



A Veterans Day Salute: We Remember and Give Thanks

One year after World War I drew to a close, President Woodrow Wilson declared November 11, 1919, as Armistice Day—a national holiday to celebrate victory in “the war to end all wars.” Yet the dream of world peace was soon shattered as first World War II, then the Korean Conflict called America’s troops back to the battlefield. In 1954, Armistice Day was renamed “Veterans Day,” as a tribute to all the men and women who have defended the cause of freedom around the world.

This Veterans Day, the WBA pays tribute to our members who have served their country, both in times of peace and of war. We thank them for sharing their stories with us, and for serving the common good.

GEORGE E. BERRY, JR.

December 8, 1941, I turned in my books and quit law school in the second quarter of my second year and enlisted in the U.S. Navy as a Yeoman 3rd Class.

I was assigned to the Personnel Office of the Office of Naval Intelligence, in Washington, D.C., from February to August of 1942, and then the U.S. Maritime Training Station, in Sheepshead Bay, N.Y., from September 1942 to July 1943, where I was promoted to Lieutenant (junior grade). I then spent the next

two months at Officer Training School, Fort Schuyler, Bronx, N.Y.

In October 1943, I reported to the Amphibious Training Bases at Camp Bradford, Norfolk, and Solomons, Md., and by December, was recommended to be an Executive Officer on an LST (Landing Ship Tanks).

A nucleus crew picked up our ship, LST 499, at Evansville, Ind., in January of 1944, and we sailed down the Ohio and Mississippi Rivers to New Orleans, La. January to March of 1944 was spent training and outfitting the ship in New Orleans, Panama City, Fla., Brooklyn, N.Y., and Boston, Mass. On March 14, 1944, we set out from Halifax, N.S., and crossed the Atlantic to Firth of Clyde, Scotland, in a 70-ship convoy.

During Exercise Tiger, a practice invasion at Slapton Sands on the south coast of England in April 1944, LST 499, one of 8 LSTs in a convoy escorted by one escort vessel, was attacked by German E-Boats. Three LSTs were torpedoed, and two sank, with a loss of over 800 Navy and Army personnel, and equipment.

LST 499 arrived at Utah Beach D-Day morning, June 6, 1944. We spent two days unloading, and on June 8, while on our way to a staging area to return to England, LST 499 hit an acoustic mine, and sank, with the loss of one officer and twelve

enlisted men. I was awarded the Purple Heart.

June to August of 1944 was spent in survivor camps until I was assigned to and reported aboard LST 312 in Manchester, England. LST 312 had been hit by a buzz bomb in London.

I was promoted to Lieutenant in October 1944. On December 12, 1944, we left Plymouth, England, and crossed the Atlantic Ocean in a convoy, arriving in New York City in bitter cold weather and a blinding snowstorm on January 7, 1945. During the crossing, the convoy was attacked by a German submarine. DE escort torpedoed as it passed astern LST 312 dropping depth charges 400 miles northeast of the Azores.

In April 1945, I was assigned to LST 309 and sailed from Mobile, Ala., through the Panama Canal. We spent a month in Hawaii for ship repairs, and arrived in the Philippines Islands on August 13, 1945, two days before the war ended.

From September 29, 1945, to October 19, 1945, I crossed the



George E. Berry, Jr.

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President's Message

Mea Culpa, Mea Culpa, Mea Maxima Culpa

by Timothy J. Geary, Esq.

I attended the Planning Committee Retreat in late September at Dick Galloway's digs at Kent Island, Md. Dick is always a gracious host and part of the off-time at the retreat involves



▲ *Cap'n Tim isn't happy about running aground.*

an outing on Dick's sailboat. I have always enjoyed sailing and Dick usually humors me by allowing me to take the helm. Imagine my chagrin when, although we were in the marked channel, the depth gauge suddenly went from 11.2 feet to 4.2 feet. This was not good on a sailboat with a 5-foot keel. We were aground!

This was embarrassing enough but when the towboat finally arrived, piloted by Dick's brother, Bob, my chagrin shifted to a deep depression when I saw his passenger was ... Dan Joseph, he of Deep Creek infamy!

My first thought was "Why me?" My second thought was "Where can I hide?" However it was too late! I had seen gloating before but until then I had never actually heard it. It is, for the uninformed, sort of a diabolical chortle.

By now I suppose that most of you realize that the message this time is about confession. I admit that my ship captaincy was short-lived and obviously nothing to write home about but how, you ask, does that have anything to do with our image as lawyers? I hope that by now most of

you are aware that my goal for this year is make all of us think about how we appear to our clients and to the public generally. My general message should be clear to those of you who have not spent your formative years in a broom closet.

The question is, "Why do members of our Association refer cases to out-of-county firms?" Oh sure, I realize that some of you have friends that go back a long way but I am not talking about that kind of relationship. I am thinking about the purely economic ones. Shucks, I have done it myself on occasion, hence my "mea culpa." Surely you didn't think the mea culpa had anything to do with my sailing? After all I was in the Air Force, not the Navy.

In any case, when we refer out of county, are we not cutting our own collective throats? This is our Bar Association, after all. Even if I can't or don't want to handle a particular type of case, I shouldn't spite my neighbor and send it away from our Association. If I do, what does this say about my perception of my neighbor or his or her abilities? We pay a lot of money every year in dues to our Association and if we are concerned about its image and the collective image of its members we should keep our referrals at home.

You are probably saying to yourself, "Well, this is all fine, but sometimes I have to make referrals in a hurry. This profession of ours involves adversity and bad things happen to our clients when we delay." Fortunately, I have an answer to that problem. The Board of Directors is fine-tuning our Website to include a lawyer-to-lawyer section similar to the business-to-business yellow pages so that each of us can list those areas of law which we do best and would welcome referrals.

The Westmoreland Bar Association has almost 475 members so it would be impossible for me to list individual member lawyers and their special areas of practice here. However, having said that, and especially in light of the content of this article, I would be remiss if I failed to mention that my dear friend, Dan Joseph, is an excellent medical malpractice attorney who would welcome your referrals.

Charity begins at home!



▲ *Cap'n Dan to the rescue.*

Law Library Notes

by Betty Ward, Law Librarian

WESTLAW

The Law Library is proud to announce that the Westlaw National Gold package will be available for public use (free of charge) on Law Library computers. This is their largest package including cases and statutes from all 50 states and all federal courts, law reviews, jury verdicts, analytical materials and so much more. Look for more information at the Circulation Desk.

JENKINS MEMBERSHIP

The Law Library has an “association” membership with Jenkins Law Library in Philadelphia. This allows our users access to electronic information available to Jenkins Law Library members, such as: the Pennsylvania “Legislative History” database; *LegalTrac*, an index to 900 legal publications; *Wilson Index to Legal Periodicals*, an index to more than 615

legal periodicals; and *Hein On Line*, full text access to original articles from a collection of the earliest legal periodicals and other legal classics.

NEW COMPUTERS

Two new computers have recently been added to the Law Library’s Computer Center. Three computers are now available for accessing legal information from the Internet and another for accessing CD-ROM information.

LOCAL ORDINANCES

Greensburg, Murrysville and Rostraver Township ordinances are available online at: www.generalcode.com/webcode2.html#penn



SESSION LAWS

The Pennsylvania Legislative Reference Bureau recently announced plans to digitize our State Session Laws.

This project will include The Statutes at Large of Pa. (1682-1817); Smith’s Laws (1700-1829); and the Laws of Pennsylvania (1700-Present). The first installment is expected to be available online this summer.

THANKS

Thank you to Diane Mitinger for donating law books and two Westmoreland Bar Association photos (1971 and 1985) to the Law Library. The items were donated in memory of her late husband, Joseph Mitinger.

TEOMA

A new website to try—TEOMA (www.teoma.com). If you like using Google, you’ll like this one—cuts through all the clutter.

REMINDER

The Law Library is open to the public until 7:30 on Wednesday evenings. This is a great time for students, paralegals and attorneys to use the full resources of the Law Library, including books from the reference room and our computer resources.

For further information, please contact the Law Librarian, Betty Ward, at (724) 830-3267 or e-mail: eward@co.westmoreland.pa.us.

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ALAN K. BERK

Served as a Lieutenant in the U.S. Air Force from 1956–1957

THE HON. ALFRED B. BELL

Specialist 5, U.S. Army (Reserves), 1969–1975

LEO J. CIARAMITARO

I am a Captain in the U.S. Army. My Pennsylvania Army National Guard unit, 1st Battalion, 103d Armor Regiment was mobilized in support of Operation Enduring Freedom. I am currently serving as the Officer in Charge of the Force Protection Compliance Team of Task Force Keystone. Task Force Keystone is the Headquarters for the entire force that was mobilized from Pennsylvania Army National Guard units to support the operation here in the Central European region.

RICHARD F. FLICKINGER

I served in the U.S. Army for two years as a 1st Lieutenant with the 199th Infantry Brigade (Separate) (Light). One of my extra duties was that of Brigade Legal Officer. My regular assignment was that of Brigade Ammunition Officer (one of two in the entire U.S. Army, but that isn't nearly as impressive as it may seem). I also served as a Captain with the 1st Logistical Command for the last half of my year in South Vietnam. If I had it to do over, I would do it exactly as I did the first time.

ROBERT WM. GARLAND

I served in the U.S. Air Force from June 26, 1942, until October 27, 1945, during World War II as a Combat Navigator with the rank of First Lieutenant and was awarded the Air Medal with four Oak-Leaf Clusters, the Presidential Unit Citation, and the European-African Service Ribbon with seven campaign Battle Stars.

I also served in the Air Force Reserve from September 26, 1945, until January 11, 1956.

MICHAEL KOLODZIEJCZAK

Major, U.S. Marine Corps, Active and Reserves, 1980–1992

PAUL KUNTZ

Lieutenant, U.S. Navy, 1968–1979

Veterans Day Salute *continued from page 1*

Pacific Ocean from San Pedro Bay to San Francisco by Navy transport and returned to Greensburg by train. On November 30, 1945, I was released to inactive duty.

DAVID W. COOK

I graduated from Greensburg High School in 1937, worked a year and then had a year at Saint Vincent College. In 1939 I had joined Company I of the 110th Infantry of the 28th Division Pennsylvania National Guard. In February of 1941, ten months before Pearl Harbor, the Division was Federalized. I then attended OCS at Ft. Benning, Ga., was commissioned as Second Lieutenant and together with my brother, Joe, we were assigned to the Cadre of the 10th Armored Division. We served with that Division in Europe until I was wounded when we were taking Trier in Germany. I went through the usual evacuation and after a short stay in England, was moved back to the States. I was in Army hospitals for the next two and a half years and was retired for physical disability as a Captain. My brother, Joe, was killed in action about a month and a half after I was wounded.

Between operations, I had much time for reading and realized I wanted further education. Upon discharge I attended the University of Pittsburgh for the next one and a half years taking a double schedule and summer school so that I completed my second and third years of college. I was admitted to Pitt Law School based upon that education, my Army experience, and courses taken in the Army. Again, I attended regular session and summer school and graduated in two and a half years.

Having been married and with children in the interim, I came back to Greensburg and practiced there until my retirement.

As far as the military is concerned, the award I value most is the Combat Infantry Badge, along with the Silver Star, Bronze Star, Purple Heart and campaign ribbons.

The military taught me to approach any problem objectively and see it through.

ANTHONY W. DeBERNARDO, JR.

I was drafted into the United States Army in 1965 at age 20, during the height of the Vietnam buildup. At the completion of basic training, I was chosen the outstanding recruit. As a result, I was admitted

into Infantry Officer Candidate School at Fort Benning, Ga., and commissioned a Second Lieutenant in the United States Army Infantry in January of 1967.

I then served a year as the public information officer of the Third Infantry (the Old Guard) at Fort Myer, Va. The Old Guard is the Army's ceremonial unit in

Washington, D.C., whose responsibilities include guarding the tomb of the Unknown Soldier. My duties included briefing and escorting members of the media, dignitaries and Medal of Honor recipients in conjunction with various ceremonies at the White House and Arlington Cemetery. From there I was accepted into Army Ranger School and was awarded the Army Ranger Beret with Tab. I was then assigned to Vietnam, serving as an infantry platoon leader with the 25th Infantry Division engaging in numerous search and destroy operations and night ambushes. In Vietnam, I was promoted to First Lieutenant and given command of a combat infantry



▲ Anthony W. DeBernardo, Jr.

company that operated in the vicinity of the Cambodian border. I served in that capacity until receiving a gunshot wound of the left tibia. Among my awards and decorations, I am most proud of the Combat Infantryman's Badge and achieving Army Ranger status.

During law school (1971–1974), I served with the National Guard as a Captain and commanding officer of a Combat Support Company along Donahue Road in Greensburg.

After graduating law school and passing the Bar, I was accepted into the Army Judge Advocate General's Corps and assigned back to the 25th Infantry Division which was now in Schofield Barracks, Hawaii. I served as a Captain initially acting as defense counsel, participating in numerous courts-martial, being later assigned as an Army prosecutor and the 25th Infantry Division's Chief of Military Justice.

Did my army service, in general, and combat experiences in particular make me a better lawyer? Hell, I don't know! But it sure has given me a better perspective on what is important in life and what isn't.

LOUIS EMANUEL

On September 28, 1954, I was drafted into the U.S. Army and sent for basic training to Fort Jackson, S.C. I don't recommend either the location or the experience. After two months I fortunately was sent to Fort Holabird, Md. (which no longer exists), to attend the Counter-Intelligence Corps school. Upon completing this I ended up in civilian clothes, living wherever I desired and working out of the office of the 109th CIC Det. in downtown Akron, Ohio. My job was running investigations (the majority were security clearance checks) in Stark, Carroll and Tuscarawas Counties. My designation was "Special Agent." This was interesting, enjoyable work. The experience in conducting interviews and making factual investigations was invaluable. I particularly recall interviewing the

Homecoming Queen of Bowling Green University—a most impressive young lady.

My most frightening experience was on September 26, 1956, the date I was ordered to report to a numbered building at Fort Dix, N.J., for separation. When I located the building, I was apprehensive because the sign on the building said "Overseas Replacement Depot." I entered and asked the clerk if this was where I was supposed to report. He said that my name was on his list and that I would be on the boat to Germany in no more than five days. I advised him that I intended to take my business elsewhere. On driving in Fort Dix I had seen a large building designated "Separation Center." I asked the clerk there whether this was the place I was supposed to be. He replied, "Do you want to get out of the Army?" He said he really didn't know the process, but that if I signed the roster on the desk I would be separated in three days. He also directed me to a barracks where I would find a bed, and said I should don my Army uniform.

Instead, I drove to Princeton, stayed two days with friends there, and returned on the third day to find that the clerk who didn't understand the process had been correct and that the only remaining requirement was to sign several dozen documents—which certainly seemed a reasonable accommodation.

RICHARD L. JIM

After I graduated from the University of Pittsburgh in 1950 there was no work to be found. Everyone was 1-A. I was scheduled to be drafted. I worked at the local steel mill for seven months in the open hearth department. It was the only job to be had. Then, I signed up for the U.S. Army Air Force. Also, I applied for Officer Candidate School in the U.S. Navy. The Navy accepted me and on May 5, 1951, I boarded a train at the Latrobe Station. My mother and father kissed me goodbye and I headed

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TIMOTHY J. GEARY

I was on active duty in the U.S. Air Force from September 1963 through September 1970. I left active duty as a Captain and immediately joined the Air Force Reserves and remained in the reserves until 1987, when I retired as a Lieutenant Colonel. The above photo shows me during flight training in a T-29 navigation trainer. I was flying somewhere over west Texas on a day celestial mission during the summer of 1964.

DAVID GOLD

I was an ROTC cadet and commissioned Second Lieutenant 1957 at Penn. I served in the U.S. Army Reserves for seven years, attending weekly meetings, and six months active duty. I became a Captain in the Judge Advocate General Corps after becoming a lawyer in 1962. I resigned my commission in 1965.

THE HON. JOSEPH A. HUDOCK

Lt. Commander, U.S. Navy Judge Advocate General Corps. (Looked better in that stunning white uniform than any of those young pup actors in that "JAG" show on TV.)

DAN JOSEPH

SP4, U.S. Army, Honorable Discharge 1974

JOHN M. LEONARD

Served in Vietnam as a Field Medical Specialist, Petty Officer 3rd, with the Ninth Marine Amphibious Brigade, from 1966 to 1967. Commendations awarded include Vietnam Service Medal with Fleet Marine Combat Insignia, National Defense Service Medal, and Vietnam Campaign Medal.

GEORGE H. LOVE, JR.

Lance Corporal, U.S. Marine Corps, March 1967–November 1968. Vietnam Service, October 1967–November 1968. Third Battalion, First Marines, First Marine Division (Thundering Third); Special Landing Force (SLF Bravo), Battalion Landing Team (December 1967–June 1968); Combatant in Battle of Thon Tham Khe against 116th NVA Battalion (Grunt); Squad Leader TET of 1968 against 803rd NVA Regiment (106 recoilless rifle); Participated in five campaigns and ten combat operations (Fortress Ridge, Badger Tooth, Badger Catch, Saline, Napoleon/Saline, Lancaster II, Charlton, Swift Saber, Mameluke Thrust and Dodge Valley); as well as combat operations against insurgent communist forces in RVN, a/k/a, Viet Cong.

Awards include Combat Action Ribbon, Presidential Unit Citation with one Bronze Star, Navy Unit Commendation, National Defense Service Medal, Vietnam Service Medal with one Silver Star, Republic of Vietnam Meritorious Unit Citation (Gallantry Cross Color), Republic of Vietnam Meritorious Unit Citation (Civil Actions Color, 1st Class), Republic of Vietnam Campaign Medal, and Rifle Sharpshooter Badge.

Also served as Lieutenant in the U.S. Navy from December 1976 to November 1984 in the Judge Advocate General's Corps.

RABE F. MARSH III

Lieutenant, U.S. Navy, 1962–1968. Served with U.S. Naval Station, Pensacola, Florida; Staff, Commander, U.S. Sixth Fleet; Admiralty Division of Navy Judge Advocate General, Washington, D.C.

JOHN A. MIKA

SP4 Finance Corps of U.S. Army, 1962–1964. The GI Bill enabled me to go to law school on a full-time basis.

KENNETH L. MURRAY

Captain, U.S. Army, 1964–1968, Vietnam

DONALD J. SNYDER, JR.

Captain, U.S. Army

Veterans Day Salute *continued from page 5*

for Pittsburgh on the train. In Pittsburgh I was sworn in as a seaman recruit and my Navy duty began.

I was in the first class at Officer Candidate School in Newport, R.I., as a seaman. Six months later I went out the gate an ensign and the Marine saluted me. While at OCS I received orders from the Air Force to report to Texas for pilot training. The Air Force was too late.

As I was a graduate engineer from the University of Pittsburgh, the Navy assigned me to the Philadelphia Shipyard. The Navy Commander who was my superior was Tom Lamonica, who said his son, Darryl, was doing good in football. Darryl Lamonica was the quarterback at Notre Dame and later the Oakland Raiders.

I was just learning how to take a ship out of dry dock when I was transferred to the Bureau of Ships in Washington, D.C., at Main Navy on Constitution Avenue.

My good friend, Ralph Costello from Pleasant Unity, and I were having lunch in Georgetown in D.C. the May prior to my discharge. He told me his brother, Pat, was getting recognized as the attorney for a man called the Turnpike Killer. That lunch was the start of my career as an attorney. After that lunch I sent for the law school admissions test.

I took the test while in the Navy. It was all about words and mathematics so I scored high. The Navy G.I. Bill gave me three free years at law school and \$135/month for expenses. I was discharged on September 5, 1954, and started law school the next day.

In the summer of 1956 while on Navy Reserve training duty I was stationed near Hyannis Port, Mass. I

found a private tennis court, and a couple of guys who were there asked me if I could play doubles with them. I was later told they were the Kennedys.

The service was good to me.

MARGARET PICKING

In the fall of 1977, an Army recruiter came to my law school campus in Northwest Ohio to recruit law school seniors like me for a



▲ Margaret Picking

career in the U.S. Army Judge Advocate General's Corps (JAGC). I didn't come from a military background, though my father had been drafted during the Korean conflict. Nevertheless, I was excited by the prospect of independently handling my own caseload and getting into a courtroom

right away, as the recruiter promised, by becoming an officer in the JAGC.

Much to the surprise of my family and friends, I applied, and was awarded a direct commission to the U.S. Army by then-President Jimmy Carter upon completion of law school.

I entered the Army in January 1979 as a Captain, attended basic training at Fort Lee, Va. (a more abbreviated and less arduous course than the standard recruit), and finally, ten weeks of training in military law in Charlottesville, Va. I then received my assignment—I would spend the next three years at Fort McNair in Washington, D.C., a beautiful and historic post. Fort McNair is part of the Military District of Washington (MDW), which includes Fort Myer, site of Arlington National Cemetery, and Walter Reed, as well as other posts, and I came to be responsible for all of it as Chief Trial Counsel for MDW.

Ironically, I started out as a defense attorney for the Army. In those days of yesteryear, the Commanding General (CG) decided which attorneys assigned to his command would be defense counsel and which would be prosecutors (called trial counsel in the military). The CG invariably assigned the newest and greenest attorneys to be defense counsel and made only the seasoned veterans trial counsel. This is no longer the case today. Defense attorneys now have an independent chain of command and are very experienced and capable.

In any event, I can assure you I didn't often win my cases as defense counsel, but I apparently created such a stir in the command with my subpoenas and my examination of witnesses that the CG made me a prosecutor. The rest, as they say, is history.

I eventually became Chief Trial Counsel for MDW and tried all manner of cases, from murder to failure to obey a lawful order.

It wasn't always easy—"lifers," as we called them, career Army types, didn't readily accept a woman as Chief Trial Counsel, giving direction to male company commanders and MPs. I had to prove myself, but that would have been true anywhere.

I left the Army after three years and returned to civilian life, accepting a job offer in the Westmoreland County DA's Office from then-DA John Driscoll. I was interviewed for the job by First Assistant Bob Johnston, who still tells me today he didn't know quite what to expect when interviewing a female Army officer.

I will never forget my three years in the Army. I had never intended to

make a career of it, but have never regretted my decision to enter. I learned to be a trial lawyer, sometimes the hard way, travelled extensively, and made lasting friendships. It was the first real job I ever had as a lawyer and it strengthened me in body, mind, and character. My experience has left me with the fervent belief that every American man and woman should be required to serve at least one year in the military, not on the front lines, but in some small way.

I served in a peacetime Army. I am not a combat veteran. The only combat I ever saw was in a courtroom. I am nevertheless very proud of my military service. As we prepare to honor America's veterans on Veterans Day, and to remember those men and women who gave their lives in service to our nation, we should all pause to reflect on the many sacrifices made by combat veterans—with thanks and with awe.

BILL WILTMAN

I was in the U.S. Army from December 1969 through December 1972. Since this was prior to my going to law school, and as I had not taken ROTC in college, I was just a regular enlistee, with the rank of Spec-5 at time of discharge (honorable). I was in a branch known as the Army Security Agency, spending the entire year of 1972 in Southeast Asia, near the Mekong River where it serves as a border between Laos and Thailand. One way it impacted my career is that, having gone to law school after the service, all of my law school expenses were covered through the GI Bill.



ROBERT J. MILIE

U.S. Army. Served in Korea as part of the Adjutant General. The photo above shows Bob Milie, on the right, upon his graduation from Saint Vincent College.

RON RUSSELL

Served 1974–1985 as a naval reserve officer, active duty November 1974 to February 1979; last rank Lt., highest position Acting Captain of USS Enhance. Served on USS Enhance, USS McDonough and several reserve units.

Commissioned through OCS Newport, R.I. Stationed in San Diego, Calif., and Charleston, S.C. Deployed to North Atlantic Fall 1976 to Winter 1977; Mediterranean Summer 1978 to Winter 1979; training duty for U.S. Naval Academy Summer 1977; Caribbean Deployment Fall 1977.

Served as Operation Dept. Head, Executive Officer and Acting CO USS Enhance; Assistant Engineering Officer USS McDonough; Top Secret Control Officer; Crypto Officer; Legal Officer; Welfare and Rec Officer; Codes team member.

JAMES R. SILVIS

Lieutenant, U.S. Navy JAG Corps, 1965–1968

GEORGE V. WELTY

I served as a First Lieutenant in the United States Army from June 1969 through June 1971 with a one-year tour of duty in Vietnam from June of 1970 through June of 1971.

I consider my two years in the Army an invaluable experience that has positively impacted my life and career.

Operation Enduring Light

Looking to volunteer your legal expertise to a worthy cause? The 14th Quartermaster Detachment is preparing for possible mobilization and is in need of volunteer attorneys to assist in preparing wills and power of attorneys as well as advising on other legal rights and responsibilities these reservists may face as active duty soldiers. Attorneys are needed on Sunday, November 24 and Monday, November 25 for two- to three-hour shifts. Contact the WBA to volunteer. Additional info can be found online at <http://www.abanet.org/poladv/letter/01dec.html#7>.

July 2002 Trial Term

Jury Trial Verdicts

by Rachel Yantos, Esq.

Of 72 cases scheduled for the July 2002 civil trial term, 17 settled, one was stricken, one was discontinued, 34 were continued, one was transferred to arbitration, one was stayed pending bankruptcy, one was on appeal to the Superior Court of Pennsylvania, one was a nonjury trial, verdicts were entered in six, and nine were held to the next term. The three cases resulting in jury verdicts are described below.

**LINDA GAUDIELLO,
AN INDIVIDUAL**

V.

**ALAN E. OLIVENSTEIN, M.D.
NO. 7317 OF 2000**

*Cause of Action: Professional
Negligence—Medical Malpractice*

Plaintiff brought this medical malpractice action against the defendant for health care rendered from July 9, 1993, through August 20, 1993. Initially, defendant was

assigned as plaintiff's treating physician in the hospital when plaintiff presented with high blood pressure and left arm pain. Upon defendant's recommendation, plaintiff underwent a cardiac catheterization test. Tests following the procedure revealed that defendant had dissected the right coronary artery with the catheter device. Plaintiff was immediately transported to Mercy Hospital, where she successfully underwent open heart surgery. Plaintiff contended that defendant was negligent in dissecting the artery, as well as ordering the cardiac catheterization test when she was not suffering from coronary artery disease or blockage.

The defendant maintained that the cardiac catheterization was recommended as a result of plaintiff's symptoms and findings. Defendant denied that he acted improperly in performing the surgical procedure during which plaintiff developed the complication.

Plaintiff's Counsel: Edward G. Shoemaker, Shoemaker & Associates, Pgh.

Defendant's Counsel: Alan S. Baum, Gaca Matis Baum & Rizza, Pgh.

Trial Judge: The Hon. Gary P. Caruso

Result: Verdict for defendant.

**MARJORIE L. MARLING
AND RAYMOND E. MARLING,
HER HUSBAND**

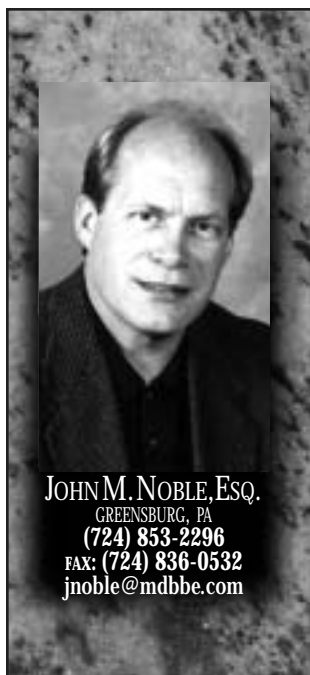
V.

**EAT 'N PARK RESTAURANT
TRUST AND CINTAS
CORPORATION AND CINTAS
SALES CORPORATION D/B/A
CINTAS CORPORATION
NO. 780 OF 2000**

*Cause of Action: Negligence—
Premises Liability*

On October 23, 1998, plaintiff was a business invitee of Eat 'n Park Restaurant in New Stanton. As plaintiff entered through the front entrance, she tripped and fell on a turned up edge of the floor mat/runner, which was allegedly improperly installed by defendant Cintas Sales Corporation, d/b/a Cintas Corporation. Plaintiff was transported to the emergency room, treated and released for orthopedic care. Plaintiff's injuries included a severe fracture of the left humerus and injuries to the nervous system. Her husband claimed loss of consortium.

Defendant Cintas denied negligent installation of the floor mat. Defendant asserted that plaintiffs' damages were caused by an intervening and/or superseding cause over which it had no control. Defendants brought cross-claims against each other for contribution and/or indemnity by way of new



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Spotlight on James Irwin



Q WHAT JOBS HAVE YOU HELD PRIOR TO BECOMING AN ATTORNEY?

A Chemist, salesman, service station attendant, construction laborer, patent attorney, tech service, farming, pin spotter, grass cutter

Q WHICH WAS YOUR FAVORITE AND WHY?

A Farming—immediate reward; nice to see a plowed field when you are finished.

Q WHAT WAS ONE FUNNY THING THAT HAPPENED TO YOU AS AN ATTORNEY?

A In the Westmoreland County Courthouse, I pointed out to one of my clients who was a defendant in a criminal matter, that the gentleman who just walked by was Irving Green, one of the best criminal lawyers in Westmoreland County; and my client looked at me and said—“I thought *you* were Irving Green!”

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

A A sense of humor and the spirit of compromise.

Q WHAT IS YOUR FAVORITE JOURNEY?

A When I return to my cottage in County Tyrone, Ireland, to be with my relatives and my friends, my ancestors (spiritually)—good books, green fields, fresh air, evening tide and a small glass of Bushmills.

Q WHAT IS YOUR GREATEST REGRET?

A (1) Not being able to have my parents present when I graduated from high school, college, law

school or when I was admitted to the Bar and the United States Supreme Court. (2) Not being able to go to China for ten weeks after being invited by my cousin, James Irwin, the astronaut, who went to the Moon on Apollo 15.

Q WHO ARE YOUR HEROES IN REAL LIFE?

A Leonardo da Vinci, Abraham Lincoln, Winston Churchill and Robert E. Lee.

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

A As Judge James Flaherty told me when I wanted to become an attorney, “If you want ulcers and insomnia, you’ve selected the right profession—but I will do what I can to help you.”

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AlterEgo: James Irwin

For amateur book collector James Irwin, his life has been a story with many chapters. Born in County Tyrone, Ireland, into a family of 12 children, his first home was made of clay with a stone floor, an open hearth and no running water.

When Jim was 13, his uncle and namesake asked if Jim would like to come live with him and his wife in America. Jim jumped at the opportunity and boarded the *RMS Mauretania* for his new life. It would be 10 years before he saw his family or his homeland again.

He stayed with his uncle, who lived in Butler, and worked on a neighbor’s dairy farm. At 16, he hopped on a bus headed to Pittsburgh with \$2 in his pocket and nowhere to spend the night. Jim found a distant relative in Squirrel Hill and settled in, attending high school at Taylor Allderdice, where he excelled at football, and was named All City.

Forty-two scholarship offers came his way, including a partial scholarship to Harvard. Jim attended Pitt, where he played

football with the likes of Mike Ditka and Marty Schottenheimer. Although the Cowboys, Vikings and Giants expressed interest, Jim chose a career at PPG over the lure of pro football. While at PPG, he patented several electrophoretic coating compositions, and was able to earn enough money to bring two of his sisters over from Ireland.

It was peer pressure that made him seek a law degree. At a college reunion, he discovered that most of his teammates had M.D.s, M.B.A.s, Ph.D.s, and other degrees. Jim decided to attend law school and, therefore, become a U.S. citizen. At that time, you couldn’t attend law school if you weren’t a citizen. His attorney’s license and U.S. citizenship are now his most prized possessions.

For the man who started his collection when he bought back all of his college textbooks after graduating, his goal in life is to live to be an old man and actually read all those books he has gathered over the years. No doubt he’ll write many more chapters in the story of his life along the way.



bookmark What Have You Been Reading?

by Jeff Pavetti, Esq.

Most lawyers enjoy reading. It is probably part of the mental hard wiring that has oriented us toward our profession.

Some of my favorite “all-time” authors include John LeCarre (spy thriller novels), Raymond Chandler (detective novels), Ernest Hemingway (life as fiction), K.C. Constantine (semi-fiction in Greensburg), Mark Twain (especially “Tom Sawyer” and “Roughing It”), and A.C. Doyle’s tales of Sherlock Holmes. I’ve



▲ Jeff Pavetti

read many of the aggregate works of these authors. I’ll liken the enjoyment of these authors to a cold beer on a hot afternoon—refreshing but not always nutritious.

On the other hand, a salami sandwich goes well with a cold beer. The “Book List” criteria, as I understand it, is to list those books that have been thought provoking and whose topic matter has provided sustenance, and even the smell and taste of the meal long after it has been consumed. For better or worse, here is my offering of salami:

DESERT SOLITAIRE ♦ by *Edward Abbey* ♦ Abbey’s journal of his season as a Park Ranger at Arches National Park, Utah. A wide ranging (and at times raging) account of nature, time and life in the American Southwest. It helps to have spent some time in Red Rock country.

THE JOHNSTOWN FLOOD ♦ by *David McCullough* ♦ McCullough has addressed topics as diverse as the Brooklyn Bridge, Teddy Roosevelt, Harry Truman and John Adams. This book (his first) graphically describes

how the human spirit can respond to tragedy in the most uplifting fashion. Also stands for the important proposition that we cannot assume that people in a responsible position will always act responsibly.

USA (THE TRILOGY) ♦ by *John Dos Passos* ♦ Dos Passos’ Trilogy (consisting of “The 42nd Parallel,” “Nineteen” and “The Big Money”) is a semi-fictional account of a fascinating period of American history, from 1900 to 1920. Trustbusters, meat packers, immigrant workers, doughboys, socialites, socialists, “reds,” and industrialists cross paths in a most unexpected fashion.

SAVE OUR LAND, SAVE OUR TOWNS ♦ by *Thomas Hylton (Photography by Blair Seitz)* ♦ Hylton persuasively argues that the traditional separation of town and country has been bastardized by suburban sprawl. He advocates a return to defined and compact communities in this thought-provoking book that is accompanied by superb photography of our Pennsylvania landscape. I think about Hylton’s theme anytime I am traveling on Route 30 in Westmoreland County.

THE DANGEROUS SUMMER ♦ by *Ernest Hemingway* ♦ Papa and his entourage follow a season of bull fighting. Celebration, pathos, life, danger and death combine in the dusty Spanish countryside.

ABRAHAM LINCOLN ♦ by *Carl Sandburg* ♦ In my book, Abraham Lincoln was the most indispensable American President. Admittedly, Sandburg places his beloved Lincoln on a pedestal—but that’s fine with me—this work remains a continuing favorite of mine.

MARY CHESTNUT’S CIVIL WAR DIARY ♦ Mary Chestnut may be the most insightful diarist that ever lived. This is a collection of her trenchant

observations of daily life in the Confederate States during the Civil War.

A SAND COUNTY ALMANAC ♦ by *Aldo Leopold* ♦ Leopold’s observations on land, life and nature (particularly his seasonal journals) are as crisp and clear as an autumn afternoon. I’ve read this book several times—and found a new perspective upon each reading.

SPOON RIVER ANTHOLOGY ♦ by *Edgar Lee Masters* ♦ Fictional epitaphs in prose, scripted by the occupants of graves in a small town cemetery. Insightful perspectives on mortality and our life’s purpose.

EXPLORATION OF THE COLORADO RIVER AND ITS CANYONS ♦ by *John Wesley Powell* ♦ The story of an amazing exploration by a remarkable American. Powell was a naturalist, explorer and one-armed Civil War Major (he lost an arm in the Battle of Shiloh) who was the first non-Native American to explore the length of the Colorado River. This is the compelling journal that he maintained during that expedition.

A GUIDEBOOK TO HISTORIC WESTERN PENNSYLVANIA ♦ by *Helene Smith and George Swetnam* ♦ Regional history and vintage architecture intrigue me. The late Judge Bernard Scherer first introduced me to this comprehensive guidebook, which has been a frequently consulted traveling resource. Smith, who has written on many diverse topics, may be the most prolific author who has ever called Westmoreland County home.

FREE WHEELING EASY IN AND AROUND WESTERN PENNSYLVANIA ♦ by *Mary Shaw and Roy Weil* ♦ Biking is a leisure activity that Dianne and I enjoy. This guidebook has been helpful in planning many enjoyable excursions. Mary and Roy are the definitive source of information on Tri State trails.

To-Wit: At The Movies

by S. Sponte, Esq.

You know, I've pretty much had it with those pundits who posit that, as a profession, we lawyers are a cultureless lot. As far as I'm concerned, nothing could be further from the truth.

Okay, maybe we aren't as up on our ballet as we could be, but there's a good reason for that. Who among us doesn't routinely have men leaping around in tights walking through their office door on a daily basis? And that gets old pretty quick. As for the contention that we know nothing about classical music, well, we know this ... really great classical music died when that plane went down in the Iowa cornfield in 1959.

All right, so maybe lawyers aren't the best candidates to appreciate what's happening on the cutting edge of culture. Maybe as a profession we

spend too much time on the cutting edge of life to stop and smell every time a rosebud passes by. But that's not to say we aren't interested in some of the more plebeian forms of popular culture such as movies and, uh, well, okay, maybe just movies. But movies are certainly mainstream culture, and I have loved them all my life. Being a lawyer hasn't diminished that passion one iota.

In an effort then to dispel the professional slur that we know naught of culture, I have decided to review the ten best lawyer movies of all time. Oh, I know, I could have expanded my list to encompass the ten best movies of all time, but the truth is lawyer movies are almost all I watch. I don't really understand most of the other ones.

TO BILL A MOCKINGBIRD ... a haunting, lovely, sentimental look at life in a small Southern town as

Lawyer Finch (Finch – Mockingbird ... get it? If so, explain it to me, I don't get it) comes to learn that it's a sin to bill a mockingbird. Those mumsers never pay, you have to get your fee from them in advance.

MEN IN BLACK VESTS ... a rollicking good comedy in which lawyers struggle to prevent alien life forms from the planet Klyent from destroying the world with stupidity, avarice, calumny, treachery, neglect, selfishness and Brylcreem. The outcome remains constantly in doubt.

INHERIT THE LONG-WINDED ... A classic movie in which the forces of good, as portrayed by

continued on page 12



Maryann White, CPA/ABV

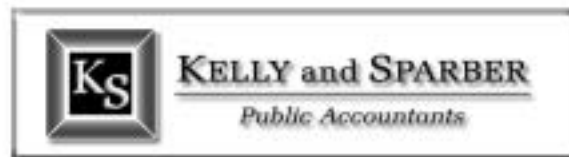
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To-Wit: At The Movies *continued from page 11*

Gwyneth Paltrow, challenge the constitutionality of a state statute prohibiting the teaching of Marvinism, the controversial theory that all human beings are descended from Marvin Cohen. Marvin is portrayed by the late Lee J. Cobb, whose performance is, I must say, a bit stiff. But Gwyneth triumphs, as we knew she would, and she looks great in the process. A must see!

I NEVER PROMISED YOU

A PLEA BARGAIN ... A great whodunit in which an unrepentant recidivist jaywalker does hard time when his lawyer for just a moment loses his concentration and pleads his client guilty to complicity in the disappearance of Judge Crater. I laughed, I cried, I ate popcorn while the pitiful defendant is hauled away to prison despite his relentless protestations that the light was yellow.

SOMETIMES A GREAT MOTION

... An animated fantasy tale in which a lawyer presents a clever, well researched, innovative motion which the court grants.

E.T.—EVICTING THE TENANTS ...

A poignant story about a poor, downtrodden family whose father loses his job, his savings and his pension when the corporation for which he worked for 40 years goes belly up because of executive mismanagement. The family is soon evicted from their apartment and forced to live on the street, cold and hungry. What can I say? It's every lawyer's dream come true.

LIE HARD ... An explosive action thriller starring Divine as the hard nosed lawyer who, in defense of his/her clients, strips to the waist and charges into a courtroom armed with briefs hanging from belts criss-crossed across his/her chest. Not a pretty picture.

DANCES WITH SHARKS ... A quirky love story about a beautiful young woman, played by Gwyneth Paltrow, who is hopelessly smitten

by a smart, witty, handsome lawyer in his mid-50s. He in turn only wants her for sex, and she agrees. Based upon an actual fantasy.

A LIEN ... A sci-fi thriller in which Sigourney Weaver battles to prevent vicious, invading extraterrestrials from recording a mortgage which would encumber the entire planet.

RAGING BULL ... A tense, gritty documentary clandestinely filmed at a recent bar association meeting

during which the members candidly discuss their most lucrative verdicts.

Well, there you have it—my ten most favorite lawyer movies of all time, and quite the list, don't you think? If nothing else, I have surely laid waste to the claim that we lawyers aren't a cultured bunch. Let me know what you think of my movie reviews. Who knows, if the idea catches on, I might do it again sometime. I'm also pretty up on wrestling movies.

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Spotlight *continued from page 9*

Q WHAT DO YOU CONSIDER TO BE YOUR GREATEST ACHIEVEMENT?

A Emigrating from Ireland by myself at age 13.

Q WHAT IS YOUR IDEA OF PERFECT HAPPINESS?

A Having good health and peace of mind.

Q WHAT ARE YOUR MOST TREASURED POSSESSIONS?

A My 2002-2003 PA Attorney's License #15965 and my U.S. Citizenship.

Q WHAT IS IT THAT YOU MOST DISLIKE?

A Americans who don't appreciate what America has to offer.

Q WHAT IS YOUR GREATEST EXTRAVAGANCE?

A On a rainy Saturday afternoon, visiting a quaint, used bookstore with an open fireplace, then having a cozy seating arrangement there and a few shillings to spend on used books.

Q WHAT TALENT WOULD YOU MOST LIKE TO HAVE?

A Being able to speed read with 100% comprehension.

Q WHAT DO YOU MOST VALUE IN YOUR FRIENDS?

A Loyalty, loyalty, loyalty!

Q WHICH LIVING PERSON DO YOU MOST ADMIRE?

A Queen Elizabeth II—I have dual citizenship, you know.

Q WHAT IS YOUR MOTTO?

A Live every day like it's your last, and one day you'll be right.

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— William L. Prosser, "Lighthouse No Good," 1. Journal Leg. Educ. (1948)

The Basics of Handling an Automobile Accident Case

by Mike Ferguson, Esq.

When I received a call from *the sidebar* asking that I prepare a “Practice Tips” article as a follow-up to the two-hour CLE program I presented on the basics of handling an automobile accident case, I was both flattered and dismayed. You see, I live in a household with a wife and three daughters. As such, I am not accustomed to having anyone care about my opinions on any subject, however trivial.

Unfortunately, the glow associated with being asked to offer my “expert” advice quickly faded when faced with the task of actually writing this column. After three tries, it became apparent that condensing a two-hour CLE into the space provided was

simply impossible. In an attempt to provide the maximum amount of useful information in the space provided, I have divided the article into two sections.

The first portion deals with the most common issues plaintiff’s counsel will need to address when undertaking representation of an injured plaintiff. The second portion of the article, which will appear in the next issue of *the sidebar*, will provide a summary of the process to be followed when prosecuting an auto claim.

COMMON QUESTIONS AND ISSUES

1. FULL TORT VS. LIMITED TORT

In Pennsylvania, all individuals making a claim for injuries and

damages arising out of a motor vehicle accident are lumped into one of two basic categories—full tort and limited tort. A person who is deemed to have full tort rights has no restrictions on their ability to

recover damages for all losses and damages suffered in an automobile accident,

regardless of whether these losses are economic (i.e., wage loss and medical expenses) or noneconomic (i.e., pain, suffering, inconvenience, etc.) Those who are bound by the limited tort option have significant restrictions on their capacity to make a claim for non-economic damages.

continued on page 14



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The Basics of Handling an Automobile Accident Case

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In order to determine which tort option applies to your client, you must first look at any automobile insurance policy on which they are a named insured. The policy will indicate whether the client elected the limited tort or full tort option. If the plaintiff is not a named insured under a policy but is an “insured” (resides in a household with a relative who has an automobile policy), they will be bound by the policy of the relative in the household in which they reside. If the plaintiff is not a named insured under any policy and does not reside with a relative who carries an auto policy, they will have full tort rights.

If the plaintiff is bound by the limited tort option, they cannot make a claim for non-economic losses unless one of the following exceptions applies:

- The plaintiff was killed in the accident.
- The plaintiff suffered serious, permanent disfigurement in the accident.
- The plaintiff suffered a serious bodily injury (as defined by the Pennsylvania Motor Vehicle Code) in the accident.
- The tortfeasor was charged with driving under the influence and was subsequently convicted or accepted into the ARD program.
- The tortfeasor was operating a vehicle not registered in the state of Pennsylvania.
- The plaintiff was operating or occupying a non-private passenger vehicle.

Section 1705 of the Pennsylvania Motor Vehicle Code provides the controlling law on the limited tort and full tort issue. Plaintiff’s counsel should become familiar with this statute.

2. FIRST-PARTY BENEFITS

Oftentimes, the injured plaintiff’s initial concerns after having been involved in an automobile accident are determining who will be paying their medical bills and whether they can obtain income loss benefits if they are missing work. In Pennsylvania, all individuals purchasing automobile insurance policies must purchase a minimum \$5,000

no-fault medical expense benefit. First-party income loss benefits are also available, but not mandatory. These first-party benefits are available to the injured claimant regardless of who was at fault in the accident.

When plaintiff’s counsel undertakes representation of an injured claimant, they must determine what automobile insurance policy is the applicable source for first-party medical expense and income loss benefits. Generally speaking, the medical bills of the injured plaintiff as well as any claim for income loss should be submitted to the automobile insurance carrier of any policy on which the plaintiff is a named insured. If the plaintiff is not a named insured under any policy, the bills and/or income loss should be submitted to any policy under which they are an insured, i.e., the auto policy of any relative with whom they reside. If the plaintiff is not a “named insured” or an “insured” under any policy, the bills should be submitted for payment pursuant to the policy on the vehicle they were occupying at the time of the accident. This priority of recovery of first-party benefits is set forth in Section 1713 of the Pennsylvania Motor Vehicle Code.

There are two common exceptions to the above-referenced general rules regarding payment of medical bills and income loss. The first exception occurs where the plaintiff was injured in a work-related automobile accident. In cases involving work-related automobile accidents, all medical bills, as well as income loss, should be submitted to the appropriate worker’s compensation carrier, if available. In this scenario, the only claim for first-party benefits would be for “gap” income loss coverage, which is coverage afforded to the injured claimant by their first-party benefit carrier for income loss damages not

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covered by the worker's compensation carrier.

The second prominent exception to the rules set forth above arises in situations where the plaintiff was operating or occupying a motorcycle at the time of the accident. First-party medical expense and income loss benefits are not available to those operating or occupying a motorcycle. Accordingly, all medical bills are the responsibility of the injured plaintiff and should be submitted to any health insurance coverage available to the injured plaintiff. If no health insurance coverage is available, the bills are the responsibility of the injured plaintiff.



3. VEHICLE DAMAGE AND RENTAL CARE EXPENSE

When a plaintiff's vehicle is damaged in an accident, a claim for this damage should be submitted to both the plaintiff's insurance carrier, (if they have collision coverage) and the tortfeasor's carrier. Both companies will make arrangements to appraise the damage to the vehicle and provide estimates for the plaintiff's consideration. Oftentimes these estimates will differ. Therefore, plaintiff and counsel should compare the estimates and accept the one which best suits the plaintiff's needs.

In the event that the injured plaintiff needs a rental vehicle, they should first look to their own policy to determine whether rental coverage is available pursuant to the terms of their policy. If so, a claim for rental benefits should be initiated. If no rental coverage is available under the applicable first-party policy, counsel for the plaintiff should contact the tortfeasor's carrier to determine whether they may be willing to accept a direct billing for a rental vehicle. If the tortfeasor's carrier is not willing to accept a direct billing for the rental

vehicle, the plaintiff has no choice but to obtain a rental vehicle, pay for the cost of the same, then submit the rental expense claim to the tortfeasor's carrier at a later time.

4. PRIORITY OF RECOVERY FOR LIABILITY CLAIMS ALLEGING

NON-ECONOMIC AND ECONOMIC LOSSES

Claims for non-economic losses such as pain and suffering and economic losses such as medical expenses and income loss not covered pursuant to first-party benefit coverage should be submitted to the insurance carrier holding the policy on the vehicle which was at fault in the accident. In Pennsylvania, liability coverage "runs with the vehicle". Therefore, if John Smith is driving a vehicle owned by Bob Jones, and the negligence of John Smith causes injury to another motorist, the insurance carrier holding the policy on the Jones' vehicle is the first source of liability coverage. If the liability coverage available on the vehicle which caused the accident is insufficient to fully compensate the injured plaintiff, a claim for "excess" liability coverage may be made under the terms of any auto policy under which the tortfeasor (John Smith) is a "named insured" or "insured."

If the liability coverage on the vehicle involved in the accident as well as any excess liability coverage available to the tortfeasor is still insufficient to fully compensate the injured plaintiff, a claim should be made for underinsured motorist benefits, if available. Underinsured motorist

benefits are benefits which may be available either under the terms of the auto policy on the vehicle the injured plaintiff was occupying at the time of the accident, or under the terms of the injured plaintiff's own automobile insurance policy. Underinsured motorist benefits provide additional coverage for non-economic losses such as pain and suffering, as well as economic losses such as medical expenses and income loss not covered by first-party benefits. Underinsured motorist coverage does not provide coverage for vehicle damage, property damage or rental expense.

In circumstances where there is no liability coverage on the vehicle which caused the accident and the tortfeasor has no other applicable liability coverage, plaintiff's counsel should initiate a claim for uninsured motorist benefits under the terms of the auto policy on the vehicle the plaintiff was occupying or under the terms of the plaintiff's own automobile insurance policy. Uninsured motorist benefits, if available provide coverage for non-economic and economic losses, including pain and suffering, as well as medical expenses and income loss not covered by first-party benefits. Uninsured motorist coverage does not provide coverage for vehicle damage, property damage or rental expense.

5. SUBROGATION

In the context of the automobile accident case, subrogation issues generally involve the right of parties who are providing medical expense benefits or

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Young Lawyers Host District Justice Gathering

The Young Lawyers Committee of the WBA hosted a gathering of District Justices and Young Lawyers on Thursday, September 26, 2002, at WBA Headquarters.

Since a Young Lawyer's first contact with the judicial system is most often the District Justice, this gathering provided Young Lawyers and District Justices a unique opportunity to chat and get to know one another.

The Young Lawyers Committee's mission is to facilitate and foster a sense of camaraderie through educational, social and community events, as well as incorporating young lawyers into active roles within the Bar Association.



▲ *Standing: Amber Leechalk, Jim Horchak and Jim Wells. Seated: Tim Kinney, Jeremy Boby, District Justice Frank DelBene, Jr., and Michael DeMatt.*



▲ *Standing: Jennifer Love, Joyce Novotny-Prettiman and Rachel Yantos. Sitting: District Justices J. Bruce King, Mark Bilik and Charles Conway.*



▲ *Standing: District Justice Mark Mansour, Lee Demosky and Peggy Tremba. Seated: Becky Brammell, Scott Avolio and District Justice Mary DiClaudio.*

WBA Seeking Assistant Treasurer

The WBA is seeking a volunteer Assistant Treasurer to replace the Treasurer upon his retirement. The Assistant Treasurer should have knowledge of the WBA

and personal commitment to its goals and objectives and an understanding of financial accounting for nonprofit organizations.

Currently, the Treasurer's duties are to serve as financial officer of the organization and manage, with the finance committee, the board's review of and action related to the board's financial responsibilities; work with the bar exec to ensure that appropriate financial reports are made available to

the board on a timely basis; assist the bar exec in preparing the annual budget and presenting the budget to the board for approval; and review the annual audit and answer board members' questions about the audit.

Interested candidates should submit a letter of application to the WBA Board of Directors, c/o the Bar Association.

Mark Your Calendars

The Annual Holiday Dinner Dance will be held Saturday, December 14, 2002, at the Hill Crest County Club in Lower Burrell.

Entertainment will be provided by The Hurricanes, a seven-piece band that plays everything from the 60s Soul of The Temptations and Van Morrison to the Big Band stylings of Frank Sinatra and Nat King Cole to the breezy sway of a Samba, or the irresistible power of vintage Rhythm & Blues.

Please plan to join us, and remember to wear your dancing shoes.

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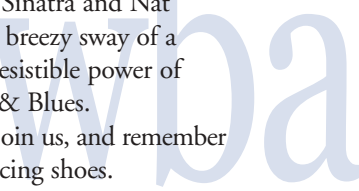
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Actions of the Board

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- Agreed that LCL Committee will take charge of coordinating a free CLE along with Orphans' Court Committee on how to handle personal and professional matters including drafting power of attorneys and disbursing of client files.
- Reviewed the Trial Academy's proposal to co-sponsor a golf outing to benefit the bar foundation and asked Outreach Committee to work with Activities Committee to plan the event.
- Agreed to draft building policy for usage of technology equipment of the WBA by its members. This would include LCD projector, visual projector, speaker system and laptop.
- Accepted proposal by Trial Academy to hold a Mentor Mixer with new lawyers for purpose of pairing new lawyers with experienced trial lawyers to be held on November 8 at 5 p.m. at WBA headquarters.
- Agreed to provide complimentary subscriptions of the *Westmoreland Law Journal* to all local libraries.
- Agreed to investigate the possibility of posting the *Westmoreland Law Journal* on the web in a non-searchable format.
- Discussed the need for WBA to be represented on the IOLTA board for two reasons: the future of pro bono at a local level is tied to the IOLTA board and 90% of the IOLTA board members are from either Pittsburgh or Philadelphia.
- Agreed to contact the PBA to encourage the state bar to use their two IOLTA Board appointments and to give one appointment to a Westmoreland Bar Association member.
- Accepted bid to construct storage closet on third floor.
- Agreed to secure two additional contractor bids for the main floor kitchen.
- Heard report on publication of judges' opinions on WBA website in a word searchable format which will be accomplished free of charge on two conditions: the attorney general has permission to post the opinions on their website and the public has access to these opinions.
- Agreed to write a thank you letter to David Gold to acknowledge the time and devotion he has given to the Westmoreland Bar Association as former editor of *the sidebar* and the *Westmoreland Law Journal*, and active member and committee chair.
- Agreed to ask Chuck Dangelo, law clerk for Judge Ober, to serve as Chair of Law Library Committee.
- Agreed to allow out-of-county attorneys use of the attorneys' meeting room, which is located in Law Library.
- Agreed to purchase a dictionary stand in memory of Law Library worker, Dorothy Mosier, and to affix a plaque with proper recognition for both Dorothy and the bar.
- Voted to allow three people to attend the national Lawyer Referral conference in mid-October.
- Voted upon recommendation from WBA member Stuart Horner to mail 2001-2002 trial verdicts to our local legislators and to include the legislators on mailing list for future *sidebar* publications.
- Voted to appoint Judith Cizek to LLS Board effective immediately.
- Voted to register the WBA as a provider for the Bridge the Gap program, a mandatory CLE program for all new lawyers, and to refer the information to the CLE coordinator.
- Agreed to develop a written investment policy statement for the Westmoreland Bar Association and to explore whether our current investment manager will aid in this process.

And Baby Makes ...

Dustin and Lisa Barr welcomed their daughter, Laura Brynne, into the world on September 25, 2002. Brynne, born 4½ weeks early, was 5 lb. 9 oz. and 20 inches long. Dustin is partner with Flickinger and Barr in Ligonier.

Jackie and Brian Knupp upped their family number to five when Tucker John was born on October 15, 2002. He was 8 lb. 5 oz. Tucker joins big sister Payton and big brother Paxton at home. Jackie is partner with Millstein and Knupp in Youngwood.



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(*Free to all members of the WBA)

FOR SALE OR RENT Law offices/building. 1½ blocks from Courthouse, Gbg. Four-story, well-maintained building with ample parking. Adjoining lot for expansion. Common areas—conference room, kitchen, 2 restrooms. Staff and furniture optional. Pat Rodgers, 724-836-1206.

foundation focus

“Know Your Credit Rights” Campaign



In an effort to educate the public about important consumer credit legal issues, the WBA launched a “Know Your Credit Rights” public education campaign that ran throughout the month of October. Held in conjunction with the PBA, this unique statewide program is designed to

educate the public about their legal rights as consumers and covers such issues as credit collection, credit reports and debt management.

Ads appeared in several local newspapers for a free brochure, available through the WBA, that answers questions concerning mortgages, credit cards, loans and bankruptcy.

Radio was also a key to this campaign. Latrobe attorney Gerald W. Yanity was featured in a “Know Your Credit Rights” broadcast on WCNS 1480 AM. Other members of the WBA are also available to speak to your service organization on legal obligations and rights of consumers.



▲ Volunteers for the United Way Day of Caring were (clockwise from left) Rebecca Brammell, Julia Moreman, Kate Wiatrowski, HERO Project Director Virginia Lieberman, Ann Emmerling, Connie Nakles and Jackie Knupp. Not shown: KJ Collamer.

Day of Caring Helps HERO Project

WBF Trustees and WBA staff members helped the HERO Project when they volunteered for the annual United Way Day of Caring on September 5, 2002. The HERO Project encourages adults to report any suspicions of child sexual abuse.

The volunteers worked together to mount posters, attach easel backs and gather materials that they then delivered to area libraries. According to HERO Project Director Virginia Lieberman, their efforts “enabled the HERO Project to reach out to areas of the county that we often have difficulty accessing.” Nearly \$100 in mailing costs and several hours of preparation time were saved thanks to the efforts of the volunteers.

In Memory of Dorothy Mosier

Excuse me ... could you tell me where I can find the current issue of the Pa. Reporter?” Or perhaps your questions were more along the line of “Do you have change for the copy machine?”

Dorothy Mosier, the face you most often saw behind the desk at the Law Library, was the lady who assisted attorneys in their search for answers (well at least the kind of answers discoverable through legal research).

Since her death in August, a number of attorneys have expressed a desire to make monetary contributions in Dorothy’s name. If you wish to do so, mail your tax deductible contribution to the **Westmoreland Bar Foundation**. All funds will be used to benefit the Law Library in Dorothy’s memory.

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Jury Trial Verdicts *continued from page 8*

matter pursuant to Pa.R.C.P. 2252(d). Plaintiffs executed a Settlement Agreement and Joint Tortfeasor Release in favor of Defendant Eat 'n Park.

Plaintiffs' Counsel: Anthony DeBernardo, Jr., DeBernardo Antoniono McCabe & Davis, P.C., Gbg.

Counsel for Defendant Eat 'n Park: Anne Friday Beck, Law Office of Joseph S. Weimer, Pgh.

Counsel for Defendant Cintas: Paul T. Grater, Pgh.

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict for defendants. The jury found no negligence on behalf of Cintas, while 85% negligence was attributed to Eat 'n Park. The verdict was molded to reflect the jury's findings and plaintiffs' release in favor of Eat 'n Park.

THOMAS GRETOK

V.

**LITTLE CAESAR EAST, INC.,
A CORPORATION
NO. 1005 OF 2000**

Cause of Action:

Breach of Contract—Lease Agreement

On February 14, 1989, the defendant entered into a lease agreement with plaintiff for space in a small strip shopping center to be built on East Pittsburgh Street, Greensburg. The lease provided that defendant would pay minimum monthly rent plus its proportionate share of common area maintenance fees, taxes and insurance. In the event defendant would abandon the leased premises, the agreement permitted plaintiff to charge additional rent during each month of abandonment in an amount equal to the minimum monthly rent. The ten-year lease was to expire on December 30, 2000. However, defendant abandoned the premises without notice to plaintiff on July 20, 1999. Plaintiff sought the difference in the monthly minimum rents of defendant and the new lessees,

additional rent, defendant's share of common area maintenance fees, taxes and insurance, as well as expenses incurred to clean and repair the property.

Defendant did not dispute that it owed certain amounts of rent, common area maintenance fees, taxes and insurance, to be appropriately set-off by rent collected by plaintiff in re-letting the space. Defendant conceded that it owed a reasonable amount of repair costs to plaintiff, but disputed the amount of those costs. Further, defendant contested the additional "double" rent provision for defendant's abandonment of the premises as an unenforceable penalty.

Plaintiff's Counsel: Douglas G. Hipp, Oakmont

Defendant's Counsel: James M. Evans, Michael C. Hamilton, Buchanan Ingersoll, P.C., Pgh.

Trial Judge: The Hon. Daniel J. Ackerman, President Judge

Result: Molded verdict for plaintiff in the amount of \$73,278.92. The jury found the liquidated damages clause enforceable.

The Basics

continued from page 15

some form of income benefit to the injured plaintiff to be reimbursed for those benefits out of any settlement proceeds the plaintiff may recover. Medical expense and income loss benefits paid pursuant to first-party auto coverage are not subrogable. However, medical expense benefits paid by some private health insurance carriers, worker's compensation, the Department of Public Welfare and Medicare may create a valid subrogation lien against the claimant's recovery. Additionally, income benefits paid by worker's compensation or the Department of Public Welfare during the pendency of the claim also create a valid subrogation lien against the client's recovery.

It is imperative that counsel for the plaintiff take proactive measures to determine whether, and to what extent, valid subrogation liens may apply to the client's potential recovery. Failure to address subrogation issues prior to or at the time of settlement can produce disastrous results for both the injured plaintiff and counsel.

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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 **Memorial 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 15601-2311.



CALENDAR of Events

NOVEMBER

- 7 Criminal Law, Noon
- 8 Mentor Mixer, 5 p.m.
- 11 Veterans Day Holiday
- 12 Planning, 4 p.m.
- 13 Membership, Noon
- 14 Past Presidents, Noon
- 19 Family Law, Noon
Board Meeting, 4 p.m.
- 20 Real Estate, Noon
- 21 CLE Lunch 'n Learn: Orphans'
Court Statutory Developments,
Noon
- 26 Vision Group, Noon
- 28-29 Thanksgiving Holiday

DECEMBER

- 11 Membership, Noon
- 12 Municipal Law, Noon
- 14 Holiday Dinner Dance
- 19 Elder Law/Orphans' Court,
Noon
- 25 Christmas Day Holiday

TOP TEN

Top Ten Least Popular CLE Courses

1. Gilding the Lily—The Rising Trend in Elder Porn
2. So You Want To Be an Arbitrator?
3. Magistrates We have Known and Loved
4. Ethical Considerations in Family Law
5. Civil Rights for Muslims
6. Sexual Harassment in the Workplace—
What's the Fuss?
7. The Wit and Wisdom of Children and
Youth Services
8. Military Tribunals—Come On, Give 'em a Chance
9. John Ashcroft and The Bill of Rights—
A Snack and Learn
10. A Primer on Office Efficiency—
Part IV, Dating Your Secretary



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