



The Waterfront Place Hotel, Morgantown, W.Va.

New Venue for 2011 Bench/Bar

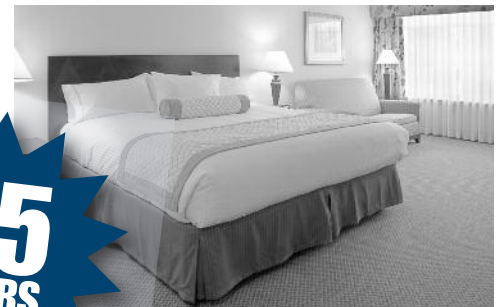
The Waterfront Place Hotel in Morgantown, W.Va., is the site for the 25th Annual Bench/Bar Conference. Overlooking the picturesque Monongahela River, this close-to-home location offers an escape that is both next to nature and steps away from bustling university happenings.

Attendees of the June 9-10 conference are in for a treat at the Waterfront because this facility has the look and feel of an eclectic, upscale boutique hotel. We invite you to attend and sample some of these amenities.

- Replenish your energy with a massage at the on-site Waterfront Spa, enjoy a dip in the indoor pool or hydrotherapy pool, or visit the state-of-the-art fitness facility to regain your sense of well being.
- Satisfy your cravings for flavor and flair at the Regatta Bar and Grille, or amble over to the cigar and martini bar, aptly named the Rat Pack Lounge, for an entertainment experience that should not be missed.
- And at the end of your busy, fun-filled day, nestle yourself into comfort in one of the spacious guest rooms featuring plush pillow-top mattresses, soothing bedding, and modern amenities.



◀ The 2011 Bench/Bar Conference will be held at The Waterfront Place Hotel in Morgantown, W.Va., June 9-10. No matter what your interests, this location is perfectly suited to the goals of the Bench/Bar Conference: time away from stress and deadlines, and time to unwind, lighten up, and enjoy yourself.



Group activities will mimic other conferences with biking, historic walking tours, golfing, CLE seminars, and such, but novelty events are also being considered. Thoughts about a steel drum band, karaoke, a “Minute To Win It” competition, and even a Tai Chi demo—with CLE credit—are all possibilities.

No matter what your interests, you will find this location perfectly suited to the goals of the Bench/Bar

Conference: time away from stress and deadlines, and time to unwind, lighten up, and enjoy yourself.

Accommodations include:

- Free wi-fi;
- Walking/biking trail (adjacent to premises);
- Separate lounge area for Young Lawyers Hospitality Suite;

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President's Message

Moving On

by Donald J. Snyder, Jr., Esq.

By the time that you read this article, I will be nearing the close of my term as your WBA President. Mike Stewart will be taking over the Presidency in April in what I anticipate will be a seamless passage of the gavel.



I had intended to use this last day in the sun to deliver a diatribe against the plague of dangerous drugs in our society and its effect upon communities within our county, but have been persuaded to temper my remarks. I am frustrated that we are confronted with the effects of this scourge in the media, on the police blotters, and in the conduct of our daily lives. It crosses all barriers and defies any single-minded approach. For the sake of our society, and our children, we have to do something to prevent us from sinking into the anarchy that prevails in other places.

Turning to the issues of the WBA, during my service on the Board, we all have attempted to conduct business effectively, watch the purse strings, and embrace the technological advances in our society as they affect our profession. In doing so, we have tried to keep the WBA relevant to the needs of the membership. We have emphasized that the WBA has a role in keeping an independent judiciary, protecting the public from charlatans who prey on ignorance and misunderstanding, and informing the next generation about the strengths of our form of government.

The WBA has not retreated to our offices or to any ivory towers, but has sought to convey our message directly to the people of Westmoreland County. In an age when the legal profession continues to be unfairly

criticized by the media, when the legal system is denounced by opportunistic politicians, and when lawyers are still cast in an unfavorable light as a result of the unscrupulous conduct of a small number of our colleagues, we have the obligation to take our message to the street corners. Our weapons are information, exemplary conduct, capable representation of our clients, and an ongoing devotion to the greater good of our communities. In all of these areas, the WBA continues to improve.

At the annual meeting, you will be presented with some changes in the By-Laws of the Association which have been recommended by the Planning Committee and approved by the

Board for your consideration. The recommendation is a result of hours of work by the Planning Committee and is intended to increase participation and give a voice to all members at the Board level. We ask that you give the proposal an objective analysis and vote accordingly.

On a personal note, I want to thank all of you for the opportunity to serve the Association, and in the traditions of Presidents everywhere, will move on and out of the way. 🍷

Call to Action:

Civics Education Program

All WBA members are invited to join me in a civics education program that will be made available to every school in Westmoreland County beginning in May. This year, as part of our Law Day program, we will teach basic U.S. citizenry. I hope you feel as I do, that civics education ensures that future generations will understand the value of our system of government.

In his October President's Message, WBA President Don Snyder echoed the urgings of PBA President Gretchen Mundorff for lawyers and judges to get involved in teaching our children about "the understanding of our democracy, the levels of government, the separation of branches of government, and the checks and balances that are built into the system."

The recent uprising of the Egyptian citizens is a modern-day example of the lengths to which people will go to fight for democracy. We Americans sometimes forget the freedoms and rights that are inherently ours. I invite you to join me in teaching these principles of democracy to our children.

At this time we are actively recruiting attorneys to volunteer for this program. Since we are seeking to offer the program to every school that shows interest, we may need many volunteers. Our plan is to provide specific interactive lesson plans that are grade-appropriate to ensure every volunteer feels comfortable and confident in teaching these classes.

You can join in this campaign by contacting Iva Munk at 724.837.5539. More information will be distributed within the next few weeks. I thank you in advance for your participation.

Respectfully,
Michael J. Stewart
President-Elect, WBA

Remembering Robert M. Stefanon

Editor's note: Robert M. Stefanon passed away on November 12, 2010. He was preceded in death by his wife, Patricia, in 1992, and is survived by two sons, Patrick, and his wife, Roxanne; and Michael, and his wife, Michelle; a daughter, Stephanie, and her husband, Dr. Robert Bogac; granddaughters Andrea, Kate, and Abigail; grandsons Jason, Benjamin, Matthew, and Cody; a brother-in-law, Bill Valinch; cousins, Robert and Skip Stefanon; and numerous nieces and nephews.

by Jim Falcon, Esq.

Our Association has suffered a great loss with the passing away of Bob Stefanon. He was a lifelong member who always upheld the highest ideal of our profession.

My initial contact with Bob occurred prior to my admission

to law school through his associate, James R. Kelley. Upon admission to the Westmoreland Bar, I was invited to practice law in the offices of Kelley & Stefanon, who were then located above the Colonial Bakery on Pittsburgh Street.

In Bob's case, my first impression was a correct one—he was always available to sit down and talk to as well as review case law and strategy. His smile, always accentuated by the cigars he loved to smoke, assured a pleasant environment for some very intense discussions.

Bob was active in a general practice, but his specialty was in workers' compensation litigation where he had over a 90% success rate in securing black lung benefits for his clients. He also served as Assistant Attorney General, Department of Justice, as well as for the Department of Labor and Industry and the Westmoreland

County Selective Service System.

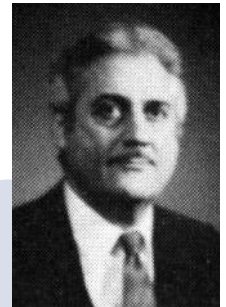
His interest went beyond the scope of the law: he was active in community endeavors, serving on the Founding Board of Trustees for the Westmoreland County Community College and being a life member of the Sewickley Township Volunteer Fire Department #15.

While being involved in his legal practice and community activities, he was also an avid golfer. He was quite colorful in his golf attire with his bright plaid shorts and brilliant "matching" shirts. Patience was truly one of his virtues, particularly when I would be in his foursome. Although Bob was an accomplished golfer, I was on the other end of the golfer spectrum.

On one occasion when Jim Kelley, Bob, and I were golfing, Bob's drive was straight as an arrow traveling a great distance. On my drive, my ball hit a tree, deflected to a shed and landed in the fairway. After we all finished chuckling, Bob complimented me for taking such an interesting approach to the fairway.

I found Bob to be a considerate and thoughtful person—always concerned for the feelings of others. Bob attended my swearing-in to the Bar Association. At that time, it was custom for the attorney being admitted to the Bar to give each local attorney who attended the swearing-in a silver dollar. It was on my 10th anniversary of being

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▲ Bob Stefanon's 1985 WBA Directory Photo

Looking for a special way to remember someone?

**Births • Deaths • Marriages • Anniversaries
Making Partner • Passing the Bar**

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.



the sidebar

the sidebar is published bimonthly as a service for members of the Westmoreland Bar Association. Letters to the Editor should be sent c/o WBA, 129 North Pennsylvania Avenue, Greensburg, PA 15601-2311, fax 724-834-6855, or e-mail westbar.org@westbar.org. the sidebar welcomes submissions from members or non-members. Please submit to the Articles Editor, c/o WBA. Back issues from 2000 to the present and a comprehensive, searchable index are available online at www.westbar.org/thesidebar.

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Remembering Robert M. Stefanon

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admitted to the Bar that Bob called me into his office, discussed how I now perceived the practice of law, and told me he had a gift to celebrate this 10th anniversary. When I opened the box, it was the silver dollar which I had given him 10 years earlier. He thought it would be a keepsake to remind me of the importance of the profession we were in.

He loved the challenge of adventure, not only in the practice of law, but of outside activities.

He was a frequent whitewater rafter at Ohiopyle, but became a more reluctant participant after being thrown from the raft on one of the rapids and continuing his river ride without the raft.

Bob Stefanon was truly a gentlemen's lawyer: sharp, witty, industrious, but always able to keep his perspective about himself. He balanced life with law, community, and adventure, but

his cherished possessions were his family. He and his wife, Patricia, had three children—Michael, Patrick, and Stephanie. I saw Bob as a devoted parent balancing the duties of his profession with the responsibilities of parenthood, which brings to mind a word of advice that I have never forgotten. As we were having one of our many conversations, he advised that as much as I enjoyed the practice of law, to always balance my work with taking time to enjoy my children—the practice of law would always be there, but your children grow, marry, and move on.

Bob Stefanon was a friend, counselor, and legal associate, but as cases came and then ended, his advice concerning family was always present. I have treasured this advice, and it is advice I am sure Bob would want to have shared with his fellow members of the Bar.

We have suffered the loss of an extraordinary individual who will be greatly missed. 🌹

New Venue

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- Lakeview Resort close-by for golfers;
- Pubs and eateries within walking distance;
- Outside deck for Thursday kick-off barbecue;
- Freshly updated conference facilities featuring state-of-the-art technology;
- One (short) hour drive from Greensburg.

Look for your Bench/Bar Conference registration in your office mail and in your inbox by mid-March. Registration fees will remain at 2010 pricing. 🌹

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Philadelphia Magazine: Top Attorneys
in Pennsylvania

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Committee Reports

Nominations Announced for 2011–2012 Board, Committees

Nominating Committee

The Nominating Committee of the Westmoreland Bar Association has recommended the following members for positions on the Board of Directors and the Membership and Building Committees. Those WBA members attending the Annual Meeting of the association, to be held on April 4, 2011, will vote “yea” or “nay” to fill these positions.



▲ *Incoming WBA President Michael J. Stewart*

At the conclusion of the annual meeting, Michael J. Stewart will assume the Bar presidency.



▲ *John K. Greiner*

VICE PRESIDENT: JOHN K. GREINER
The Vice President ensures that the WBA’s mission, services, policies, and programs are carried out. One-year term.

John K. Greiner has been nominated for the position of Vice President. He is completing his third year as a Director on the WBA board.

John is Chair of the WBA’s Civil Litigation Committee, and serves on the Planning, Orphans’ Court, and Technology Committees. He is a member of the Ned J. Nakles American Inn of Court and Western Pennsylvania Association of Trial Lawyers.

A graduate of Saint Vincent College with a B.A. in Liberal Arts, John earned his J.D. from the University of Pittsburgh. He is a partner with Belden Law in Greensburg.

BOARD OF DIRECTORS: LEE R. DEMOSKY AND MARIA E. SOOHEY

The Director ensures that the WBA’s mission, services, policies, and programs are carried out. Three-year term.

The Nominating Committee has selected Lee R. Demosky and Maria E. Soohey as candidates to fill one vacancy on the WBA Board of Directors. The election will be held at the annual meeting on April 4.



▲ *Lee R. Demosky*

LEE R. DEMOSKY
Professional Background

- Meyer, Darragh, Buckler, Bebenek & Eck, PLLC, February 1999–present; elected

- Partner in January 2002
- Assistant Part-Time District Attorney, Fayette County, November 1997–January 1999
- Coldren Adams, Associate Attorney, May 1996–February 1999
- Dauphin County Public Defender’s Office, April 1993–May 1996
- Widener University School of Law, 1994
- Saint Vincent College, 1992

WBA Activities

- Member since 1997
- Outstanding Young Lawyer of the Year, 2004
- ADR Committee
- Municipal Law Committee
- Family Law Committee
- Inns of Court, 1997–present
- Westmoreland Academy of Trial Lawyers

MARIA E. SOOHEY
Professional Background

- Ferguson Law Associates, February 2010–present
- Aestique Medical Center, General Counsel/Chief Financial Officer/Business Operations, 1996–present
- United Physicians, Inc., Executive Director (Interim), June 1995–October 1996
- Theodore A. Lazzaro, M.D., Plastic Surgery, Business Manager, 1980–1990
- Duquesne University School of Law, 1996, Law Review
- University of Pittsburgh, 1986



▲ *Maria E. Soohey*

WBA Activities

- Member since 2001
- Trustee, Westmoreland Bar Foundation, 2003–present
- Treasurer, Westmoreland Bar Foundation, 2009–present
- Planning Committee
- Inns of Court, 2006–present

Other Professional Information

- Areas of practice: Business, Healthcare, Elder Law, Estate Planning

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Nominations Announced for 2011–2012 Board, Committees

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LEE R. DEMOSKY

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Other Professional Information

- Executive Board, Saint Vincent Law Society
- Adjunct Professor, Saint Vincent College, 12 years
- Partner, Meyer, Darragh, Buckler, Bebenek & Eck, PLLC
- PBA–YLD Executive Council, 2002–2004

Reason for Interest in

Board Position

I am interested in serving on the WBA Board of Directors as I have been actively involved in the WBA for over 14 years and I am interested in promoting the interests of all Westmoreland County attorneys into the future. I believe that it is more important than ever for attorneys practicing in our county to join forces to preserve and also expand our profession.

MARIA E. SOOHEY

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- Board Member, Turkey Trot: Benefits Big Brothers Big Sisters
- Faculty, University of Phoenix: Teaching Health Law & Ethics, Masters Level Courses

Reason for Interest in

Board Position

Like most of you, I am passionate about our profession. It is an

integral part of me and I love it. The WBA Board, our Board, has remained consistent in its commitment to represent us, the members of the Westmoreland Bar Association. I view the WBA Boards, past and present, as people of goodwill, working together toward a common purpose and being successful at it. I want to serve the members of our Association by dedicating time and effort to important issues affecting our practices and our county.

Each of us possesses unique skills, and mine are in budgeting and finance. I hope to use my skills to solve problems that can adversely affect our Association and our profession locally, regionally, and nationally. Good relationships with my colleagues are important to me, and I value the ones I am fortunate enough to currently have, and look forward to those yet to come. I am a good listener and will remain a voice of our members. I am energized by the opportunities that technology brings to the practice of law, recognize the challenges, and remain focused on creative solutions. Should I be given the opportunity to serve on the WBA board, I will use my skills to make a difference and achieve results. As a board member, I assure you that I will serve with civility, grace, and dignity: values that remain synonymous with the Westmoreland Bar Association.

MEMBERSHIP COMMITTEE: PHILIP N. SHELAPINSKY

The Membership Committee is the first point of contact most applicants have with the WBA. Five-year term.



▲ Philip N. Shelapinsky

Philip N. Shelapinsky has been nominated to fill the open position on the WBA Membership Committee.

Phil returned to Greensburg, and the Westmoreland Bar Association, in 2005 when he became Executive Director of Lawyers Abstract Company. He began his career in 1973 with Fisher, Long & Rigone in Greensburg, then went on a corporate journey of approximately 20 years, as Director of Real Estate Development, first with Supervalu, then with the Buncher Company in Pittsburgh.

“My interest in serving on the Membership Committee,” says Phil, “in addition to plugging Lawyers Abstract, is to convey to the new lawyers the importance of the many opportunities that membership in the Westmoreland Bar Association provides. My first time as a member of the Association, I did not use the benefits provided by the Association membership enough. The ability to learn from your peers in Association sponsored activities, such as committee memberships and the Inns of Court, is something that I want to stress to the new lawyers. My increased involvement in Association activities the second time around, has been both professionally and personally beneficial to me and something that I want to stress with the new lawyers.”

Phil earned both his undergraduate degree in Economics and his law

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Lawyer Referral Service of the Westmoreland Bar Association

The Lawyer Referral Service is now accepting applications for 2011.

If you are a full-participating member of the WBA and need an application, call 724-834-6730.

From The Bench

A Year In Review

Editor's note: The Hon. Michele G. Bononi and The Hon. Christian F. Scherer have been on the Westmoreland County bench for a little over a year. We asked them to share their thoughts on their first year as judges.

THE HON. MICHELE G. BONONI

About fifteen years ago, I read a book that focused on the breakdown of our society due to the loss of community. It stressed the importance that neighborhoods and the community have in the development of our youth, and the way in which they later shape adult lives. Without community involvement, it became more difficult for a child to learn social skills, which often led to that child having difficulties as an adult.



▲
The Hon. Michele G. Bononi

Whether it is in a juvenile matter, custody dispute, or some other family law case, the litigants are often facing problems in isolation. They do not know how to deal with these problems, and they have nowhere to turn. In the past, members of their community were available to help, but not now.

It is with this in mind that I have approached my first year on the bench. I have tried to adopt not only a legal approach, but a community-style approach to these cases by bringing in the knowledge and hard work of the various agencies within our community to assist me. In collaboration with the Westmoreland County Juvenile Probation Department, the guardians ad litem, the court masters and hearing officers, the Westmoreland County Children's Bureau, CASA, the attorneys who work the cases, and the various social agencies in Westmoreland County, I see progress and positive results everyday. While these individuals and agencies face enormous challenges, their devotion to their respective jobs is unbelievable.

Unfortunately, I have learned that drug and alcohol abuse is very prevalent in our society. All too often it results in the breakup of families and is the cause of many delinquent and destructive acts. While I personally do not know how to overcome these addictions, I continue to lead people to programs designed to address these issues. But despite my best efforts, and sometimes the best efforts of the litigants, failure often occurs.

I have also learned that, at times, persistence will achieve results. For example, a custody case in which an addicted parent runs across state lines with a child can result in that child being put in a dangerous situation. Obtaining cooperation from the other state can be frustrating, despite the advances in the law. Very often, the fleeing parent tries

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THE HON. CHRISTIAN F. SCHERER

My life as a Judge began with an assignment in family court. Because my previous legal experience consisted of civil litigation and criminal prosecutions, I encountered a whole new area in family law. In my first year on the bench, I strove to have a positive impact on the lives of the litigants who appeared before me.



▲
The Hon. Christian F. Scherer

This first year on the bench has been a rewarding experience for me personally. A new matter presents itself every day in family court. One truly gets the feeling that a positive impact can be made on people's lives. I have found, however, that the cases that come before me, for the most part, are a microcosm of society, as it presently exists. The family unit in our society is ever-changing; and I can honestly say that I have learned more about society in my first year in family court than I did in all my earlier years as an attorney and as the Sheriff. Being the parent of four

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Nominations From the Bench: A Year In Review

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degree from the University of Pittsburgh.



▲ David S. DeRose

BUILDING COMMITTEE: DAVID S. DEROSE

Responsible for maintaining the management and upkeep of Bar Headquarters. Five-year term.

David S. DeRose has been nominated for

reappointment to the WBA's Building Committee. He currently is its Chair.

A member of the Pennsylvania Trial Lawyers Association and the Association for Conflict Resolution, Dave is also a founding member of Lawyers Abstract Company of Westmoreland County, serving on its Board of Directors from 1987–1994. Dave also serves on the WBA's ADR, Planning, Family Law, and Elder Law Committees.

A graduate of Penn State University, Dave earned his juris doctor from the Duquesne University School of Law and has been a member of the WBA since 1977. He is an associate with QuatriniRafferty, PC, in Greensburg.

Criminal Law Committee

CLE Updates

The Criminal Law Committee had a successful CLE on the new Day Reporting program in December (see article on page 10).

A lunch and learn CLE is scheduled for March 22, 2011, at the WBA. The speaker will be Jonathan Vallano, who will speak on the psychological aspects of witness prep and juries. 🌿

THE HON. MICHELE G. BONONI *continued*

to obtain relief in the other state by twisting the truth. Without the other state having full knowledge of the actual facts and circumstances of the case, getting cooperation is difficult and requires additional steps. This may include dealing with local sheriff's departments and calling various social agencies and judges in the foreign jurisdiction. Oftentimes, without persistence, the danger of a child being hurt is imminent; the law should always protect children and take whatever steps are necessary to ensure their safety. These are the cases that can keep me up at night.

Finally, I have come to appreciate that a judge can only succeed if she has a good staff working with her. I could not have survived my first year without my secretary, law clerk, court reporter, court aide and, yes, my sheriff's deputies. Their dedication and hard work made my transition to this job an easy one.

I look forward to continuing to work with the families in Westmoreland County. I know that there are many challenges ahead in the area of family law, but I also know that courts are needed to protect the most important members of our society, our children. 🌿

THE HON. CHRISTIAN F. SCHERER *continued*

children has given me insight into numerous issues that have come before me. The experiences I have seen—the good and the bad—have had an impact on me as both a husband and a father.

The amount of responsibility that comes with being a judge in family court is more than I had anticipated, especially with regard to dependency cases. I have found that one of the most difficult aspects of the job is to determine whether or not parental rights must be terminated.¹ Terminating someone's parental rights is hard to fathom but, unfortunately, it is sometimes necessary.

I truly respect the men and women who practice this profession of family law. I find most attorneys who practice in front of me to be caring and diligent in the representation of their clients, and I am very impressed with the professionalism of the Westmoreland County bar. Similarly, I am equally impressed with the many volunteers, service providers and public servants who dutifully and faithfully serve those whose circumstances require that they come in contact with family court.

During my first year on the bench, many people have assisted me. I have been blessed with what I consider to be a very helpful and courteous staff. I can't thank my staff enough for the assistance they have provided me and for the professionalism they have displayed. And I would be remiss if I did not acknowledge my colleagues for their insight and advice, as well as the attorneys who have been patient and helpful as I accustom myself to this new career.

Finally, I thank *the sidebar* for the opportunity to reflect on my experience during my first year on the bench in Westmoreland County. 🌿

¹ This is not to minimize the other important decision-making aspects of this job.



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Spotlight on Richard Jim



Q WHAT JOBS DID YOU HAVE BEFORE BECOMING A LAWYER?

A Berry Picker; Wall Washer; Furnace Installer; Steel Open Hearth Inspector; U.S. Navy Officer; and Pitt Placement Bureau.

Q WHICH WAS YOUR FAVORITE AND WHY?

A U.S. Navy Officer. This was my first time away from home and I lived in Philadelphia and Washington, D.C.

Q WHAT IS THE FUNNIEST THING THAT'S HAPPENED TO YOU AS AN ATTORNEY?

A Representing the owner of stinking goats at a magistrate hearing.



Q WHAT QUALITY DO YOU MOST LIKE IN AN ATTORNEY?

A Patience.

Q WHAT IS YOUR FAVORITE JOURNEY?

A Any journey with my family.

Q WHAT IS YOUR GREATEST REGRET?

A Selling my Oracle Stock at 3¹/₂.

Q WHO ARE YOUR HEROES IN REAL LIFE?

A Any challenged individual who gets it done.

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

A Take some time off to sit in courtrooms and listen.

Q WHAT DO YOU CONSIDER YOUR GREATEST ACHIEVEMENT?

A Has not yet happened.

Q WHAT IS YOUR IDEA OF PERFECT HAPPINESS?

A Eating an entire pumpkin pie.

Q WHAT IS YOUR MOST TREASURED POSSESSION?

A 1920's Mickey Mouse toy with a Walter (not Walt) Disney label.

Q WHAT IS IT THAT YOU MOST DISLIKE?

A Walking past the perfume counter at Macy's.

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Multi-System Day Reporting Center Attempts to Fill the Gap

INNOVATION IN COMMUNITY CORRECTIONS DEVELOPED TO BE NEW FORM OF INTERMEDIATE SANCTION

Westmoreland County's Day Reporting Center (DRC) opened on November 1, 2010. The DRC is a sentencing alternative which fills the gap for offenders between probation and prison, both in terms of severity and personal restrictions imposed on the offender.

The targeted population of the DRC consists of adults who are age 18 and older with a substance abuse, mental health, and/or co-occurring disorder who are involved with the Westmoreland County court system and Adult Probation/Parole Office. The DRC serves criminal justice clients who are at risk of being revoked and sentenced to the county jail due to failure to comply with the sentencing

court requirements. However, individuals can also be court-ordered to the DRC as a condition of pre-trial supervision, probation, and intermediate punishment or parole.

The DRC's main goal is to bring various agencies together within one centralized location in the county, in one partnership, to provide a variety of services to those sentenced to the DRC. The DRC, which is a collaborative effort between SPHS Behavioral Health and the Westmoreland County Adult Probation/Parole Office, will work in partnership with other agencies within the county to address the total needs of its clients.

Some initial partnering agencies involved in this collaborative effort include: Private Industry Council, CareerLink, Westmoreland Casemanagement and Supports, Inc., and Veterans Administration Services.

Additional support agencies will be added on an as-needed basis.

The Day Reporting Center provides offenders the opportunity to receive various services including, but not limited to, mental health and substance abuse treatment, case management services, job search efforts, education services, and court surveillance, all available at one location. The DRC also provides transportation for those not eligible for the Medical Assistance Transportation Program.

Initial funding for the development of the DRC is being provided through grants by the Westmoreland Drug and Alcohol Commission, Inc. (HealthChoices), and the Pennsylvania Commission on Crime and Delinquency (PCCD).

The Day Reporting Center will not only meet the needs of offenders and streamline services, it will also increase the likelihood of an offender's successful completion of treatment services, assist clients in securing and maintaining employment and education, increase the surveillance and accountability of high-risk offenders within the criminal justice system, and reduce recidivism within the criminal justice system.

An individual participating in the DRC must report on a regular and frequent basis to the program, which not only monitors his or her activities or whereabouts, but also assesses the offender's treatment needs, support service needs, and provides rehabilitative services on-site.

The Day Reporting Center is located at 203 South Maple Avenue in Greensburg. To initiate a referral, call Pat Nuzzo, Probation Officer II, at 724-832-6778. For more information about the DRC, call Kayla Larry, Supervisor, at 724-832-6778 or 1-800-220-1810.

Spotlight on Richard Jim

continued from page 9

Q WHAT IS YOUR GREATEST EXTRAVAGANCE?

A Eating an entire pumpkin pie.

Q WHAT TALENT WOULD YOU MOST LIKE TO HAVE?

A Being able to play a guitar.

Q WHAT DO YOU VALUE MOST IN YOUR FRIENDS?

A Friends who advise and tell me when I'm wrong.

Q WHAT IS YOUR MOTTO?

A "Put me in, coach. I think I can score." (Peanuts) 🐿️



▲ Seaman Richard Jim exploring downtown Newport, Rhode Island, while on a day pass from U.S. Navy Officer Candidate School in 1951.

November 2010 and January 2011 Civil Trial Terms

Jury Trial Verdicts

by Beth Orbison, Esq., Thomas L. Jones, Esq., and Monique J. Lafontant Mears, Esq.

November 2010 Trial Term

Of forty-seven cases listed for the November 2010 Civil Jury Trial Term, fourteen settled, twenty-six were continued, two were transferred to binding arbitration, two were decided by a summary jury trial, and three cases were tried to verdict. The jury verdicts and summary jury trial verdicts for the November 2010 civil trial term are summarized below.

**SUSAN RENEE MUDRY,
INDIVIDUALLY AND AS PARENT
AND NATURAL GUARDIAN OF
BLAKE STEPHEN McDONALD,
A MINOR**

V.

**NAOMA W. BOYD, A/K/A
NAOMA W. WADE
NO. 5792 OF 2007**

*Cause of Action: Negligence—
Pedestrian Motor Vehicle Accident*

On April 12, 2006, at 3:36 p.m., Defendant was operating a motor vehicle in the 900 block of Broad Avenue in North Belle Vernon. Plaintiff Blake McDonald, who was thirteen years old at the time, was a pedestrian attempting to cross Broad Avenue when he was struck by Defendant's vehicle. As a result of the accident, Plaintiff suffered multiple traumas with open comminuted mid-shaft fractures of the tibia and fibula of the lower left leg. In due time, the Plaintiff fully recovered from his injuries.

Defendant raised the affirmative defenses of contributory/comparative negligence and assumption of the risk. Defendant's accident reconstruction expert witness characterized the accident as a "dart out" incident, in which Plaintiff darted out into approaching traffic with little or no advance warning to Defendant, the



approaching driver. Furthermore, the expert opined that there was no reason to believe that the actions of Defendant contributed to the accident.

Plaintiff's Counsel: Charles L. Bell, Jr., Arnold

Defendant's Counsel: Scott Mears and Richard F. Boyle, Jr., Mears, Smith, Houser, & Boyle, P.C., Gbg.

Trial Judge: The Hon. Richard E. McCormick, Jr.

Result: Verdict in favor of Defendant. The jury found that Defendant was not negligent.

BONNIE KOSH

V.

**GREENSBURG POOL &
SUPPLY CO.
NO. 6324 OF 2009**

*Cause of Action: Breach of
Contract—Negligence*

In 2002, Defendant installed a pool liner and associated equipment for Plaintiff. Every summer thereafter, Plaintiff alleged that the pool leaked. In 2007, Defendant returned to Plaintiff's home to attempt to stop the pool from leaking. Defendant informed Plaintiff that the leak was

caused by a light fixture in the pool and said that he temporarily fixed it.

Plaintiff claimed that Defendant breached its contract with Plaintiff by failing to correct the situation, resulting in continuing leaks and a detachment of the pool liner from the interior floor and walls of the pool. Defendant denied all liability, stating that the cause of the problem was groundwater runoff from the hillside that flowed under the pool, a fact that Defendant had previously recommended Plaintiff correct.

Both parties presented experts.

Plaintiff's Counsel: John M. O'Connell, Jr., Gbg.

Defendant's Counsel: Joseph Massaro, Gbg.

Trial Judge: The Hon. Anthony G. Marsili

Result: Verdict in favor of Defendant. The jury found, by a 10-2 decision, that Defendant did not breach its contract.

**DAWN A. SCHRECKENGOST
AND SHAWN SHRECKENGOST,
HER HUSBAND**

V.

**KING'S COUNTRY SHOPPES, INC.,
T/D/B/A KING'S FAMILY
RESTAURANT
NO. 10342 OF 2008**

*Cause of Action: Negligence—
Personal Injury—Loss of Consortium*

On October 7, 2006, Plaintiff Dawn Schreckengost went to King's Family Restaurant in New Kensington and ordered a chicken salad from the menu. Plaintiff claimed that when she took a bite of the salad, there were pieces of porcelain in the food. She alleged that the porcelain caused injuries to her teeth, mouth, and gastric system. Plaintiff and her husband filed an action against

continued on page 12

Jury Trial Verdicts *continued from page 11*

Defendant asserting claims of negligence and loss of consortium.

Defendant denied that the incident was the factual cause of any injuries to Plaintiff-Wife. Defendant argued that at the time of the incident, Plaintiff downplayed any injury to the manager of Defendant's restaurant. Further, Defendant argued that Plaintiff had pre-existing stomach and gastric issues.

Counsel for the parties agreed to a binding summary jury trial.

Plaintiff's Counsel: Jon C. Botula, Pgh.

Defendant's Counsel: Kenneth T. Newman, Pgh.

Trial Judge: The Hon. Anthony G. Marsili

Result: Verdict in favor of Plaintiff. The jury found, by an 8-0 decision, that Defendant's negligence was the factual cause of harm to Plaintiff-Wife and awarded medical damages in the amount of \$783.67. The jury denied any award for pain and suffering to Plaintiff-Wife and denied any award for loss of consortium to Plaintiff-Husband.

DAVID DEFELICES

V.

ROBERTA JONES

NO. 9092 OF 2007

Cause of Action: Negligence—Personal Injury—Motor Vehicle Collision

On January 8, 2007, Plaintiff, while operating his motor vehicle, was stopped at a red light at the intersection of Freeport Road and Drey Street in New Kensington when his Ford Econoline van was struck in the rear by Defendant's vehicle. Plaintiff claimed that the collision caused him to suffer from myofascial pain syndrome involving the posterior trunk muscles. As a result, Plaintiff claimed that he could no longer be employed as a painter. Furthermore, he claimed damages for pain and suffering.

Plaintiff's expert witnesses rendered opinions concerning Plaintiff's

projected loss of earning capacity as a result of the injuries he sustained.

Defendant maintained that the vehicles sustained only minimal damages and that neither Plaintiff nor Defendant suffered any apparent injury. The accident was considered "non-reportable" by the Arnold Police Department. A medical report indicated, among other things, findings of "no evidence of lingering injury" and "ongoing evidence of nonorganicity consistent with magnification or fabrication of symptoms."

Counsel for the parties agreed to a binding summary jury trial with a high/low agreement.

Plaintiff's Counsel: Susan N. Williams, Gbg.

Defendant's Counsel: Dwayne E. Ross, Latrobe

Trial Judge: The Hon. Richard E. McCormick, Jr.

Result: Verdict in favor of Defendant. The jury found, by an 8-0 decision, in favor of the Defendant and awarded zero damages to the Plaintiff.

CYNTHIA WEIGAND AND

KARL WEIGAND

V.

THOMAS M. McCLARRAN, JR.,

AND SHIRLEY McCLARRAN

NO. 421 OF 2009

Cause of Action: Negligence—Slip and Fall

On January 29, 2008, Plaintiff Cynthia Weigand exited her vehicle at 520 Donohoe Road, Latrobe—where Defendants conducted a dog breeding business—and fell on a patch of ice and/or snow in Defendants' driveway.

Plaintiff alleged that as a direct and proximate result of the carelessness and negligence of Defendants in maintaining the driveway to ensure that it was safe for use by business invitees, she sustained a fracture of her left distal fibula. As a further result,

she suffered wage loss, impairment of earning capacity, medical bills, and pain and suffering. Her husband asserted a claim for loss of consortium.

Defendants denied the driveway had accumulated ridges of ice and snow so as to place Defendants on notice of a dangerous condition. On the contrary, Defendants asserted that the area had been salted earlier on the day of the accident.

Plaintiff's Counsel: John J. Romza, Covelli Law Offices, Pgh.

Defendants' Counsel: Dennis J. Slyman, Gbg.

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict in favor of Defendants and against Plaintiffs.

January 2011 Civil Trial Term

Of thirty-five cases listed for the January 2011 Civil Jury Trial Term, six settled, twenty-four were continued, one was transferred to binding arbitration, and four cases were tried to verdict. The jury verdicts for the January 2011 civil trial term are summarized below.

TIMOTHY FLYNN, ADMINISTRATOR OF THE ESTATE OF BETTY FLYNN, DECEASED,

V.

THOMAS N. KAMINSKI, M.D.,

KENNETH W. BOSCHA, M.D.,

LYNN & KAMINSKI MEDICAL

ASSOCIATES, P.C., AND

FRICK HOSPITAL

NO. 5792 OF 2007

Cause of Action: Negligence—Wrongful Death—Medical Professional Liability

On March 12, 2006, Plaintiff's mother, Betty Flynn, had a clostridium difficile infection and was admitted to Frick Hospital under the care of Defendant-Doctors Kaminski and Boscha. Plaintiff alleged that Defendants did not properly diagnose or treat his mother's infection, and that as a result, she died on March 13,

2006, while an in-patient at the hospital. Specifically, Plaintiff claimed that Defendants failed to properly administer medications, failed to adequately hydrate her, and failed to recognize that her condition was deteriorating rapidly.

In addition, Plaintiff alleged that Defendant Frick Hospital, through its nurses and staff, were negligent in several respects, including, but not limited to, failing to adequately communicate with the attending physicians, failing to adequately hydrate Plaintiff's mother, and failing to monitor and recognize the rapid deterioration of Plaintiff's mother, leading to her death. Immediately prior to jury selection, Plaintiff and Defendant Frick Hospital reached a settlement agreement and signed a joint tortfeasor release.

At trial, Plaintiff presented one expert witness, a family practitioner, in support of his position that Defendants had deviated from the standard of care. Defendants presented two expert witnesses—

a specialist in both internal medicine and geriatrics, and a specialist in infectious diseases—who testified that Defendants did not deviate from the standard of care.

Plaintiff's Counsel: Carlyle J. Engel, Swensen Perer & Kontos, Pgh.

Defendants' Counsel: Steven J. Forry, Marshall, Dennehey, Warner, Coleman & Goggin, Pgh.

Trial Judge: The Hon. Richard E. McCormick, Jr.

Result: Verdict in favor of Defendants. The jury found that Defendants were not negligent.

**FIRST LATROBE CO.
V.
COMMONWEALTH OF
PENNSYLVANIA DEPARTMENT
OF TRANSPORTATION
NO. 738 OF 2007**

Cause of Action: Eminent Domain

Plaintiff owns a shopping center located at the intersection of Routes 30 and 981 in Unity Township. When Defendant PennDOT redesigned the

intersection in 2007, access to and from the parking lot of the shopping center was altered. The entrance/exit near the front of the Big Lots store, prior to the taking, was accessible by motorists traveling north and south on Route 981. Subsequent to the taking, access was limited to those motorists heading north on Route 981. In addition, after the taking, customers entering the premises now approach the shopping center along a side wall and do not have a clear view of all of the businesses located in the shopping center.

Both parties filed appeals from the award of the Board of Viewers, which was \$650,000.

At trial, Plaintiff's experts, real estate appraisers, testified that Plaintiff suffered damages in the range of \$825,000 to \$875,000 as a result of the decrease in the fair market value after the taking.

Defendant presented the testimony of the engineer who designed the intersection, who explained why the

continued on page 14

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* American Bar Association Standing Committee on Lawyers' Professional Liability. (2008). *Profile of Legal Malpractice Claims, 2004-2007*. Chicago, IL: Haskins, Paul and Ewins, Kathleen Marie.



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Jury Trial Verdicts *continued from page 13*

changes were necessary for public safety. In addition, Defendant presented the testimony of a real estate appraiser who testified that the fair market value of the property decreased by \$500,000.

Plaintiff's Counsel: William P. Bresnahan and William P. Bresnahan, II, Hollinshead, Mendelson, Bresnahan & Nixon, P.C., Pgh.

Defendant's Counsel: Ryan J. Kammerer, Assistant Counsel, Commonwealth of Pennsylvania, Pgh.

Trial Judge: The Hon. Richard E. McCormick, Jr.

Result: Verdict in favor of Plaintiff, with compensable damages set at \$500,000.

ANTHONY R. CESARE

V.

DOMINIC CESARE

NO. 7496 OF 2008

Cause of Action: Defamation

Plaintiff is the father of the Defendant. Both men operate competing local businesses that install custom-built water treatment systems. Plaintiff-Father sued Defendant-Son for defamation, seeking damages for loss of business, due to his son's allegedly defamatory statements made about him to several of his business associates.

By way of background, this case originates in a 2007 custody action, wherein Plaintiff-Father sought visitation with his grandson. Plaintiff's Complaint alleges that during said litigation, Defendant prepared a "Parent Information Form" wherein Defendant wrote, "Throughout my childhood the plaintiff has physically and sexually abused me." Plaintiff further alleges that Defendant made the same statements to other people, who were business associates of Plaintiff.

As a result of the allegedly false statements, Plaintiff alleged not only that his business dealings with his customers have been harmed, but that his reputation in the community was also harmed.

In response, Defendant alleged that the statements were true and, further, that Plaintiff suffered no damages as a result of those statements. Defendant further alleged that Plaintiff made the statements public before Defendant did so.

Plaintiff's Counsel: Amy Cunningham, Gbg.

Defendant's Counsel: Steven L. Morrison, Harrison City

Trial Judge: The Hon. Anthony G. Marsili

Result: Verdict in favor of Plaintiff. The jury found that the communication made by Defendant was defamatory. However, no monetary damages were awarded to Plaintiff.

ALBERT BIANCO

V.

MANNI'S LIGHTHOUSE LANDING, INC.

NO. 6189 OF 2008

Cause of Action: Breach of Contract


Plaintiff alleges that Defendant, upon payment by Plaintiff, and pursuant to an oral contract, in the spring of 2007, agreed to de-winterize and launch Plaintiff's boat, a 1983 Carver 28-foot mariner vessel. Plaintiff further alleges that, because of Defendant's failure to properly inspect said boat, the boat sank on or about June 28, 2007, when Defendant placed it into the river.

Defendant alleges that they correctly performed all of the terms and conditions requested by Plaintiff. Defendant further alleges that any damage to the boat was caused by either the Plaintiff or the previous owner of the marina. Defendant claims monetary damages in a Counterclaim, as a result of Defendant's costs in having to raise the sunken vessel.

Plaintiff's Counsel: Tara E. Fertelmes, Pgh.

Defendant's Counsel: Patrick J. McStravick, Philadelphia

Trial Judge: The Hon. Anthony G. Marsili

Result: Verdict in favor of Plaintiff. The jury found that Defendant breached the oral contract, and that the breach was the factual cause of Plaintiff's damages. The jury awarded Plaintiff \$9,000 in damages. 

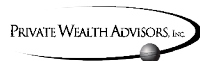
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To-Wit: LOL

by S. Sponte, Esq.

It wasn't one of my shining moments. Twenty years have passed, the client in question has long since gone on to a final reward hopefully far richer than the measly temporal one I was able to achieve for him, and yet every time it pops into memory I still convulse with tasteless laughter like the craven, heartless bastard I sometimes seem to be.

It was a dog bite case, and a good one at that. The *sui* canine was my favorite breed, a German Second Biter. Good doggie! And the client was a kind and elderly gent who had stopped by to visit an ailing friend, lugging with him carpet samples he had picked up at the store to help his friend make a decision about some new carpeting.

As soon as the front door opened, this delightfully vicious beast knocked

him to the ground and began savagely biting him about the head, face, arms, shoulders, and legs. And now, six months later, here he was, in the middle of his deposition, testifying about the gruesome attack that had sent him to the hospital for two weeks.

“What kind of lawyer laughs at the searing, painful lances with which life impales his clients? Oh, I do, I do.”

He gets to the part about his rolling around in the dirt with the dog on top of him and I start to chuckle.

Oh, had it only stayed a chuckle. But as I listened to his testimony, as I conjured up the image of this

roly-poly little old man beset by dog and dust and entwined in a bizarre mélange of yelping and barking and the wild, ineffectual flailing of chubby arms and chubby legs, plaid socks sunk below pasty white ankles, shags and Berbers flung asunder, the chuckle became a laugh, then a guffaw, then a howling, relentless torrent of cackles, chortles, snorts, hoots, and snickers.

I tried to stop it, I really did. I twisted my fingers, bit my lips and stabbed my palms with a ball point pen, all to no avail. Once that raging flow of mirth got loose, nothing could staunch it, and when opposing counsel mercifully suggested this might be a

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The Honorable Irving L. Bloom recently travelled to Israel, visiting Jerusalem, Galilee, and the Dead Sea. "The camel stank badly, had fleas, and was a spitter," he said, "but I had fun wading in the Dead Sea."

DEAD SEA, ISRAEL

To-Wit: LOL *continued from page 15*

good time to let the court reporter take a break, I could only nod in affirmation as I fumbled for my handkerchief to dry the blood from my lips, the ink from my hands and the tears from my eyes.

Now I know what you're thinking. What kind of lawyer laughs at the searing, painful lances with which life impales his clients? Oh, I do, I do. The finger in eye, hammer blow to head humor of the Three Stooges has always brought tears to my eyes. So have the blunt force stylings of all the great comedy duos, Abbott and Costello, Laurel and Hardy, Adam and Eve. Damn funny stuff.

It is an unerring truth of the human condition that tears of laughter and tears of sorrow flow from the same wellspring, and isn't draughting long and hard from that spring what it is we all do for a living? As long as this madding profession drives me to tears,

I'm going to laugh about it. Crying is really more for the uninitiated, don't you think?

There's a pragmatic side to this as well, as laughing is not without its profit. After the deposition had concluded, my client decided to settle for the reasonable offer the insurance company had already put on the table.

"The only flaw in my case was you," he told me. "You're crazy, and I'd be crazy, too, if I let you take my case to a jury."

Ah yes, crazy, maybe so. But I've been practicing law now for more than forty years, and in those quiet, contemplative moments, when I'm off visiting the deep recesses of my psyche, that statistic has me positively rolling in the aisles. 🐾

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Bar Foundation Focuses on the Need, Not the Cause



by Diane Krivoniak, Executive Director

I recently came across the German proverb, “Charity sees the need, not the cause.” When clients come through the door of the Pro Bono



▲
Diane Krivoniak

office, it is easy to look at those in need and make judgments about the way they are living their lives and the missteps they took to bring them to the 218 South Maple Avenue Pro Bono office.

The Westmoreland Bar Foundation, luckily, focuses on the need, and not the cause. Through member donations—both time and money—along with grant money from the WBA, Laurel Legal Services, and IOLTA, Pro Bono can provide the assistance that these individuals seek, using only the criteria of income and need.

As 2011 gets downgraded from new and exciting to everyday ordinary, the bar foundation will continue on its mission of recruiting enough volunteers and raising enough dollars to serve the indigent. Parents and grandparents seeking custody orders, seniors needing help with utility bills, families struggling with housing issues, minimum wage workers trying to make ends meet; all are the faces of pro bono. All are in need of an attorney’s expertise.

It is not necessary to talk about why having a lawyer is important to

someone in trouble. Whichever area of law you practice, you know how much your clients depend on you. So donating time or dollars to support legal service for the neediest among us is probably a no-brainer.

But why is it important that attorneys continue to support the Westmoreland Bar Foundation as their charity? Because we are you. The Bar Foundation is governed by lawyers, run by lawyers, and financially supported by lawyers. This is your foundation. And Westmoreland is where you work, raise your family, and spend your free time. (Hopefully, you have some!)

As a matter of fact, when asked, many of you graciously and consistently respond. In 2010, we raised \$3,500 from members’ dues check-off. We raised almost \$4,000 from the opt-out program. The silent auction brought in an additional \$8,500. And last year, despite the dirty rotten economy, Pro Bono still had the volunteer and financial resources to serve almost 500 clients.

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- Through a financial donation;
- By volunteering to take a pro bono case;
- By making a donation in remembrance of a loved one or honoring a colleague with a memorial or tribute gift;
- By gifting an appreciated stock;
- By naming the Westmoreland Bar Foundation in your planned giving.

So no matter what your preference in way of support, there is something you can do to meaningfully help those in need of legal services through the bar foundation—this bar foundation, your bar foundation.

Thanks to the following individuals and bar foundation friends for their recent support of the Silent Auction and opt-out donations:

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- R. Mark and Linda Gesalman
- Michael Johnson

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Westmoreland Revisited

Prohibition

by *The Hon. Daniel J. Ackerman*



▲
The Hon. Daniel J. Ackerman

It can be said, without citation to authority, that in any history of Westmoreland County, whiskey could have a chapter unto itself. The chapter, of course, would begin with the massive failure of the citizenry to comply with the central government's law imposing an excise tax on distilled products, which, in 1794, would become known as the "Whiskey Rebellion." It was the only occasion when the president, acting as commander-in-chief,

would take the field as the head of the army, even if it was only at the start of a mission, which took 13,000 troops into Western Pennsylvania to enforce the law.

In the eighteenth century, distilling was a logistic necessity to the farmers west of the Alleghenies, who could ill afford to send their bulky crops over the mountains to the east. Distilled rye whiskey, however, was a compact and cheaper alternative, and was so popular that it was an alternate form of currency.

President Washington's show of force, instituted at the urging of Secretary of the Treasury Alexander

Hamilton, had the desired effect, and wholesale resistance to the law evaporated, at least to a tolerable level. The liquor tax was thereafter a permanent fixture for raising federal revenue, and in fact, was, in the absence of an income tax, the main source of government funds for the next 126 years. Income taxes were imposed temporarily to help fund the Civil War and America's participation in the First World War. However, when Prohibition became the law of the land through the Eighteenth Amendment, all taxes on alcohol, then outlawed, were lost in 1920, and the federal income tax has been with us ever since as an unintended consequence of Prohibition.

A later Secretary of the Treasury, Andrew Mellon (whose father, Thomas, the judge and banker, was raised in Murrysville), would find his department in charge of enforcing the Eighteenth Amendment and the Volstead Act, which created the criminal penalties for violation of the Amendment. Ironically, he was not one of the Amendment's proponents or admirers. In fact, it has been suggested that he loathed both the Amendment and the act. He made no apology for the fact that he did not abstain, or that he and his brother, Richard, owned the rye distillery in Scottsdale that produced Old Overholt. Mellon's one-third interest in the distillery, which was founded in 1810, was purchased from Henry Clay Frick in 1887 for \$25,000. In 1925, in the sixth year of Prohibition, the Union Trust Company, a Mellon entity, sold the distillery and its inventory for

\$4.5 million. A future owner used the business to market medicinal spirits.

Such usage was one of three recognized exceptions under the Volstead Act, which allowed the limited manufacture and sale of intoxicants. All of the exceptions were greatly abused. While our current newspapers are running articles speculating on possible legislation to legalize the medical use of marijuana, it is interesting to learn what a farce the medicinal use exception in the Volstead Act turned out to be.

Prescriptions for alcoholic beverages were written and filled for anyone who could claim a chill, a recent sneeze, or, more likely, a friendship with a physician or pharmacist.

The other two exceptions were homemade cider—a nod to farmers, who are reliable voters—and sacramental wines and spirits—which caused more than a few bootleggers to assume the role of clergy presiding over nonexistent congregations.

The Eighteenth Amendment and the Volstead Act were, in practice, so widely ignored during the fourteen years of Prohibition (1920–1934)—not just by gangsters and rum runners, but by otherwise law-abiding citizens—that it is hard to imagine how they ever took root in the first place. Americans had a history of imbibing, and even though the per capita consumption of alcohol in the early years of the twentieth century was only a third of what it was in the preceding century, the saloon environment of the time was regarded as a breeding ground for lost paychecks, broken marriages, and ruined careers.



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The vast majority of drinkers were men. And their intemperance turned women, who suffered from their excesses, into the early reformers. It followed that the temperance movement found a compatible ally in the movement for women's suffrage. The Methodist, Baptist, and evangelical churches, along with the Woman's Christian Temperance Union (note the WCTU water fountain at the old front entrance to the Courthouse), were also vigorous advocates for a dry society; and one of the great political orators of the day, William Jennings Bryan, took up their cause. The Anti-Saloon League, which hardly anyone can remember today, became the strongest lobby that Washington and the various state legislatures had ever seen, and few politicians survived the period without its endorsement.

The cliché, "politics makes strange bedfellows," was never as true as when the above collection of dry organizations was joined by one of the most powerful and xenophobic

political forces of the twenties, which also championed Prohibition—the Ku Klux Klan. The Klan was dry, at least in theory, because it believed that drinking provoked disruptive and criminal behavior in African-Americans and urban immigrants, who had brought their customs of making and drinking wine and beer with them from Europe.

While there was sufficient political will to bring about Prohibition, in the end, it failed. It was underfunded by the government. It was lethargically enforced. It bred corruption and spurred organized crime. And finally, and significantly, it didn't succeed because of social nullification. People just didn't stop drinking.

Because they didn't stop, there were too many people to arrest, and those who were arrested were too numerous for the judicial system to handle. Because the Volstead Act provided for concurrent jurisdiction, prosecutions could be maintained in both federal and state courts. But the act contained a clause that guaranteed

an instant backlog—it provided the accused with the right to a trial by jury. Both court systems were promptly overwhelmed.

Out of this chaotic situation came a novel legal principle, born of urgent necessity: the plea bargain. As Daniel Okrent relates in "Last Call: The Rise and Fall of Prohibition," the procedure was instituted in New York City by the United States Attorney, and it started with a bang. It was made known that the prosecution would request light fines in exchange for guilty pleas to liquor violations. The violators were instructed to appear at New York's Old Post Office Building where two federal judges would dispose of five hundred cases at a time. The event became known as "Bargain Day."

PROHIBITION IN WESTMORELAND COUNTY'S COURTROOMS

When we turn to the judicial record of Westmoreland County as set forth in the Westmoreland Law Journal, there are only six liquor cases

continued on page 20



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foundation focus

continued from page 17

- Bruce Mattock
- David Millstein
- The Hon. William J. and Mrs. Carol Ober
- Michael Quatrini
- Vince and Patty Quatrini
- Dwayne Ross
- Donald J. Snyder, Jr.
- Mike and Karen Stewart
- Stewart, McArdle, Sorice, Whalen Farrell, Finoli & Cavanaugh
- John Wohlin
- Harvey Zalevsky 🍷

Volunteers for Justice

The Pro Bono Program extends thanks to the attorneys who volunteered their time from October to December 2010: Faith Burns, Brian Cavanaugh, Michael DeMatt, Amanda Faher, Rebecca Fenoglio, William Gallishen, Barry Gindlesperger, John Hauser, III, James E. Kelley, Jr., James Kopelman, Irene Lubin, Timothy Maatta, Shirley Makuta, Paul Miller, Jr., Donald Moreman, Milton Munk, Jr., Debra Nicholson, Andrew Skala, Harry Smail, Jr., Mark Wible, and Ronald Zera. 🍷

LawSpeak

First they came for the Socialists, and I did not speak out because I was not a Socialist. Then they came for the Trade Unionists, and I did not speak out because I was not a Trade Unionist. Then they came for the Jews, and I did not speak out because I was not a Jew. And then they came for me, and there was no one left to speak for me.

— Martin Niemöller, a German, Lutheran pastor and prisoner for eight years in a Nazi concentration camp

Prohibition *continued from page 19*

reported during the fourteen years of Prohibition, and not one involves an appeal of a conviction under the liquor laws. Of course, the Law Journal reports only a small fraction of the opinions handed down, but such an absence suggests that it is a good guess that almost all charges ended through guilty pleas, and that few defendants went to jail. The cases reported involve attempts by defendants (none successful) to suppress evidence, defects alleged in the indictments, the maintenance of a common nuisance, and the petition of an owner of an automobile to have the seized vehicle returned after it had been confiscated during the lessee's use of it in the transportation of intoxicating liquor.

In the latter case, *Hare and Chase Petition*, 12 WLJ 191 (1924), Judge Whitten dismissed the owner's petition to return its 1923 Essex coach, noting that the lessee of the vehicle had pled guilty to delivering liquor through the use of the car, and that the statute required forfeiture of any vehicle involved in the transportation of contraband. The owners' remedy, the judge said, was to assert a claim for money due under the lease against the sheriff's proceeds, after the sale of the vehicle, provided it could prove that the illegal use was without its knowledge or consent.

Two of the opinions involve defendants' attempts to have liquor returned to them, and to suppress its introduction as evidence at the time of trial.

The case of *Commonwealth v. Lewko*, 12 WLJ 195 (1924), involved a motorist's challenge on constitutional grounds to the search of his vehicle by the Arnold Chief of Police after his car wrecked on the highway, exposing to view twenty bottles of "Cereal Beverage." Judge Whitten found probable cause for the seizure based upon the arresting officer's view of the bottles, but went on to say that the motorist had no property rights in an

illegal product, which precluded both suppression and return of the same.

In *Commonwealth v. Povich*, 13 WLJ 62 (1925), a defendant homeowner challenged the validity of a search warrant for his residence. Writing for the court, Judge Copeland concluded: "The court will not suspend the conduct of a trial to enter into a collateral inquiry as to the means through which evidence otherwise competent was obtained. If a wrong was done the owner, his remedy is in a different forum."

The "different forum" referred to would have been a civil action against the offending officer. The opinion also notes that possession of intoxicants was prima facie evidence of violation of the act. The burden at trial rested upon the defendant to show that he had acquired the liquor lawfully prior to the effective date of the act, and that it was only used by him in the confines of his home. Is there any wonder as to why there were so many negotiated pleas?

There was another note in the discordant theme of enforcement: an action in equity to enjoin a common nuisance. The Hines Hotel, on Jefferson Street in Latrobe, was a modest and passably clean establishment, which, in pre-Prohibition days, offered its guests a fully equipped and stocked bar. When Prohibition came along, the owner decided to rent the building, which, of course, included the bar fixtures. Subsequently, and to his astonishment, the owner learned that the tenant had put the barroom to its intended use, and had been arrested. A new tenant was found; he also encountered the toils of the law. Over a period of three years, the persistent landlord rented the premises



to seven successive tenants, each one finding their enterprise similarly interrupted by the authorities.

The equity action, entitled *Commonwealth v. Hines, et al.*, reported at 17 WLJ 28 (1929), was heard by an en banc panel of Judges Copeland, Whitten, and Dom, who found the hotel to be a common nuisance. In their findings of fact they noted:

To gain entrance to the Bar three door-ways from the street must be passed through. As you open the first door a bell rings back of the bar counter, and, then a second door of plank with an arrangement thereon through which one on the inside may look out, then a third door lets one into the bar. Some of the doors are re-enforced by iron strips and sheet metal.

The opinion of the court can be distilled to a rhetorical question: In renting a fully equipped barroom, what did the owner expect the tenants to use it for?

The sheriff was directed to padlock the premises for a year.

Enforcement of the law often calls for ingenuity, and sometimes an indirect approach is more effective. After all, Al Capone was never convicted for bootlegging or murder; rather, he went to prison for failing to pay income taxes. A local variation of such an enforcement strategy, and an example of how far we have come in the past ninety-some years, is evident in the opening paragraphs of the court's opinion in *Tornado v. Commonwealth*, 14 WLJ 131 (1926), written by the now familiar Judge Whitten.

On Saturday evening, March 20th, 1926, the plaintiffs in error and 29 other persons were attending a social event at the home of Mr. and Mrs. Henry Leonard, known as Leonard's Inn, in Penn Township, Westmoreland County, Pennsylvania. The persons there assembled did not disperse at midnight, but remained there until 3 o'clock A.M. March 21st, 1926 (being Sunday morning), when John B. West, a Justice of the Peace [a position now known as District Magistrate Judge], Constables C. Gressler and Glenn N. Welsh, entered the said house, at which time said Justice of the Peace announced to those present (hereinafter designated as the defendants) that they were guilty of desecrating the law relating to the Sabbath.

The said Justice of the Peace then announced that each of said defendants should place in his hands the

sum of \$5.00, to be forfeited in case such defendants did not appear at the office of said Justice March 25th, 1926, for a further hearing...

The defendants did appear, and the justice, now in his more traditional judicial role, found each of them guilty and imposed on each a fine of \$4.00 and costs of \$3.67.

The defendants, through their counsel, Carroll Caruthers (the grandfather of bar member William F. Caruthers, II, and the late J. David Caruthers) sought review by a writ of certiorari and the judge found that even though the record showed that the defendants were "indulging in the diversion of dancing with music furnished by hired musicians accompanied by loud boisterous talking, crying out to one another and stamping heavily with their feet..." the record did not show with sufficient particularity which specific act complained of was committed by each of the defendants.

At last, vindication and justice for the accused? Well, not quite. The judge quashed the defendant's writ for certiorari because the defendants had previously and voluntarily paid their fines and costs, depriving the court of jurisdiction.

Oh, the good old days. Let us raise a toast to them—with non-alcoholic beer, of course. 🍷

SOURCES:

- Okrent, Daniel, *The Last Call: The Rise and Fall of Prohibition* (Simon and Schuster, 2010).
- Westmoreland Law Journal, Vols. 12, 13, 14, 15 and 17.

Looking to hire or be hired? The Westmoreland Bar Association operates an informal placement service for paralegals, legal secretaries, and attorneys by collecting résumés and forwarding them to potential employers at no cost.

Contact Bar Headquarters at 724-834-6730 or westbar.org@westbar.org for more information.

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New Member Sketches

ADAM GORZELSKY has been admitted as a participating member of the WBA. He earned both his bachelor's degree in English Writing/Communications and his J.D. from the University of Pittsburgh. An associate with Susan N. Williams in Greensburg, Adam and his wife, Katie, live in Latrobe.

JONATHAN MEYER has joined the WBA as a participating member. Jonathan earned his undergraduate degree in Psychology and Communications, as well as his J.D. from the University of Pittsburgh. An associate with Rebecca Brammell in Harrison City, Jonathan resides in Pittsburgh.

BETH E. TEACHER was admitted to the WBA as a participating member. She graduated from the University of Pittsburgh at Greensburg with a degree in Business Management and Accounting, and earned her

J.D. from Duquesne University. A corporate attorney with the Elliott Company in Jeannette, Beth and her husband, Stephen, live in Jeannette.

ANTHONY G. URTI has joined the WBA as a participating member. Anthony earned his undergraduate degree in Political Science from Slippery Rock University, and his juris doctor degree from the University of Pittsburgh. He is an associate attorney with Geary & Loperfito, LLC, in Vandergrift. Anthony and his wife, Nicole, live in Pittsburgh. 🐾

Actions of the Board

NOVEMBER 17, 2010

- Membership Committee report accepted as submitted: Michael Stewart II, participating.
- Heard that investment account has topped \$1 million.
- Some committees will be told that their expenses will be curtailed to help with budgeting.
- Accepted the 2011 budget as presented.
- Agreed to ask Mark Sorice and Brian Bronson to serve additional terms on the LLS Board. Mr. Greiner agreed to take the expired term of Harry Smail.
- Moved to appoint James Antoniono to a three-year term on the PBA House of Delegates.
- Learned that the Nominating Committee has recommended two candidates for the one open seat on the board of directors: Maria Soohy and Lee Demosky.
- Reviewed the PAC bylaws. It is the WBA President's responsibility to appoint board members and WBA board's responsibility to approve. Board agreed to appoint Phil McCalister and Scott Avolio.
- Heard YL committee report from YL Chair Michael Quatrini:
 - Lunch with the civil law judges is scheduled for January 24.
 - New Kensington will be the site for the encore presentation of the iPad vs. Kindle CLE.

—YL CASA fund-raiser is set for September 15, 2011; location TBD.

- Agreed that WBA office will keep records of dates received for any fee disputes that come into the office, as well as panel composition and follow-through.
- Voted to adjust WBA building insurance coverage as recommended by recent building appraisal.
- Agreed to enter into one-year affinity proposal with Littner Insurance, who will extend disability and life insurance discounts to members.
- Heard request from WBA President Snyder for appeal to support a civics education project that is offered through the PBA.
- Agreed to host another Courthouse BASH sometime in 2011.

DECEMBER 15, 2010

- Membership Committee report accepted as submitted: Adam Gorzelsky, Anthony Urte, Beth Teacher, participating.
- President Snyder appointed the following attorneys to serve three-year terms on the LLS: Mark Sorice, Brian Bronson, and Cindy Stine, reappointments; John Greiner, new appointee.
- Heard YL committee report:
 - Holiday after-work party taking place December 15.
 - Tech CLE was very well received with 30+ at Greensburg site and another 15 at New Kensington.
 - Next Tech CLE may be a "how to," with focus on how to set up Facebook, LinkedIn, and other social networking sites.
- Agreed to invite Dr. Chaudhary to speak at the January Quarterly Meeting for one-hour free CLE.
- Board agreed to offer a civics-type program that teaches the three branches of government; will use Law Day to kickoff the program. 🐾

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Duquesne Law Alumni Event Held at the WBA



▲ James Liberto, Duquesne University School of Law Dean Kenneth G. Gormley, Maria Soohey, and Gino Peluso were among those who attended a reception and book signing in October, that was sponsored by the Duquesne University Law Alumni Association.

The Duquesne University Law Alumni Association hosted a reception for the Westmoreland Bar Association at WBA headquarters on Thursday, October 14, 2010. The first-ever event was organized by Duquesne Law Alumni Association Immediate Past-President and WBA member Gino F. Peluso.

The gathering was well attended by WBA members, including retired Superior Court Judge Joseph A. Hudock, Common Pleas Court Judges Gary P. Caruso and John J. Driscoll, and WBA Past-Presidents Vincent J. Quatrini, Jr., Barbara J. Christner, and Kenneth B. Burkley. Newly installed Duquesne University School of Law Dean Kenneth G. Gormley spoke about the accomplishments and direction of the law school, and discussed some of the upcoming events being planned for 2011, in conjunction with the law school's 100th year anniversary celebration.

As a part of the event, Dean Gormley conducted a book signing for his book, "The Death of American Virtue: Clinton vs. Starr," which was selected by critics for both The Washington Post and the New York Times as one of their Top Ten books of 2010.

"The excellent turnout and responses received, both during and after this inaugural event, were most encouraging," says Gino Peluso. "I look forward to continuing this as an annual affair." 🍷

BRIEFLY SPEAKING



Greensburg attorney **Pete Cherellia** was honored by the Westmoreland County Juvenile Probation Department for his service to Yough Youth Commission, serving as its secretary for more than 10 years. He was presented with the Meritorious Service Award from the Pennsylvania Juvenile Court Judges Commission.



Latrobe attorney **Tim Hewitt** will be speaking at the Westmoreland County Historical Society on Tuesday, April 12, at 7 p.m., about his "Triumph Over Fire & Ice" by running the Iditarod and Death Valley. For more information, contact the WCHS at 724.532.1935.



Linda Broker reports she spied Latrobe attorney **John Leonard** in the Denzel Washington movie, "Unstoppable," which was filmed in and around Pittsburgh in 2009. The film was released on DVD earlier this month.

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CALENDAR OF EVENTS

*All committee meetings and activities will be held at the WBA Headquarters unless otherwise noted. Visit www.westbar.org for more information about activities and CLE courses, or to **register online**.*

MARCH

- 9** Real Estate Committee, Noon
- 10** Membership Committee, Noon
- 11** [CLE] Basic/Advanced Mediation Practice Techniques: Understanding the “Me” in Mediation, Noon to 2 p.m.
- 15** Family Law Committee, Noon
- 16** Board Meeting, 4 p.m.
- 17** Elder Law & Orphans’ Court Committees, Noon
- 22** [CLE] Witness Preparation: A Prepared Witness is a Persuasive Witness, Noon to 1:15 p.m.
- 24** Ned J. Nakles American Inn of Court, 5 p.m.

- 31** [CLE] Estate Planning Under the 2010 Act, Noon to 1:15 p.m.

APRIL

- 4** Annual Meeting of the Westmoreland Bar Association and Westmoreland Bar Foundation, 4:30 p.m., Greensburg Country Club
- 13** [CLE] 2011 Auto Law Update and Criminal Defense Strategies, Noon to 2:15 p.m.
- 19** Family Law Committee, Noon
- 20** Board Meeting, 4 p.m.
- 25** [CLE] Compliance Period Seminar, 9 a.m. to 2:45 p.m.
- 27** Ned J. Nakles American Inn of Court, 5 p.m.

LAWYERS CONCERNED FOR LAWYERS CORNER

- The 12-step recovery meeting, exclusively for lawyers and judges, is in downtown Pittsburgh every Thursday at 5:15 p.m. For the exact location, call Pennsylvania Lawyers Concerned for Lawyers at **1-800-335-2572**.
- LCL has a new website at www.lclpa.org. Attorneys and judges will find information on how LCL can help them, a member of their family or a colleague who may be in distress. It is confidential and easy to navigate. Visit it today.
- Lawyers Confidential Help Line: **1-888-999-1941**. Operates 24 hours a day.



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