



On Women In The Profession

by Abby De Blassio, Esq.

When I was a young lawyer in the mid-1990s, I was an associate at Fisher, Long & Rigone. Wes Long sent me to Armstrong County to cover an ARD hearing at the courthouse in Kittanning. I had never been there before, so when I arrived at the assigned courtroom, I introduced myself to the tipstaff, who directed me to sit in the jury box with the other lawyers to wait for my case to be called.



▲ Abby De Blassio

It never dawned on me that I was the only woman in the jury box, but when the judge took the bench, his first order of business was to remind me. As soon as the tipstaff opened court, the sage judge's first comment was: "Well, it's about time we had something good looking in the jury box!"

Not being overly vain or underdressed, I looked to my left, then to my right, and then behind me, and after assessing my company I presumed that the judge was a heterosexual male and that his comment was directed toward me. I can't recall whether or not I blushed,

or whether I reciprocated the flattery, however I remember that I did enjoy the humor, albeit at my own expense.

After the laughter in the courtroom died down, court proceeded uneventfully, my client received his ARD, and I went on my way unmiffed.

Now before you throw down *the sidebar* in disgust thinking, "Here it comes, another one of those *feminists* warming up to rant," you should know that, although I was born in 1966, the same year that the National Organization for Women (NOW) was founded, I was never a bra burner. At the time modern radical feminism was at its peak, I was too young to even wear a bra, let alone burn one. The Women's Rights Movement had already had significant impact by the time I entered the world.

Feminists, such as Betty Friedan (one of the founders of NOW, and author of "The Feminine Mystique"), had already focused mainstream America on the plight of the middle-class housewife who, in the years previous to my birth, had few economic and reproductive options and was socially expected to find fulfillment by marrying well and creating life,

along with the tasks associated therewith.¹

A revolution in women's rights occurred shortly before I was born and continued through my early childhood. By virtue of those developments, and by virtue of my having positive male and female role models that reinforced conventional thinking, I grew up never questioning whether or not I could or should become a lawyer because I was a woman, not worrying about whether or not the fact that I was a woman would impair my progress in my

chosen trade, and knowing that my career aspirations would not be foiled by a lack of reproductive choices.

Upon my high school graduation in 1984, my parents sent me on my way, grateful for the accomplishments of my predecessors, which opened doors that not long before

my birth were previously closed to women. This allowed me to have a sense of humor along the way, whenever I encountered remarks that were once considered sexist and ignited rage amongst my predecessors.

Fast-forward to 2006. Women now make up 28.3% of the membership

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¹ Friedan, Betty, *The Feminine Mystique*. New York: Norton, 1963. See also: Eisenberg, Bonnie and Ruthsdotter, Mary, *Living the Legacy: The Women's Rights Movement 1848-1998*, California: The Women's History Project, www.legacy98.org/move-hist.html, 1998.

President's Message

Just One More Thing ...

by Rebecca A. Brammell, Esq.

As you read this we will be in the midst of the end-of-the-year rush ... the celebration of holidays and the making of New Year's resolutions.



One of my duties as President of the WBA has been to field calls from other lawyers' unhappy clients. I do not try to divert people with serious concerns away from the Disciplinary Board or try to settle fee disputes.

Mostly the calls I deal with are from people who are upset that their attorney doesn't call them back or who think that things aren't moving the way they would like and they don't understand why.

There is no magic to it. It usually takes just a few minutes of patient listening, just like the old-fashioned "complaint office." A call from their lawyer is usually enough to make them happy. I have found that you all have been willing to take my calls and the matter is pretty quickly resolved.

While I am going through my Bar Association list, there is a stack of phone messages piling up on my desk. Through these phone calls I have gained a better perspective on why people get so upset, and I have made some changes in the way that I do things. I have learned to make better use of my secretary/paralegal. If I am either out of the office for extended periods of time or busy working on projects, here are a few things that I have found helpful:

1. If someone calls twice and I have not been able to get back to them, my paralegal schedules a phone appointment. I give her a great deal of flexibility when it comes to my

schedule although we have made a few rules about how many different people and problems I can deal with in a given day.

2. Set aside time for calls and encourage others to do the same. Let's face it, unless you block out time to make and take phone calls you are letting the outside world control your schedule. You are constantly interrupting your train of thought and work process on other things. I don't know of anyone who is really sitting around waiting for the phone to ring.

3. Be realistic about what you will be able to do. Until cloning is perfected, you can't be in more than one place at a time. If you are going to be in court or working on a project, have your secretary let the clients know that you will be tied up. See if there is information that the secretary can get from the client

so you can relay an answer or schedule a phone appointment to go over things.

4. It really does pay to follow things up with a note. Clients have a much clearer expectation when you put it in writing. They may have "selective hearing" but it is really hard to have "selective reading."

5. That leads me to something I told you in my last President's Message: Fire your five worst clients. You know who those people are, and if you don't, ask your secretary. She will rattle that list off very quickly. Everyone will be happier.

6. If you have the luxury of partners or associates, consider trading those difficult files. Having someone take a fresh look at a case sometimes means that you have really made a mountain out of a mole hill. If the new look just confirms the problem, see number 5 above.

After my last article in *the sidebar* dealing with stress, I have had several more conversations with other lawyers about the practice of law. By far, the fact that we are trying to manage a business that produces an income is the highest source of our stress. If it were just a matter of practicing law, it wouldn't be nearly as complicated.

Deciding what copy machine to buy or lease, hiring and firing, making

arrangements for office supplies, taxes, all of those things add up to a second job that you must allow

yourself time to do. We all know that it takes time to do

those things but if you are like me you don't feel like you are really working unless you are doing the "legal stuff." Set aside hours in the week to work on the "back office" matters and delegate what you can to a staff member. I know there's at least one local colleague who thinks you can go it alone, but I don't.

Give yourself credit for the fact that you can balance all of these things and remember to do something every day that makes you happy.



Rebecca A. Brammell

Construction in Greensburg Makes Parking an Adventure

If you have been to downtown Greensburg within the last few months, you were probably met by closed streets, detours, and a slew of frustrated drivers who, like you, were having a hard time finding a parking space thanks to three major ongoing construction projects.



▲ This seven-story building located between North Main Street and North Pennsylvania Avenue will house employees from the Pennsylvania Department of Labor and Industry when completed next summer.

The first project is a seven-story, 90,000-square-foot building that will house 265 employees of the Pennsylvania Department of Labor and Industry, who are currently scattered in four offices throughout the city. The building, located between North Main Street and North Pennsylvania Avenue (just a few doors down from WBA headquarters) will house the Bureau of Disability Determination, Bureau of Workers' Compensation, Unemployment Compensation Board of Review and the Office of Unemployment

Compensation Tax Services when completed in late summer 2007. The construction has permanently eliminated more than two dozen parking spaces in the metered lot on North Main Street.

The second project is also on North Pennsylvania Avenue, directly behind the Courthouse, where four floors are being added to the existing Courthouse Square Extension. The construction has necessitated the closure of North Pennsylvania Avenue between West Otterman and West Pittsburgh Streets, leading to a three-block detour. The new space is expected to be usable by April 2007.

The Children's Bureau will have two floors in the new building, and will be connected to the Courthouse via a walkway over Pennsylvania Avenue. Another floor will be taken by the Westmoreland Development Council, a "one-stop shop" that consolidates four county economic development agencies: The Economic Growth Connection, the Westmoreland County Industrial Development Corp., the Westmoreland County Department

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▲ Four floors are being added on to the existing Courthouse Square Extension on Pennsylvania Avenue in Greensburg.

of Planning and Development and the Redevelopment Authority of the County of Westmoreland. The remaining floor will be leased as offices for the private sector.

Ground has been broken for the third construction project, Seton Hill University's Center for the Performing Arts, which is being built at the intersection of Harrison Avenue and West Otterman Street. Site preparation has interfered with traffic and parking on Ehalt Street and Harrison Avenue, as well as the city's George T. Kearns and Christel Horner lots. Demolition and construction will have an impact on road closures and parking until the project is completed in 2009.

A number of surface lots are under construction at various places in the city, but none are near completion. If Greensburg is your destination, arrive early and wear good walking shoes.

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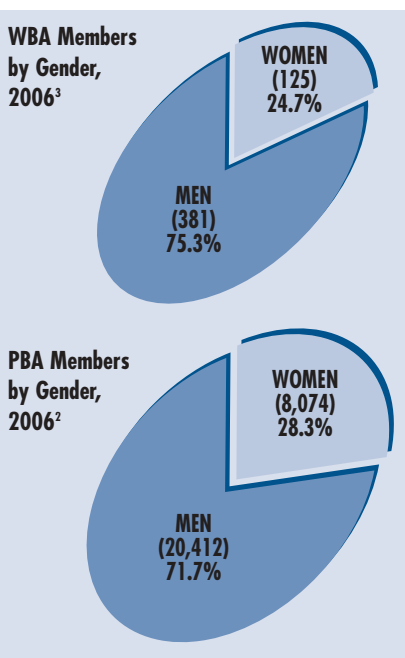
On Women In The Profession *continued from page 1*

of the Pennsylvania Bar Association.² Westmoreland Bar Association membership is now 25% female.³



Female leadership in the Westmoreland Bar Association is almost directly proportional to female membership—9 of our 31 committees, or 29%, have a female chair or

co-chair, and we have had three female bar association presidents since 1996 (Marnie Abraham in 1996, Diane Murphy in 2000, and Rebecca Brammell in 2006). These ratios can only be expected to increase. The 2007 graduating class at the University of Pittsburgh School of Law is comprised of 44% women, and 56% men. The male/female ratio coming out of Pitt



Law is expected to be 60/40 for the class of 2008, and 57/43 for the class of 2009.⁴ The figures for Duquesne Law are almost the same: 54/46 for 2007, and 53/47 for 2008 and 2009.⁵

The Pennsylvania Bar Association, Commission on Women in the Profession (known to members as “WIP”) monitors the progress of female lawyers statewide. The role of WIP is to “assess the current status of women in the profession and identify barriers that prevent them from full participation in the work, responsibilities and rewards of the profession; make recommendations to the PBA Board of Governors and House of Delegates for action to solve problems the commission identifies and develop educational programs to address

² Source: Pennsylvania Bar Association, Commission on Women in the Profession website, www.pabar.org/wiphome.shtml—Women in the Profession 2006 Annual Report Card.

³ Source: Diane Krivoniak, Executive Director, Westmoreland Bar Association.

⁴ Source: Beth Liberatore, University of Pittsburgh Law School Registrar.

⁵ Source: Angela Chirumbolo, Research Analyst, Institutional Research and Planning, Duquesne University.

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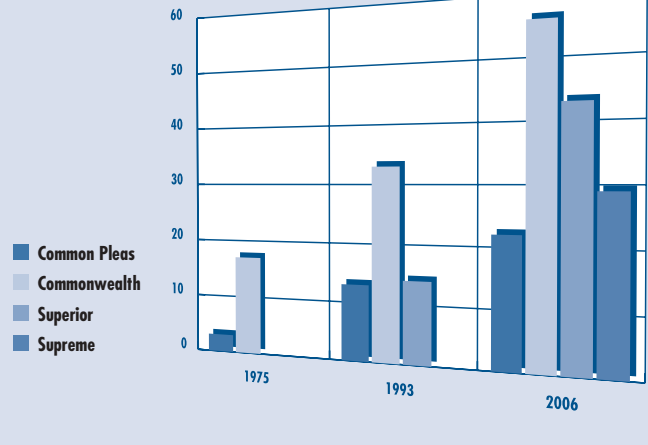
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discrimination against women lawyers and the unique problems they encounter in pursuing their professional careers.”⁶

Mindful that, regardless of my personal experiences, not all women who practice law today have had a smooth ride on the gender train, particularly those senior to me who began to practice law when the profession was less accepting of women, I recently attended the WIP annual retreat, on November 3-4, 2006, in Hershey, PA. My attendance at the event was precipitated, in part, by PBA President Kenneth Horoho Jr.’s efforts to attract more women to become active in the PBA. Always feeling that my plate was full, given the demands of my practice and personal life, as well as local bar association activities, I never made the time in the past to participate in state bar functions. However, what caught my eye about the event agenda was that the keynote speaker would be Sally Helgesen, author of several books addressing the leadership styles of women, who has made a career of coaching and consulting organizations interested in attracting, retaining and developing high-caliber professional women.⁷

Although I have never felt that gender hindered either my professional development or my access to leadership opportunities in the Westmoreland Bar Association, I have felt that we live in somewhat of a

Women in the Pennsylvania Judiciary, 1975-2006, by Percentage (excluding minor judiciary)



fishbowl locally, insulated from the issues that plague those lawyers working elsewhere, by virtue of the absence of behemoth law firms. That these topics were still coming up in the context of a statewide conference intrigued me, as I have always suspected that we cannot be immune forever from “big city” issues as large firms from Allegheny County continue to stretch their tentacles across county

borders. In order to compete on the grander scale, local law firms need to continuously educate themselves on the needs of lawyers—male and female—and how they are faring in neighboring counties, as we compete for the highest quality labor pool, to distinguish ourselves in the legal marketplace from neighboring big-city competition. Also, given the growing ranks of women in the legal

profession, and the investment that legal employers make in their female employees, legal employers need to keep their ears open to matters affecting the career development of women members that may impact significantly on their bottom line and overall performance.

The WIP retreat was attended by a diverse group of highly accomplished female lawyers from the public and

private sectors and the judiciary from counties throughout the Commonwealth. Of significance was the dichotomy in the discussions about the present status of women in the profession. In one camp there were women who, like myself, felt that gender was not an impediment to their advancement in the profession, and who believed that their success was based upon their level of commitment to their work, questioning “why are we still having these discussions?” about equality in pay, advancement and leadership opportunities. One could see clearly, by looking around the

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⁶ Source: Pennsylvania Bar Association, Commission on Women in the Profession website, www.pabar.org/wiphome.shtml.

⁷ Information on Ms. Helgesen’s publications is available on her website: www.sallyhelgesen.com.



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On Women In The Profession *continued from page 5*



room, that women were represented and distinguished in all areas of the law—in large firms, small firms, government positions, the judiciary, the legislature, corporations, and in local and state bar organizations. This camp included those who, as a matter of choice, declined leadership opportunities and chose practice areas and work arrangements that yielded lower compensation for quality of life reasons, as well as those who made substantial sacrifices in their personal lives—and in fact attained recognition and compensation commensurate with their efforts—to an extent they felt was equivalent to that of their male counterparts.

In the other camp were women who felt that there is still a glass ceiling and that gender inequality still exists in compensation, quality of assignments, promotions and partnership opportunities. This sentiment is not without the support of empirical evidence. In September 2006, the Allegheny County Bar Association released the results of its 2005 Membership Survey, commissioned by the Gender Bias Subcommittee of the ACBA.⁸ According to David Blaner, Executive Director of the ACBA, compared to the results of a similar survey conducted 15 years ago, the income gap between male and female lawyers in Allegheny County has not closed, and has actually widened. He attributes this in part to the fact that women are not often rainmakers and

often accept “compromise positions” in transactional work when they decide to have a family. Mr. Blaner indicated that large firms sometimes unfairly presume that when a woman has children, she will not want to take an employment position that requires travel and evening commitments. As a consequence, such women are often overlooked for placement in more lucrative practice areas and partnership positions.

I spoke with Federal Magistrate Judge Lisa Pupo-Lenihan, co-chair of the ACBA Gender Bias Subcommittee, who continues to hear reports of men and women in the same law firm at the same level earning \$20,000 less annually. She indicated that the problem of income inequality is “more widespread than we thought.”

There have not been any in-depth studies in Westmoreland County to determine whether there are salary discrepancies between male and female

attorneys in equivalent positions or to determine whether unfair practices occur with regard to quality of assignments, promotions or partnership opportunities. The WBA Women in the Profession Committee is currently developing a questionnaire to conduct a survey similar to the one conducted in Allegheny County, and is examining issues that are unique to the female attorney.

Acknowledging that female lawyers “rarely walk a straight career path,” the PBA Commission on Women in the Profession recognizes that we should strive to meet the needs of women lawyers at various stages of their careers, who typically fall into four distinct groups: (1) new admittees who need to focus on mentoring and training; (2) those on a temporary leave of absence who need to maintain their skills and connections; (3) part-timers who need to balance work with personal obligations; and

(4) full-timers, who also need to balance work and personal obligations, but in addition need to find time for networking, rainmaking, marketing, continuing education and the development of practice aids.⁹ A significant contribution of WIP has been the formation and collection of model policies for Alternative Work Arrangements, which can guide firms in addressing compensation issues for both male and female lawyers who want to make “work/life balance”

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⁸ Results of the Membership Survey can be accessed on the ACBA website, www.acba.org.

⁹ Source: Pennsylvania Bar Association, Commission on Women in the Profession, 2006 Agenda, prepared by Phyllis Horn Epstein, Dana Baiocco, Penina Kessler Lieber and Marina Angel.

a priority.¹⁰ WIP is a resource for professional development, for peer support and mentoring, and for substantive practice assistance, and it serves as an additional avenue to network with other female lawyers for professional recognition and visibility.¹¹

The current leadership of the Commission, Co-Chairs Phyllis Horn Epstein of Epstein Shapiro and Epstein, P.C. (Philadelphia) and Dana Baiocco of Jones Day (Pittsburgh), recognize that our profession requires us to “share our energies to bring out our best as professionals in the service of our clients and our communities ... [W]e are each an important resource for one another to meet these important goals and that as women lawyers we are role models and leaders within the Commonwealth.”¹²

¹⁰ The model policies are available on the WIP website: www.pabar.org/wiphome.shtml.

¹¹ See footnote 9, supra.

¹² Id.

Shuker Named PBA Director of County Bar Services

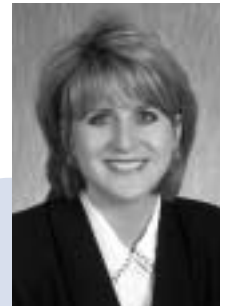
On September 11, 2006, WBA member Michelle Shuker assumed the position of Director of County Bar Services for the Pennsylvania Bar Association.

In that capacity, Michelle serves as the PBA's liaison to all sixty-three county bar associations in Pennsylvania. She helps to coordinate and present the Avoidance of Legal Malpractice seminars that are conducted in each county by the PBA's Professional Liability Committee, and travels with the PBA Bar President to annual dinners and bench-bar conferences. Once a year, she and the CCBL Executive Board organize the two-day Conference of County Bar Leaders, where county bar association executives, board members and

committee chairs attend workshops and share ideas and resources.

“Art Birdsall, who was the Director of County Bar Services for 31 years, left a well-run program and organization,” says Michelle. “Now I get to improve on a good thing. I'm interested in hearing your ideas about how the state bar association can be more supportive on a local level.”

Although Michelle has moved to Harrisburg, she still maintains a home in Pittsburgh, and plans to remain an associate member of the WBA.



▲ Michelle Shuker

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practice tips

by Pamela Ferguson, Esq.

When asked to write an article about forensic consultants, I immediately thought of one of my guilty pleasures: the television show CSI (not CSI:



▲ Pamela Ferguson

Miami or CSI: New York—too much of a good thing is not necessarily a good thing). I know I am not alone in my admiration of the efficacy with which Gil Grissom and his crime scene investigative team unravel the intricacies of crime scene

evidence and their uncanny ability to elicit the murderer's confession. As Perry Mason popularized the practice of law, CSI's six-year run has romanticized the field of forensic science.

While the mass-market success of shows like CSI has helped to push forensic experts into the public limelight, forensic consultants are not a recent invention. In fact, the involvement of forensic consultants in legal proceedings originated in the 19th century.

In 1885, Eugene Lacassagne, a surgeon and prominent university professor from Lyon, France, disagreed with the local police department's determination that an elderly man's death was the result of suicide. Lacassagne and two other physicians were called to the scene and asked to rule on the manner of death. The two other physicians readily agreed with the police officers' conclusion that the elderly man had died as a result of a fatal, self-inflicted gunshot wound. Ever the skeptic, Lacassagne refused to accept the official police conclusion without a thorough investigation of the crime scene.

Forensic Experts Can Help Make Your Case

Upon inspection of the elderly man's body, Lacassagne observed evidence that contradicted a finding of suicide. He noticed that the victim's eyes were closed, his hand was clenched tightly around the gun and the area around the wound was free of gunpowder burns. These observations caused Lacassagne to suspect and eventually conclude that the elderly man had been the victim of foul play.

Forensic experts and consultants can be used to:

- Educate counsel about their specific area of expertise to help them make an informed decision about what course of action to take. Experts are available in a number of fields including accident reconstruction, accounting, computers, construction, engineering, insurance, medical care, and police and penal matters.
- Evaluate cases to help determine if they have merit.
- Test potential evidence.
- Conduct experiments to prove or disprove a point.
- Prepare demonstrative evidence, such as diagrams, maps, models or computer simulations, to be used during trial.
- Testify at a deposition or trial.

Lacassagne knew from previous experience that the eyes of the deceased were often closed when death occurred from natural causes, but were rarely closed when death resulted from sudden trauma. Equally troubling to Lacassagne was the lack of gunpowder burns, as he had never known the victim of a self-inflicted gunshot wound to be free of such burns. Lacassagne was also puzzled by the elderly man's unusually firm grip on the weapon, as his experience had taught him that the gun usually slipped from the grasp of a mortally

wounded victim. This led Lacassagne to suspect that the elderly man's firm grip was the result of someone placing the gun in his grasp immediately postmortem.

Lacassagne's forensic analysis ultimately resulted in the apprehension and conviction of the elderly man's son who, as suspected by Lacassagne, had shot his father from some distance, placed the weapon in his hand, and then closed his eyes, presumably in a final gesture of paternal fondness.

Today, the use of forensic consultants in all facets of the law is becoming commonplace and, in some instances, is an absolute necessity. The analysis and presentation of evidence by forensic consultants has become vital to the practice of law. With the advice of forensic consultants, attorneys can achieve a better understanding of their case, thereby enabling them to present a compelling and convincing case to the judge or jury.

Lawyers seeking the assistance of a forensic consultant need look no further than the American College of Forensic Examiners Institute (ACFEI) for guidance (www.ACFEI.com). The ACFEI, which boasts the largest membership of forensic consultants, has compiled an extensive list of available experts who are conveniently categorized by specialty and location.

Clearly, the field of forensics has evolved since the day of Lacassagne. In the 21st century, the use of forensic consultants is no longer restricted to "big money" cases financed by large firms. Even sole practitioners can avail themselves of the assistance of forensic experts, as the ever-increasing supply of available forensic consultants drives the cost of their services downward. Attorneys willing to trek into the world of forensic consultants may find themselves well rewarded for their journey.

September/October 2006 Civil Trial Term

Jury Trial Verdicts

by Rachel Huss, Esq., Charles J. Dangelo, Esq., and Jacquelyn A. Knupp, Esq.

Of the forty-eight cases slated for the September/October 2006 Civil Jury Trial Term, fifteen settled, one was dismissed, twenty-four were continued, and six verdicts were entered. The cases in which juries deliberated are summarized below.

MICHAEL COLE
v.
KENNETH CARDIFF,
WEST PENN WALL SYSTEMS,
CARDIFF CONTRACTING
AND JULIE CARDIFF

*Cause of Action: Breach of Contract—
Breach of Fiduciary Duty—
Tortious Interference*

Plaintiff and Defendant Kenneth Cardiff entered into a verbal partnership agreement forming a partnership named West Penn Wall Systems. Plaintiff contended that, subsequently, Kenneth Cardiff and his wife, Julie Cardiff, formed Cardiff Contracting



and that, through this newly formed company, Defendants took the contracts between West Penn Wall Systems and its various customers, destroyed them, and replaced them with contracts between Cardiff Contracting and the customers, thereby eliminating Plaintiff's right to any share in the profits of the contracts of West Penn Wall Systems.

Defendants contended that Plaintiff voluntarily terminated the partnership with Kenneth Cardiff. There were a number of West Penn Wall System jobs that were partially completed when Plaintiff refused to continue working, which were completed by Cardiff Contracting. Defendants

contended that Plaintiff received the benefit of his bargain because he was paid his weekly salary and bonuses for the period of time he worked for West Penn Wall Systems.

Plaintiff's Counsel: Michael J. DeRiso, Monroeville

Defendants' Counsel:

Timothy C. Andrews, Gbg.

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict in favor of Defendants. Jury found Plaintiff did not prove the existence of an oral partnership agreement with Defendant Kenneth Cardiff or that Kenneth Cardiff intentionally interfered with the contractual relations between West Penn Wall Systems and any third parties.

BETTY L. PLATE
v.
HENRY ROLAND
NO. 4762 OF 2000

*Cause of Action: Negligence—
Motor Vehicle Accident*

On December 23, 1998, Plaintiff and Defendant were traveling in the same vehicle through North Carolina on Interstate Highway 77 during a snowstorm when their automobile was involved in a collision with a tractor-trailer truck. Defendant's wife and mother-in-law, passengers in Defendant's vehicle, were killed in the accident. Death actions on their behalf were instituted in North Carolina and resulted in a verdict in favor of defendant trucking company and its driver. Plaintiff was not a party to the North Carolina actions. Plaintiff filed this action in Westmoreland County against Defendant, who was driving the car in which she was a passenger, alleging that the accident was caused

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Jury Trial Verdicts *continued from page 9*

by Defendant's negligent operation of the vehicle. In new matter, Defendant contended that the accident was caused by adverse weather and road conditions not within the control of the Defendant.

The case was bifurcated and tried as to liability only. The sole issue for trial was whether the weather and road conditions were so bad at the time of the accident that Defendant should not have been driving.

Plaintiff's Counsel: Amy S. Cunningham, Gbg.

Defendant's Counsel: Dwayne E. Ross, Reeves and Ross, Latrobe

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

Result: Molded verdict in favor of Defendant. In special findings, jury found Defendant not negligent in continuing to drive his vehicle in the weather conditions that developed up to the time of the accident.

MELVIN DRAKULIC

V.

**DONNA LEE PLECENIK,
INDIVIDUALLY AND
TRADING AND DOING
BUSINESS AS LEVEL
GREEN MINI MART**

V.

**SEALER KING, SEAL
COAT COMPANY
NO. 7866 OF 2001**

Cause of Action:
*Negligence—
Premises Liability*

On December 26, 1999, Plaintiff entered upon the property of Defendant, Donna Lee Plecenik, in order to patronize the Level Green Mini Mart. As she was walking, Plaintiff slipped on a wet, painted curb and fell to the ground. Six months prior to the accident, Defendant had hired Sealer King, Seal

Coat Company, the Additional Defendant, to spray the curb with yellow paint.

Plaintiff's complaint against Defendant alleged that the paint on the curb became slippery when wet and was a hazardous condition. As a result of the fall, Plaintiff claimed various injuries to his left arm, shoulder, neck, back, and right knee. Defendant asserted that she relied upon the knowledge and expertise of the Additional Defendant, an independent contractor, to select the paint and apply it to the curb on which Plaintiff allegedly fell. At trial, evidence was presented that Plaintiff did not immediately seek medical attention following his fall, and that he sustained a stroke subsequent to the fall that affected the left side of his body.

Plaintiff's Counsel: Patrick H. Mahady, Mahady & Mahady, Gbg.

Defendant's Counsel: Dwayne E. Ross, Reeves and Ross, Latrobe

Additional Defendant's Counsel: Maria Spina Altobelli, Mears, Smith, Houser & Boyle, P.C., Gbg.

Trial Judge: The Hon. William J. Ober

Result: Verdict in favor of Defendant and Additional Defendant.

SANDRA KAY JAKUBAK

V.

HEATHER LEE BOYLE AND GARY

R. BOYLE

NO. 352 OF 2004

NO. 357 OF 2004

*Cause of Action: Negligence—
Motor Vehicle Accident—Binding
Summary Jury Trial*

On February 12, 2002, Plaintiff and Defendant, Heather Lee Boyle, were involved in an automobile accident at the intersection of William Penn Highway and School Road in Murrysville, Pa. Defendant was driving on William Penn Highway and

stopped at its intersection with School Road, where her view was blocked by a large truck. Defendant proceeded into the intersection and collided with the passenger side of the vehicle driven by Plaintiff, who was entering the intersection from School Road. Plaintiff claimed that she sustained injuries to her neck, back, shoulders, arms, and chest. Defendant asserted the contributory and comparative negligence of the Plaintiff.

Plaintiff's Counsel: Howard F. Murphy, Papernick & Gefsky, L.L.C., Monroeville

Defendant's Counsel: Dwayne E. Ross, Reeves and Ross, Latrobe

continued on page 12

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To-Wit: Gracious Me

by S. Sponte, Esq.

I knew right away what it was when I saw the envelope in the morning mail. It was the opinion. I knew because it bore the return address of the judge before whom I had argued the case some weeks before. I knew because it was a fairly thick envelope. And I knew because, well, because after thirty-five years in the law biz, I just knew.

It was an important case, a lawsuit against a local municipality challenging an ordinance that my research had led me to conclude was beyond the power of the municipality to enact. Such cases, a challenge to authority and its abuse, have been the mainstay of both my practice and my psyche for a long time now. Thanks to my upbringing, I have always had a disdain for the arrogance of power, and this case, all by itself, had come to

fill an entire rucksack in my myriad collection of emotional baggage.

Within seconds after I had ripped the envelope apart, exposing its potentially threatening innards to the light of day, I knew that I had prevailed. The court had bought my argument whole hog and had struck the ordinance down. I had won, and of lesser import, so had my client.

Now those who know me well also know that the only professional event that makes me more obnoxious than losing is winning. I sing, I dance, I soar majestically through the ether, higher than a kite, completely oblivious to the teachings of Icarus, and just as much at risk.

If I had the capacity to restrain it, to not be so demonstrative in my exhilaration, it might not be so bad. For much of my career however, I haven't done such a good job of reining in my feeling, and it has

sometimes been a problem.

Many years ago for instance, I tried a paternity case before a jury. It was a difficult and emotionally taxing case, and when the jury returned a favorable verdict, I started a'whoopin' and a'hollerin' right there in the courtroom. I raised my arms in victory and started chanting, "Who's your daddy?" Under the circumstances, it was a poor choice of expressions. I embarrassed all concerned, including the foreman who discreetly inquired of the judge if it was too late to reconsider the verdict.

For a long time favorable verdicts and opinions did not seem sufficient, standing alone, to fully herald my

continued on page 12



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To-Wit: Gracious Me *continued from page 11*

acuity. Even a skywriter's message, hailing my victory as if declaimed by heaven itself, would not have fulfilled my insatiable need for approbation. And it cost me a lot of money to boot.

But as we all come to learn, the path of self-aggrandizement is strewn with dangerous impediments. One day, inexplicable as it sounds, I lost a case. When the jury announced its verdict, opposing counsel began pounding his fists on counsel's table next to me, a'whoopin' and a'hollerin', in an as obnoxious a display as I'd ever seen.

Apparently nothing rankles me more than a taste of my own petard, for I immediately poured the

I raised my arms in victory and started chanting, "Who's your daddy?" Under the circumstances, it was a poor choice of expressions.

remainder of my still hot cappuccino into his lap. His pain was immediate and intense, and, as an added bonus,

the foam would surely stain his trousers. It was right then that I determined to curb my own offensive celebrations. The possibility that someday I might run into someone just like me was far too risky.

So now, as is my current practice, I will simply place a mannerly call to opposing counsel in this case to applaud his gallant effort. He's a long-time friend and I know my courtliness will infuriate the hell out of him for sure. Oh, oh, oh, this is going to be sweet.

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Jury Trial Verdicts *continued from page 10*

Trial Judge: The Hon. William J. Ober

Result: Verdict in favor of Defendant. Jury determined that neither Defendant nor Plaintiff were negligent.

**MYSTIC A. KELLER
V.**

**VINE STREET ASSOCIATES,
A PENNSYLVANIA GENERAL
PARTNERSHIP; CATHERINE C.
MCCAULEY; CATHERINE M.
FLORIANI; PATRICIA S.
MCCAULEY; SALLY A. MCCAULEY;
CHRISTINE M. FERNANDEZ;
AND JOHN W. MCCAULEY, III,
TRUSTEES UNDER THE WILL
OF J. WILLIAM MCCAULEY, JR.,
DECEASED, INDIVIDUALLY AND
AS GENERAL PARTNERS OF
VINE STREET ASSOCIATES;
AND LYNN C. MCCAULEY
NO. 9098 OF 2004**

Cause of Action: Negligence—
Premises Liability

Plaintiff rented an apartment in a multi-unit building owned by

Defendants, Vine Street Associates and its general partners. On December 9, 2002, Plaintiff exited the front door of her apartment, walked onto a paved driveway where her vehicle was parked, and slipped and fell on a sheet of ice. The fall fractured Plaintiff's left ankle. On December 13, 2002, Plaintiff underwent surgery to her ankle in the nature of an open reduction and internal fixation.

The parties agreed to bifurcate the case and a trial was conducted on the issue of liability only. Plaintiff presented testimony regarding the circumstances of her slip and fall on the ice in the driveway. Defendants presented testimony that they lacked

knowledge of the slippery condition and that the condition was not present for a sufficient period of time such that they should have been aware of the problem and taken corrective action.

Plaintiff's Counsel: Mark Galper, Bergstein & Galper, P.C., Monessen
Defendant's Counsel: Maria Spina Altobelli, Mears, Smith, Houser & Boyle, P.C., Gbg.

Trial Judge: The Hon. William J. Ober

Result: Verdict in favor of Defendant. Jury found Defendants were negligent but their negligence was not the factual cause of Plaintiff's harm.

LawSpeak

"The half truths of one generation tend at times to perpetuate themselves in the law as the whole truths of another, when constant repetition brings it about that qualifications, taken once for granted, are disregarded or forgotten."

— Cardozo, C.J., *Allegheny College v. National Chautauqua Co. Bank*, 246 NY at 373 (1927)

Westmoreland Revisited

Judge Alexander Addison and the Whiskey Insurrection

by The Hon. Daniel J. Ackerman, President Judge

Editor's note: In this space, the sidebar aspires to revisit, through this and other contributors, lawyers from the past who played significant roles in the history of Westmoreland County.

The Chinese curse, “May you live in interesting times,” may well have been invoked against Alexander Addison, the first Westmoreland County judge who was learned in the law (a few may say he was also the last, but that is beside the point) and who was also the only judge from this county to leave office by way of impeachment.



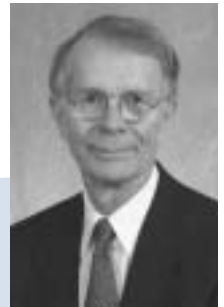
After the founding of the county in 1773, our judiciary was comprised of public-spirited laymen. The Pennsylvania Constitution of 1790 provided that the president judge of each judicial district was to be a professional lawyer or learned in the law. Alexander Addison was the first judge designated to serve the county under the new constitution. His tenure was from 1791 to 1803.

It would however be a mistake to perceive the man as a provincial magistrate presiding in an isolated frontier, for here was a local judge who corresponded with the president and

was a participant in events on a national scale.

Born in Ireland in 1759, and educated at Edinburgh, he was licensed to preach by the Presbytery of Aberlow, Scotland. Emigration brought him to a short tenure as a minister in Washington, Pa. Thereafter, he

turned his attention to the law and a legal practice in Pittsburgh, and then to his term on the bench in a judicial district, which included the four counties that would later be the



The Hon. Daniel J. Ackerman

continued on page 14



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Judge Alexander Addison *continued from page 13*

hotbed of the Whiskey Rebellion or Insurrection: Allegheny, Washington, Fayette and Westmoreland.

Whiskey on the frontier was the single commodity that had a standard value and all other goods were measured by the

amount of whiskey it would take to purchase them.

This stability of value existed, at least in part,

because the courts

licensed public houses

and regulated the price of liquor.

And, of course, distilled grain products were easier to transport and store than the grain itself. Whiskey was also a tempting subject for taxation.

George Dallas Albert, in his "History of Westmoreland County," writes: "If the Scotch and Irish brought anything with them to this country, it was a hatred of the excise tax system in England." An excise tax is one levied upon domestically manufactured products and collected at the place of production. Pennsylvania had enacted an excise tax on goods including whiskey, but collection efforts proved so feeble that the legislation was rescinded.

Then, in 1791, the same year that Alexander Addison became a judge, Congress passed a law levying a tax of four pence per gallon on all distilled spirits. The fuse had been lit, and the southwestern Pennsylvania counties came close to rebellion with firebrands calling for secession from both the Commonwealth and the federal union.

Edward Watts, in a recent history with the interesting title "Messy Beginnings," writes, "At the same time, the white settler population also recognized themselves as colonial, as second-class citizens on the margin of the empire, denied the rights of citizenship and often classed with indigenous populations in imperial representation and policies." These

settlers, as Watts notes, had often claimed land in an informal fashion (read "stole it") and consisted often as not, of Revolutionary War veterans, not of the officer class, and only marginally more palatable than the First Americans they replaced, who had immigrated from Scotland, Ireland, Germany, France and Switzerland, "an ethnic heterogeneity which troubled the more Anglo-centric East."

The wholesale refusal of these westerners to honor the tax, along with a few riots bent on intimidating those who might attempt to collect it, convinced the federal government that this was a matter not to be taken lightly and Alexander Hamilton, the Secretary of the Treasury (the ultimate destination for the tax revenue), was angered by the resistance; an anger shared with the eastern-controlled

federal government. In a proclamation on August 4, 1794, President Washington called out the militia, an organized army of 13,000 troops (as large as the one that defeated the British) under the command of General Henry Lee, the then-governor of Virginia and the father of Robert E. Lee, which set out toward the western counties. This was the first test of the new federal authority and, to emphasize the importance attached to the matter, Washington himself accompanied the army on part of the march, the first and only time a sitting president and commander-in-chief accompanied an army in the field.

The show of force had the desired effect; the opposition to it dispersed and the rebellion proved insubstantial. An investigation followed. There were a few arrests, but the federal point of



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view prevailed over regionalism, as it would seventy-four years later at the end of the Civil War. Among those in positions of local authority who supported the Federalist's position were John Neville and Alexander Addison.

Addison was a regular correspondent with the president, as is noted from one of Washington's letters to him:

Philadelphia, December 6, 1798.

Sir: Your favor of the 21st, Ulto.,¹ enclosing thoughts on the 'Liberty of Speech and of the Press' in a Charge to the Grand 'Juries of the County Courts of the fifth Circuit of the State of Pennsylvania' has been duly received, and I pray you to accept my thanks for this fresh haste, of your attention and politeness to me.

I am persuaded I shall read it with the same pleasure, and marked approbation that I have done your other productions of a similar nature which have come to my hands. I say shall, because my occupations since I came to this City have been such as scarcely to afford me time to look into a News-paper. With great esteem etc.

Geo. Washington

¹ Ulto.—Latin reference to "post," i.e., the letter of the 21st of last month.

While he may have been on good terms with the president, it is likely that Addison's position during the insurrection was not a popular one here, and he did little to disguise his contempt for those who opposed the central government. He wrote:

Those, without property to secure their attachment to the government or the country, unaccustomed to a regular industry, and trained to a rambling life, had the arms in their hands, were known and associated to each other, and could, without any sacrifice, remove to wherever they pleased. It was this kind of men that were the great terror during the troubles, and now only remained to keep those troubles arrived. The well disposed were more inclined to quiet, were not generally armed, and had as yet no complete system to bind them together.

He was clearly a courageous judge, not swayed by the public mood, who in 1803, left office through impeachment, not due to corruption or the misuse of his office but, for what all commentators seem to agree upon, that he fell victim to political rancor. The official line on his impeachment deals with a conflict

between Judge Addison and an associate judge named Lucas.

In the 18th and early 19th centuries it was common practice to have a judge preside with one or two associate judges who were not schooled in the law. I have heard reference to them as "flowerpot judges," because they were no more useful than decorations in the courtroom. Contrary to custom, this associate judge attempted to charge either a jury or grand jury—accounts differ—and Judge Addison stopped him. Perceiving this as an affront to his position, Lucas applied to the legislature which instituted impeachment proceedings. The trial, held in Lancaster, where the legislature was sitting, was characterized by partisan feelings. Judge Addison was denied the right to review certain documents or to procure witnesses from this part of the state to aid in his defense.

In a more politically stable time he would have completed his term with accolades similar to one reported by Albert from a Dr. Carnahan. "A more intelligent, learned, upright and fearless judge was not to be found in the State."

Alexander Addison, age 48, died almost two hundred years ago, on November 24, 1807.

SOURCES

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- Memoirs of The Bench and Bar of Westmoreland County, Pennsylvania, Albert H. Bell, self-published (1924)
- The George Washington Papers at the Library of Congress, 1741-1798
- Dr. Susan Sommers, St. Vincent College
- Vignettes, Tribune-Review, Robert B. VanAtta, 10/8/06

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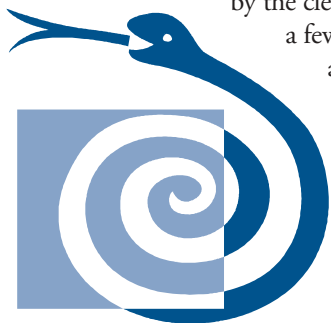
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But Without Ears, How Can They Hear the Call of the List?

In what is reminiscent of the biblical plagues, the office of Jeannette District Magistrate Joe DeMarcus has become infested with snakes. The condition was first reported by the cleaning crew a few months ago when, while working after hours, several of the crew noticed snakes hanging from the outside gutters of the building on Clay Avenue.



that they had no hands with which to carry briefcases, I became suspicious.” The Jeannette police were called and immediately sent a prowler car with two officers to the scene. “Yep, snakes,” observed Patrolmen Pat Mundane, when he found several more sitting in the chairs at the back of the courtroom. He informed his sergeant who informed his captain who placed a call the next day to the Westmoreland County Buildings and Grounds Department. They immediately swung into action, sending out a crack team of two anthropologists, three biologists, a paleoarchaeologist and one guy from Orkin. While the scientific team was carefully noting the number and species of the reptiles, gingerly tagging each specimen for tracking and future identification and making careful notes of the length, gender and sexual

orientations of the specimens, the Orkinologist started spraying and stomping. The intruders were soon eradicated. “It could happen again,” said one of the scientists. “We think this new building was accidentally constructed over an ancient snake burial ground, and the current intruders are merely reacting to their instinctive urges to return to their roots.” “Yeah, well, instinctive urges or not,” said the Orkin guy, “I’ve got a mongoose in the back of the truck and I know how to use it.” The Westmoreland Bar Association has taken the matter under advisement and is considering presenting a petition to the Building and Grounds Department urging that the interlopers be extended full professional courtesies whenever possible.



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Shirley Makuta Is Making It Count



The Pro Bono Program salutes Shirley Makuta, who is always so helpful in offering her expertise and time in responding



▲ Shirley Makuta

to a question or phone call on a client's behalf. Shirley's success with finding answers for these questions, which usually regard protocol or an emergency situation, may be why she is revered as "Oh Wise One." Although the cases Shirley takes are sometimes the most difficult, she maintains her sense of humor and exhibits genuine caring for people. Melissa, Shirley's secretary, is equally gracious and helpful.

Shirley is presently working with the Pro Bono office to foster a Domestic Relations seminar for indigent residents who are initiating a support case. Her enthusiasm inspires us all.

Thanks to Shirley and Melissa for their ceaseless efforts on behalf of the Pro Bono Program!

Volunteering Our Thanks

In keeping with the season of remembering our blessings, the Pro Bono staff would like to extend a special thanks to everyone who has contributed in any way to our program. We are grateful for those who have offered their services, and

would also like to extend a warm and appreciative welcome to those who would like to help in the New Year. Even the smallest effort is greatly appreciated. Thank you, each and every one!

As Aesop wrote in his fables, "No act of kindness, no matter how small, is ever wasted."

Looking For A Special Way To Remember Someone?

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 your check payable to the Westmoreland Bar Foundation and mail to WBA Headquarters, 129 North Pennsylvania Avenue, Greensburg, PA 15601. All donations to the Westmoreland Bar Foundation are tax-deductible.

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Business of the Board

OCTOBER 17, 2006 ANNUAL JUDGES/BAR LEADERS MEETING

- Discussed court appointment fees, an annual topic of concern of the WBA leadership. Concluded that county commissioners would not be likely to agree to any increase.
- Circulated proposed mediation rules for custody. Family Law Committee has not approved yet, but family court judges have been involved with process.

WBA BOARD MEETING

- President Brammell reported that Nominating Committee was appointed; interview process will begin in near future.
- President Brammell chose Mike Stewart to serve as YL liaison.
- Learned that Disciplinary Board Director Paul Killion will be here on October 20 to discuss how WBA should handle attorney concern calls.

- Approved moving the Fall Quarterly Meeting from the bar office.
- Approved expenditure to advertise Living Trust seminar in Circleville.
- Adopted conflict of interest policy as presented by Treasurer DeDiana.
- Voted to accept Fee Dispute Committee's revisions to their rules.

NOVEMBER 21, 2006

- Learned that Citizens Bank did not renew PBA affiliation program; PNC signed on as the new PBA affiliate.
- Learned that PBA will not increase dues for 2007, but will most likely do so for 2008.
- Michele Bononi and Judith Ciszek will complete their terms on the Laurel Legal Services board at the end of December. Agreed that if they are interested in serving another three-year term, they should be reappointed.
- After hearing recommendations on how to handle attorney complaints from October meeting with Disciplinary Board Chief Counsel Paul Killion, agreed that President Brammell will draft guidelines on how to handle attorney concerns and present them to the board for consideration at December board meeting.
- Learned that PBA is seriously considering establishing an office in the Pittsburgh region in order to increase participation and membership.
- Took action to draft a letter under the Executive Committee's signature to indicate WBA's opposition of the establishment of the Western Pa. PBA office.

- Young Lawyers Committee reported that their Halloween party was a success with the families; this group has requested a similar party for Christmas.
- Young Lawyers Committee will host a Christmas party, open to all WBA members, at a local eatery.
- Voted to allot a total of \$1,000 for two Christmas parties: a children's and an adult.
- Agreed to obtain the DVD on the Operation Safe Surf training so that the Young Lawyers can schedule a group training with follow-up discussion on implementation.
- Learned that Mr. Stewart will act as board liaison with the Young Lawyers.
- Agreed to have all board members sign off on the conflict of interest policy, and to continue to do so each year.
- WBA Political Action Committee reported that their board agrees to maintain the collection and disbursement of contributions to the local legislators. They also agreed to adopt the plan Mr. Antoniono presented to select WBA members to mobilize the different legislative regions of the county on an as-needed basis.
- Agreed to plan additional Living Trust seminars for the spring with Greensburg as one of the first locations.
- Courthouse Centennial Committee reported that \$40,000 has been collected for the Courthouse Centennial book: \$29,000 came from WBA member contributions, \$5,000 is still outstanding.

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wba

Candid Camera: 2006 Holiday Dinner Dance



◀ For Susan, it was a pretty picture of a scantily clad young woman, but for Jim, it was oh-so-much more.

“Down the hall and to the right.”

▲ “I don’t care what the hell you think. I am not Kris Kringle and I haven’t got any damn toys.”



◀ And in the next second, both David and the necklace were gone.



▲ Although it’s been more than forty years since their last great hit, *The Barlots* are still remembered for their soulful rendition of “Shaboom, Shaboom.”



▲ Ah, but alas, only Peggy could come up with a phrase that rhymed with “Nantucket.”

▶ For just a moment, one brief and shining moment, John seemed so happy.



▲ Harry waited patiently while the flustered waitress hunted around for change back from his quarter tip.

And Baby Makes ...

Elizabeth and Jeremy McCall welcomed their new son, Samuel David, into the world on June 9, 2006. David weighed 8 lb 10 oz at birth. Big sister, Anna (3½) is thrilled with her new baby brother. Elizabeth is an associate with Bononi & Bononi, P.C., in Greensburg.

Margaret Zylka House and her husband, Max, are the proud parents of their new son, Isaac Edwin House. Born on October 25, 2006, Isaac was 8 lb and 22½ inches long with dark brown hair and blue eyes. Margaret reports that their family is doing well adjusting to having two children. Big brother, Max, who turned 3 in December, is becoming a big help. Margaret is a solo practitioner in Connellsville.



CALENDAR OF EVENTS

JANUARY

- 1** Courthouse closed in observance of New Year's Day
- 8** Bankruptcy, Noon
- 10** Membership, Noon
- 15** Courthouse closed in observance of Martin Luther King, Jr., Day
- 16** Family Law, Noon
Board Meeting, 4 p.m.

FEBRUARY

- 5** Bankruptcy, Noon
- 14** Membership, Noon
- 19** Courthouse closed in observance of Presidents Day
- 20** Family Law, Noon
Board Meeting, 4 p.m.

**Happy Holidays
from the
Westmoreland
Bar Association**

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**.
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