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**THE NEWSLETTER OF THE
WESTMORELAND BAR ASSOCIATION
VOLUME XXVIII, NUMBER 5
NOVEMBER 2016**

Honoring Judge Pezze

Editor's note: The Hon. Debra A. Pezze passed away on Wednesday, October 12, 2016. In 1991, she was the second woman elected to the Court of Common Pleas in Westmoreland County, and was in her 25th year of service. She is survived by her father, Angelo Pezze; her husband of 28 years, Tom Balya; daughters, Maria Balya (David Hickey) of Boston, and Angela Balya, of Pittsburgh. She is also survived by her sister, Angela Rudick and husband Alan, and their children, Carly (Ron) Paulovich (children Grace and Angelo) and Cara (Chris) Burnside; sister-in-law, Mary Jo Zappone, of Austin, Tex.; brothers-in-law, Don Balya, of Bridgeville, and Dennis (Judy) Balya, of Washington Township. Memorial contributions may be made to the Clelian Heights School for Exceptional Children or to the Humane Society of Westmoreland County.

by *The Hon. Richard E. McCormick, Jr., President Judge*

People, let me tell you 'bout my best friend.¹
Debra Ann Pezze.

Debra, like Barbra.² They had so much in common. Debbie was born and raised in Penn. Barbra, born and raised in Brooklyn. Debbie was Catholic. Barbra was Jewish. Barbra had such a beautiful voice. And Debbie, well you know, I don't think I ever heard her sing — not so much in common after all. But they both loved Hillary Clinton—and “buttah!” Did you see Debbie's Hillary pin at the funeral home? Finally, her right to free speech was restored.

She was brilliant, in both mind and visage, hardworking and diligent, and

¹ Harry Nilsson. “Best Friend.” *The Courtship of Eddie's Father*. ABC. 1969. Television.

² Barbra Streisand.



The Honorable Debra A. Pezze

she was the very meaning of the word *sympatico*, of getting along with and having a comprehensive understanding of and for others.

That brilliant visage? She had a smile that could pick you up and sustain you for the rest of the day. We love the banter around the table, we love the food, but since she's been gone I realize, the main reason that our

group all went to La Vita's was to see Debbie's smile. That included Tom.

It's the same reason why lawyers and their clients, police officers and deputies and victims, all liked to be in her courtroom. And if she didn't have a smile on her face, she had a smile in her voice, or in her words. And with that smile came the understanding that someone had a bad day, or had gone through a horrible loss, or was scared to death as to how their case was

going to end up. She brought that understanding to the bench and to her life. The last time I was with her she told me she loved me, and how much I meant to her, and she smiled. Hopefully that can sustain me.

She was hardworking, diligent, and indefatigable. Just ask me. I practiced law with her and I ran for judge with her. No one could work a bingo hall or a political gathering like Debbie could. Of course she had that smile going for her, and she had the ability to listen and to hear what people were saying, and give them hope and reassurance. I scrambled, day after grueling day, to try to keep up. And she kept going, and she also encouraged me and energized me to campaign hard with her, so that she could join me on the bench. Toward the end of that

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President's Message

The Sky Is Falling v. The Sky Is (Not) Falling

by John M. Noble, Esq.

Most of you out there may recall the tale of “Henny Penny”—more commonly known as “Chicken Little”—the familiar storyline which follows a frightened little chicken who believes the world is coming to an end. With



origins dating back to the 1840s in the United States, this fable endures—typically associated with uninformed fear from those who then incite alarm in the people around them.

So, where am I going with this? OK. You knew it was coming. It's that sky-is-falling ever-so-pesky word “change” again. Fear of change, to be precise, with attention focused this month on those who incite as well as those who are easily incited by others upon the mere possibility of change—and, of course, that the panic button is justified—because change is unknown and therefore bad.

As your WBA President, I receive calls, emails, and texts from otherwise intelligent, cool-headed lawyers who, without any inquiry or cross-examination, react (or more accurately, overreact) to “something they were told” involving the bar association. I've witnessed these same professionals deftly dissect hearsay statements when on the record but in “real life” quickly swallow rumor as gospel—followed by an unthoughtful public reaction. It typically goes like this—I get the overexcited call about what was “heard,” I ask where the rumor came from and the caller “doesn't want to say ...” yet they have already spread the alarm nonetheless.

What does the past tell us? Once upon a time, people smoked in restaurants and airplanes and fought to keep it that way. It took most of a generation for public smoking laws to change. Remember when everything was closed on Sundays? Heck, we're just now getting wine into grocery stores. There was a time when we had no fax machines, much less cell phones and email, and I clearly recall the unreasonable resistance to each new technology. Remember those who rudely opposed “women lawyers”? Every generation wrestles with doing something “different” and I am neither the first nor the last WBA President to encounter the chronic mantra opposing change: “we never did it that way before.” Translation: “I fear the unknown, so I'll fight to keep doing what we've always done.”

Your current WBA Board has been discussing several issues that are expressly unsettling to some association members: unit county status, the WBA building, staff evaluations—just to name a few. Specifically regarding the building, we have spent considerable time over the past few years assessing whether or not to continue ownership. Many a more-senior WBA colleague has regaled us with how the purchase of the building was one of the most contentious issues ever in the long history of our Association despite the obvious utility, if not need, for brick and mortar at that time in our history. Not surprisingly, isolated resistance has been expressed to the Board's investigating even the

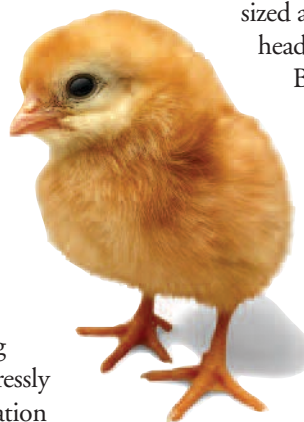
possibility of disposing of the building, despite the obvious non-utility of 9,000 square feet of space given 2016 technology, the significant decline of the building's use over the past several years—as documented by the staff daily—and the rising annual building costs and expenses that exceeded \$55,000 in 2015 and will likely exceed another \$50,000 in 2016. Without question, the WBA Building certainly had a long and productive run and we owe our past leaders grateful thanks for their collective efforts. The time has come, however, to at least entertain the discussion for a justifiable change—to a far less costly, more appropriately-sized and technology-efficient headquarters. To this end, the

Board looks forward to a very transparent Association-wide conversation and consensus decision in this regard.

In all honesty, I don't really recall the ending of the “Henny Penny” fable so much, with the over-alarmed chickens all being eaten

by the fox. I think most other people forget that part, too. The timeless moral?—“Don't believe everything you hear.” Otherwise, I prefer “Green Eggs and Ham,” where Dr. Seuss simplifies unfounded resistance to change with a much happier ending—change can actually taste good! Whether “Chicken Little” or “Sam-I-am,” change undoubtedly involves an unknown future—and that fear of the unknown sure feels scary while comfort with the status quo always feels, well, more comfortable.

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ABA Adopts Model Code of Anti-Discrimination Behavior

by David J. Millstein, Esq.

In one of its most controversial acts in recent history, the American Bar Association, at its annual meeting this past August, revised Rule 8.4 of the ABA Model Rules of Professional Conduct adding subparagraph (g) as follows:

Rule 8.4: Misconduct

It is professional misconduct for a lawyer to:

(g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socio-economic status in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these Rules.

The ABA has recommended that this language be adopted by every state bar association and while many state bars already do have some form of discrimination protection contained in their Rules of Professional Conduct, none are quite as far reaching as this one.

Although the ABA House of Delegates passed the proposal by a substantial margin, it has nonetheless created a firestorm of angst, gnashing of teeth, and beating of breasts from many commentators. In its report to the House of Delegates, the ABA's Standing Committee on Ethics and Professional Responsibility outlined the long history behind the formulation of this rule, a history that goes back to 1983 when the ABA first began its efforts to promote diversity and fairness. Acknowledging that the revised Model Rule prohibits conduct beyond what is already provided in the Human Relations statutes of most states, the report notes that the ABA has always tried to hold lawyers to the highest possible standard of behavior.

Googling the phrase "ABA speech code" provides a plethora of hits to the blogs, op-ed pieces, and commentaries of such vituperative critics as Stephen Bainbridge, UCLA law professor, Eugene Volokh, UCLA law professor (what's going on out there in LA?) and Edwin Meese, former United States Attorney General under President Reagan, just



to name a few. Common among all these critics is the belief that the ABA is a leftist organization, that the proposal stifles free speech and expression of right-wing conservatives, and that it tramples on the religious faith of those who oppose such things as same-sex marriage¹ and, it would appear, equality of women.

When it comes to bombastic, Bainbridge is at the fore. He refers to the ABA as the politically correct speech police and suggests that the new rule is solely the result of too many female lawyers objecting to being called "sweetie" or "honey."² Of special note is Bainbridge's admission that he believes men cannot and should not become women and that the Constitution, despite the ruling of SCOTUS making it *ipso facto* the law of the land, does not protect same-sex marriage because God frowns on such things. He refers to the ABA as "beyond reform," and that "conservatives should quit it, instead of allowing their fees to fund this sort of stupidity." He doesn't actually say he treats people he scorns with scorn but he does admit how much trouble he would be in if California, his state of practice, enacts a similar rule.³

Meese suggests that the rule may interfere with a lawyer's religious life if that religion teaches that God requires a marriage to be only between a man and a woman. Volokh, in his blog "The Volokh Conspiracy," opines that comments made by a presenter in a CLE could be taken as offensive by

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¹ Something we know a bit about in this county.

² I can provide his name, address, phone number, and email address if anyone is now enraged enough to go looking for him.

³ He makes no reference to that part of the rule which exempts any legitimate advice or advocacy.

the sidebar

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ABA Adopts Model Code *continued from page 3*

someone in the audience, resulting in a complaint against that lawyer under this rule, and that the ABA's sole purpose here is to limit lawyers' expression of viewpoints that it disapproves of.⁴

David French, in the *National Review*, is equally emphatic in his opposition. He cites *Davis v. Monroe County Board of Education*, 526 US 629 (1999) in which a fifth-grade little girl couldn't recover damages against a school board for the sexual harassment she was experiencing at school and then says this:

*So unless bar associations can make the case that aggrieved legal feminists are snowflakes more fragile, and deserving far greater protection from free speech, than a fifth-grade girl, then this new speech code doesn't stand a chance in court.*⁵

It is apparent from the vitriol of the self-labeled conservative opposition that they believe women need to tough it out when they are disparaged by men, or even grabbed by them, that lawyers should be free to treat transgender people, minorities, the poor, etc. with professional disdain in the workplace, during legal proceedings in court, or otherwise at any time they please, and that any intrusion into that right violates

⁴ As with Bainbridge, he does not mention the legitimate advice or advocacy exception.

⁵ See Footnote 2.

their freedom of speech, expression, and free exercise of their religious beliefs. It pretty much parallels the arguments made in support of laws enacted by some states⁶ permitting citizens to discriminate against gays as part of their freedom to practice their religious beliefs.⁷

On the other side of this hot ingot, and the principal proponent for the rule change, is the ABA's Standing Committee on Ethics and Professional Responsibility. In a recent issue of *The New York Times*, Elizabeth Olson reported that Myles V. Lynk (not a lawsuit, but rather the Peter Kiewit Foundation Professor of Law and the Legal Profession at the Sandra Day O'Connor School of Law at Arizona State University) said during the debate on the proposal that the American Bar Association needed "to catch up" with the states which had already adopted similar prohibitions. When the rule came up for a vote at the ABA meeting, not one lawyer spoke against it.

"The states have not waited for the ABA to act. They have been laboratories of change," Professor Lynk said. "It is time for the ABA to catch up." In a recent telephone conversation, he noted that although many states had adopted a similar rule, they varied by a considerable degree, and that one of the factors motivating the ABA to adopt the model rule was to bring statewide uniformity to dealing with the problem at hand.⁸ Because the rule's adoption is so recent, no state has yet had sufficient time to consider adopting it as written.

The PBA Legal Ethics and Professional Responsibility Committee considered the proposal at its September meeting. The current applicable rule is set forth below.⁹ It contains no prohibition against the kind of conduct detailed by the ABA's model rule. The big question is this: if Pennsylvania should adopt such a rule, how many of our colleagues would require no alteration of their current mode of behavior and how many would require some serious training? ■

⁶ Ironically named Religious Freedom Restoration Act after the federal legislation of the same name that actually does that.

⁷ Also note that this rule only applies to professional conduct. Lawyers remain free as always to treat women and members of other protected classes with disdain, disparagement, ridicule, humiliation, and slurs in their private lives. Whew!

⁸ Previously, six states had no rules of conduct regarding anti-discrimination/prejudice/bias behavior; the remaining states had provisions varying widely in their scope and applicability. (Source – ABA)

⁹ The current Pennsylvania Rule of Professional Responsibility (Rule 8.4 – Misconduct) provides as follows:

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) knowingly commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.



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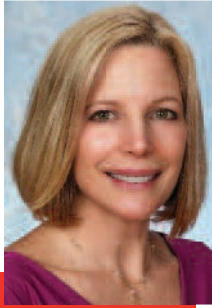
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The Right Arm of the Court

by Pamela Ferguson, Esq.

As a former law clerk, I jumped at the chance to write an article about our county's twelve law clerks. As I contemplated the questions I wanted to ask them,



Pamela Ferguson

I thought about why I decided to be a law clerk. It is a position unlike any other.

On the one hand, the law clerk is an extension of the judge: a right arm of the court, as Judge Driscoll used to say, responsible for providing the judge with accurate and current case and statutory laws upon which the case should be based. While the judge is ultimately responsible for the decision, the law clerk is charged with making sure the decision isn't

overturned—a responsibility not to be taken lightly.

Being the “right arm of the court” involves so much more than research and writing: it requires a camaraderie with the judge, an intellectual and emotional connection that eventually morphs into a singular way of writing and thinking. It is a challenging, yet satisfying position, even in its anonymity; the only complaint I ever had was with its menial title.

The moniker “clerk” connotes an image of someone filing papers and performing administrative duties, responsibilities not included in the

“law clerk” job description; although, it is a step up from the original title of “secretary” bestowed upon the very first law clerk in 1882 by Supreme

Court Chief Justice Horace Gray,¹ who decided to employ honor graduates from Harvard Law School to help him with his burgeoning caseload. Thrilled to be working for the highest court in the land, Chief Justice Gray's “secretaries” struggled with the problem of telling

their parents that their first position out of law school was as a “secretary.”

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“Being the “right arm of the court” involves so much more than research and writing: it requires a camaraderie with the judge, an intellectual and emotional connection that eventually morphs into a singular way of writing and thinking.”


¹ Appointed by President Chester Arthur; served from 1881-1902.

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The Right Arm of the Court *continued from page 5*

Their difficulties were highlighted in the *Texas Bar Journal* article, “What DO Law Clerks Do?”

The question just what to call the law clerk has always been troublesome. The terms “secretary” and “clerk” suggest a typist or file clerk, and at one time there may have been good reason to use this designation since the tasks in the beginning were indeed on the secretarial side. However, as the institution matured in the tasks assigned it, the designation “clerk” became a misnomer if taken too literally. This would often require the young graduate to explain the substance of his first employment, at least to his parents, lest they think that the past years had produced a file clerk, not an attorney.²

Title notwithstanding, the position of “secretary” to a Supreme Court

justice was highly coveted and much needed. By the late 1800s, all of the justices came to realize the importance of delegating duties. As a result, Attorney General Augustus Hill Garland made a plea to Congress in 1885 to request clerkship assistance for the Supreme Court:

I believe it would greatly facilitate the business of the Supreme Court if each justice were provided by law with a secretary or law clerk, to be a stenographer, to be paid an annual salary sufficient to obtain the requisite qualifications, whose duties shall be to assist in such clerical work as might be assigned to him.³

By the early 1900s, with the court’s expanding caseload and delegation of more responsibilities, the position’s title changed from “secretary” to “clerk,” a title still not reflective of the duties incumbent upon the position. Even so,

to this day, it has become so ingrained in the court lexicon that no attempts to change it have been successful. Many states have tried to relabel the position to the more appealing “law assistant,” “research aide,” and “legal assistant;” however, none have stuck. “Law Clerk” is the statutory title for the position in the federal courts and is generally utilized at all judicial levels to describe the office today.

The position’s title is not the only issue with which the judiciary has struggled. While the need to delegate was apparent to each and every member of the Supreme Court as early as the late 1800s, it was not accepted by all and was, in fact, reviled by some. During his time on the bench, Justice Robert Jackson⁴ was quite vocal in his concerns delegating duties to a law clerk. In the 1959 article “Internal Operations of the United States

² Johnson, Nicholas. What DO Law Clerks Do? 22 *Texas B.J.* 229 (1959).

³ Attorney General Garland’s Report to Congress. 1885 *Atty Gen Ann. Rep.* 43.

⁴ Appointed by President Franklin Roosevelt; served from 1941-1954.

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Supreme Court,” 43 J.AmJud.Soc’y 45, 48, he was quoted as saying:

A suspicion has grown at the bar that the law clerks ... constitute a kind of junior court ... This idea of the law clerk’s influence gave rise to a lawyer’s waggish statement that the Senate need no longer bother about confirmation of justices but ought to confirm the appointment of law clerks.

Justice Jackson’s concerns remained a point of consternation and were raised by many jurists throughout the years. Justice William Rehnquist⁵ argued in the 1957 *U.S. News & World Report* article, “Who Writes Decisions of the Supreme Court?”⁶ that clerkship influence did exist. Recalling his tenure as law clerk for Justice Robert Jackson from February 1952–June 1953, Rehnquist opined that there existed the possibility for influence by the clerks in the realm of the Court’s activities:

Any subordinate who briefs his superior is bound to have or acquire ideas of his own regarding the matters briefed. Unless each of the nine Justices is to be utterly without professional assistance, the Court, like many other institutions, is bound to be exposed to the risk of such subordinate bias ... The bias of the clerks, in my opinion, is not random or a hit-and-miss bias. From my observations of two sets of Court clerks during the 1951 and 1952 terms, the political and legal prejudices of the clerks were by no means representative of the country as a whole nor of the Court which they served ... the political cast of the clerks as a group was to the “left” of either the nation or the Court.

Despite Justice Rehnquist’s criticism and his call for an impartial study of the clerkship institution, he employed three law clerks to work on certiorari petitions and assist in drafting his opinions. Common to all of the

justices’ comments, whether in support or suspicious of the institution of law clerk, was the acknowledgment that the court’s heavy caseload required the aid of clerks in the judicial process.

While there are basic duties required of all law clerks at every level of the judiciary, the position is an amorphous one, dependent primarily on the personality and dictates of the judge for whom the law clerk works. Justice Horace Gray’s law clerk described his duties:

When he returned from court each day he (Justice Gray) would hand me the records and briefs of any cases in which the arguments had been completed, and would tell me to look over these “novelettes,” as he called them, and see what I thought of them. This I would do, often being compelled to work in the evening in order to be prepared to make my reports. When I made them the Judge would question me to bring out the essential points, and I rarely learned what he thought of the case until I had been thoroughly cross-examined ...⁷

John Frank, who worked for Justice Hugo Black⁸, described a law clerk’s tasks as:

⁷ Baier, Paul R. The Law Clerks: Profile of an Institution. 26 *Vanderbilt Law Review* 1146 (1973).

⁸ Appointed by President Franklin Roosevelt; served from 1937-1971.

the product of the whims of his Justice. In general, it is the job of the clerk to be the eyes and legs for his judge ... This can involve an immense amount of work, depending upon how curious the Justice is. It is legend that Justice [Louis] Brandeis once asked a clerk to look at every page of every volume of the United States Reports for a particular point.⁹

Not all of the tasks were befitting a law school graduate. In addition to research and writing, every law clerk was required to perform certain “baggage tasks,” which, as the name describes, included carrying the judge’s bags. Other “baggage tasks” depended upon who the clerk was working for: Justice Gray was known for requiring his clerks to cut his hair; Justice Harlan Stone enjoyed taking walks with his clerk; Justice Black’s clerks were required to hold their own on the tennis court; while Justice Brandeis expected his clerks to help host his Sunday teas.

During his invocation address for the first Law Clerk Institute held in Baton Rouge, La., in 1972, Paul Baier, former law clerk to Michigan Court of Appeals Judge John Gillis (1969–1970), reflected on his “baggage tasks”:

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⁹ Frank, John. *Marble Palace*. 113 (1958).

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⁵ Appointed by President Richard Nixon; served as an associate justice from 1972-1986, and Chief Justice from 1986-2005 .

⁶ *U.S. News & World Report*, Dec 13, 1957, at 74, 75.

The Right Arm of the Court *continued from page 7*

In Michigan they were called “Silver Mercuries” after the judges’ cars. There was even a trophy presented each week by the Chief Judge to the clerk who had gone out of his way to serve his judge ... Some clerks really put out—it’s all part of the job. I remember washing my judge’s car ... one afternoon when in the middle of research I was called to the bench during orals

and handed a note by my judge that read: ‘We’ve been on the bench for almost five hours. I’m hungry. Get me a corned beef on rye.’ I did ... Perhaps there is more to the notion of gastronomical jurisprudence than most pundits of the judicial process are willing to admit.

Embodied in these reflections is the understanding that being a law clerk is not a “nine-to-five” job with defined

duties, which is why the Appellate Judges Conference of the Division of the Judicial Administration of the American Bar Association in 1972 hosted the first National Law Clerk Institute: a workshop for prospective clerks. Offering advice on the history of the position, writing, researching, and serving the judge, the members of the Appellate Judges Conference hoped the Institute would help prepare the novice clerk for the responsibilities they were assuming.

In closing the conference, Baier referred to the law clerk position as an “institution,” and, quoting Machiavelli’s *The Prince*¹⁰, he called upon them to bring to the institution “the personal qualities of a good minister”:

For a prince to be able to know a minister there is a method which never fails. When you see the minister think more of himself than you, and in all his actions seek his own profit, such a man will never be a good minister, and you can never rely on him; for whoever has in hand the state of another must never think of himself but of the prince, and not mind anything but what relates to him.

In thinking only of their judges, the law clerk, as an extension of the judge, “a right arm of the court,” if you will, struggles every day to serve, as Baier said, “our prince: the Law.” ■

¹⁰ Baier, 1171.



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Westmoreland County's ten full-time and two part-time law clerks chose their career paths out of an enthusiasm for legal research and writing. Some are recent law school graduates; others are seasoned attorneys. Regardless, each one brings unique experiences to the position that benefits their judge.

FAMILY DIVISION

For Judges Scott Mears, Harry Smail, Jr., Michele Bononi, and Timothy Kreiger, and their law clerks, **April Schachtner, Caitlin Bumar, Larissa McGrew, and David Mulock**, respectively, a typical day in family court can feel like a guest appearance on "The Jerry Springer Show." Emotional exhaustion notwithstanding, clerking in family law is never boring and, at times, offers great personal satisfaction.

April Schachtner, Judge Mears's clerk for the past ten months, received her undergraduate degree in anthropology from Saint Vincent College and her JD from Duquesne Law School. She interned during law school with Greensburg attorney James Geibig; then, after graduation, worked as an abstractor in the oil and gas field. "Meeting lots of great people" is what she likes best about her job. When not working, April likes to read, listen to books on tape, play tennis, and ride bikes.

Larissa McGrew has been Judge Bononi's law clerk since January of 2010. She graduated from Indiana University of Pennsylvania before obtaining her JD from Rutgers School of Law. During law school, Larissa worked for a closing company and an insurance defense firm. Prior to starting her current position, Larissa served as a law clerk for seven judges in three different counties. Married to our current Public Defender Wayne McGrew, with a two-year-old son, and a seasonal family business, hobbies are somewhere in that elusive balance between work and life that she has yet to discover; but, when she does, Larissa would like to travel and read.

Meet Your County Law CLERKS

Judge Smail's law clerk of three months, **Caitlin Bumar**, had the benefit of interning for her judge during her last year of law school before starting in the position full time. In addition to her internship, Caitlin worked as a legal writing teaching assistant and research assistant while a law student at the University of Pittsburgh School of Law. Prior to law school, she obtained a bachelor degree in psychology from Indiana University of Pennsylvania. A self-professed hometown girl at heart, Caitlin always knew she would settle in Latrobe, so a Courthouse position in Greensburg was the perfect career choice. In her spare time, she enjoys baking "anything that's full of carbs, and rescuing wayward cats."

CRIMINAL DIVISION

Amanda Knorr, Christina Gongaware, Megan Little, and part-time law clerks, **Diane Quinlan** and **Michael Lydon**, work for our four criminal court judges: Meagan Bilik-DeFazio, Rita Hathaway, Christopher Feliciani, and the late Debra Pezze.



Christina Gongaware has been clerking for Judge Hathaway for a little over a year. A rewarding internship with a Vermont judge during a semester at Vermont Law School helped her decide to apply for the clerking position in Westmoreland County. Christina also interned in the Civil Rights Unit of the Vermont Attorney General's Office, working with clients who filed employment discrimination or hate crimes claims; and in the Westmoreland County

District Attorney's Office. Prior to law school, she attended Juniata College. As a recent law school graduate, Christina is appreciative of her clerking position with Judge Hathaway: "I am lucky to be learning the law from an extremely skilled and knowledgeable judge." In her free time, Christina enjoys running and reading. "Although," she says, "I have been unsuccessful at doing both at once."



Megan Little will reach the two-year mark with Judge Feliciani this December. She credits her position to being in the right place at the right time. As a Westmoreland County Public Defender, Megan's first experience before Judge Feliciani was quite fortuitous. After an extradition hearing, the judge asked her if she liked working in the Public Defender's office. She responded that she did; however, she preferred writing and researching. By sheer coincidence, the judge was looking for someone with those skills: His law clerk, Amy DeMatt, had recently been hired as the new Court Administrator and he was searching for her replacement. An offer was made and the rest is history. Megan has a bachelor degree in psychology from California University of Pennsylvania and a JD from Thomas M. Cooley Law School. She enjoys cooking, reading, and, as of late, running. She recently completed the Beat the Heat 5K with her boyfriend, Victor Myers, who is Judge Feliciani's nephew and an associate at Galloway Monzo, P.C.

Michael Lydon is one of two part-time law clerks who worked for Judge Debra Pezze, and he actually came out of retirement to do so. Having clerked for various judges in the state and federal courts for over thirty years, he realized that he missed the position. Michael attended Northwestern, the University of Pittsburgh, and Duquesne Law School. In addition to his love of research and writing, Michael enjoys hiking, traveling, reading, and dogs.

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Meet Your County Law CLERKS

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CIVIL DIVISION

For law clerks **Leann Pruss** (Judge Christopher Scherer), **Emily Shaffer** (Judge Anthony Marsili), and **Beth Orbison** (President Judge Richard McCormick, Jr.), civil court offers them the opportunity of doing what they like best about the law: writing, research, and analyzing cases.



Leann Pruss has been with Judge Scherer for four years. After attending Duquesne University for both undergraduate and law school, Leann worked at a civil law firm in Pittsburgh for six months; a private family law firm for a little over a year; and at Laurel Legal Services for four years, handling Protection from Abuse, custody, and divorce cases. She enjoys her job because of the satisfaction she gets after writing “a really good opinion that encompasses exactly what the Judge is looking for to support his decision.” In her spare time, Leann enjoys reading and collecting “anything involving Pepsi.”



After graduating from the University of Pittsburgh and Duquesne Law School, and working at PCLaw Associates, **Emily Shaffer** still wasn't sure in what area of the law she wanted to practice. To gain a better perspective and to help her make the next logical move in her career, Emily decided to become a law clerk. Her first clerking position was with Washington County President Judge Debbie O'Dell Seneca. A little over two years ago, she started clerking for Judge Anthony Marsili and has been with him ever since. When she's not working, Emily enjoys running. ■

Honoring Judge Pezze

continued from page 1



The Hon. Debra A. Pezze and her husband, Westmoreland County Commissioner Tom Balya, at the WBA 125th Anniversary Gala, October 2011.

campaign she wasn't feeling very well, especially in the morning, and she had to take some time off. I thought, wow, I ran her into the ground. But no, it wasn't my energy or my perseverance. It was Maria, her first daughter, causing that morning sickness. As her husband, Tom, said, she learned she was going to be a mom and a judge nearly simultaneously.

She was courageous. Oh, how courageous she was, in the face of a horrible disease. She was always concerned, not with what it was doing to her, but with what it meant for those she loved and cared about.

She also had the courage of her convictions. She hated racism and sexism and the hateful debasement and abuse of women. She had the courage to fight for an acquittal for our client, who admittedly killed her husband because she had suffered from his abuse, and she had the courage to resist the threatening and harassing behavior of that victim's family when she ran for judge.

She hated the denial of the right of anyone to love who they loved and be married to them. As soon as possible after same-sex marriage was lawful in Pennsylvania, she performed her law



The Hon. Debra A. Pezze with her daughters, Maria and Angela, at the WBA Picnic & Music Festival, August 2002.

clerk's marriage to her long-time partner.

I don't know of anyone in the legal profession, lawyers and judges alike, who was more admired for her legal mind, and more so, for her legal heart. I had the great privilege and advantage to grow as a lawyer with her. As Angie Mitas said to me at the funeral home, “Those were the best days of our lives, those days in the PD's Office. That was where we learned the purpose of justice. To assure that everyone's rights were protected and respected.” No one brought more enthusiasm to that purpose than Debbie. She lived it and breathed it, and she helped us by example in our efforts to achieve it.

She told me that she had two models in that endeavor. My father, whom she'd known since she and my brother, Tim, were high school friends, and Dante Bertani, who was a mentor from the beginning of her career, and who followed me up to her chambers when I first learned of her death so that we could break the news to her staff.

This was a woman who never looked down on anyone. This was a woman who always looked for the best in everyone. This was a woman who, as Dan Ackerman once noted, always had something positive to say on behalf of each and every client.

She was my best friend because she always looked for the best in me and did the best she could for me. I know that if my brother, Tim, were still with us he would fight me over that claim. Tim, if you're reading this from above, I know, she was your best friend, too!

You know what? She was everybody's best friend. ■

If You Didn't Know Debbie Pezze¹

by *The Hon. Daniel J. Ackerman*

How hard it is to get to know everyone in a bar association with five hundred members. Certainly, you knew of Debbie's stellar reputation as a judge, since reputations for excellence are known in the broadest circles. But did you know her as a person?

¹ Her title is not used here because it is limiting. I think she would have approved.



The Hon. Richard E. McCormick, Jr., The Hon. Debra A. Pezze, and The Hon. Daniel J. Ackerman, August 2001.

Did you see her as a diminutive public defender standing tall in the courtroom, filling it with impassioned arguments for the poor, and sometimes despised, individuals she represented?

Did you hear her speak with love and devotion about her two families, the one she was raised in, and the one she created by marriage?

If you participated in a proceeding before her as a judge, didn't you leave her huge courtroom with a sense that it was filled with understanding, and that

below the blindfold of Lady Justice there was a smile on her face?

Did you sense that here was a woman of faith and good humor, who prayed for the welfare of others, and said that being on her prayer list, "was like joining the Mafia—once you got in you could never get out"?

Was it apparent that this most even-handed judge had a heart that longed for universal justice?

Do you think that if you might have known her better you may have loved her like a favorite sister?

If you didn't know Debbie Pezze, don't despair, for she has influenced the lives of those lawyers and judges who did know her, and because of that, we are all the better. ■

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 North Pennsylvania Avenue, Greensburg, PA 15601.



The Hon. Debra A. Pezze will be among those remembered at the Westmoreland Bar Association's 55th Annual Memorial Service to be held at the Westmoreland County Courthouse in May 2017. Please plan on joining us to honor our colleagues.

The Westmoreland Bar Association Is Headed to Pittsburgh

On June 14–16, 2017, WBA members can stay in the place *The New York Times* describes as “a dash of modern luxury and big-city flair,” when the bar association heads to The Fairmont in downtown Pittsburgh for its 2017 Bench/Bar Conference.

“Yes,” the *NYT* writes, “Pittsburgh has a new look— younger, artier and less bleakly post-industrial—but until recently the city didn’t have a first-class hotel to match its made-over mood.” Until The Fairmont.

Rooms at The Fairmont begin on the 14th floor, so no matter where you are, you’ll have breathtaking views of PNC Park, a beautifully restored downtown, or the majestic

PPG Towers. For just \$189 per room per night (plus \$7/day parking, a \$130 discount off the going rate of \$319), you’ll enjoy classic cocktails and jazz nightly at Andy’s lounge, a state-of-the-art health club and spa, free wifi, and the option to bring a guest.

The Fairmont is just steps away from the high-energy, eclectic Market Square, and a short walk to the theater district, PNC Park, the Rivers Casino, or any number of restaurants and bars.

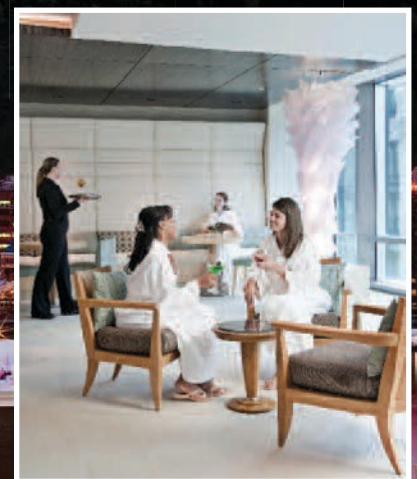
On Wednesday night, join us for dinner at one of Pittsburgh’s newest hotspots, the “impossible-to-get-a-reservation-at” restaurant Gaucho Parilla Argentina. But first, cycle into the cocktail hour on the Pittsburgh Party Peddler. Or go on a group outing to watch the

Pirates take on the Rockies. Then end the evening with a Pub Crawl led by the Young Lawyers.

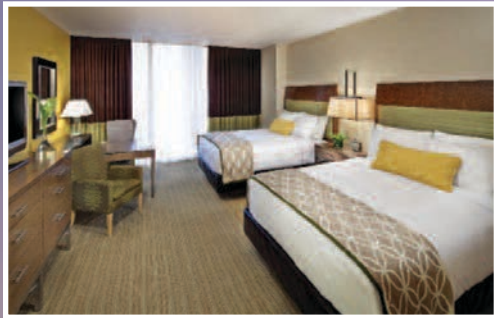
On Thursday, we’ll kayak off the North Shore down the Allegheny River, take an urban hike from Emerald View Park to Mt. Washington, and fulfill our CLE requirements with seminars on Pennsylvania’s Medical Marijuana Laws and the Whiskey Rebellion.

Mark your calendars for June 14–16, 2017, and join us for some urban fun in the city that *Travel + Leisure* magazine rates as one of the “Best Places to Travel in 2016.” ■

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foundation focus

Meet Amanda Kurtz

by Emily Shaffer, Esq.

Take a minute to reflect and remember what law school was like for you. For many, including Duquesne University Law Student Amanda Kurtz, the excitement of a career in law is diminished by the overwhelming task of paying for it. The price is not just the unquantifiable hours of studying, interning for free, and counseling *pro se* litigants at law school clinics, but a debt that, to recent graduates, seems insurmountable.

Amanda put it best, articulating that, “The financial commitment of law school is scary, so I wanted to look for opportunities to help lessen the burden when I graduate.” To do so, Amanda applied for one of the three law school scholarships offered by the Westmoreland Bar Foundation, and, for the second year in a row, was awarded the Wayne R. Donahue Memorial Scholarship at a ceremony

occurring at the Westmoreland County Courthouse in August.

Named for Westmoreland Bar Association member Wayne Donahue, this scholarship is awarded annually to a Westmoreland County resident enrolled in a Pennsylvania law school.

Satisfying the essay requirement, Amanda wrote about why she wants to be a lawyer and why she felt deserving of the scholarship. She reflected on her long-held desire of becoming a lawyer and how she came to realize through job shadowing that being a lawyer is more than the theatrics portrayed on the big screen, but includes offering assistance and

counseling, which she determined to be a fulfilling career choice.

Amanda is thankful to the Bar Foundation for having twice been awarded with such an opportunity, stating, “I just think it’s great that the Bar Foundation has these scholarships for law students. Law school is a huge financial commitment and it can get stressful dealing with finances, so being awarded any scholarship is great to lessen the burden and reduce the stress on students.”

Amanda is using her legal education to focus on employment discrimination and workers’ compensation law, and is pursuing a Labor and Employment Law concentration, which she hopes to complete this fall semester. Upon graduation in June 2017, Amanda hopes to begin her legal career in Westmoreland County.

To learn more about Amanda Kurtz, stop in and chat with her in the Pro Bono Office (4th Floor of the Courthouse Annex), where she interns on Fridays during the school year. She also works for a law firm in Pittsburgh, and as a research assistant for Professor Laurie B. Serafino, J.D., Director of Clinical Legal Education at Duquesne University.

“I figured that I might as well use my spare time to come out here and help and get some experience,” Amanda said. She explained that she has always wanted to be an attorney because she likes the idea of helping to represent people who can’t represent themselves. Clearly she has already begun doing just that.

Let Amanda’s eagerness and excitement for a career in the law remind you of your own when you



Amanda Kurtz

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Spotlight on Maureen Kroll



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

A Model for the JCPenney Co. Teen Board and Sales Associate for JCPenney, Head Nurse—Intensive Care Unit, Director of Nursing/Assistant Administrator—Monsour Medical Center.

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

A My first time in front of a district justice, it was a very small case regarding an animal and some damage done to property. When the judge ruled in our favor, I jumped out of my chair, raised my arms, and yelled, "Yes!" (as if I had just won a Supreme Court decision).



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

A Willingness to work on solutions to the issues in the case.

Q WHERE DO YOU LIKE TO TRAVEL?

A Anywhere, but especially the beach at Siesta Key in Sarasota, Fla.

Q WHAT IS YOUR GREATEST REGRET?

A Ran out of time to help my husband write his life's story. What a "best seller" that would have been!

Q WHO ARE YOUR HEROES IN REAL LIFE?

A My husband, Dr. William Monsour. He truly lived his life always fighting for what was right and fair for everyone. He was a pioneer in ending smoking in public places and played a role in the Clean Water Act.

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

A Work very hard. Get involved with the Bar Association. Do not give up. It takes time to build a practice, but you will.

Q WHAT IS THE BEST ADVICE YOU EVER GOT?

A Get out of your comfort zone!

Q WHAT DO YOU CONSIDER YOUR GREATEST ACHIEVEMENT?

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Intellectual Property Law Patents, Trademarks, Copyrights

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 - Registered over 300 Federal, Pennsylvania, and Canadian trademarks
 - Obtained patents in all major countries, including European Union, Japan, China, U.K., Germany, Brazil, Mexico, etc.

Bachelor's degree in Engineering from New York University
 Master's degree in Electrical Engineering from Drexel University
 J.D. from Temple University
 Chemistry studies at University of Pittsburgh
 Registered Professional Engineer (Pennsylvania)
 Formerly Assistant Professor at Villanova University
 Formerly Doctoral Candidate in Mathematics at Bryn Mawr College

Spotlight on Maureen Kroll

continued from page 15

A Three amazing children.

Q WHEN AND WHERE WERE YOU HAPPIEST?

A I am happy every day, because I know how to count my blessings. Plus, I am happy with a glass of champagne and chocolate.

Q WHAT IS YOUR MOST TREASURED POSSESSION?

A A pair of worn out shoes my mother wore up until the day she passed. She was a very hard worker and so humble.

Q WHAT IS IT THAT YOU MOST DISLIKE?

A Dishonesty.

Q WHAT IS YOUR GREATEST EXTRAVAGANCE?

A An in-ground pool and then all of the expenses that you did not anticipate.

Q WHAT TALENT WOULD YOU MOST LIKE TO HAVE?

A Singing. When I tried out for a musical, I got only a dancing part.

Q WHAT DO YOU VALUE MOST IN YOUR FRIENDS?

A Not taking things too seriously.

Q DO YOU HAVE ANY PETS?

A Champ was my one and only Labrador Retriever who is no longer here. Never realized how much you can miss a pet.

Q WHAT DO YOU DO FOR FUN?

A Well, I have a hibachi grill and a bar in my kitchen, so you guessed it—cook, bake, and entertain.

Q WHAT PROFESSION, OTHER THAN YOUR OWN, WOULD YOU MOST LIKE TO ATTEMPT?

A I still love nursing and hope someday to work a few days a month in that field again.

Q WHAT IS YOUR MOTTO?

A “It is what it is.” ■

Meet Amanda Kurtz

continued from page 14

began your legal career. Was your motivation, like Amanda’s, a desire to represent clients in need? Did you want to make some kind of difference in the world?

It is necessary to have big dreams while pursuing such a challenging career, and as attorneys we have the opportunity to assist potential lawyers in realizing their dreams by contributing to the Bar Foundation.

If you want a more “hands-on” approach, consider donating your time to the Pro Bono Office. These honorable acts may seem small, but to a future lawyer like Amanda, they certainly are not. ■

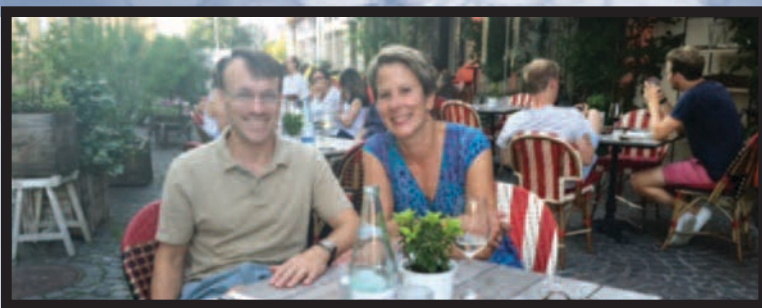
The Sky Is Falling v. The Sky Is (Not) Falling

continued from page 2

Today’s moral? Please try to resist uninformed reaction and incitement to “everything you hear” about the Bar Association. Make an effort to become informed before having an opinion. Ask questions before you react and spread “what you heard.” Your WBA Board has been working very hard on many issues and is happy to entertain all inquiries—anytime and with transparency. We welcome your input. All you have to do is share it with us.

So fear not: the sky is not falling! ■

where in the world IS THE WBA MEMBER?



WBA member Ken Baldonieri and his wife, Amy, have done more than just visit Budapest, Hungary—they have relocated there for the next two years. “Amy started her job as Director of Advancement at Central European University. The school was founded in 1991 as an English speaking school by George Soros. I am hoping to teach law there, but nothing is settled. In any case, very exciting to be here, but I will miss Greensburg and the people in the community,” he says. Here they are enjoying a restaurant in the Castle district.

BUDAPEST, HUNGARY

To-Wit: The Legend of Baghy Pance

by S. Sponte, Esq.

For years now, I have volunteered each summer to spend a week as a counselor at Camp Ahunkomonee, the law camp for kids up in the Poconos. It's close enough to be only a day's drive and yet far enough away to get me out of the claptrap monotony of my regular grind. I like being with the kids, they're the only ones who address me as "Counselor" without sneering.

Although my primary assignment is to teach cross-examination eye-rolling to third-year campers, my favorite job is campfire storytelling, particularly on those dark and stormy nights so perfect for horror stories. That's when I collect my campers around the fire and tell them what it's like to be a lawyer.

The last campfire was such a night. "A long, long time ago, in a bar association far, far away," I began, "there was a young man named Baghy Pance. He was a very smart but poor young man who wanted nothing more than to be a lawyer.

"Why in tarnation do you want to be a lawyer?" his father asked. 'Isn't shoveling manure good enough for you?'

"I like it just fine,' Baghy replied, 'but I want to do it with a suit on.'

"Because he graduated first in his class, he was offered a six-figure job with a big city law firm to do ERISA work ('Oooh,' all the kids murmured appreciatively), but what he really wanted was to help the common folk." Until that moment I don't think I ever heard kids that young use the word "putz" before.

"So he moved back to his hometown and set up shop representing common folk aplenty. He soon found, however, that it didn't pay all that well and that the more affluent people in town wouldn't hire him because

they still remembered him as a poor, manure-shoveling hayseed.

"One day, Baghy decided that if he was going to make any real money in the law biz, he needed to change his image in a big way. 'To hell with the common folk,' he thought, and he bought himself a big, fancy red convertible and some handmade custom suits with contrasting color vests, he courted and married a beautiful young socialite, and he joined every club in town, including, most jarringly, the Masons.

"Soon his career took off and he started getting every big case in town. All of his criminal clients were getting acquitted, all of his tort clients were recovering millions of dollars, all of his divorce clients were doctors, and he was making tons of money.

"One day he was cruising the highway in his big red convertible thinking of how his life had changed. 'Oh, oh, oh, I have this great car,' he thought, 'this beautiful young wife, these wonderful new clothes, all these great fee-paying clients, all this money.' So entranced was he by his great good

fortune that he never saw the telephone pole until the moment he hit it head-on

and was at once dispatched to his hereafter and he found himself standing directly before God.

"How could you take me now, Lord?" he asked. 'How could you take me now? I had this beautiful red car, this gorgeous young wife, all these wonderful new clothes, all these rich clients, and all this money, how could you take me now?'

"The Lord looked down at him and said 'Honest to God, Counselor, I didn't recognize you.'"

The kids were quiet then; the only sound was the dying crackle of the fire. After a few minutes one camper raised her hand. "But who was taking care of the common folk?" she asked.

"Yeah," all the other campers chimed in, "what happened to them?" The sun was now starting to come up and I could tell it was going to be a great day.

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Updates from Our Appellate Courts

by Pamela Ferguson, Esq.

On September 9, 2016, in **D.P. AND B.P., HIS WIFE V. G.J.P. AND A.P.** (No. 25WAP 2015), the Pennsylvania Supreme Court panel of Chief Justice Thomas Saylor and Justices Max Baer, Debra Todd, Christine Donohue, Kevin Dougherty, and David Wecht affirmed Judge Harry Smail's order granting parents' Motion to Dismiss Grandparents' Complaint for Custody on the basis that the provision of the Domestic Relations Act upon which they asserted standing is unconstitutional. Judge Smail held that 23 Pa.C.S. §5325(2), which grants standing to grandparents to sue for partial custody or visitation of their grandchild when the parents have been separated for at least six months or are involved in divorce proceedings, violates parents' fundamental right to raise their children free from government intervention, as it presumes parental unfitness solely on the basis of their marital status.

The Court agreed; however, only in part. Instead of finding 5325(2) in its entirety to be unconstitutional, the Court, with the exception of Justice Wecht, severed the subsection into two parts, striking only the first part, which grants standing to grandparents when the parents have been separated for six months. The Court refused to find the second part of paragraph (2), which grants standing when the "parents are involved in divorce proceedings," to be unconstitutional because the Defendants' Motion did not raise that issue.

The majority held that judgment on the second part of paragraph (2) "should be left to future controversy in which the issue is squarely presented, when the Court has the benefit of focused adversarial briefing and the Attorney General is apprised that the constitutional validity of the second half of 5325(2) has been called into

question and is given an opportunity to defend it."

Justice Wecht concurred with the majority's decision to strike the first part; but dissented to severing the subsection, holding that both parts should be struck down as unconstitutional:

"The majority correctly states that 1) allowing grandparents standing to intervene in custody cases implicates the fundamental right of parents to exercise care, custody, and control over their children and therefore we review this challenge under a strict scrutiny standard; 2) the state has a compelling interest in protecting children; and 3) because we are dealing with a parent's fundamental right to limit access to her child, the state-granted standing to Grandparents, when parents are separated or divorced, must be narrowly tailored to advance the state's compelling interest in safeguarding youth to be constitutional. While I join the majority's proper pronouncement of the applicable law, I respectfully do not agree with the majority's application of the law ..."

In finding the entire subsection to be unconstitutional, Justice Wecht opined that it is not narrowly tailored in that "it allows grandparents to force parents into court to litigate their custody decisions without pleading (and proving) the harm to the child necessary to justify infringement on a parent's fundamental right."

The majority effectively agreed with this analysis in holding that ... the question is "whether the state may exercise its interests in fostering grandparent-grandchild relationships over the objection of presumptively fit parents solely on the basis that they have been separated for at least six months. Where there is no reason to believe presumptively fit parents are not acting in their children's best interests, the government's interest in allowing a third party to supplant their decision is diminished."

The same argument could be made about divorced parents, as Justice Wecht argues; however, the majority refused to address the issue as the facts of this case did not warrant a review and that "it would be premature—and thus improper—to make a wide-reaching constitutional declaration

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(about the entire subsection (2)) when no challenge to the standing requirements relative to divorced parents has been raised or briefed.”

Obviously, the majority is paving the way for future constitutional challenges to grandparent standing in cases where the parents are divorced.

DAYLIN LEACH, MINORITY CHAIRMAN OF THE SENATE JUDICIARY COMMITTEE AND SENATOR REPRESENTING THE 17TH SENATORIAL DISTRICT ET AL., V. COMMONWEALTH OF PENNSYLVANIA, ET AL.

(Pa. Supreme Court 60 MAP 2015)

On June 20, 2016, the Pennsylvania Supreme Court unanimously affirmed a 2015 Commonwealth Court decision striking down Act 192, described by the NRA as “the strongest firearms pre-emption statute in the country.”

The 2014 law, packaged into a bill on criminal penalties for theft of copper wiring and signed into law by then-Governor Tom Corbett, allowed

gun owners and organizations such as the National Rifle Association to challenge firearm ordinances of local municipalities in court, regardless of whether they were directly affected or hurt by the local ordinance. It also awarded attorney fees and court costs to the Plaintiff, to pay for services provided by the organization if the challenge was successful.

Shortly after the law’s enactment, the NRA sued Lancaster, Philadelphia, and Pittsburgh over their restrictive gun laws. In response, the three cities and several state lawmakers, on behalf of five other municipalities, launched a pre-emptive strike and filed suit in Commonwealth Court, alleging that the law violated the “original purpose” and “single subject” clauses of Pennsylvania’s Constitution. Citing the “original purpose” clause (Article III, Section 1), which requires that a bill not be amended in a way that changes its original purpose, and the “single subject” clause (Article III, Section 3), which requires that bills passed by the legislature contain only a

single subject, Lancaster, Philadelphia, and Pittsburgh argued that attaching prohibitions on local gun restrictions to a bill originally created to impose penalties for theft of copper wiring was unconstitutional.

Supporters of the bill argued that it would prevent local governments from illegally setting gun restrictions against the legislature’s wishes. Opponents of the bill argued that the NRA and other organization’s challenges would burden the courts with abstract lawsuits, cost municipalities substantial sums in defense costs, risk the payment of public dollars to private-interest groups, who have suffered no real harm, and have a chilling effect on local government.

In 2015, the Commonwealth Court agreed with the opposition and overturned the law, finding that it violated the state constitution; but, not before some municipalities were scared into repealing their gun laws: a result which some claim was the Act’s sole intent.

continued on page 20

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Updates from Our Appellate Courts *continued from page 19*

“The penalties that were put into that statute were draconian penalties that no solicitor would want to subject a municipality to,” said Joseph Bagley, the solicitor who advised Cheltenham Township to repeal its gun regulations after the 2014 law passed. Even after the Commonwealth Court struck down the law, Bagley said, he advised Cheltenham not to reenact regulations until the Supreme Court heard the case.

During oral argument before the Supreme Court on House Speaker Mike Turzai’s (Allegheny County) and Senate President Pro Tempore Joe Scarnati’s (Jefferson County) appeal of the Commonwealth Court’s decision, Justice Debra McClosky Todd referenced a previous attempt by Republicans to pass legislation prohibiting municipalities from enacting gun control ordinances when she asked, “This bill that we’re talking about today actually died in committee, right?” Martin Black, an attorney for Democratic lawmakers, told the panel that attaching the measure to another bill at the end of a legislative session prevented citizens from weighing in. Justice Max Baer added that municipalities could have provided more input on the law if it had not

been attached to another bill at the last minute.

Affirming the Commonwealth Court’s decision, Chief Justice Thomas Saylor wrote in his opinion that, “as the Commonwealth Court suggested, creating a civil cause of action for persons affected by local gun regulations is simply too far afield from the definition of the new offenses relating to the theft of secondary metal to be considered part of one subject.”

Philadelphia Mayor Jim Kenney hailed the Supreme Court decision as a “great victory for proper legislative procedures and for the ability of local governments to adopt common sense gun regulations without fear of financially crippling litigation.”

Joe Scarnati suggested that similar legislation might be introduced again in the future: “Some municipalities are simply going too far afield of the powers they are given pertaining to gun ownership and there should be penalties for local regulation that is not in accord with current state law.”

Regardless of their stance on gun control, the Supreme Court sent a very clear message to our legislators: To avoid court interference, follow proper legislative procedure. ■

Supreme Court Encourages People to Apply for Appointments

As part of its desire for wider public participation in the judicial system, the Pennsylvania Supreme Court is undertaking a new initiative making it easier for people to express interest in being appointed by the Supreme Court to advisory panels, commissions, and independent agencies with the judiciary.

Legal training, experience, and expertise are necessary for many assignments, but there are appointments for non-attorneys as well.

“The court appreciates the time and effort the board and committee members dedicate to their roles,” said Justice David N. Wecht. “With this outreach we hope to encourage more people to apply for these important positions. Providing easier access to apply for these positions and announcing them to a broader audience will ensure that the court will have a more diverse pool of applicants. A broader array of candidates, and consequently panel members, will serve the court and the Commonwealth as they bring new perspectives to the important work the panels do.”

The Unified Judicial System website at www.pacourts.us will serve as the central resource for the new initiative. As vacancies arise, they will be featured on the home page, usually beginning the first week of the month. Clicking on the announcement will lead readers to a list of vacancies with links to information about the missions of the respective entity, including terms of service, as well as an application and directions for submission. Applicants will have one month to apply. ■

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Westmoreland Revisited

1916: Going Back A Century

by The Hon. Daniel J. Ackerman

If you think about it, a hundred years is not an unimaginable span. It's only the rapid pace of technology which makes it seem so remote from today. Many of us have lived though the majority of a century, and a number of our parents, and many more of our grandparents were children in 1916.



The Hon. Daniel J. Ackerman

A year which contained monumental, even earth-shaking events, which served as punctuation marks in the script of daily life, where individuals did their best to earn a living, provide for their families, and like

now, tried to come to grips with the confusing world around them. Laborers and farmers put in long and exhausting days, merchants fretted over competition, businessmen commuted to work by trolley, doctors made house calls, and court reporters used a pad and pencil to record trial testimony in shorthand.

On these pages we're offering a quick look at what may have been on the minds of the lawyers at our bar in 1916; and, like you, their interests were not confined to the law alone.

Worries over fees and finances were likely, for the Supreme Court, contrary to the hopes of many, on January 24, in *Bushhaber v. Union Pacific Railroad*, 240 U.S. 1, upheld the constitutionality of the income tax, which had been enacted two years before. Further, anxiety abounded, for the Great War, as it was then known, was in its second year, creating food

scarcities in Europe with resulting inflation in America caused by soaring commodity prices.

Beyond financial concerns, the country was divided on the issue of potential involvement in the European war. In late February, newspapers began to report an engagement near the small city of Verdun in northeast France. After several days, it appeared that the fighting was taking on a life of its own. The battle, which one observer called "a glimpse into hell," would last most of the year and claim 700,000 casualties. With a seemingly apocalyptic war in the background and a country divided on which course to take, Americans may have felt that they had fallen prey to the ancient Chinese curse, "May you live in interesting times."

Still, there were deeds to be drafted, claims to pursue, and rights

to defend. So lawyers attended to the daily business of their offices, and on occasion, ventured into the impressive and relatively new eight-year-old courthouse; which was not always a simple undertaking for those who practiced some distance from Greensburg. Jurors called to service from outlying areas, for example, had the option of spending a night in the courthouse dormitory if they wished to avoid the extended commute necessary to reach the ends of the county.

As the year started, the Westmoreland Law Association, at its annual meeting on January 10, had 82 dues-paying members, and assets of \$1,430, of which \$465 came from dues paid the preceding year. The report of A.H. Bell, Treasurer, also demonstrated that there were expenditures of \$272 in 1915, which included the annual salary of \$60 paid to Elizabeth Brown, librarian at the Citizens' Law Library, and \$9 for letterhead.

Among the membership were lawyers whose surnames are familiar to some of today's practitioners: Shaw, Whitehead, Lightcap, Rial, Marsh, Fink, Abraham, Cope, Kahonowitz, Coulter, Smith, Williams, Jamison, Doran, Eicher, Kunkle, Allshouse, Pershing, Marker, Snyder, Walthour, and Silvis. At year's end, the report would show 71 dues-paying members, along with 26 names on a "List of Delinquents," not previously reported, who owed the association a total of \$825.

March 9 & 10—Pancho Villa with a force of 500 attacks a U.S. Calvary regiment at Columbus, N.M., killing 12; President Wilson sends 12,000 U.S.

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continued on page 22

1916: Going Back A Century *continued from page 21*

troops over the Mexican border in pursuit of the attackers.

Just as today, the *Westmoreland Law Journal* was published every Friday out of the Law Association's office in the Huff Building on South Main Street by editors John F. Wentling and William S. Rial. Subscriptions ran \$3.00 a year, "payable in advance." The format is fully recognizable today, in fact, there are hardly any changes, except that when judicial opinions were published, they often were cut short, sometime in mid-sentence, where the editors concluded they were taking up too much space, with the remainder of the opinion appearing in the next week's issue. Reading some opinions tested the patience of the bar; for example, President Judge Charles D. Copeland, Sr.'s, opinion in *Dornan Estate*, 5 WLJ 103, began with Issue 29, on February 25, and appeared in serial form every week for over a month, until it reached its conclusion in Issue 34 on March 31.

March 19—The Saturday Evening Post runs its first cover illustrated by Norman Rockwell.

March 25—For the first time, women are permitted to attend a boxing match in New York City.

April 24—An armed rebellion in Ireland, known as the Easter

Rising, began in an attempt to free the country from British rule.

As it has always been, the law in 1916 was a seamless web, covering all aspects of life, large or small.

In *Application for a Charter for the Ruthenian Greek Catholic Church of St. Nicholas*, 5 WLJ 133, President Judge Copeland denied the application for a new church charter, as Herminie, where the church would be located, already was home to St. Nicholas Russian Orthodox Greek Catholic Church, and having two churches in the same village which contained the name St. Nicholas would lead to "confusion and annoyance."

July 1—Pirate shortstop Honus Wagner, at 42, becomes the oldest player to hit an inside-the-park homerun.

July 1—The Somme Offensive begins; a massive confrontation between the British and Germans, where, on this first day alone, the British army lost 60,000 soldiers, killed or wounded. The offensive would last until mid-November, with combined casualties of over one million.

Most reported cases in 1916 seemed to focus on financial matters, such as contracts and distribution of decedents' estates, but one area, the procurement of damages arising out of motor vehicle

accidents was starting to create new case law.

In *Bowers v. Pittsburgh-McKeesport & Greensburg Railway Company*, 6 WLJ 47, the plaintiff sought to recover \$1,999.24 for property damage to his truck. The defendant offered no evidence to contradict the plaintiff's testimony concerning the amount of the damages; so when the jury found the defendant negligent, and issued a verdict for the plaintiff in the amount of \$1,561 the plaintiff sought post-trial relief asking the court to increase the award to the amount testified to at trial. Judge Alexander D. McConnell denied the plaintiff's motion, ruling that while the plaintiff's testimony was uncontested, the jury remained free to believe or disregard his testimony either wholly or in part.

July 30—German agents or sympathizers detonate a bomb at the Black Tom Ammunition Depot in New Jersey, killing seven; President Wilson's adherence to neutrality remains unshaken.

August 25—The National Park Service is created.

September 13—Mary, a circus elephant, is hung in Edwin, Tenn., for killing her trainer.

While common pleas decisions were of interest, precedents, then as now, were set by appellate courts, and were closely read by the bar. While tort actions were becoming more common, appellate courts were inclined to adopt measures to keep recoveries at a minimum. Comparative negligence was then unheard of, and any amount of contributory negligence, no matter how small, would put a plaintiff out of court.

In *Dove v. Philadelphia Transit Co.*, 98A. 618 (Pa.Super. 1916) the court upheld a nonsuit where the plaintiff's

LawSpeak

"If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself."

James Madison, *Federalist Paper No. 51* (1788).

horse-drawn van collided with the defendant's car, because the plaintiff was deemed negligent in not observing the oncoming vehicle, as "it was a big green car, and its headlight was burning."

Likewise, the doctrine of assumption of the risk derailed many a lawsuit. The plaintiff's decedent, in *Lehigh Valley Railroad Co.*, 98 A. 655 (Pa.Super., 1916), was an assistant foreman engaged in repairing a bridge over railroad tracks. His crew had removed sections of the bridge's flooring, and when a train passed underneath, one of the horses on the bridge bolted, knocking the assistant foreman through one of the openings on the bridge floor, causing him to fall to his death; a risk which the court found he had assumed.

October 7—Football coach John Heisman (for whom the trophy is named), in a classic display of sportsmanship, sees his Georgia Tech team defeat Cumberland, 222 to 0.

November 7—Election Day, President Wilson defeats Charles Evens Hughes; and in Montana, Jeannette Rankin becomes the first woman to be elected to the U.S. House of Representatives.

Issues pertaining to sex and morals worked their way into the judicial system in 1916, which should not come as a surprise, for such issues have been around an awfully long time, and there seems to be no hope of resolving them to everyone's complete satisfaction.

A decision of the State Board of Censors was examined in the case of *In re Franklin Film Corporation*, 98 A. 623 (Pa.Super. 1916). The producers of the film, "Virtue," appealed a ruling of the board, which banned the film's public showing, to the court of common pleas, stating: "[T]he films [sic] complained of were thrown upon a screen and examined." Having seen the evidence, the court determined that the censors' objections were "without merit." The board then appealed to the superior court, which reversed the lower court's finding, noting that while the common pleas court's decision found the board's arguments "minute and far-fetched," it failed to find an arbitrary or oppressive abuse of discretion on the part of the board.

On November 13 and 14, the U.S. Supreme Court heard oral argument on a case involving the Mann Act, which, in 1910, made it a felony to engage in the interstate transportation of "any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose." The case was *Caminetti v. United States*, 242 U.S. 85, where, the defendant, Caminetti, appealed an 18-month prison term and a \$1,500 fine imposed under the Mann Act for transporting a woman from Sacramento, Calif., to Reno, Nev., "with the intent that she should become his mistress or concubine." It was the first time the justices would apply what became known as the "plain meaning rule," and in its decision, which would be announced the following year, the Court determined that the act covered not only prostitution, but any form of extramarital sex.

What we may discern from all this is that no generation is unique, and that the issues faced in one generation will arise again in another, albeit under nuanced circumstances, creating both a growing body of case law, and, happily for you, a need for lawyers.

SOURCES

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- "What Happened in 1916." OnThisDay.com. 24 Jun. 2016.



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NOVEMBER

- 24** Courthouse closed in observance of Thanksgiving
- 25** Courthouse closed in observance of Thanksgiving

DECEMBER

- 3** Annual Holiday Dinner Dance, Oakmont Country Club
- 6** [CLE] Bridge the Gap, 9 a.m. to 1:15 p.m., 4 ethics credits available
- 7** Dinner with Santa, 5:30 p.m.
- 8** Painting With A Twist Fundraiser for the Pro Bono Program, 6 to 8:30 p.m., 1020 Towne Square Drive, Greensburg

- 9** Family Law Committee Holiday Gathering, 3:30 p.m. at Maureen Kroll's house
- 13** Ned J. Nakles American Inn of Court, 5 p.m.
- 15** [CLE] Video Compliance, 9 a.m. to 3:15 p.m., 3.5 substantive and 2 ethics credits available
- 16** After-Work Holiday Party, 4:30 p.m., The Rialto Back Bar
- 20** Membership Committee, 8 a.m.
- 26** Courthouse closed in observance of Christmas

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Speaker:

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Session 3 — 1 Substantive & 1 Ethics Credit

12:00 pm – 2:00 pm (Video from 10/25/16)

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Speaker:

**Paul J. Brahim
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Session 2 — 1 Substantive Credit

10:45 am – 11:45 am (Video from 8/16/16)

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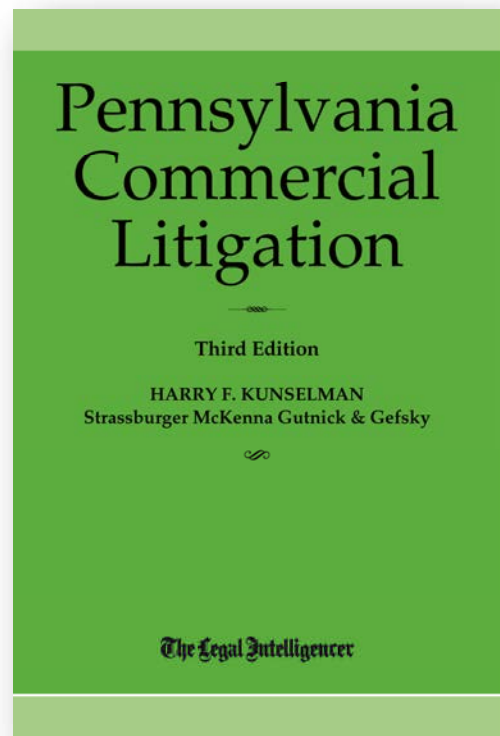
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 - 10 and 20-Year Level Term Life – Plans where your rate remains the same for the length of the term! For PBA members and spouses/ domestic partners.
- Long-Term Disability – A variety of plan options that can protect your income when you are unable to work. Benefits up to \$10,000/month.
- Accidental Death & Dismemberment (AD&D) – Protection for you and your insured family 24/7, anywhere in the world.

For Your Practice

- As an attorney, you're focused on protecting the rights of your clients. But, you need to be just as concerned about protecting your own firm and employees. Consider these options...
- Lawyers' Professional Liability – Coverage to help protect your new firm against costly legal malpractice lawsuits.
 - Workers Compensation – In some jurisdictions, this coverage is mandatory for practices with as few as a single employee.
 - Business Owners Insurance – Core business coverage, including building and business personal property, employee dishonesty, and business liability.
 - Cyber Liability – A suite of data security and privacy solutions customized to your firm.
 - Employment Practices Liability – Coverage for wrongful acts arising from the employment process.

Explore your options today!

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