earliest days of my career, I have always been drawn to the cause, the crusade, the singular opportunity to stomp upon the powerful and arrogant on behalf of the weak and downtrodden. I have my parents to thank for this passionate predilection, they taught me all I ever needed to know about being downtrodden, and I continue to carry their invaluable lessons with me each and every day of my life. Consequently, causes have been and still remain the staff of my professional life and, as

those who know me well will readily attest, it is what I have lived for.

Recently though, pickings have been slim. Oh, there have been a few fun cases, occasionally the invidious landlord to defeat or the intrusive municipal ordinance to repress, but by and large, things have been woefully calm of late. For a while there I was beginning to worry that society had become far too respectful of the rights of the individual to suit the likes of me.

Well, I am now here to tell you "pish tosh." I am now here to tell you that my fretting in this regard has been totally without merit.

I was beginning to worry that society had become far too respectful of the rights of the individual to suit the likes of me.

Never again will I doubt the existence of despots in this world, glory be, glory be. For I have encountered the end all and be all of evil, the Grand Poobah of Tyrants, the Big Kahuna of Malevolence, and he is mine, all mine.

If you had to hazard a guess as to his occupation, there would be only two choices really, dictator of Germany or high school principal. This particular despot is the latter, a bona fide member of a species already well known for having produced some of the stupidest forms of life on Earth and bested in that regard only by the school boards

who hire them. This guy, before he became a high school principal, had been a gym teacher. God, life can be so sweet sometimes.



As the clients, yes, clients, there were a lot of them, told me some of their stories, I was overcome by disbelief. No one could get away with some of the things this guy was up to. For instance, he annually culls out all those students beyond the age of compulsory education that he deems unfit for his school, tells them they are far too stupid and worthless to attend college and then harangues them into quitting school entirely.

"Did he then herd them into mass showers?" I asked incredulously.

He expelled students without hearing willy nilly, dragged them to magistrate's court for every minor disturbance, every one convicted, tossed around the epithet "poor white trash" as if he were saying "good morning," and, supported by the cast of Amontillado, imposed upon his charges a reign of terror that would have embarrassed Torquemada.

As I geared up for Round One in federal court, I licked my lips in anticipation of the glorious stomping just around the bend. Ah, but the Divine Miss Justice works in mysterious ways, not the least of which compels me to pause in my tale until next time. Be sure to tune in, I'll make it worth your while.

© 2000, S. Sponte, Esq.

New Member Sketches

Cheryl L. Esposito has been admitted as an associate member of the WBA. She attended Penn Hills, the University of Pittsburgh and the University of Pittsburgh School of Law. She and her husband, John J. Nebel III, make their home in Pittsburgh with their children, Deanna and Dominic.

Derek J. Ferace, son of WBA member Gene Ferace and an attorney with McGrath & Associates, P.C., has been admitted as an associate member. He attended Greensburg-Salem, the University of Pittsburgh and Duquesne University School of Law. He and his wife, Michelle, make their home in Greensburg.

C. Christopher Hasson, an associate member of the WBA, graduated from Central Cambria High School, Washington & Jefferson College and Duquesne University School of Law. Christopher now works at

Leger Ball & Scotti, P.C., in Pittsburgh. He and his wife, Mary Louisa, live in Belle Vernon with their children, Brendan and Marissa.

Robin Sue Holmes, a participating member, attended Pennsburg High School, the University of Pennsylvania, Trenton State College and Temple University School of Law. She and her husband, Richard C. Young, make their home in Greensburg with their children, Kendall and Skylar.

David A. Miller, an attorney with Amatangelo, Baisley & Rega in Donora, has been admitted as an associate member. He attended California Area Senior High School, George Mason University and the University of Virginia School of Law. He makes his home in Charleroi.


Michael A. Pacek is a law clerk with the Superior Court of Pennsylvania and an associate

member of the WBA. He is a graduate of Greensburg Central Catholic, Saint Vincent College and Duquesne University School of Law. Michael is a resident of North Huntingdon.

M. Farley Schluss has been admitted as an associate member. She graduated from North Smithfield High School, Iowa State and Duquesne University School of Law. With an office in Pittsburgh, she and her husband, Gregory, make their home in Bethel Park with their children, Kurt, Erik and Margaret.


Karen L. Stroka is a participating member working with Laurel Legal Services Inc. A graduate of Greensburg-Salem, Grove City College and Duquesne University School of Law, Karen lives in Greensburg.

Rachel Yantos, law clerk for Judge Ackerman and Judge Caruso, has been admitted as a participating member. A graduate of Derry, Saint Vincent College and the Dickinson School of Law of the Pennsylvania State University, Rachel lives in New Alexandria.



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Were You A No-Show?

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wenty-eight members of the WBA who registered to attend the Annual Dinner Meeting in April but did not, cost the association almost \$1,400 in unnecessary expenses.

Kindly consider this the next time you register for a WBA luncheon or dinner event and find yourself unable to fulfill this commitment. By giving the staff adequate notice, you are helping out the entire association.

Spotlight on David Cook



Q WHAT IS THE QUALITY YOU MOST LIKE IN AN ATTORNEY?

A Honesty and respect for self, other attorneys and the law.

Q WHAT IS YOUR FAVORITE JOURNEY?

A To Bermuda.

Q WHAT IS YOUR GREATEST REGRET?

A Lack of normal college life.

Q WHAT ADVICE WOULD YOU GIVE TO ATTORNEYS NEW TO THE PRACTICE OF LAW?

A Never stop learning.

Q WHAT IS YOUR GREATEST ACHIEVEMENT?

A Marrying Jeanne and raising three children.

Q WHAT IS YOUR IDEA OF PERFECT HAPPINESS?

A Being together with my wife, three children and nine grandchildren.

Q WHAT IS YOUR MOST TREASURED POSSESSION?

A The Combat Infantry Badge.

Q WHAT IS IT THAT YOU MOST DISLIKE?

A Arrogance.

Q WHAT IS YOUR GREATEST EXTRAVAGANCE?

A Buying books and “gadgets.”

Q WHAT TALENT WOULD YOU MOST LIKE TO HAVE?

A The ability to write well.

Q WHAT DO YOU MOST VALUE IN YOUR FRIENDS?

A Understanding.

Q WHICH LIVING PERSON DO YOU MOST ADMIRE?

A Dr. John Murray of Duquesne University.

Q WHAT IS YOUR MOTTO?

A *Illegitimi non carborundum*. Literally translated from the Latin, “Don’t let the bastards get you down.”

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2000-2001 Committee Chairs



◀ Standing (left to right): George Allen Butler, Real Estate Chair; The Honorable Irving L. Bloom, LCL Chair; Michael J. Stewart, Family Law Chair; Rabe F. Marsh III, Civil Litigation Chair; and David R. Gold, Law Library Chair. Seated (left to right): J. David Caruthers, Criminal Law Chair; The Honorable Richard E. McCormick, Jr., Bench/Bar Co-Chair; Beth L.F. Orbison, Bench/Bar Co-Chair; and James R. Silvis, Gifts & Memorial Co-Chair.



▲ Richard F. Flickinger, Finance Chair; John M. O'Connell, Jr., Gifts & Memorial Co-Chair and Planning Chair; L. Christian DeDiana, Orphans' Court Chair; and President Diane E. Murphy



▲ Standing (left to right): Edward E. Gilbert, Activities Chair; Harvey A. Zalevsky, Fee Dispute Chair; Francis R. Murrman, Membership Committee Chair; Harry F. Smail, Jr., Young Lawyers Co-Chair; and Michael G. Dailey, Elder Law Co-Chair. Seated (left to right) David S. DeRose, Building Chair; William J. McCabe, Municipal Law Chair; Kathleen Kemp, Small Firm/Solo Practice Chair; and Kathleen Helling, Elder Law Co-Chair.

On The Move ...

ABBY DEBLASSIO has moved to new offices located at 101 North Main Street, Suite 201, Greensburg; phone (724) 832-9440; fax (724) 832-9443.

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Not shown: John M Noble, ADR Chair; Eric E. Bononi, Business Law Chair; Marnie E. Abraham, By-Laws Chair; Edward C. Flynn, Employment & Labor Chair; H. Nevin Wollam, Historical Chair; John M. Campfield, Info Tech Chair; William S. Ferraro, Info Tech Co-Chair; Susan N. Williams, Lawyer Referral Chair; Charles C. Mason, Jr., Legislative Chair; David J. Millstein, Publications (sidebar) Chair; Timothy S. Martin, Publications (WLJ) Chair; H. Keith Hauger, Unauthorized Practice of Law Chair; and Lee R. Demosky, Young Lawyers Chair.



Actions of the Board

APRIL BOARD RETREAT

- Agreed to mail pictorial directories not yet picked up.
- Reported that partnering with PBI has been implemented with PBI scheduling videotape seminars at bar headquarters.
- Agreed to circulate membership survey results to all committee chairs and planning committee members.
- Endorsed the establishment of a vision group to study the changing practice of law.
- Authorized expenditure to host a reception for Commonwealth Court to replace the Summer Quarterly Meeting.
- Directed ADR Committee to continue their work in educating and promoting mediation and arbitration.
- Adopted policy to restructure committees to appoint chairs and vice chairs for two year terms.
- Adopted job descriptions for committee members. Members should appear and participate at committee meetings and communicate availability for meetings. Post job description on annual committee sign-up letter.
- Agreed to hold committee luncheon meeting in May to outline assignments, explain changes in committee structure, and discuss committee members involvement.
- Approved by-law change which will give the past-president voting privileges.
- Approved purchase of photo of the current Court of Common Pleas with placement in the bar headquarters.
- Approved visit from the American Bar Association PAR

program to review the Lawyer Referral Service program.

- Approved review of the marketing strategy to look at preserving the practice of law in Westmoreland County.
- Reported that the Academy of Trial Lawyers agreed to underwrite \$1,000 to benefit the mock trial program.
- Authorized Pres., Vice Pres., Pres.-Elect to make decisions between board meeting.

MAY 16, 2000

- Accepted Karen Stroka as participating member.
- Reported that bar association's general fund will be merged with law journal funds beginning in June.
- Approved \$2,000 contribution to the Pennsylvania Bar Association Political Action Committee.
- Reviewed bid for upgrading kitchen on second floor and agreed to secure a second bid.
- Discussed the large number of bar members who registered but did not attend the annual meet-

ing and agreed to publish notice in the next side bar that points out the magnitude of this expense and the waste of bar association funds.

- Agreed to investigate possible increase in court-appointed fees with the civil lit committee and the family law committee involved with this matter.
- Agreed to recognize Bill Caruthers (Sr.) for 50 years' service as an attorney.
- Agreed to partner with the Futures Commission and St. Vincent to hold town meeting to discuss with the public the findings of that commission.
- Discussed a proposal for establishing a videoconferencing center at the WBA headquarters.
- Agreed to send a letter written by President Murphy to all Commonwealth Court judges inviting them to reception on the 6th of June.
- Approved plan for committee restructuring as outlined at board retreat.
- Approved vote on by-law change for Fall Quarterly Meeting.

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foundation focus



Mock Trial Scholarships Awarded

The Westmoreland Bar Foundation recently awarded two scholarships to participants of the county-wide Mock Trial Competition. The Mock Trial Competition is a contest for high school students to compete in simulated legal trials. Participating students conduct a trial as lawyers and witnesses

attending Virginia Tech in the fall and will pursue a degree in engineering. Noah is the son of Patricia and Nicholas Pappas.

Carlee Amber D'Angelo recently graduated from Greensburg Central Catholic High School. She will attend Gannon College in the fall and will pursue a degree in advertising/communications. Carlee is the daughter of Carmine and Joyce D'Angelo and resides in Clarksburg.

"I would like to thank you all again for giving me the honor of

the Mock Trial award," said Carlee. "The award means a great deal to me personally, and also to my school."



▲ Carlee D'Angelo

Explorers Post Visits Washington

On April 10 and 11, 2000, the Law Explorers Post of the Westmoreland Bar Association took a field trip to Washington, D.C. The Explorers Post, chaired by Jim Wells, is open to high school students interested in careers in the legal field. Jim and his wife, Dawn, served as chaperones on the trip.

The first day, the group toured the United States Capitol and observed a session in the Senate. They also visited the Jefferson Memorial, Washington Monument, Lincoln Memorial and Vietnam Veterans Memorial.

On the second day of the trip, the group toured the United States Supreme Court, Ford's Theater and the Holocaust Museum.

"The students seemed to enjoy visiting historical places and learning more about their government," Jim said. "However, as a result of this trip, Dawn and I have agreed not to have children."



▲ Jim Wells



▲ Noah Pappas

before real-life judges and "juries" and winning teams proceed to regional, state and national playoffs.

Noah Pappas, a 2000 graduate of Greensburg Salem Senior High School, was a member of the winning Westmoreland team. He will be

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Since 1991, the Westmoreland Bar Foundation has raised thousands of dollars to assist the poor, disabled, elderly and children in our community. Through the **Special Way to Remember** program, you can honor a colleague or loved one with a contribution to the Foundation. Your gift will help serve the needs of our own who have nowhere else to turn for legal services.

If you would like to make a gift to the Foundation as a meaningful expression of respect, please make check payable to the Westmoreland Bar Foundation and mail to WBA Headquarters, 129 N. Pennsylvania Ave., Greensburg, PA 15601.



WBF Hosts Chamber BASH at Courthouse



▲
"Hmmm ... I wonder if I left the iron on at home ..."



▲
*"Get back!
Get back!"*

▲
*"I told you,
lady—
down the
hall and to
the left!"*



▲
*For the
uninitiated,
Janie
Belden
demon-
strates the
technique
for greeting
a judge.*

WBA Member Receives Zone 6 Pro Bono Award at PBA Annual Meeting



▲
David J. Millstein (fourth from left) is joined by Westmoreland Bar Association members and staff at the annual Pennsylvania Bar Association meeting where he received the Zone 6 Pro Bono Award. Shown, from left to right, are: The Honorable Gary P. Caruso, H. Reginald Belden, Jr., Executive Director Diane Krivoniak, David J. Millstein, Pro Bono Coordinator Iva Munk, Milton V. Munk, Jr., President Diane E. Murphy and Robert I. Johnston.

Jury Trial Verdicts *continued from page 6*

report, which did not contain the recommendation. The defendant admitted negligence in failing to read the entire report, but denied liability in that no masses were palpated in the breast at that time; a six-month follow-up mammogram would not have required a biopsy since the calcifications had not changed; and the lesion would have been too small to have been perceived by repeat mammography even if it had been performed.

Plaintiff's Counsel: Harry S. Cohen, Harry S. Cohen & Associates, Pgh.

Counsel for Defendant Beth A. Maxwell, M.D.: Christopher C. Rulis, O'Brien, Rulis & Bochicchio, LLC, Pgh.

Counsel for Defendant GYNO Associates, Inc.: Mark R. Hamilton, Zimmer Kunz Professional Corporation, Pgh.

Trial Judge: The Hon. Daniel J. Ackerman

Result: Verdict for Defendants.

JOANN VARSEL V. CHARLES E. HUDSON NO. 1012 OF 1997

Cause of Action: Negligence

Plaintiff was mowing defendant's lawn with defendant's lawnmower. While operating the mower, the side discharge area became clogged with grass. As plaintiff tried to remove the clumps of grass, the mower lurched backwards, causing the blades of the mower to strike her fingers. Injuries included partial amputation of the third and fourth fingers of the right hand. Plaintiff alleged that defendant was negligent in disconnecting, altering or removing safety equipment on the lawnmower, and in failing to warn plaintiff of the same.

The defendant maintained that, at the time of the accident, the mower was in the complete, lawful control and use of the plaintiff. In *New Matter*, the defendant raises contributory/comparative negligence, assumption of the risk, and

that plaintiff's actions were not reasonably foreseeable.

Plaintiff's Counsel: Michael D. Ferguson, Ferguson Law Associates, Latrobe.

Defendant's Counsel: Richard F. Andracki, The Law Offices of Richard F. Andracki, Pgh.

Trial Judge: The Hon. Charles H. Loughran, President Judge

Result: Verdict for Defendant.

NANCY P. OTTO V. GIANT EAGLE, INC., A PENNSYLVANIA CORPORATION, A/K/A GIANT EAGLE MARKETS, INC., A PENNSYLVANIA CORPORATION NO. 2435 OF 1998

Cause of Action:

Negligence—Slip and Fall

As the plaintiff was leaving defendant's store, she tripped over a projection or platform at the base of a display counter protruding into the aisle leading to the exit. Injuries alleged were a fractured left wrist, a fracture of the left distal radius, severe bruising of her entire body and that her vision and hearing had been adversely affected. Plaintiff claimed that defendant was negligent, *inter alia*, in failing to maintain its premises in a reasonably safe condition for customers and in failing to post warning signs.

The defendant claimed that it acted with reasonable, ordinary and prudent care and skill with respect to the inspection, operation and maintenance of areas under its control. The defendant also

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LAW SPEAK

After all is said and done, we cannot deny the fact that a judge is almost of necessity surrounded by people who keep telling him what a wonderful fellow he is. And if he once begins to believe it, he is a lost soul.

—Harold R. Medina, *Some Reflections on the Judicial Function: A Personal Viewpoint*, 38 A.B.A.J. 107, 108 (1952)

asserted that negligent acts of third parties/entities not affiliated with the defendant may have constituted an intervening/superseding cause of plaintiff's injuries.

Plaintiff's Counsel: Christ. C. Walthour, Jr., Walthour and Garland, Gbg.

Defendant's Counsel: James F. Rosenberg, Marcus & Shapira, LLP, Pgh.

Trial Judge: The Hon. Charles H. Loughran, President Judge

Result: Molded verdict for Plaintiff in the amount of \$600. Causal negligence apportioned 50/50 between the parties.

MARCH/APRIL TRIAL TERM

Of the 125 cases on the March/April 2000 Civil Division trial lists, 49 settled; 29 were continued; 1 was discontinued; 3 moved to Arbitration; 1 will be non-jury; summary judgment was entered in 1; non-suit was entered in 1; and 12 were tried to a verdict.

STEVEN B. BUSH V. ROBERT J. KEY AND R.J.K., INC., T/D/B/A R.J. KEY RACING STABLE NO. 7991 OF 1996

Cause of Action: Breach of Oral Contract

Defendant engaged the services of the plaintiff to train his race horses. Plaintiff contended that the oral contract, as well as industry standard regarding compensation for trainers, included a weekly salary, free housing and 5% of the gross annual purse earnings. Although defendant provided plaintiff with a weekly salary and free housing, plaintiff maintained that he never received 5% of the gross purse for 1992 as per their oral agreement.

Defendant denied that plaintiff was entitled to a percentage of the gross purse earnings of any horses he trained, and denied that receiving a percentage is standard in the industry when the trainer is a full-time salaried employee. Defendant alleged that a written contract or assignment was entered into, whereby plaintiff assigned all training fees withheld by race tracks to defendant, and counterclaimed for commission checks received directly from out-of-state racetrack and retained by plaintiff.

Plaintiff's Counsel: Mark J. Homyak, The Homyak Law Firm, Pgh.

Defendant's Counsel: John M. O'Connell, Jr., O'Connell & Silvis, Gbg.

Trial Judge: The Hon. Daniel J. Ackerman

Result: Verdict for Plaintiff in the amount of \$44,086.30, and for Plaintiff/Counterclaim Defendant on the counterclaim.

MICHAEL DEDO, AN INDIVIDUAL V. DISALVO'S INC., A CORPORATION, T/D/B/A DISALVO'S STATION NO. 2477 OF 1997

Cause of Action: Unpaid Wages—Arbitration Appeal

Plaintiff was employed by defendant as a line cook. Plaintiff brought this action to recover unpaid overtime wages from March, 1994, through his termination from employment in September, 1995. Plaintiff also requested liquidated damages and attorney's fees.

The defendant claimed that plaintiff was fairly and fully compensated for the work performed, none of which consisted of overtime. In New Matter, defendant raised the affirmative defenses of the statute of limitations; Title 29, Part 542 of the Code of Federal Regulations; and the Minimum Wage Act of 1968.

Plaintiff's Counsel: Bernard T. McArdle, Stewart, McCormick, McArdle & Sorice, Gbg.

Defendant's Counsel: John P. Smarto, Gbg.

Trial Judge: The Hon. Daniel J. Ackerman

Result: Verdict for Defendant.

continued on page 16

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Jury Trial Verdicts *continued from page 15*

SONJA VON WEILAND V. VIVEK SRIVASTAVA
NO. 1888 OF 1998

*Cause of Action: Negligence—
Motor Vehicle Accident*

Plaintiff alleged that defendant ran a stop sign and struck Plaintiff's automobile broadside on the right passenger side, injuring Plaintiff, a guest passenger. Injuries included an acute cervical antrapezius strain and post traumatic vertigo.

In New Matter, defendant contended that the plaintiff failed to allege an election of full tort under automobile insurance policy, precluding her from maintaining an action for non-economic loss. Defendant also relied upon plaintiff's receipt of first-party benefits or worker's compensation payments to preclude recovery.

Plaintiff's Counsel: Susan N. Williams, McDonald, Moore,

Mason & Snyder, Latrobe.
Defendant's Counsel: Scott O. Mears, Jr., Mears and Smith, P.C., Gbg.

Trial Judge: The Hon. Daniel J. Ackerman

Result: Verdict for Plaintiff in the amount of \$10,000.

**JOANNE T. SMAIL,
EXECUTRIX OF THE ESTATE OF
WILLIAM R. SMAIL, DECEASED
V. JILL M. BERTANI**
NO. 6898 OF 1996

*Cause of Action: Negligence—
Motor Vehicle Accident*

The Plaintiff's decedent was traveling west, while defendant was heading east. The complaint alleged that defendant lost control of her car, crossed the center line and impacted plaintiff's decedent's vehicle, resulting in his death.

In Answer and New Matter, defendant contended that plain-

tiff's decedent crossed the center line, proceeded into defendant's lane of travel and impacted head-on with her vehicle. Defendant asserted that the Pennsylvania Motor Vehicle Financial Responsibility Act (MVFRL) operated as a total or partial bar to plaintiff's recovery, and raised the Comparative Negligence Act.

Plaintiff's Counsel: Robert T. Kane, Munhall.

Defendant's Counsel: Kenneth S. Mroz, Dickie, McCamey & Chilcote, P.C., Pgh.

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict for Defendant.

**CHERYL CLINE AND JIM CLINE
V. GARY LASCEK**
NO. 9414 OF 1994

*Cause of Action: Negligence—
Motor Vehicle Accident—
Loss of Consortium*

On December 2, 1992, plaintiff drove onto the rear entrance of the Riverside Plaza parking lot in New Kensington. After stopping at a stop sign and while turning left into the parking area, her vehicle was struck by the defendant's. Plaintiff alleged, inter alia, that defendant was negligent in driving at an excessive speed, and by operating his vehicle at night without lights. Injuries included severe chest pain, headaches, injuries to the upper back and numbness in the left arm and hand. Her husband claimed loss of consortium.

In New Matter, defendant maintained that he operated his vehicle in a careful and prudent manner. The affirmative defenses of contributory/comparative negligence and assumption of the risk were raised. Defendant contended that plaintiff's recovery was precluded by receipt of first-party benefits or worker's compensation payments.

Camtiti Camera: Inn of Court Dinner



◀ "It's Brut. Why do you ask?"



▲ "It's true, I'm a judge. But you can call me 'Snookums.'"



◀ "Looks real to me, John."

Plaintiff's Counsel: Michael C. Pribanic, Pribanic & Pribanic, P.C., Pgh.

Defendant's Counsel: Kenneth Ficerai, Mears and Smith, P.C., Gbg.

Trial Judge: The Hon. Gary P. Caruso

Result: Verdict for Defendants.

**ELIZABETH M. CAMBRUZZI AND ELIZABETH L. CAMBRUZZI V. DAVID B. WHITE
NO. 676 OF 1999**

Cause of Action: Negligence—Motor Vehicle Accident

This collision occurred at the intersection of State Route 3020 (Barnes Lake Road) and State Route 30 in North Huntingdon Township. Plaintiffs' vehicle was stopped at a stop sign waiting to make a right turn onto Route 30 East when defendant's vehicle struck the rear of the plaintiffs' vehicle. The complaint alleged that defendant was negligent, inter alia, in failing to apply his brakes properly. Both plaintiffs alleged traumatic injuries to the general area of the neck, spine, head and back.

The defendant raised the affirmative defenses of contributory/ comparative negligence and assumption of the risk. Defendant also raised a sudden emergency, in that his brakes failed at the time of the collision.

Plaintiffs' Counsel: Jeffrey D. Monzo, Belden, Belden, Persin & Johnston, Gbg.

Defendant's Counsel: Maria Spina Altobelli, Jacobs & Saba, Gbg.

Trial Judge: The Hon. Gary P. Caruso

Result: Verdict for Plaintiff in the amount of \$5,000.

**ERIC A. GALLEY V. LORI L. DRYLIE
NO. 3654 OF 1997**

Cause of Action: Negligence—Motor Vehicle Accident

On July 6, 1995, plaintiff was operating his motorcycle in an easterly direction on T-819 in Hempfield Township, while defendant was heading west. The complaint alleged that plaintiff was making a left turn when defendant caused her vehicle to strike his motorcycle on the right side. Injuries included fractured right ankle and foot; all toes fractured on right foot; deep lacerations on right and left legs; open wound on right calf; and neck and back injuries.

In her Answer, defendant averred that the collision was caused by plaintiff making a left turn immediately in the path of defendant's oncoming vehicle. Defendant pled the affirmative defenses of a Joint Tortfeasor Release executed by plaintiff's passenger, as well as the provisions of the MVFRL.

Plaintiff's Counsel: Bruce W. Blissman, East McKeesport.

Defendant's Counsel: Scott E. Becker, Law Office of John A. Bonacci, Pgh.

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict for Plaintiff in the amount of \$10,000. Causal negligence attributed 50/50 between the parties.

**BEATRICE E. PORTER AND CHRISTOPHER J. PORTER, A MINOR, BY HIS PARENT AND NATURAL GUARDIAN, BEATRICE E. PORTER, AND BEATRICE E. PORTER, IN HER OWN RIGHT V. JASON MCGEE
NO. 4271 OF 1996**

Cause of Action: Negligence—Motor Vehicle Accident—Arbitration Appeal

On October 11, 1994, defendant was traveling behind plaintiffs' vehicle, headed south on Freeport Road in Arnold. The complaint alleged that defendant's vehicle collided with the rear of plaintiffs' vehicle. Plaintiffs claimed injuries to the neck and back, and that muscles, ligaments, tissues, tendons and nerves were torn and dislocated. Plaintiff Beatrice Porter also claimed injuries to the left upper extremity and left hand.

Defendant raised the affirmative defense of contributory/comparative negligence in that plaintiff brought her vehicle to a quick stop, which caused the collision. Defendant also raised the MVFRL, and the amendments known as Act 6; assumption of the risk; and the statute of limitations. The minor's claim was settled prior to trial.

continued on page 18

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Jury Trial Verdicts *continued from page 17*

Plaintiffs' Counsel: John E. Quinn, Mark J. Reiter, Evans, Portnoy & Quinn, Pgh.

Defendant's Counsel: John C. Donaher, III, Jacobs & Saba, Gbg.

Trial Judge: The Hon. Charles H. Loughran, President Judge

Result: Verdict for Defendant.

ALLEN DODD V. TAWNYIA DODD NO. 3879 OF 1998

Cause of Action: Negligence

In Summer of 1996, plaintiff was aligning a trailer hitch, attempting to connect a camper to a tow vehicle operated by defendant. The complaint alleged that defendant backed up her vehicle, trapping and crushing plaintiff's left index finger, and causing severe injuries to the same.

The defendant asserted the affirmative defenses of contributory/comparative negligence; assump-

tion of the risk; and the MVFRL and Act 6 amendments.

Plaintiff's Counsel: Richard H. Galloway, Dennis B. Rafferty, QuatriniRaffertyGalloway, P.C., Gbg.

Defendant's Counsel: Kim Ross Houser, Mears and Smith, P.C., Gbg.

Trial Judge: The Hon. Charles H. Loughran, President Judge

Result: Verdict for Defendant. 51% causal negligence attributed to plaintiff.

ALICE THIEM V. DAVID P. KUNKLE, AS EXECUTOR/ PERSONAL REPRESENTATIVE OF THE ESTATE OF JOSEPH PAUL KUNKLE, A/K/A PAUL J. KUNKLE, DECEASED NO. 2480 OF 1998

Cause of Action: Negligence—
Motor Vehicle Accident—
Arbitration Appeal

On May 10, 1996, plaintiff was traveling east on Traffic Route 414 (Pinewood Drive) in Sewickley Township. The complaint alleged that defendant's automobile suddenly and unexpectedly struck the left driver's side of plaintiff's vehicle. Injuries included headaches; neck, shoulder and arm pain; left shoulder contusions; and aggravation of herniated disc.

The defendant raises, in New Matter, the affirmative defenses of contributory/comparative negligence; assumption of the risk; the MVFRL, as well as Act 6; the Dead Man's Act; and the statute of limitations.

Plaintiff's Counsel: Jerome L. Tierney, North Huntingdon.

Defendant's Counsel: John C. Donaher, III, Jacobs & Saba, Gbg.

Trial Judge: The Hon. Charles H. Loughran, President Judge

Result: Verdict for Plaintiffs in the amount of \$10,000 for economic loss.

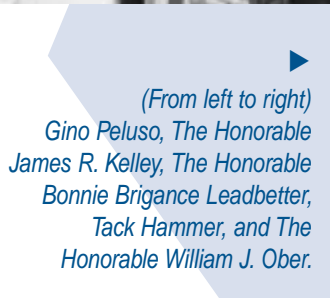
WBA Welcomes Commonwealth Court *continued from page 1*

acquaint the general population with what it is that the Commonwealth Court is and what it is that we do," said President Judge Joseph T. Doyle. "This 30th anniversary is a celebration and we want to reach out to the public through a special session."

The Commonwealth Court considers appeals from the Court of Common Pleas for violations of rules and regulations of state and local agencies as well as direct appeals from state administrative agency determinations. The 11 cases heard included arguments on whether keeping junked vehicles on a property constitutes a nuisance in and of itself, on the rejection by the Liquor Control Board of a catering club liquor license for



(From left to right) Commonwealth Court Judge Bernard L. McGinley, President Judge Charles H. Loughran, and Commonwealth Court Judge Emil E. Narick.



(From left to right) Gino Peluso, The Honorable James R. Kelley, The Honorable Bonnie Brigance Leadbetter, Tack Hammer, and The Honorable William J. Ober.

a volunteer fire company and on a residency requirement for employ-

ees of the Fort Cherry School District, Washington County.

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Designed to serve the existing membership, provide useful information to the general public and attract future members, www.westbar.org has been visited over 10,000 times by people in at least 27 countries, including the United States, Japan, Saudi Arabia, Australia and Canada, since its inception last February.

Several months ago the site was registered with a number of search engines so nonmembers could find www.westbar.org more easily. Here is an overview of what you will find when you log on.

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Clicking on the "Attorney Search" button accesses a database containing information on every WBA member. Search by name, city or area of practice when you need to contact an attorney. If you haven't submitted your information for this database, please fill out the form on this page and return it to the Bar office.

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In order to enter this section of the site, you must use your user name and password. If you have forgotten either, call the Bar office for assistance.

This part of the site contains a list of current committee assign-

ments, an application for the Lawyer Referral Service (LRS), information about the Speakers Bureau and Lawyers Assistance programs, an activities calendar and a message board for members to communicate with other members.

PUBLIC SERVICES

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Bureau, and Westmoreland Bar Foundation. The latest CLE schedule and activities calendar can also be accessed by the general public.

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Advertising rates and copy deadlines for the *Westmoreland Law Journal* and *the sidebar* can be found in this area of the Web site.

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In the near future, we hope to include even more information on our Web site. If you have suggestions on how to make the Web site better, please drop us a note by fax (724.834.6855), e-mail (wba@westol.com), or regular mail (129 N. Pennsylvania Ave., Greensburg, PA 15601).

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TOTAL VISITS	10,011
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AVERAGE REQUESTS/VISIT	6.0
AVERAGE PAGES/VISIT	1.6
AVERAGE DAILY VISITS	19

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CALENDAR of Events

JULY

- 12 Membership—Noon
- 18 Family Law—Noon
- 18 Info Tech—Noon
- 18 Board Meeting—4 p.m.
- 19 Young Lawyers—Noon
- 20 Elder Law & Orphans’
Court—Noon
- 26 Small Firm/Solo—Noon
- 28 Summer Golf Outing at
Cherry Creek Golf Course,
Youngwood—1 p.m.
- 30 WBA Family Picnic at
Idlewild Park

AUGUST

- 9 Membership—Noon
- 15 Family Law—Noon
- 15 Board Meeting—4 p.m.
- 16 Young Lawyers—Noon
- 17 Elder Law & Orphans’
Court—Noon

TOP TEN

Top Ten Most Common Phrases Used With Clients

1. You would have known if you'd have asked her age.
2. No, you have to wait for the divorce decree to be final.
3. Sorry, that would make me an accessory.
4. It's unlisted, why do you ask?
5. No, I wouldn't accept that form of payment even if you were better looking.
6. 12 to 23, if you're lucky.
7. I don't care if you never heard of my law school, that's how much I charge.
8. No, you can't deduct the cost of his birthday present from your next support check.
9. I know you don't want to, but going back to work might actually be good for you.
10. Yes, I know, but you still have to pay your taxes.



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