



Accelerated Permanency Treatment Program Earns WBF Support

On September 7, 2011, the Trustees of the Westmoreland Bar Foundation unanimously voted to provide financial support to the recently launched project in Family Court known as the Accelerated Permanency Treatment Program (APTP). Judge Feliciani has implemented this program to reunify children separated from their parents when the Children’s Bureau has already intervened and the future of the family, as an intact unit, has been threatened by alcohol or substance abuse.

In an attempt to help the parent recover, Program Coordinator Roy Kindelberger (Children’s Bureau) and a multi-disciplinary team meet weekly with drug- or alcohol-dependent parents to provide support, encouragement, and either rewards or penalties for their behavior. If a parent complies with the requirements imposed—staying sober, going to AA or NA meetings, treatment with a counselor or therapist, attending weekly court sessions—the parent is rewarded with gift cards and additional

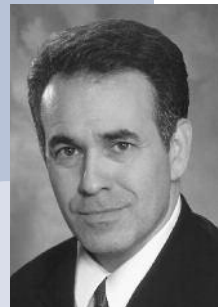
hours of child visitation. But the ultimate incentive to the parents—in addition to living a life that is free from substance abuse—is a permanent unification of the family.

In addition to Judge Feliciani, the team is presently comprised of Stephanie Madl, a Drug & Alcohol Counselor at Southwestern PA Human Services (SPHS); Sarah Distefanis and Dawn Marino, paralegals with the Statewide Adoption Network; Mary Anne D’Auria, from Wesley-Spectrum Services (family therapists); Tim Phillips, of Westmoreland Community Action; Mary Ann Grec, the county solicitor who handles most of the child dependency cases; Kyle Baxter, court-appointed guardian ad litem representative; Eric Dee, attorney representative for the parent, and Annaliese Masser, the Master who hears many

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THE VIEW FROM THE BENCH

by *The Hon. Christopher A. Feliciani*



During the course of my eight years hearing dependency cases, I came to realize that a very large percentage of the juvenile cases coming before me had a drug and/or alcohol component. Of that large percentage of cases, a significant number ended in the termination of the parental rights of the drug/alcohol-addicted parent.

▲ *The Hon. Christopher A. Feliciani*

Clearly the established protocols for dealing with the problems of dependency were insufficient to address the problem, and a more intensive approach was needed to increase the likelihood of reunification of the family.

At the time, there was a certain single parent who had appeared before the court. Two of her minor children had been removed from her custody as a result of various problems at home, most notably her addiction to marijuana and heroin. After having an in-court discussion with her and realizing she was crying out for help in overcoming her drug addiction, I decided to create a panel of individuals to oversee a pilot, experimental treatment court. The members of the panel are individuals from our community who come from different agencies, including Southwestern PA Human Services, Wesley-Spectrum Services, M & M Drug Testing, Statewide Adoption Network, and Westmoreland Community Action, along with attorney representatives for parents and guardians ad litem, a county solicitor and a coordinator assigned by the Westmoreland County Children’s Bureau. We have

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WESTMORELAND BAR FOUNDATION

President's Message

Happy Holidays

by Michael J. Stewart, Esq.

As we approach the end of another year, I want to thank all of our members for your dedication and service to the Westmoreland Bar Association. We just celebrated our 125th anniversary, and no matter what calendar you observe, that kind of longevity is no small feat. It would never have happened without the participation and care our members lavish on our bar association.



Thanks also to our extraordinary staff: Diane, Susan, Cathy, and Julia. They are so instrumental in the continued development and maintenance of a quality Bar Association and we couldn't get anything done without them. I want to also thank our past presidents who continue to serve this Association far beyond their years of active service as official Board Members. Their efforts flow from a wonderful commitment to the values that this organization embraces.

Throughout my term on this Board, the single most discussed issue on the local, state, and national level has been the restoration of civility to our profession. I quote Justice Anthony Kennedy of the United States Supreme Court:

"Civility is the mark of an accomplished and superb professional, but it is even more than this. It is an end in itself. Civility has deep roots in the idea of respect for the individual. We are civil to each other because we respect one another's human aspirations and equal standing in a democratic society. We must restore civility to every part of our legal system and public discourse. Civility defines our common cause in advancing the rule of law. Freedom may be born in protest, but it survives in civility."

At this time of year, may I suggest to you that, in part, our mission need be the observance of respect for colleagues. It is inextricably linked to our desire for goodwill towards one another. We need to appreciate that

being kind is more important than being right. We need to recognize that while everyone wants to live on top of the mountain, all of the happiness and growth occurs in the climb.

Though we may have different cultural and religious traditions, it is during this time of year, this holiday season, when we pause to remember our purpose in the short time that we have on this earth, when we look forward to spending time with family and friends, that we remember those who may not be as fortunate. May the spirit of this time motivate our generosity now and throughout the year as we continue to give back to our profession and our communities. Finally, may you and your family have a blessed holiday season. 🌸

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



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And just a reminder—you can access the same membership information online anytime at westbar.org/attorneys. 🌸



New Venue for 2012 Bench/Bar: Bedford Springs Resort

by John M. Hauser, III, Esq.,
Bench/Bar Committee Co-Chair

The 26th Annual Bench/Bar Conference will be held June 14-15, at the historic Bedford Springs Hotel, in Bedford, Pa. Close to home with luxurious accommodations, this resort seems the perfect locale to add an element of opulence to this year's Conference.

Attendees at this year's Conference will enjoy the upscale amenities at the resort including historic architecture, marble lavatories in all of the guest rooms, crystal chandeliers, a spring-fed indoor swimming pool, an outdoor swimming pool, and the 30,000-square-foot Springs Eternal Spa. History buffs will likely appreciate the period architecture and innumerable historic artifacts and documents lining the walls of the resort. Also, the more outdoorsy among us will be partial to the numerous gardens, outdoor walking and biking trails, Cannondale mountain bikes available for rental, and the highly rated golf



course. Epicurean delights also abound, with three top-tier

restaurants on the premises, plus a dessert and coffee shop, and complimentary tea in the lobby each day of your stay. And those of you wishing to stay longer than the Bench/Bar Conference may also be glad to hear that the group rate has been locked in for three days prior to and following the Bench/Bar Conference.

Activities at this year's Conference will be similar in many ways to past conferences; however, there will be

some new additions, including a yoga workshop, a historic tour of the resort, and a cooking class which will be taught by the resort chef over wine. Also, for the hackers among us, this year's golf outing will be a scramble with "best-ball" team scoring. Finally, the Young Lawyer's Suite will be in the resort's Donald Ross Suite, which makes an impression on all who enter.

Regardless of your interests, you will find this location to be a welcome relief from the stress and deadlines of practice, and perfectly suited to the camaraderie and relaxation that are the goals of our Bench/Bar Conference. We hope to see you there! 🍷



the **sidebar**

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15601-2311, fax 724-834-6855, or e-mail westbar.org@westbar.org. the sidebar welcomes submissions from members or non-members. Please submit to the Articles Editor, c/o WBA. Back issues from 2000 to the present and a comprehensive, searchable index are available online at www.westbar.org/thesidebar.

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Remembering Mike Rubinoff

Editor's note: Mike Rubinoff passed away on August 31, 2011. He is survived by his wife, Sandra; children, Mark Rubinoff (Betsy) and Sally Rubinoff (Paul Englund); four grandchildren, Nicholas, Leah, Alec, and Ethan Rubinoff; brother, Arthur Rubinoff (Janet); nephew, Derek Rubinoff; and niece, Kailan Rubinoff.



by Judge Irving Bloom

My best friend died on August 31, 2011, at the age of 72. I am not going to recite the usual listing of those who survived him. That is better left to the obituary that appeared in the *Tribune-Review* in the beginning of September.

▲
Mike Rubinoff

I had a call from Mike in early June that he was suffering from cancer and would be undergoing treatment that would take care of the matter. I was concerned, but he seemed in a good mood. Later, I got a call from his wife, Sandy, that it was a particularly aggressive form of cancer and was fast-moving and fatal. We kept in touch by phone every few days; I promised, as requested, to come and visit him very soon.

In the middle of August, I got a call from Sandy that things were moving quicker than expected and if I wanted to talk to him, I should come and visit quickly. Within two days, I got a ticket and flew down to Naples determined to try to be as cheerful as possible.

Sandy and Mike's daughter, Sally, picked me up at the airport and we went to visit Mike at the hospital. That visit was among the toughest six hours of my life. Mike and I crammed a review of 44 years of friendship into those six hours. Mike and I had shepherded each other through illnesses, divorces, tough cases in the practice of law, family births and deaths, and every possible aspect of a lifetime of friendship.

We discussed how his philosophies had morphed from a left-leaning, very liberal political science professor to a conservative who thought the greatest accomplishment of the George W. Bush administration was the lowering of capital gains taxes.

We talked about homicide cases we worked on together, narcotics cases, and particularly discussed how most of our clients were guilty and if we got half of them off we were doing well.

For a few hours, Mike seemed to forget the fact that he was only pain-free because of the Oxycontin and seemed to forget for that short period of time the fragile state of his

health. We both laughed and enjoyed each other's jokes told for about the seventh or eighth time as if they were new and fresh to both of us. I reminded him of all the good he had done as a political science professor and the fact that a good number of the assistant D.A.s in Westmoreland County were taught political science by him. He wasn't so sure that was a good thing.

At my encouragement, he reminisced extensively about his work as a Special Master in domestic relations. I reassured him that his reputation had been one of complete objectivity and fairness to both sides of the table in a most difficult and emotional field of law. When he started tearing up at this discussion, I told him to cut that out. He had a lot of life yet to live and he was going to beat this problem. We both knew that wasn't true. For the moment, it helped him get through the day.

He told me his son and grandchildren were coming for the weekend to celebrate his 72nd birthday. The thought of that brought large smiles to his face. He was so looking forward to that visit. He tried looking forward to the time when he would be a bit better and could get out of the hospital.

He joked with me about how I had been best man and toasted the bride and groom the first time he married Sandy. He also remembered that I had been the best man the second time he married Sandy. He asked me if I remembered the wording of my toast on the second occasion. I did. I said to Mike and Sandy, "Darn it, this

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time get it right! I'm not going to do this a third time!" We both laughed, and when Sandy was out of the room for a moment, he said to me, "Irv, we did get it right this time." I smiled and laughed and the tears didn't come until I was alone back in my hotel room knowing that that was the last time I would ever see my best friend.

He died twelve days later. He had seen and visited with the people he wanted to see and visit with and he died at peace. His death was five years to the day from when he had retired and moved to Florida, where he and Sandy had such a wonderful life. How sad. 🌹

Remembering John F. Kradel

Editor's note: John F. Kradel passed away October 4, 2011. He is survived by his wife of 58 years, Nancy; children, Kim Kradel, Sally (Ronald) Smichnick, Susan (Dennis) Waite, John (Kimberly) Kradel, Amy Beth Kradel, and Mark (Diane) Kradel; grandchildren, Corrie and Nathan Smichnick, Samuel Kradel Waite, John (Courtney), Kayla, Mark, William, Joseph, and Heather Kradel; brothers, R. Paul (Eileen) and James (Jane) Kradel; a nephew; and great-nieces and nephews.

by Jeff Pavetti, Esq.

John F. Kradel died on October 4, 2011, at the age of 79. He practiced law for 53 years, primarily in the Ligonier Valley. He is survived by his wife Nancy (they were married for 58 years), six children, and nine grandchildren.

Back in the day when a young person waited for his or her turn at public service, John was elected to the Legislature at the tender age of 32. That was quite an accomplishment. In that era, the Pennsylvania Legislature wasn't the most productive deliberative body on the planet ["*Plus ça change ...*"]. As John told the tale, the members were summoned into session to collect their per diem, and little else was accomplished at the Capitol short of some serious poker games and an almost obsessive celebration of the birthdays of the members.

John did not seek a second term. When an astonished colleague asked why he hadn't run for reelection, John famously replied, "I got tired of driving to Harrisburg to sing 'Happy Birthday.'"

John's newspaper obituary noted that he enjoyed mentoring young lawyers. As a young lawyer in the early 1980s, I remember John as a welcoming, supportive, and helpful colleague. Although I was admitted to practice after the preceptorship program ended, I wished that I had participated in that program and had the benefit of a mentor like John.

John always had a contented smile on his face. That smile could be rather contagious. You always got the impression that John enjoyed being a country practitioner. John was a very insightful and pragmatic person and undoubtedly his clients benefited from his sage (and common sense) advice. Something tells me that he may have collected more than his share of fees in the form of farm grown meat and produce—but that might have come in handy as John was the father of six children. He represented many municipalities in the greater Ligonier area. If memory serves me correctly, he also kept evening hours in an ancillary office or two. On top of all that, he operated business enterprises, including ice cream stands. John was a person who enjoyed being busy.

I'll end with one final remembrance of John: he could be rather sartorially challenged. John was capable of wearing a white shirt, blue tie, and brown sport jacket. For some reason, it worked for him. In many respects, it was classic John Kradel—he always left you with a smile. 🌹



▲ John F. Kradel

Mike Rubinoff and John Kradel will be remembered, along with Bob Garland, at the 50th Annual Memorial Service of the Westmoreland Bar Association to be held at the Courthouse in May 2012. Please plan on joining us to honor our colleagues.

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Accelerated Permanency Treatment Program Earns WBF Support *continued from page 1*

of the dependency cases. Many of the hours spent by these individuals on this work are donated without compensation.

“A multi-disciplinary team approach works in a way that one person, with one perspective, can’t,” explains Kyle Baxter. “With weekly meetings, there’s



constant accountability that doesn’t exist in a regular Children’s Bureau case, where people can get into the system and just sit there. People can’t

break the cycle of addiction on their own. We are rooting for the parent to succeed, and once you lose the adversarial nature of it, then the attitude of the participant changes, too. That’s why this works.”

If you would like to support this program, add your name to the court-appointment list or send a tax-deductible contribution to the Westmoreland Bar Foundation, specifically designating your gift as a contribution to the APTP fund. Contributions to this fund will be used to purchase gift cards and other “rewards” for successful participants in the program. Your contribution will go a long way toward creating and maintaining healthy families in Westmoreland County. 🌟

THE VIEW FROM THE BENCH *continued from page 1*

named the program the Accelerated Permanency Treatment Program, or “APTP” for short.

Our pilot case lasted approximately nine months. The program required the woman to meet weekly with the team and weekly with the court. To our surprise, she appeared consistently and on time each and every week for a consecutive nine-month period. When she complied with the services and was drug free, I acknowledged her efforts in open court and she received increased community visits with her children, gift cards and other similar rewards. She was required to remain in her mental health and drug treatment program until successfully completed, and although she had a couple minor setbacks during the course of the program, she was successful in having both of her minor children returned to her custody at the six-month review hearing.

After she had been sober for eight months, our panel conducted a graduation ceremony, she was given a framed certificate of completion, a window air conditioner (something that she had on a wish list), and a public display of approval by the entire team and the members of her family. It was a success story we hope to repeat with other parents in similar situations.

It is estimated that this successful pilot case alone resulted in cost savings to the county in the approximate amount of \$35,000. The program does require financial support for the purchase of gift cards used as rewards for the participants when they are in compliance with the program requirements.

I truly believe that the program works because of the team’s weekly intensive, unrelenting interaction with the participants. This approach, in my opinion, holds the participants accountable for their conduct while rewarding positive, appropriate behavior. If we can get the participants to abstain from drug and/or alcohol usage long enough for them to recognize that they can function without them, their long-term chances of remaining drug- and alcohol-free and reunifying their family increases significantly.

The process is very demanding on all the members of the panel. However, each of the individuals has acknowledged the need for such a program and has demonstrated a commitment to the process now and in the future. We are currently in the process of screening future participants and hope to start the next phase before the end of this year. Limitations of time and resources oblige us to limit the number of participants to ten, but our hope is that there will then be ten fewer families torn apart by the damage inexorably flowing from the abuse of drugs and alcohol. 🌟

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bookmark What Have You Been Reading?

by Nancy L. Harris, Esq.

Since I haunt only used book stores, the old-fashioned, real paper kind, the books I read could hardly be considered new releases. But any author with a writing style that flows easily off the page usually comes home with me. If I have to work at it, we're done.

TOO BIG TO FAIL

❖ *by Andrew Ross Sorkin* ❖ Sorkin is a former New York Times financial columnist and is now a financial commentator with

CNBC. This is a fascinating and highly readable inside story of the people and policies involved in the financial meltdown of 2008. Based on detailed personal accounts and



▲ Nancy Harris

documents from those whose names you heard every day on the news.

BLEACHERS ❖ *by John Grisham* ❖

Not your usual whodunit or courtroom drama, but rather an intriguing character study of small-town America and the aftermath of high school football stardom. If you liked "Remains of the Day," you'll love Bleachers.

THE DEVIL KNOWS YOU'RE DEAD ❖ *by Lawrence Sanders* ❖ Or any of the Matthew Scudder series by this author. This is an offbeat crime series about a private detective who is a recovering alcoholic, and who has some unusual, occasionally quite violent, friends.

A BRIEF HISTORY OF TIME ❖

by Stephen Hawking ❖ The first half is great for those who'd like an admittedly superficial understanding of special relativity, wormholes, the theory of time, etc. But about halfway through, when Hawking started into particle physics, he lost me.

THE LAST JUROR ❖ *by John*

Grisham ❖ Although this is a mystery and courtroom drama, the real charm is in the character portrayals drawn of small town Southern life. Perhaps these characters, and the ambience John Grisham creates, don't exist at all except in our collective imaginations, but they certainly come to life here.

BURY MY HEART AT WOUNDED KNEE ❖ *by Dee Brown* ❖ The detailed but well written histories of native American tribes through the early twentieth century, taking as its focus the slaughter of Lakota Sioux at Wounded Knee, South Dakota. I'm not sure of the exact quote, but it goes something like: "As Red Cloud, an important chief of the Oglala Teton Dakota (Sioux) said, 'They (the white men) made us many promises, more than I can remember, but they kept only one; they promised to take our land, and they did.'"

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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

Bookmark

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THE PHYSICS OF RADIOLOGY

❖ *by Johns and Cunningham* ❖ Just kidding—wanted to see if you were still reading the list. Actually, this is an excellent textbook on ionizing radiation and its interactions with matter at the molecular level, but I wouldn't recommend it for casual reading.

THE ECONOMIST ❖ This is not actually a book, but rather a weekly world news magazine published in London, England. Highly readable and informative, it incorporates regional and topical expertise to a greater extent than a typical American "news" weekly, providing a fascinating outsider's view of American politics, economics, and society. Enlightening, to say the least. 🌟

*Care to share what you're reading?
E-mail us at westbar.org@westbar.org.*

BRIEFLY SPEAKING



[Photo: acba.org]



Elizabeth Bailey and The Honorable Donetta W. Ambrose were honored by the Duquesne University School of Law on Tuesday, October 18, 2011, as part of the school's celebration of 100 years of Duquesne women in the law. Miss Bailey, who graduated from Duquesne in 1947, was honored as the oldest law practitioner in Pennsylvania, as well as the oldest living Duquesne Law School alumna. Judge Ambrose received the Carol Los Mansmann award for distinguished public service.

New Member Sketches

DARRELL J. ARBORE has rejoined the WBA as a participating member. He earned an undergraduate degree in PoliSci from Frostburg University, and his J.D. from Duquesne University. Solicitor for the Westmoreland County Tax Assessment office, Darrell also practices law with his wife, Tracey A. Wilson, in North Huntingdon.

SUSAN OTT has joined the WBA as an associate member. A graduate of Pitt with a degree in Psychology and Public Health, Susan earned her J.D. from Duquesne. She is a contracted lawyer with Rhoades & Wodarczyk, LLC, in Pittsburgh.

TRACEY A. WILSON was reinstated as a participating member of the WBA. She earned a bachelor's degree from Point Park University and her J.D. from Duquesne University. Tracey practices with her husband, Darrell J. Arbore, in North Huntingdon. 🌟

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**where in the world
IS THE WBA MEMBER?**



In July of this year, WBA member Dwayne Ross and his wife, Kathy, celebrated their 25th anniversary in Italy. This photo was taken in front of the Trevi

Fountain in the romantic city of Rome, Italy. A traditional legend holds that if visitors throw a coin into the fountain, they are ensured a return to Rome.

ROME, ITALY

To-Wit: Contempt of Counsel

by S. Sponte, Esq.



“I can do this,” I thought to myself as I walked into the courtroom, smiling sardonically at the pillars of justice that guarded its entrance as I passed by. I proceeded directly to the lectern with my file and stood there waiting, calm and composed.

Now usually I am tense before oral argument, on edge, wired, but not this time. Maybe this time my composure had been informed by the tenor of my prior experiences with this judge, or maybe I was just overcompensating for what I knew lay ahead.

This case has been very difficult, not because of the law and not even because of opposing counsel’s decidedly idiosyncratic behavior. What’s made it difficult is that every motion I have filed in this case, and there have been many, has been met with an increasingly intemperate reaction from His Honor. When I filed this

particular motion, he scheduled a hearing for, as he described it, “the purpose of ripping Plaintiff’s counsel a new one.” Putting the image aside for a moment, there’s nonetheless a bit of

“When it comes to verbal warfare, I’m perfectly capable of taking care of myself—on a level playing field. The problem here is that this field isn’t level.”

comfort that comes from knowing exactly what to expect.

His Honor entered the courtroom from the side door, as always, and took his seat on the bench. “You again, huh?” he said with disdain when he

saw me standing there.

“Yes, Your Honor,” I replied. “And as dilatory, unprofessional, and incompetent as ever,” I added with a twisted grin,

quoting his comments about me from his most recent opinion. “I’m thrilled to see you again as well.”

And with that, I launched into my argument, supremely confident that he would interrupt me incessantly, insult me inordinately, and make my professional life, yet again, a living hell with his badgering, his insults, his taunts, and his criticisms, and I was right. Grumbling something about my not having previously disclosed the middle initial of my name, he launched into his diatribe du jour, this time accusing me of “lack of

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G

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To-Wit: Contempt of Counsel *continued from page 9*

candor with the tribunal.” Since he had not previously used it, I got out my checklist of intemperate remarks and crossed it off, noting with some small measure of relief that he was very quickly running out of fresh, new slurs.

It isn’t so much that his rulings have consistently gone against me, no. That’s life in the law and I can deal with that. And it isn’t because his rulings fly in the face of clearly established precedent either. Rather it’s all those professionally insulting remarks, those wholly unwarranted, vituperative phrases that this unaccountably intemperate judge has thrown around with malice, tidy little venomous expressions like “dilatatory” and “lack of candor” that rip and tear at the licensed flesh and, when they make their way into the everlasting print of an opinion, leave permanent, cavernous wounds in their wake. That’s what’s really scorched my marshmallows.

When it comes to verbal warfare, I’m perfectly capable of taking care of myself—on a level playing field. The problem here is that this field isn’t level. While there’s a stringent code of conduct that mandates courtesy from counsel to court at all times and in all ways, the import of which is sanctified by the punishing power of contempt, there is really no meaningful corresponding restraint which governs the way judges speak to counsel. Oh sure, there’s the Code of Judicial Conduct, but let’s get real here. It’s administered

by the judges themselves, and while many of them might never say “shut up” to counsel, none of them would say “shut up” to a fellow jurist. Accordingly, that Code has all the stopping power of a squirt gun.

No, we lawyers need to deal with the problem ourselves. To that end, I propose that our bar association establish a Committee on Comity, comprised of volunteer colleagues to deal with such instances of judicial abuse and to issue sanctions if and when appropriate. If you’re interested to serve, send me an application, your c.v. and a statement from your mental health care provider certifying that you’re mad as hell and you’re not going to take it anymore.

Let me assure you that this is not personal with me, but rather purely a professional matter, as it must also be for you. It is critical that we remain above the fray at all times, not only because it’s the professional thing to do, but also because up there in fair play heaven we’re far less likely to bump into His Honor or another one of his intemperate ilk.

I have another argument scheduled before His Honor next month, and I expect more of the same. But I’ll hang in there, knowing that one day soon I’ll be able to stare directly into his dark, shrouded eyes and say, “(O)ne more comment like that, Your Honor, and I’ll cite you for contempt.”

Oh, oh, oh, oh, oh, but trust me, it’s nothing personal. 🍷

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November 2011 Civil Trial Term

Jury Trial Verdicts

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

Of thirty-four cases listed for the November 2011 Civil Jury Trial Term, ten settled, twenty were continued, and one was transferred to binding arbitration. There was one civil jury trial specially set in October and there were three civil jury trials during the November 2011 civil trial term.

KEVIN T. MIYAMOTO

V.

HEARTLAND EXPRESS INC. OF IOWA AND JACK KYTTLE, SR. NO. 2469 OF 2009

Cause of Action: Negligence—Personal Injury—Automobile Accident

On March 18, 2007, Plaintiff was driving in the westbound lane of State Route 70 in South Huntingdon Township when a large slab of ice dislodged from the roof of a tractor-trailer truck owned by Defendant Heartland Express and operated by Defendant Jack Kyttle. The slab of ice struck and shattered the front windshield of Plaintiff's vehicle, causing ice and glass to hit the Plaintiff, cutting his face, eyes, upper body and arms, and causing injury to his right shoulder.

Passing motorists called 911 to report the incident and identified the Defendants' truck as the offending vehicle. Section 3720 of the Pennsylvania Motor Vehicle Code, 75 P.S. § 3720, provides that a fine may be imposed on the operator of a motor vehicle who causes serious bodily injury or death when snow or ice dislodges from his moving vehicle and strikes another. Defendant was not cited for violating this code. At trial, liability was not in dispute.

As a result of Plaintiff's injuries, Plaintiff received both emergency room and follow-up medical treatment and has facial scarring that he alleged is permanent in nature.



Plaintiff's Counsel: Timothy Conboy, Caroselli Beachler McTiernan & Conboy, Pgh.

Defendants' Counsel: Gary Scoulos, Meyer Darragh Buckler Bebenek & Eck PLLC, Pgh.

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

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

on the move?

Don't forget! Pa.R.D.E. Rule 219(d)(1)(ii) requires that every attorney shall provide his or her current office and residence address, each of which shall be an actual street address or rural box number, to the Disciplinary Board. All changes in address must be reported to the Attorney Registrar within thirty (30) days after such change.

Be sure to inform the WBA as well, so you don't miss any important mail or e-mail communications.

LEVI WRIGHT

V.

MANOR HOUSE KITCHENS, INC. NO. 1220 OF 2009

Cause of Action: Negligence—Personal Injury—Premises Liability

On September 22, 2007, while Plaintiff was shopping at the Defendant's outlet store, a store employee offered Plaintiff a seat in a plastic resin chair that was seated on a tile floor. Plaintiff was 6'6" tall and weighed 400-450 pounds. Plaintiff sat in the chair for approximately thirty minutes, but when he leaned backwards on the two back legs of the chair, the chair collapsed and broke and Plaintiff fell to the floor.

As a result of the fall, Plaintiff alleged that he sustained injuries to his neck and back, and experienced numbness in his hands. He was treated by a chiropractor.

Plaintiff alleged that the chair was in an unsafe, dangerous and/or defective condition, and that Defendant knew or, in the exercise of reasonable care, should have known that the chair was defective.

Plaintiff introduced testimony from the treating chiropractor at trial. Defendant offered testimony from a physician who conducted an independent medical examination of Plaintiff.

Plaintiff's Counsel: Justin R. Lewis, Law Offices of Justin R. Lewis, PLLC, Pgh.

Defendant's Counsel: Brian J. Smith, Dell, Moser, Lane & Loughney, LLC, Pgh.

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

Result: Verdict in favor of Defendant. The jury found that Defendant was not negligent and entered a unanimous verdict in favor of Defendant.

continued on page 12

Jury Trial Verdicts *continued from page 11*

**JOHN M. LEONARD, EXECUTOR OF THE
ESTATE OF DOROTHY J. LEONARD, DECEASED
V.**

**GEORGE R. BOU SAMRA, M.D.,
WESTMORELAND COUNTY CARDIOLOGY, INC., A
PROFESSIONAL CORPORATION, WESTMORELAND
REGIONAL HOSPITAL, A CORPORATION,
AND EXCELA HEALTH, A CORPORATION
NO. 12363 OF 2008**

Cause of Action: Professional Negligence—Medical Malpractice

On October 31, 2007, Defendant Dr. Bou Samra performed angioplasty on Dorothy Leonard's lower left leg. Following surgery, Dorothy suffered the onset of retroperitoneal hemorrhaging ("RPH"), or internal bleeding, in the abdominal cavity. Early the next day on November 1, 2007, a responding intensive care physician ordered that a CT scan be performed, which confirmed a massive retroperitoneal hematoma. Dorothy was transferred to the hospital's critical care unit. After suffering excruciating pain and several cardiac arrests, Dorothy died later that day. At the time of her death, Dorothy was obese and suffered from diabetes, kidney, and cardiac diseases.

Plaintiffs contend that Defendant Doctor knew or should have known that RPH is the most common serious complication of a vascular procedure like the angioplasty Dorothy Leonard underwent. Also, the type of angioplasty performed by the Defendant elevated the risk of RPH due to the increased difficulty in properly accessing the femoral artery below the abdominal cavity. Plaintiffs also maintain that no effort was made by any nurses, agents, and/or employees of Defendant Westmoreland Regional Hospital/

Excelsa Health to notify any designated interventional cardiologist of Dorothy's change in condition at or around the time she was transferred to the critical care unit after the angioplasty procedure. Defendants presented expert medical testimony that the care and treatment they provided Dorothy Leonard was within the applicable standard of medical care.

Plaintiff's Counsel: Todd R. Brown, Meyers Giuffre Evans & Schwarzwaelder, LLC, Pgh.

Defendant Dr. Bou Samra's Counsel: Lynn E. Bell, Davies McFarland & Carroll, P.C., Pgh.

Defendant Excelsa Health/Westmoreland Regional Hospital's Counsel: Linton L. Moyer, Thomson, Rhodes & Cowie, P.C., Pgh.

Trial Judge: The Hon. Gary P. Caruso

Result: Verdict in favor of Defendant Dr. Bou Samra and against Plaintiff. The jury found that Defendant Westmoreland Regional Hospital/Excelsa Health was negligent but there was no causal connection between its negligence and any harm to the deceased Plaintiff.

**SHELDON R. BARKER AND FRANCESCA
BARKER, HIS WIFE, INDIVIDUALLY, AND
SHELDON R. BARKER, AS EXECUTOR FOR
THE ESTATE OF WILLIAM D. BARKER
V.**

**GERARD D. WHITNEY
NO. 4369 OF 2010**

Cause of Action: Breach of Contract—Real Property

Defendant entered into various agreements with the Plaintiffs for the purpose of purchasing property they owned in North Huntingdon. The total purchase price was approximately \$140,000.00. Plaintiffs allege that Defendant failed to make various payments to them under the contracts, addenda and Note and claim that Defendant caused damage to the home while he was in possession of it. Plaintiffs sought monetary compensation from Defendant.

The Defendant denied Plaintiffs' allegations and filed a counterclaim alleging that the agreements were not valid, and that Defendant signed some of the documents under duress. He further claimed that he repaired numerous defects in the home, and that he should be compensated for renovations and improvements.

Plaintiffs' Counsel: Timothy Lijewski, Pgh.

Defendant's Counsel: Donald R. Rigone, Gbg.

Trial Judge: The Hon. Anthony G. Marsili

Result: Molded verdict in favor of Defendant/Counterclaim Plaintiff in the amount of \$3,959.00. The jury unanimously found in favor of Plaintiffs in the amount of \$4,141.00 and in favor of Defendant/Counterclaim Plaintiff in the amount of \$8,100.00. 🍀

Lawyers' Exchange

(Free to all members of the WBA)

BOOKS WANTED Don't let your recent best-sellers or classic books collect dust—donate them to a good cause. The Mount Pleasant Junior/Senior High School library is in need of recent best-sellers or classics in almost any condition. Books can be dropped off at the school or at WBA Headquarters. Donors' names will be affixed to the inside of the book cover. If you don't have any books to donate, please consider a financial contribution. For more information, contact Maureen Grace at mgrace@mpasd.net.

OFFICE SPACE AVAILABLE with office support, S. Greensburg. Fax, conference room. Rent negotiable depending upon circumstances. Contact Jeff Burzawa at 724-858-8738.

Westmoreland Revisited

Blitzkrieg

by Shane Winesap

Editor's note: Author and lecturer Shane Winesap is a fellow at the Grapeville Institute for World Peace through Law. His latest book, "Why Jurors Dress the Way They Do," will be published in May.

I don't know how they did it," Alvin Doran said as he drew on his cigarette and shook his head.

His secretary, Ellie Malone, looked back in surprise to the man she had worked for over the past twelve years. "Why should you be upset over a verdict acquitting not only your client, but a man who is also your wife's cousin?"

"Because the case was a sure loser," he replied. "And there was something strange about that jury."

We can imagine such a conversation after looking at the records and the transcript in the clerk's office, where, in the Court of Oyer and Terminer, at No. 165 April Term 1943, Otto Nonebetter had been indicted and tried for hoarding gasoline, violating the rationing laws, and abetting the black market. We also know from courthouse lore that Alvin Doran, a lawyer with over 20 years of experience, and Clarence Peck, the assistant district attorney, agreed to save some time by simply seating the first twelve jurors called—a practice frequently used by Doran when representing a non-fee-paying member of his wife's extended and dysfunctional family. These were federal charges transferred from the district court, which was often done in lesser cases to thin the district court's docket.

HOW THINGS WENT DOWNHILL

The authorities took interest based on a report from a local Plymouth dealer who had sold Otto Nonebetter a 1936 Plymouth coupe in January with only 10,000 miles on the odometer. The dealer became suspicious when



▲ Judge Ackerman greets the author at a 2009 social event.

the car was brought back for service three months later with 26,500 miles on it. The black and white "A" sticker on the car's window allowed Otto only four gallons of gas a week. He wasn't a doctor or a defense plant worker, who with a "B" or "C" label could buy greater amounts; he repaired violins in the basement of his home on Alwine Avenue. Investigators also learned that Otto was driving to New York City, at least weekly, with an odd trip to Buffalo thrown in from time to time—on four gallons a week?

It was all a matter of physics, Otto told his pro bono family counselor and later the jury. "In planning these outings, I only took routes which were all downhill." Little did the shocked courtroom participants know that the surprising verdict came from Berlin.

Even before the start of the war, the Nazi High Command had drawn

contingency plans for an American front. Such a possibility was not ruled out here, and the Jeannette Sportsmen's Club initiated a program instructing its members on how to fire on descending paratroopers. When, in 1942, British air raids crippled the German glass industry, German hausfraus took to the streets, distraught over their inability to purchase milk glass pitchers, bowls, and salt shakers. The rumpus caused by these broad-shouldered women so harassed Goebbels, the Nazi propaganda chief, that the timetable for operation "Westmoreland Vore" was pushed up and given top priority. They would alert their mole on his next visit to New York; the women of the Third Reich would get their milk glass!

A DARING PLOT

The bell rang as Otto opened the door to Vera's Victorious Violins on 123rd Street. "Which one of the Marx brothers plays the violin?" he said to a square-jawed woman behind the counter.

"You can bet it ain't Harpo," Vera said back, giving the countersign.

On his drive home, which, as a matter of fact, was mostly downhill, Otto concluded that an airborne attack on Jeannette would be too costly because of the well trained hunters. So, at a drop in a Wilkes-Barre bowling alley, he sent word back that the airborne infiltration should be directed at Kecksburg, where residents had little reason to look up into the night sky.

As always, Otto's information was highly prized in Berlin. But before they could proceed, horrible news came back across the Atlantic: Otto had been arrested, and if convicted, would likely be confined in the Westmoreland County jail. Yes, he

continued on page 14

LawSpeak

"There is no man so good, who, were he to submit all his thoughts and actions to the laws, would not deserve hanging ten times in his life."

—Michael de Montaigne (1533-1592), *Essays*, Book iii, Chap. ix

Blitzkrieg *continued from page 13*

had supposedly capable representation, even if it was from a family member, and this was not the type of case that usually brought jail time for a first offender; but the judge, who was not known for his leniency even in quiet times, was a veteran of the first war and had a son who was flying a B-17 out of England. Their man on the ground must be acquitted before the operation could proceed.

Alvin Doran had been puzzled as to why Otto, who was free on bail, was so insistent upon seeing the jury list as soon as it was published, but he let him have it as soon as it came out. Otto spent the night copying it and then took the copy on one of his “outings,” along with the form he had received calling him to jury duty the year before.

THE KECKSBURG INCIDENT

On a moonless November night, seventy-five paratroopers, all capable of speaking passable English, drifted through the cold air above Kecksburg. Fifty of them—thirty-five men and fifteen women—carried forged jury summons in their backpacks. The others carried what would pass for uniforms worn by mail carriers. This latter group spread out throughout the county in order to present “special delivery letters from the jury commissioners” telling the recipients that because of a change in the court docket their presence in Greensburg the following day was no longer needed.

As the jurors were seated, Alvin thought they were the most somber group he had ever seen in a courtroom. But there was no defense, so what difference would that make? The jurors all rose to the tipstave’s cry when the judge entered, and two jurors in the front row shot their right arms out at a forty-five degree angle, and then, looking sheepishly at one another, began to wiggle their fingers and withdraw their arms in a mock wave to his honor.

It was the shortest deliberation anyone could remember. The minute clerk dutifully noted that the jury began its deliberations at 4:01 p.m., and returned a verdict at 4:04, and that included the time it took to leave the courtroom and come back. The judge was speechless: no avuncular comments were made praising commitment to civic duty, he just waived his hand and pointed to the jury room and they understood that they were excused. Back in chambers the judge had second thoughts as he slipped out of his robe and into his suit coat. Perhaps he had been too brusque, and these people, no matter how bewildering their verdict, still could exercise the franchise. So he would engage in his usual post-trial schmoozing of the jury. As he pushed open the door to the jury room at 4:07, to his amazement he found the room empty.

At that time, they were not even likely within the city limits. They had planned to quickly disperse in separate groups no larger than three and to blend into the countryside in different directions. Three weeks later, two were apprehended in Lawrence, Kansas. One was shot in a grocery store robbery in Steubenville, and all but four would be apprehended and brought to justice. In 1988, a dying postal service worker in Dayton admitted to being one of the airborne mail carriers.

Nor, after the verdict, was Otto ever seen again on Alwine Avenue. For several years that followed, there were rumors of purported sightings. He was in the string section of the Altoona Symphony; he was a beer vendor at Forbes Field; he was a foreman at a Somerset County pretzel factory. None of the sightings had any basis.

GONE, BUT NOT FORGOTTEN?

Because of setbacks on the eastern front, Operation “*Vestmoreland Vare*” was abandoned, and with the jubilation of the Allied victory, Otto Nonebetter was soon forgotten. The

courtroom is still there, the jury commissioners’ office now has a system where jurors can call in to see if they are still needed, and the three minute not guilty verdict is still a record, and a local joke about juror efficiency.

As for Alvin Doran, a few rough years would follow; there were some snide comments that he had been somehow complicit in packing Otto’s jury and his practice suffered. He persevered. He took each day as it came, and was a model of civility to his clients, the court, and his colleagues. Over time, he was again held in esteem, even by his wife’s family. He never sought the bench or any other office, but was content in being a general practitioner who tried some cases when necessary. And when he did try a case, he put great stock in voir dire. 🍷

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Actions of the Board

SEPTEMBER 21, 2011

- Distributed and reviewed accountant's 2010 review of WBA accounts.
- Agreed to invite the PBA president or PBA E.D. to attend the January 2012 quarterly meeting to discuss PBA benefits with membership.
- Agreed to contribute \$2,500 to the PBA PAC, as budgeted.
- Agreed that President Stewart would speak with the judges to determine if a bar leaders/judges meeting should be set for 2011.
- Agreed to have a conference call with the Dauphin County law clerk and WBA board to learn how Orphans' Court Monitoring Project works in Dauphin County.
- Agreed to look at existing advertising/sponsorship policy and develop specific parameters for how to handle requests for sponsorship of local events.

OCTOBER 19, 2011

- Accepted Membership Committee recommendations: Allison Thiel and J. Alan Manderino, participating.
- Agreed to liquidate CD at S&T Bank.
- Voted to increase membership dues by \$10, which is the amount that PBA is increasing their 2012 dues. The WBA portion will not increase.
- Reappointed Chuck Wade to a three-year term on LLS board.
- Agreed to send second letter to LRS panel attorneys who have not submitted reports and payments owed to the WBA.
- Agreed to invite Fee Dispute Committee Chair Harvey Zalevsky to the November board meeting to discuss the Client Security Fund's request that fee dispute panel decisions be shared with the Client Security Fund.

- Agreed to advertise Judge Driscoll's award dinner for the Distinguished Citizen of the Year awarded by the Boy Scouts in upcoming WBA correspondence and to send a representative from the board. 🤝

Can't wait to read the sidebar? We can e-mail it to you.

Be among the first to receive new issues of the sidebar when you sign up for e-mail delivery. Send an e-mail to susan.zellner@westbar.org and ask to subscribe to the e-sidebar. When a new issue is published, you will receive a PDF via e-mail immediately.

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in Westmoreland County
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save the date!

January 26, 2012: WBA
Quarterly Meeting with
CLE (details TBA)

CALENDAR OF EVENTS

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

JANUARY

- 2 Courthouse closed in observance of New Year's Day
- 11 Real Estate Committee, Noon
- 12 Membership Committee, Noon
- 16 Courthouse closed in observance of Martin Luther King, Jr., Day
- 17 Family Law Committee, Noon
- 18 Board Meeting, 4 p.m.

- 26 WBA Quarterly Meeting with CLE (details TBA)

FEBRUARY

- 9 Membership Committee, Noon
- 15 Board Meeting, 4 p.m.
- 20 Courthouse closed in observance of Presidents Day
- 21 Family Law Committee, Noon

Join the Lawyer Referral Service of the Westmoreland Bar Association, where every appointment and every handshake can lead to more clients.



The Lawyer Referral Service is accepting applications from WBA members for 2012. Call 724-834-6730 for more info.

LAWYERS CONCERNED FOR LAWYERS CORNER

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

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WESTMORELAND BAR ASSOCIATION

QUARTERLY MEETING

WINTER 2012



GUEST SPEAKER

Mark D. Yochum

Professor of Law, Duquesne University School of Law

Mark D. Yochum is a Professor of Law at Duquesne University School of Law, specializing in tax issues, bankruptcy, and professional responsibility. He is a graduate of Carnegie-Mellon University and Georgetown University Law Center. Professor Yochum has written and lectured extensively on federal criminal tax issues and tax lawyer's ethics, as well as ethical problems in bankruptcy. He has served as the Law School's coordinator for participation in Continuing Legal Education since 1990, and also provides legal counsel to the Small Business Development Center. Professor Yochum formerly served as President of the Pittsburgh Tax Club, and has been a regular lecturer for the Allegheny County Bar Association Taxation and Bankruptcy sections, as well as other professional organizations in the region.

Who: Westmoreland Bar Association Members
What: WBA Winter Quarterly Meeting
When: Thursday, January 26, 2012, from 4 to 5 p.m.
Where: Greensburg Garden & Civic Center
Topic: Sex with Clients: Honor in the Profession

All WBA members who attend will receive 1 FREE ethics CLE credit. A complimentary reception immediately follows at 5 p.m.



COURSE DESCRIPTION

'Sex with Clients' is about honor in the profession. The lurid title is meant to attract lawyers' attention to the notion that the personal interest of the lawyer can create a conflict of interest, even when the personal relationship with a client is somewhat short of sex. We will discuss the genesis and effect of Pennsylvania's new rules of conduct concerning a lawyer's romance with a client.

PLEASE JOIN US IMMEDIATELY FOLLOWING THE SEMINAR FOR A RECEPTION HONORING

Judge James R. Kelley

ON THE OCCASION OF HIS RETIREMENT.

The Hon. James R. Kelley retired from the Commonwealth Court in December 2011 after more than 20 years on the bench.

Complimentary refreshments will be served.



[Please detach and send the portion below to the WBA office, or register online at www.westbar.org.]

WESTMORELAND BAR ASSOCIATION

QUARTERLY MEETING

WINTER 2012

Complete and return by Friday, January 20, 2012

Send to: Westmoreland Bar Association 129 N Pennsylvania Ave Greensburg PA 15601-2311 Fax: 724.834.6855 E-mail: westbar.org@westbar.org Register online at www.westbar.org

Name _____

Cost to attend: FREE for WBA members. All WBA members who attend the CLE will receive 1 FREE ethics credit.

- I will attend the meeting and would like CLE credit.
I will attend the meeting but would NOT like CLE credit.
I will attend the complimentary reception honoring Judge Kelley at 5 p.m.

THURSDAY, JANUARY 26, 2012 GREENSBURG GARDEN & CIVIC CENTER



Musical Director Daniel Meyer



Guest Soloist Noé Inui

Join us for 
Adventures of the Heart
at the

WBA
Night at the
Symphony

Saturday, February 4, 2012

The WBA invites you to bring your favorite date to the Westmoreland Symphony on **Saturday, February 4**, for a Valentine-themed concert. Tickets for WBA members are **BUY ONE, GET ONE FREE**. Prices range from \$19 to \$39 each, with \$27 being the best value.

Call the Westmoreland Symphony office at 724-837-1850 to purchase your tickets. Be sure to identify yourself as a WBA member to get the special offer.

Following the concert, join us for a complimentary drink for you and your guest at the Rialto Cafe.

Saturday, February 4, 2012
8:00 p.m.
Palace Theatre, Greensburg

The Program:

Kernis: *Musica Celestis*

Mozart: *Violin Concerto No. 5* with soloist
Noé Inui, violin

Beethoven: *Symphony No. 2 in D*

WBA members are also invited to attend a pre-concert lecture beginning at 7 p.m. with Conductor Daniel Meyer and Soloist Noé Inui.



Trial Tips in Action 2012 – a chance to earn FREE CLE credits

Volunteers are needed to score high schoolers as they demonstrate courtroom proceedings in a Mock Trial. Your participation as a juror in this trial tips in action seminar qualifies you for **1.5 free CLE substantive credits per session**. Only 12 jurors are needed for each session, so return the registration form as soon as possible. No walk-ins can be accepted.

Trial Tips in Action (Mock Trial)
Westmoreland County Courthouse
February 1, 6, 13, 16, & 23
5:00 pm
Courtrooms #3 & #5

WBA Trial Tips in Action Seminar Registration Form
Fax 724-834-6855 or mail completed form to: WBA, 129 North Pennsylvania Avenue, Greensburg 15601

Please check the appropriate area :
_____ Register me as a juror for the trial tips in action seminar. **I do want 1.5 FREE CLE substantive credits per session.**

_____ Register me as a juror for the trial tips in action seminar. **I do NOT want CLE credit.**

Name _____

Address _____

Email address _____ Telephone _____

For those wishing CLE credit: Attorney I.D.# _____

All sessions are scheduled to begin at **5 pm**, please plan to arrive 15 minutes prior .
Please choose 1 or more sessions you wish to serve as a juror:

- Wednesday, February 1st _____
- Monday, February 6th _____
- Thursday, February 13th _____
- Thursday, February 16th _____
- Thursday, February 23rd _____



5 Dates Available:
February 1
February 6
February 13
February 16
February 23



PLEASE NOTE:

The total time frame for each session will be approximately 1 hour and 45 minutes.

Jurors will receive 1.5 FREE CLE substantive credits for an entire session.