



2002: The Year In Review

january february march april



NEW MEMBER CEREMONY



MOCK TRIALS



WBA ANNUAL MEETING



LOUGHRAN GALA

may june july august september



BENCH/BAR CONFERENCE



WBA PICNIC & MUSIC FEST



october november december



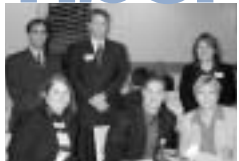
FAREWELL



UNITED WAY DAY OF CARING



YOUNG LAWYERS DJ GATHERING



HOLIDAY DINNER DANCE

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President's Message

“It’s ‘Saviour of ’is Country’ When the Guns Begin to Shoot”

by Timothy J. Geary, Esq.

Since this is a holiday issue, I decided to dispense with my usual theme and instead refer back to the special article about military veterans that appeared in the September–October issue of



the sidebar. I had the distinct honor and privilege to serve our country for over 24 years, seven of which were on active duty during the war in Vietnam. During the majority of that period of time (1963–1970), I was a combat crewmember on a C-141A transport. There are two types of combat aircraft according to fighter pilots. They are “weapons platforms” (read fighters and bombers) and “targets.” I was a navigator on a “target.” I mention this only for what I perceive as its darkly humorous effect on target crewmembers. Most service members approach life with a gallows sense of humor.

As the holiday season approaches and we reflect upon the happy moments we experience with our families and friends at this time of the year, we need to remain mindful that we are only one more refusal by Saddam away before we as a country are at war, again! Therefore, I ask you to think of those young men and woman who serve in our armed forces and who will not be home for the holidays but rather will be in some remote, miserable, mean area of the world, and also in harm’s way.

I remember my own holidays away from home. I spent Christmas 1963

in Greenville, Miss., where I had been sent to become an AF medic. No, I had not flunked out of college. Actually, after my sophomore year, I ran out of money and the USAF promised me food, clothing, a place to sleep and a paycheck. “Three hots and a cot” was how they phrased it. Anyway, at the risk of offending those among you who may either be from Mississippi or have some connection to that state, in 1963 I was convinced that if God were ever going to give the world an enema, Mississippi would have made his short list for insertion points. Certainly Mississippi in 1963 was not the place for a New England Yankee, like myself, but on the other hand, it was not in harm’s way, either.

I spent Christmas 1964 in Waco, Tex., a sorry little burg with nothing but Baylor University and way too many honkytonks. It was in Waco that I had the good fortune to attend flight school and be commissioned as a second Lieutenant. However, it is Christmas 1965 that I really want to talk about. I was in Saigon, Vietnam, that holiday season and what I remember most was my Christmas dinner. We were at Tan Son Nhut airbase preparing to fly to the Philippines and the only, and I mean only, place to eat was at what the

aircrews referred to as the “roach coach.” The unofficial designation was “ground-oriented roach infested mobile feeding facility,” hence the name “roach coach.” It was a rather large camper-type vehicle that was driven to various places on and around the flight line and used to serve chow to the aircrews and maintenance workers. Such vehicles were rarely cleaned and certainly were not anyone’s first choice for fine dining. On the other hand, on this particular

Christmas, the roach coach was the only spot to eat and I opted for what I hoped was some type of a “special” Christmas meal rather than going hungry.

As soon as I entered the door I saw a sign which read, “All we got is Spam

and Cheese. Don’t ask for nothing else!” (sic). They did have some condiments available so I guess I should not have complained as bitterly as I did (to no avail, I might add). As an aside, I am not seeking sympathy here but actually trying to make a point. As soon as I finished complaining, I thought of those men who were languishing in the Hanoi Hilton. At that time we didn’t really know the name of the infamous prison in North Vietnam, only that it was there and it had American “guests.” In fact, some

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**Freedom isn’t
really free. It is
paid for, over and
over, by the blood,
sweat and tears
of young people,
most not even out
of their teens.**

Nominations Announced for 2003–2004 Board, Committees

The Nominating Committee of the Westmoreland Bar Association has recommended the following members for positions on the Board of Directors and the Membership and Building Committees. Those WBA members attending the Annual Meeting of the association, to be held on April 7, 2003, will vote “yea” or “nay” to fill these positions.



▲ Incoming WBA President Aaron M. Kress

At the conclusion of the annual meeting, Aaron M. Kress will assume the Bar presidency.

VICE PRESIDENT: JAMES R. SILVIS

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

James R. Silvis is in his third year as a Director on the WBA board. He is currently Co-Chair of the Gifts & Memorial Committee, responsible for roasting the WBA’s outgoing presidents, and is a member and former Co-Chair of the Bench/Bar Committee. Jim is also a current member and past-president of the Westmoreland Academy of Trial Lawyers, and a past-president of Lawyers Abstract Company.

A graduate of Dickinson School of Law, Jim has been a member of the WBA since 1965. Jim is a partner in O’Connell & Silvis in Greensburg.



▲ James R. Silvis

BOARD OF DIRECTORS: BARBARA J. CHRISTNER

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

A member of the WBA, PBA and ABA since 1992, Barbara J. Christner is currently Co-Chair of the Real Estate Committee and a member of the Elder Law and Orphans’ Court Committees. Barbara is also a Trustee of the Westmoreland Bar Foundation, serving on its Outreach and Scholarship Committees, and as a Moot Court juror. In addition, she has served on

the Board of Directors of Laurel Legal Services.

According to Barbara, serving on the WBA Board of Directors “would be a good opportunity to contribute my time and energy to an organization that benefits not only the legal community, but would also give me an opportunity to promote the Bar Association with

the general public to continue building good relationships between the legal community and the public.”

Barbara has been a member of the board of directors of Lutheran Youth and Family Services and the Westmoreland Choral Society, and is a member of the Bell Choir of First Lutheran Church.

A graduate of Duquesne University School of Law, Barbara is a shareholder in Ward & Christner, P.C., in Greensburg.



▲ Barbara J. Christner

MEMBERSHIP COMMITTEE: PEGGY HOOKER

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

Since joining the WBA in 1985, Peggy Hooker has served on the Elder Law, Orphans’ Court, Small Firm/Solo Practice and Parent

Counsel & Guardian Committees.

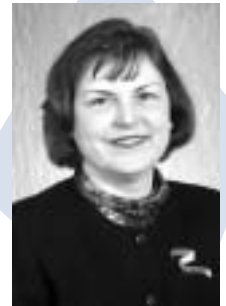
She is the current Co-Chair of the Elder Law Committee.

Peggy moved to Pennsylvania from Tennessee, where she was honored with the Mayor’s Service Award for the City of Knoxville, and received a Certificate of Appreciation from the Knoxville/Knox County Community Action Committee. She also received the Knoxville Legal Aid Society’s Order of Commendation.

Peggy has been a frequent trainer in Medicaid and medical assistance, legal issues for caregivers, guardianships, powers of attorney, wills and living wills, welfare law, Social Security and other topics.

Her community activities have involved volunteering for the Pa. Association for Retarded Citizens–Allegheny County Chapter, and being active with the First United Methodist Church, Bread for the World, Southern Appalachian Food

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▲ Peggy Hooker

President's Message *continued from page 2*

of those guests were there from shortly after the Gulf of Tonkin incident on August 4, 1964, until they were finally repatriated in March of 1973, almost nine years later!

We all know that history has a way of punishing those who don't pay it heed. Now our history books tell us that the Gulf of Tonkin incident may never have happened at all, or at least that if something did happen the North Vietnamese were not responsible. Whether or not it happened, over 56,000 of our young men paid with their lives. Freedom, after all, isn't really free. It is paid for, over and over, by the blood, sweat and tears of young people, most not even out of their teens. I think that Rudyard Kipling best captured the spirit of how the populace views its military men and women in his poem, "Tommy," named for the common British infantry soldier of his era (see box).

Tommy (EXCERPTS)
by Rudyard Kipling

Then it's Tommy this, an' Tommy that, an' "Tommy, 'ow's yer soul?"

But it's "Thin red line of 'eroes" when the drums begin to roll.

For it's Tommy this, an' Tommy that, an' "Chuck him out, the brute!"

But it's "Saviour of 'is country" when the guns begin to shoot.

For the full text of this poem, go to www.online-literature.com/kipling/840.

If our national leaders are going to war again in Iraq, it will be our young men and women who will do the fighting and dying. They will be the ones whose bodies and psyches will suffer, not our national leaders.

Certainly I would like to see the end of Saddam to say nothing of that psychopath in North Korea. However, I will try to keep in mind that in order to rid the world of such vermin it will be soldiers who are usually very young, very homesick and who are probably experiencing their first Christmas away from family and friends, who will be the ones on the firing line.

Please try to keep our military men and women in your thoughts and prayers as we enjoy Christmas and New Year safe here in Westmoreland County.

HAPPY HOLIDAYS!



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3	\$513	\$641	\$706	\$796
5	\$555	\$694	\$764	\$861
7	\$579	\$724	\$797	\$898
9+	\$603	\$754	\$830	\$936

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*Firms with one to five attorneys, each with gross billings under \$300,000, with no attorney spending more than 25% of his time in Personal Injury or Financial Transactions, no negligence claims within the last five years, and no history of disciplinary action.

September/October 2002 Trial Term

Jury Trial Verdicts

by Rachel Yantos, Esq.

One hundred and eleven cases were slated for trial during the September/October 2002 civil jury trial term. Of those, 38 were settled, 44 were continued, 3 were tried nonjury, 2 moved to arbitration, bankruptcy was filed in 2, 7 resulted in verdicts and 15 were held to the next trial term. The first case highlighted from the trial term involved an advisory verdict from the jury. In equity actions, the parties may request that a jury be empaneled to render an advisory verdict. In such cases, the advisory verdict is not binding upon the court.

MOTORISTS MUTUAL INSURANCE COMPANY

V.

**KATHRYN GRECO, GREGORY
GRECO, AND FAYE GRECO, BY
KATHRYN GRECO AND GREGORY
GRECO, HER PARENTS, KENNY
RAY YECKEL AND TEST BORING
SERVICES, INC.
NO. 3714 OF 2001**

Cause of Action:

*Declaratory Judgment—Insurance
Coverage—Advisory Verdict*

Plaintiff insurance company sought a declaration that it had no duty to provide coverage or a defense to defendant Kenny Ray Yeckel based upon a policy of automobile insurance issued to Mr. Yeckel's employer, defendant Test Boring Services, Inc. The policy provided coverage to Test Boring and its sole shareholder, Jeff Selvoski, as well as to anyone using a covered auto with the permission of Mr. Selvoski or Test Boring. The underlying action arose from a motor vehicle accident involving the vehicles operated by Mr. Yeckel and Mrs. Greco, in which her minor daughter was a passenger. The truck driven by Mr. Yeckel was owned by Test Boring.

The Greco family brought suit against Mr. Yeckel and Test Boring for negligence and negligent entrustment.

Plaintiff contended that Mr. Yeckel was not an "insured" under his employer's policy of insurance because he was operating a covered auto without the knowledge or permission of Mr. Selvoski or Test Boring. On the day of the accident, Mr. Yeckel had borrowed the company vehicle from another employee, Scott Patrick, who had driven the vehicle home from work the previous day. Eleven days before the accident and in the presence of Mr. Patrick, Mr. Selvoski expressly forbade Mr. Yeckel from driving any company vehicle while he did not possess a valid Pennsylvania driver's license.

Defendants Greco asserted that Mr. Yeckel operated the vehicle with the permission of Mr. Selvoski and/or Test Boring. In new matter, plaintiff averred that Mr. Patrick was given possession of the truck and had authority to permit its use by Mr.

Yeckel. In addition, plaintiff contended that Mr. Selvoski asked Mr. Yeckel to drive the truck to secure repairs and inspection even after he was informed that Mr. Yeckel did not have a valid driver's license.

A jury was empaneled to render an advisory verdict to the court. The jury was asked to determine if, at the time of the accident, Mr. Yeckel was operating Test Boring's truck with the permission of Test Boring or Mr. Selvoski.

Plaintiff's Counsel: Richard E. Rush and Templeton Smith, Jr., Thomson, Rhodes & Cowie, P.C., Pgh.

Counsel for Defendants Greco: Jan C. Swensen, Swensen Perer & Kontos, Pgh.

Counsel for Test Boring Services, Inc.: Rabe F. Marsh, III, Ward & Christner, P.C., Gbg.

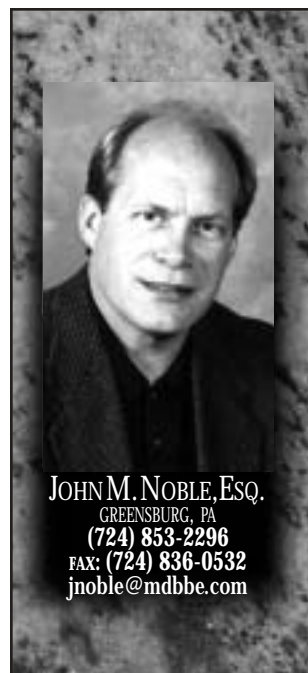
Defendant Yeckel: pro se

Trial Judge: The Hon. Gary P.

Caruso

Advisory Verdict: The jury found that Mr. Yeckel was operating the vehicle with permission from Test

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Jury Trial Verdicts *continued from page 5*

Boring or Mr. Selvoski. The court declared that Mr. Yeckel was an insured under the commercial automobile policy issued to Test Boring.

ELIZABETH BOGLE

V.

SANDRA SOLOMON

NO. 4241 OF 2000

Cause of Action: Negligence—

Motor Vehicle Accident—Arbitration Appeal

This motor vehicle accident occurred on July 28, 1999, in Derry Township, Westmoreland County. Both vehicles were traveling southbound on State Route 217 when plaintiff stopped her vehicle to make a left hand turn onto an intersecting street. As plaintiff waited for traffic to pass, the defendant failed to stop her vehicle and collided into the rear of plaintiff's vehicle. Plaintiff claimed soft tissue injuries. The defendant denied negligence and averred that she was acting reasonably, prudently and with due care. In new matter, defendant asserted the affirmative defenses of the Pennsylvania Comparative Negligence Act, statute of limitations, and the Pennsylvania Motor Vehicle Financial Responsibility Law (MVFRL), as amended by Act 6, including the limited tort provisions of the same. In reply

to new matter, plaintiff averred that she retained full tort insurance coverage at the time of the accident.

Plaintiff's Counsel: Michael D. Ferguson, Ferguson Law Associates, Latrobe

Defendant's Counsel: Michael C. Maselli, Law Office of Marianne C. Mnich, Pgh.

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

Result: Verdict for defendant.

LORNA G. SMITH AND JACK SMITH, HER HUSBAND

V.

RODNEY C. HUMMEL AND SCHUYLKILL STONE, INC.

NO. 5956 OF 2000

Cause of Action: Negligence—Motor Vehicle Accident

On October 5, 1998, at approximately 8:50 a.m., plaintiff was involved in a motor vehicle accident at the intersection of State Routes 130 and 4006 (North Greengate Road) in Greensburg, Westmoreland County. Plaintiff Lorna G. Smith was operating her vehicle in a southerly direction on North Greengate Road and was proceeding through the intersection on a green traffic signal. Defendant Rodney C. Hummel, operating a vehicle owned by defendant Schuylkill Stone, Inc., and traveling west on State Route 130, failed to stop for a red traffic signal and caused the collision with plaintiff's vehicle. The complaint alleged that Mr. Hummel was employed by Schuylkill Stone, Inc., and was acting within the course and scope of his employment and upon the business of his employer at the time of the accident. Plaintiff claimed injuries that included a concussion, fractured ribs, fracture of a tooth at the gum line, a separated shoulder, lacerations, diplopia, and other specified injuries. Her husband brought a claim for loss of consortium.

In new matter, defendants asserted that some or all of plaintiff's injuries may have been the result of pre-existing conditions. They also sought application of all sections of the Pennsylvania MVFRL, including the preclusion of recovery of medical bills and wage payments that were covered by plaintiff's own insurance. The parties stipulated that liability rested with Mr. Hummel and Schuylkill Stone, Inc., and that Mrs. Smith was not contributorily negligent. However, defendants made no admission that injuries suffered by Mrs. Smith were caused by the negligence of defendants.

Plaintiff's Counsel: Robert L. Blum, Blum Reiss & Plaitano, Mt. Pleasant

Defendants' Counsel: Patrick W. Murphy, Solomon & Associates, Pgh.

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

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The Basics of Handling an Automobile Accident Case

Editor's note: Section I of this article appeared in the September–October 2002 issue of the sidebar.

by Michael D. Ferguson, Esq.

SECTION II - PROCESSING THE AUTO CLAIM

When undertaking representation of individuals injured in automobile accidents, it is useful to have a standard structure or method for processing the claim from the initial consultation through the trial of the case. The bulk of the work which must be done by the plaintiff's counsel usually occurs during one of three phases of the claim. These phases, chronologically, are the initial consultation and follow-up, preparation of a settlement brochure and demand, and the litigation of the claim. The method that I follow in my practice is set forth below:

1. INITIAL CONSULTATION AND FOLLOW-UP

Prior to the initial consultation with the prospective client, plaintiff's counsel should make sure to request that the client bring the following documentation/information to the consultation:

1. Police report or incident report information.
2. All automobile insurance declaration pages on any insured automobiles in the household in which the client resides.
3. All letters and claim information for any insurance company which has contacted the plaintiff regarding the accident.
4. Photographs of any injuries and/or damage to vehicles.
5. Any damage repair estimates which have been provided to the plaintiff.
6. The plaintiff should prepare a list of the names, addresses and phone

numbers of all medical providers with whom they have treated for the injuries suffered in the accident. At the initial consultation, counsel, in addition to the information contained in the documents set forth above, should obtain the following information from the client:

1. The client's personal information, such as date of birth, address, phone number, social security number, etc.
2. The specific claim information for the insurance carrier/claim representatives handling both the client's first party medical benefit and income loss claims as well as the applicable claim information for the tortfeasor's carrier.
3. A summary of income loss information, including the name of a contact person who can provide verification as to the plaintiff's income loss.
4. Names, addresses and phone numbers of all witnesses to the

accident if not already mentioned in the police report.

5. Counsel should attempt to identify any entity which may have a potential subrogation lien against the client's recovery. This includes the client's private health insurance carrier, and any other entity which may be providing income or medical expense benefits to the client during the time that the claim is pending.
6. A written fee agreement and multiple authorizations for release of information should be executed so that counsel can obtain the appropriate medical records, insurance files, etc.

At the initial consultation, counsel should provide the client with the following instructions:

1. The plaintiff should be instructed to keep counsel updated regarding

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The Basics of Handling an Automobile Accident Case

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their medical treatment and employment status.

2. The plaintiff should be instructed to keep a written and, if possible, photographic diary of the day-to-day ramifications and consequences of the accident and their injuries.
3. The client should be encouraged to continue treating until they have reached their maximum medical improvement, as determined by their physician.

Immediately after the initial consultation, counsel should issue letters of representation to both the plaintiff's first party benefit carrier as well as the tortfeasor's carrier. These letters should include a brief summary of the accident, liability evaluation, and a summary of the client's injuries and damages. Counsel should obtain a copy of the police report as well as written statements from liability witnesses, if necessary.

Counsel should obtain any medical records which are not subject to change, such as emergency room records. These should be forwarded to the appropriate claim representative as they are received.

2. PREPARATION OF SETTLEMENT BROCHURE AND DEMAND

After the injured plaintiff has completed all medical treatment necessitated by their injuries, plaintiff's counsel should prepare a settlement brochure and formal demand to be presented to the tortfeasor's carrier. The settlement brochure should be a concise compilation of all relevant documentation necessary to prove and evaluate the plaintiff's claim. Settlement brochures should include, at a minimum, the following documentation:

1. Police report and any other documentary evidence establishing liability or fault.
2. Proof of the plaintiff's full tort

status or proof that a full tort exception applies.

3. Proof as to the damage to the vehicles involved in the accident. This includes damage estimates and photographs.
4. All relevant medical records and reports generated as a result of the plaintiff's treatment. A narrative report should be obtained from the physician or physicians who have been supervising the plaintiff's treatment. These reports must include the following information:
 - A. The relevant history provided by the plaintiff/patient;
 - B. Diagnosis as to the plaintiff's injuries;
 - C. The treatment plan which was administered;
 - D. The physician's prognosis for the recovery of the plaintiff;
 - E. A statement by the physician that the injuries and treatment were a direct result of the accident at issue.
 - F. A statement by the physician that the opinions offered in the body of the report are being offered within a reasonable degree of medical certainty.
5. An itemized summary of all medical bills and copies of all medical bills. Written documentation verifying any subrogation liens which have been asserted against the plaintiff's recovery should also be included.
6. Proof of income loss and the client's work disability status should be included.
7. Plaintiff's counsel should prepare a concise summary or overview of the claim with regard to both liability and damages. At the conclusion

of the summary, a formal demand for settlement should be made along with a reasonable time limit for responding to the demand.

3. LITIGATING THE CLAIM

In the event that settlement negotiations are not successful, counsel for the plaintiff should take the following steps:

1. File a complaint and make a determination as to whether to seek an arbitration or jury trial.
2. Forward interrogatories and requests for production of documents to defense counsel.
3. Schedule depositions of the parties as well as any critical liability witnesses.
4. File a Praecipe for Trial or Arbitration.
5. Schedule medical depositions. Practically speaking, counsel should refrain from scheduling medical depositions as long as possible. The expense of the depositions can serve as an impediment to settlement. Additionally, the testimony offered by the physician may become stale or outdated in the event of an extended delay between the taking of the deposition and the time of trial.
6. Try the case.

I would caution that my method for prosecuting and processing auto claims may not be for everyone. A determination as to the proper course to follow in prosecuting the claim must be made on a case by case basis. However, this method has worked well for me.

By mastering the basic issues which arise in the auto claim and developing a method for prosecuting these claims, plaintiff's counsel will have the proper foundation necessary to meet the needs of the injured client.

practice tips

To-Wit: Bite My Tongue

by S. Sponte, Esq.

What the hell's the matter with him," I asked my partner as we left the courtroom.

"You know," she said, "I bet he's asking the same thing about you."

That little colloquy followed a rather heated courtroom exchange between opposing counsel and me on what should have been a routine motion. But I let things get out of hand, yes I did. Now I'm ashamed of myself, sort of, and I am in need of the catharsis of confession. So here goes.

I don't care what you may have heard, I'm a really nice guy. I mean, just ask any of my colleagues, ask my partner or my secretary of thirty years, go ahead, ask any of my ex-wives, not number two, though, and they'll tell you the selfsame thing—I'm a really

nice guy.

And this recent episode aside, and maybe a few dozen other ones pretty much just like it, I always treat my colleagues, every man, woman or horse's ass one of them, with courtesy and respect.

But the truth is, I am by my nature a pretty combative guy, particularly in adversarial situations. Deep beneath this cosmopolitan and urbane exterior dwells the temperament of a Neanderthal, a primitive killer whose basic instinct has always been, quite simply, to eviscerate any and all opposition without mercy. As a child, I had few friends.

I can still recall how bereft I was as a third grade baseball player to discover that no matter how high I raised my shoes when sliding into second base, I couldn't get Keds to slice flesh. And when I was ten, I used to sit in the corner by myself and

slowly pronounce the word "disembowel" over and over. Even to this day I adore the onomatopoeic way it conveys the inherent rip and tear penchant of my soul.

Now lest you jump to the wrong conclusion here, my doctor assures me I am no longer a threat to myself or others. I am fully capable of intellectually imposing restraint upon my volcanic psyche. After all, haven't I learned to stop beating the dog?

Initially opposing counsel showed up forty minutes late for the presentation of my simple petition for a hearing date. Then he pulled out a brief in opposition to my motion that he had never served on me and asked the court to dismiss my petition. And

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To-Wit: Bite My Tongue *continued from page 9*

when I suggested the court reschedule the matter to give me the chance to read the brief and properly prepare, he said, under his breath, "Whatsa matter, you a chicken, bawkw, bawkw bawkw." I yearned for a meat cleaver, but I let it pass.

His Honor agreed with me and rescheduled the argument for two weeks hence. By then I had read the brief and found my esteemed colleague had mis-cited every case in it, every single one. Well, maybe "mis-cited" is the wrong term. Perhaps "mal-cited" would be more accurate. I was starting to produce steam from my armpits, and I know that is not a good sign.

Opposing counsel's presentation consisted of reading his brief aloud. He concluded by noting that if I possessed anywhere near the "legal expertisement" that he had, I would concede.

Even then I fully intended to simply present my own carefully constructed, unassailable argument. But instead I pulled out photocopies of all his cited cases, threw them down on the table in front of him, and said "Tell you what, Bozo, here are all your cases. Why don't you just take a minute now and read them, and then why don't you tell me and the Court just where they say what you say they say, huh? Take your time, I can wait."

At that, His Honor intervened. "Now don't you think that's my job," he asked, ever so solicitously.

"Well, usually yes," I replied, "but I couldn't be absolutely certain you would have called him a bozo."

Now please believe me, I don't use the word "bozo" in legal arguments lightly. Well, okay, I do, but I don't usually say it aloud. I simply lost control and there's no excuse for it.

So, feeling as wretched as I do over my appalling conduct, I think the only proper thing to do is publicly apologize. Of course I can't mention my opposing counsel by name, much

as I might like to, so let's just call him "Mr. X." I will feel ever so much better as soon as he has this read to him.

Mr. X, I'm sorry I acted so unprofessionally, I truly am. I'm sorry I called you a bozo and I'm sorry for the embarrassment and hurt it must have caused you. And I'm really sorry I called the managing partner of your firm, a man who has been a close personal friend of mine for 25 years, and got you fired. That was probably something I should not have done. When I heard you had to go on welfare and that your wife took the kids and moved back to New Mexico, well, believe me, it hurt me a lot more

than it hurt you.

I was also sorry to hear that you've resorted to alcohol to dull the pain, and if anything I did contributed to that, gee, I'm so sorry. I'm so so sorry that I apparently ruined your life forever and that you will pass your remaining years as pitiful, wasted cretinous shell of a human being. Can you ever forgive me?

There, I feel so much better. You know, it's true what they say, confession is really good for the soul.

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Can't get enough Sponte? More articles are online at www.funnylawyer.com.

Nominations Announced for 2003–2004 *continued from page 3*

Bank, Tennessee Hunger Coalition, Amnesty International and the Southern Poverty Law Center.

Peggy is a graduate of the University of Tennessee College of Law, and is a partner in Hooker & Broker in Greensburg.

BUILDING COMMITTEE: MILTON V. MUNK, JR.

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

Milton V. Munk, Jr., has been serving on the Building Committee since its inception. He is among those responsible for turning the abandoned, pigeon-infested Players' Club on North Pennsylvania Avenue in Greensburg into the elegant, spacious headquarters of the Westmoreland Bar Association.

In addition to serving on the Building Committee, Milt has been the Treasurer of the WBA for the past 15 years. He is a current member of the Elder Law and Orphans' Court Committees, as well as the Finance, Planning and Real Estate Committees. He has been the Solicitor for Mount Pleasant Borough since 1965 and for Smithton Borough since 1977.



▲ Milton V. Munk, Jr.

An avid golfer and supporter of the teams of his alma mater, the University of Notre Dame, Milt maintains a solo practice in Mount Pleasant.

**HAVE YOU PAID YOUR 2003 WBA DUES YET?
DON'T LET YOUR MEMBERSHIP LAPSE.
SEND IN YOUR PAYMENT TODAY!**

bookmark What Have You Been Reading?

by James R. Silvis, Esq.

As a child in the 40s and 50s, I remember seeing newspaper headlines and listening to radio and early television broadcasts mentioning people with strange sounding names—Alger Hiss,



▲ James R. Silvis

people and places were important!

THE VERY BEST MEN: FOUR WHO DARED: THE EARLY YEARS OF THE CIA

◆ by Evan Thomas ◆ The book traces the four men who ran covert operations for the government from the end of World War II to the beginning of the Vietnam War. It follows the transformation of the Office of Strategic Services of World War II to the CIA led by idealistic young gentlemen who were handicapped in their intelligence gathering because they believed that gentlemen did not read other gentlemen's mail. It shows the revolving door between Wall Street law firms and the CIA and our efforts to overthrow various South American governments and install our own men who were more friendly to the United Fruit Company. You will learn the origin of the words "plausible deniability."

◆ IN THE TIME OF THE AMERICANS: FDR, TRUMAN, EISENHOWER, MARSHALL, MCARTHUR, THE GENERATION THAT CHANGED AMERICA'S ROLE IN THE WORLD ◆ by David Fromkin ◆ The author

shows the transformation of America from a pre-war isolationist nation into a global super power. Though we were mostly motivated by good and were beloved as a country at the end of World War II, within a few years that perception changed.

THE NIGHTINGALE'S SONG

◆ by Robert Timberg ◆ This is one of my favorite books concerning the Cold War. It traces the careers of five midshipmen at Annapolis, Bud McFarland, John Poindexter, John McCain, Oliver North and James Webb, through their careers and involvement in the Iran Contra Scandal. Of particular interest are the exploits of John McCain and Oliver North. McCain was somewhat of a playboy and wasn't an adept fighter pilot, having been involved in several accidents; however, as a prisoner of war, he exhibited courage almost beyond belief. Likewise, there is some doubt as to Oliver

North's ability as a Company Commander, but no doubt about his courage and fighting ability in attempting to get his men out of situations he created. By the way, the nightingale is a bird that learns to sing by mimicking its parents, much as those involved in the Iran-Contra Affair were following the public pronouncements of their Commander in Chief, Ronald Reagan, regarding the Freedom Fighters in Nicaragua attempting to overthrow a communist government.

IN SEARCH OF HISTORY

◆ by Theodore White ◆ The author chronicles his travels prior to World War II in China and sets the background for the expulsion of the nationalists under General Chiang Kai-Shek from the mainland by Mao Tse-tung.

THE NIGHTMARE YEARS: 1930 TO 1940

◆ by William Shirer ◆ Mr. Shirer was a reporter stationed in Germany prior to World War II. This book shows how Germany fell under the influence of the Nazis during that time. For the most part, the Nazi leaders were uneducated thugs and it is amazing that anyone would have taken them seriously.

TRUMAN

◆ by David McCullough ◆ Follows Harry Truman from farm boy in Missouri, and Captain in World War II, to his rise from County Judge to accidental President. Although

continued on page 12

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What Have You Been Reading? *continued from page 11*

he never attended college, he was a voracious reader, especially of the classics. As President, he reorganized the Department of Defense, created the CIA, initiated the Marshall Plan, established our Cold War policy of containment and committed our troops to Korea; yet, in spite of all his accomplishments, his mother-in-law still believed that he wasn't good enough for her daughter.

PLAIN SPEAKING ♦ by Merle Miller ♦

A compilation of taped interviews with Harry Truman in preparation for a book that was never written. Of particular interest is the firing of Gen. McArthur in Truman's own words, and his very frank opinion of Richard Nixon.

THEODORE REX ♦ by Edmund Morris ♦ Although the book gets a little ponderous at times, it captures the essence of TR, a man of action who is thought to have read over 20,000

books and was a prolific writer, world traveler, hunter, environmentalist, and taxidermist. The book reveals the personal side of TR galloping his horse through Rock Creek Park while shooting at limbs of trees, doing pull-ups on a bridge overhanging the Potomac River, and insisting that his staff and key senators exercise with him daily.

THE ROOSEVELTS: AN AMERICAN SAGA ♦ by Peter Collier and David Horowitz ♦ This is a very readable contrast between Franklin Delano Roosevelt and Theodore Roosevelt.

GOODBYE DARKNESS, A MEMOIR OF THE PACIFIC WAR ♦ by William Manchester ♦ The author bases the book on his experiences as a Marine during the invasion of the Pacific Islands from Guadalcanal to Okinawa. It vividly describes the hardships and the horror of the island-hopping campaign.

THE VICTORS: EISENHOWER AND HIS BOYS. THE MEN OF WORLD WAR II ♦ by Steven Ambrose ♦ Puts a human face on the great events, starting with the invasion of Normandy and the march through Europe.

SON OF THE MORNING STAR ♦ by Evan S. Connell ♦ The study of the events leading up to and culminating with the defeat of General George A. Custer at Little Big Horn. There were many interesting details of the life of the Plains Indian, military tactics and a character study of the participants of the massacre at Little Big Horn.

For fun, you might enjoy reading the following:

EAT THE RICH ♦ by P.J. O'Rourke ♦ Mr. O'Rourke dissects the various economic systems in the world. For instance, Albania switched from communism to bad capitalism in which the country's principal industry was a



Maryann White, CPA/ABV

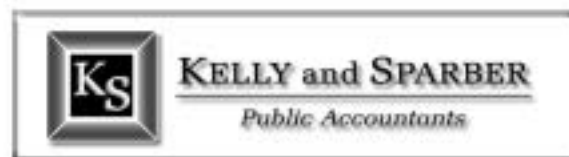
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pyramid scheme. Mr. O'Rourke explains the workings of the NYSE and describes it as America's last refuge for non-psychotic litterers.

If you like history and baseball and would like to learn more about the giants of the game, there are three books I recommend:

SUMMER OF '49 ♦ *by David*

Halberstam ♦ The book follows the pennant race between the New York Yankees and Boston Red Sox in 1949. It was at a time when the ball players had to take off-season jobs to support themselves, room together during the season, and take public transportation or walk to the ballpark. Although the book focuses on the competition between Ted Williams and Joe Dimaggio, it is really a history of America in the post-war years.

THE BOYS OF SUMMER ♦ *by Roger*

Kahn ♦ In this book about the great Brooklyn Dodger teams of 1952 and 1953, Kahn describes the love affair between a community and its baseball team. Many of the players were veterans who had been involved in combat during World War II and the book traces their lives through the middle 1970s.

JOE DIMAGGIO, THE HERO'S LIFE ♦

by Richard Ben Cramer ♦ This biography of the great Yankee center fielder spends a lot of time on the dark non-public side of Dimaggio. After baseball, his profession was being "Joe Dimaggio." He was an athlete of grace, but of very few words. He never had a driver's license because friends drove him. He never made a plane reservation because friends took care of that for him. The author describes a man obsessed with money who, rather than pay a hotel bill, allegedly gave his seven World Series rings to cover the cost of his stay. Unlike that of today's superstars, *his* personal life was always protected by the press.

As I get older and try to decide what to read next, I'm guided by P.J. O'Rourke's dictum, "Always read stuff that will make you look good if you die in the middle of it."

An Open Letter to the U.S. Chamber of Commerce

Editor's note: On October 15, 2002, American Bar Association President Alfred P. Carlton, Jr., sent an open letter to the U.S. Chamber of Commerce urging it to focus on restoring confidence in American business rather than spending sizable amounts of money attacking lawyers. The letter is in response to television ads the Chamber is airing in Alabama, Michigan, New Mexico, Ohio, South Carolina, Texas, and adjoining media markets, that claim consumer lawsuits against businesses are clogging the court system and adding to the cost of products. Mr. Carlton's letter is being reprinted in the sidebar at the request of the WBA Board of Directors.

The United States Chamber of Commerce's current advertising campaign impugning lawyers is a sad attempt to divert America's attention from the far more serious problem facing our nation today: the need to restore confidence in American business. If the Chamber seeks to represent the interests of decent and responsible American businesses, why is it spending its good money in attacking lawyers rather than on addressing the business at hand?

The Chamber's television ads claim that consumer lawsuits against businesses are clogging the U.S. courts and adding to the cost of products. What the ads do not mention are the facts. An extensive study of caseloads in the federal courts found no evidence of an "out-of-control and damaging-to-business increase in the number of lawsuits brought by an increasingly litigious public." In fact, the study found that in the major area of contracts, "businesses participate at least as often as plaintiffs as they participate as defendants." In addition, in the state courts, 50 percent more contract than tort cases were filed in 2000, and the number of product liability lawsuits by consumers against businesses declined about 20 percent between 1996 and 2000.

As John Adams told juries: "Facts are stubborn things." Besides ignoring some stubborn facts, the ads do not recognize the true function of the nation's courts: to provide justice to those who are harmed. Nor do the ads say what anyone with common sense knows and what all good businesses practice: the best way to avoid lawsuits is to make safe products.

Attacking lawyers has been a popular sport since the time of Shakespeare. But at least Shakespeare spoke knowledgeably, with tongue firmly in cheek. It is ironic that the Chamber's campaign war chest—the unknowing source of which is the American consumer—attacks the one profession that advocates for the consumer's right to safety, quality and fairness, an attack that is not simply uninformed but just plain wrong.

But we lawyers believe that the American people are not easily fooled. They and we see the ads for what they really are—a failed effort to divert attention from behavior by more than a few bad apple businesses that have caused Americans to lose their confidence in our nation's capital markets. Wouldn't it be better if the legal profession and American business worked together to restore such confidence, rather than the Chamber attacking lawyers?

We believe that, by engaging in frivolous diversionary tactics and ignoring the real needs of U.S. businesses, the Chamber is failing to strengthen our American business ethic. We call on the Chamber to cease and desist from these diversionary tactics—and instead to turn its considerable resources toward the real needs of its members. We do this in the name of the decent and responsible American businesses the Chamber claims to represent, businesses that care about their customers, their shareholders and their American democracy—and appreciate that our democracy is based upon the rule of law.

Jury Trial Verdicts *continued from page 6*

Result: Molded verdict for plaintiff Lorna G. Smith in the amount of \$270,000, which reflects the parties' consent to reduce the jury's award by the sum of \$5,000.

**COLLEEN MARIE SCHMIDT AND
PAUL M. SCHMIDT, HER HUSBAND
V.**

**DAVID JOSEPH HYLAND
NO. 499 OF 1997**

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

Plaintiffs brought this negligence action against defendant as a result of a motor vehicle accident that occurred on March 7, 1995, at approximately 4:00 p.m. Wife-plaintiff was operating a vehicle owned by her husband on State Route 3039, otherwise known as Clay Pike, in North Huntingdon, Westmoreland County. Wife-plaintiff brought her vehicle to a complete stop attempting to make a left hand turn. The defendant, traveling directly behind plaintiff, collided into the rear of plaintiff's vehicle. Wife-plaintiff claimed soft tissue injuries, while her husband asserted loss of consortium. Defendant averred that he exercised reasonable and prudent care under the circumstances. The affirmative defenses of contributory/comparative negligence, assumption of the risk and the Pennsylvania MVFRL, along with its amendments known as Act 6, were asserted in new matter.

Plaintiff's Counsel: Robert L. Blum, Blum Reiss & Plaitano, Mt. Pleasant

Defendant's Counsel: Kim Ross Houser, Mears, Smith, Houser & Boyle, P.C., Gbg.

Trial Judge: The Hon. Daniel J. Ackerman, President Judge
Result: Verdict for defendant.

MARCO LUCCI

V.

**JAMES BAKER CONSTRUCTION
CO. AND KENNETH A. BAKER
NO. 3016 OF 2001**

Cause of Action: Negligence—Motor Vehicle Accident—Arbitration Appeal

This accident occurred on October 17, 2000, at approximately 2:50 p.m. in Delmont, Westmoreland County. Plaintiff alleged that defendant Kenneth A. Baker, an agent and/or employee of defendant James Baker Construction Co., was operating his vehicle directly behind plaintiff's vehicle. The complaint averred that both vehicles were traveling in an easterly direction on Manor Road and were approaching the intersection of Route 66. Plaintiff's vehicle was struck in the rear by defendant's vehicle. Soft tissue injuries were claimed.

Defendant alleged that he was operating his vehicle in a westbound direction on Manor Road and was traveling away from the intersection of Route 66 at the time of the accident. Defendant averred that plaintiff pulled out of a driveway directly into defendant's path of travel immediately prior to the collision. The affirmative defenses of contributory negligence, assumption of the risk and the right, privileges and/or immunities of the Pennsylvania MVFRL were raised in new matter.

Plaintiff's Counsel: E. Timothy McCullough, Murrysville

Defendants' Counsel: Joseph A. Hudock, Jr., Summers, McDonnell, Walsh & Skeel, L.L.P., Pgh.

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict for defendant based upon special interrogatories submitted to the jury.

**DAVID J. O'BARTO AND
ROCHELLE L. O'BARTO, HIS WIFE
V.**

**ADA G. KEPPLER
NO. 7101 OF 1999**

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

This motor vehicle accident occurred on January 8, 1998, at the intersection of State Routes 22 and 1055 in Salem Township, Westmoreland County. The husband-plaintiff was traveling in the right eastbound lane on Route 22. According to the complaint, defendant proceeded through the intersection traveling south on Route 1055 and into the path of plaintiff. Plaintiff selected the full tort provision of insurance coverage. In addition to soft tissue injuries, plaintiff suffered an open fracture of the right knee and rupture of the attached tendon, subsequent arthrotomy of his right knee to retrieve a loose screw from initial surgery and permanent limitation and mobility to the right knee. Wife-plaintiff asserted a claim for loss of consortium.

In new matter, defendant raised the affirmative defenses of contributory/comparative negligence, assumption of the risk and the Pennsylvania Motor Vehicle Financial Responsibility Act.

Plaintiff's Counsel: Bernard M. Tully, Bernard M. Tully, P.C., Pgh.

Defendant's Counsel: Christopher M. Fleming, Jacobs & Saba, Gbg.

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

Result: Verdict for plaintiff David J. O'Barto in the amount of \$50,000. No award for wife-plaintiff.

LawSpeak

"An eminent lawyer cannot be a dishonest man. Tell me a man is dishonest, and I will answer that he is no lawyer. He cannot be, because he is careless and reckless of justice; the law is not in his heart, is not the standard and rule of his conduct."

— Daniel Webster, Speech to the Charleston, S.C., Bar Association, May 10, 1847

Anecdote

Demurrer to the Evidence

by Judge Irving L. Bloom

When last we dealt with a case of *Commonwealth vs. Neckeraur* (see the July–August 2002 issue of *the sidebar*), the Superior Court had just decided that lying to the police when being questioned by them is legal in this Commonwealth. However, that was not the end of the case inasmuch as the Superior Court sent down for trial issue of whether or not Mr. Neckeraur had committed an obstruction of justice by hiding a motor home owned by Donald and Ada Jane Groomes.

You will recall that there had been a bitter divorce case between Mr. and Mrs. Groomes when Mrs. Groomes suddenly disappeared one day and has not been seen or heard from since. The police, suspecting foul play, were

interested in the fact that supposedly Mr. Neckeraur had hidden the motor home at the request of Donald Groomes.

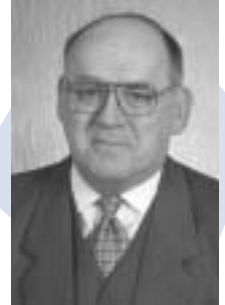
In preparation for the trial, the state police and district attorney's office of Fayette County traced the motor home through its initial hiding places in Virginia and to its final hiding place in the state of Florida. In order to prove their case, they brought witnesses, both lay and police, from Virginia and Florida to testify against Mr. Neckeraur as to the fact of his possession of the motor home over a period of a year in those two states. I was told at the time that the cost of bringing these witnesses to Uniontown and feeding and housing them amounted to about \$25,000.

As the trial date neared, I was called on many occasions by the state police and urged to have my client tell what he knew about the disappearance of Mrs. Groomes.

You might also recall that I had Mr. Neckeraur take a lie detector test and I was satisfied that he knew nothing about the disappearance of Mrs. Groomes.

The police did not believe that to be true and told me that if he was convicted they were going to press for a five-year sentence for Mr. Neckeraur.

continued on page 19



▲ Judge Irving L. Bloom



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Actions of the Board

NOVEMBER 19, 2002

- Met with Court of Common Pleas judges. Discussed issues of concern for members of the bench and the bar, including the present and future role of pro bono in providing access to justice for the indigent, PFA representation for both plaintiffs and defendants, and the community town meeting on Family Court issues scheduled for March 13, 2003, at the University of Pittsburgh at Greensburg.
- Accepted membership committee recommendation as presented: Nancy Stewart, participating.
- Discussed the need to have an established written investment policy for WBA funds and agreed to meet with financial advisor in February to discuss this matter.
- Learned that Mr. Whelton and Mr. Falatovich have agreed to serve another three-year term with the LLS board and extended sincere thanks from the board for the service provided on behalf of the WBA and the indigent of Westmoreland County.
- Reviewed minutes from the bar foundation's first mini-retreat and determined that a joint meeting of both boards would be beneficial.
- Learned that the Municipal Law Committee is partnering with SmartGrowth to offer three community seminars with the first one set for sometime in January. WBA members will be invited to attend and can receive CLE credits.
- Voted to appoint John Scales as co-chair of local PAC along with Mr. Mason.
- Agreed to formally acknowledge Rep. Tangretti for his stand against the frivolous lawsuit legislation.
- Reviewed report from Mr. Whelton, Ms. Brammell and Mrs. Krivoniak on the American Bar Association's national lawyer referral service conference in Philadelphia and learned that the information gathered at this seminar supports the recommendation from the ABA to revamp the WBA Lawyer Referral Service program.
- Agreed to offer free CLE credits to each WBA member who serves as a juror in the mock trial program.
- Voted to contact the PBA to request that they seek CLE accreditation for attorney coaches in the amount of 12 hours per year.
- Reviewed, amended and accepted the 2003 WBA budget.

Mock Trial Jurors To Earn CLE Credit

WBA members who serve as jurors during the 2003 Mock Trial Competition, scheduled for the month of February, will be eligible to receive free CLE credits. One credit hour is available for each "trial" session.

The Mock Trial Competition gives teams of local high school students the opportunity to argue cases in an actual courtroom before a judge. Students play the roles of lawyers, witnesses, plaintiffs and defendants. Volunteer

attorneys serve as jurors in the trials. The juries determine the winners in each trial based on the teams' abilities to prepare their cases, present arguments and follow court rules.

If you are interested in serving as a juror for the 2003 competition, please contact the Bar office at 724.834.6730.

PBI Online CLE Program Approved

Chester C. Corse, President of the Pennsylvania Bar Institute, has announced that its online CLE Programs have been approved by the Pennsylvania Continuing Legal Education Board and that the Board has certified PBI as a "distance education" provider. Starting January 1, 2003, lawyers will be able to earn up to three of the required twelve annual credits online.

PBI has launched its Online Campus at onlinecle.pbi.org. The catalog is growing daily, and by January 1 will have 60 hours of credits available, including numerous ethics programs and courses in every major area of practice.

Lawyers are encouraged to visit the Online Campus now, explore using a free demo program, and register for programs that they may take after January 1.

"We are very excited about this development," said Corse. "It makes our courses much more widely accessible to lawyers. PBI programs will now be available on demand, at any time and anywhere a lawyer happens to be. Attorneys can learn when it is convenient for them. We call it 24/7 CLE."

For further information, visit onlinecle.pbi.org, or call PBI staff attorney Susan Swope at 1-800-932-4637, ext. 2260.

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WBA Sets Equipment Usage Policy

Effective November, 20, 2002, the following usage policy applies to all Westmoreland Bar Association equipment. At present, the equipment includes:

- LCD projector
- Visual presenter
- Lavalier microphone
- Three handheld microphones
- Sound system
- Wall-sized screen
- TV
- VCR
- DVD player

WBA EQUIPMENT USAGE POLICY

- The audio/visual equipment of the WBA may be used by all WBA members for no fee.
- All WBA equipment is to remain within the Bar headquarters and cannot be removed for use outside of the building.
- WBA members may use the equipment outside of regular office hours but must receive training on the use of the equipment. It is understood that the member who has booked the use of the WBA building is also responsible for any damage caused to equipment.
- Non-members may use the equipment but shall be required to pay rental fees as follows:
 - Visual presenter: \$50 per day
 - LCD projector: \$100 per day
 - VCR, TV, DVD: \$25 per day
- Only the executive committee may overrule this existing policy.

foundation focus

WBF Participates in Adoption Day 2002



The Westmoreland Bar Foundation's Outreach Committee was a proud participant in Westmoreland County's First Annual Adoption Day held November 22, 2002, at the Westmoreland County Courthouse.

Twenty families were brought together during a day-long ceremony and celebration that finalized the adoptions of 25 children between the ages of 9 months and 17¹/₂ years. One-third of the children had been in

foster care for more than five years.

The Hon. Rita Hathaway and The Hon. Anthony Marsili officiated the private adoption proceedings. Refreshments and entertainment, including arts and crafts projects and Suzy the Clown, were available for all new families and their guests. New family photos were taken, and all children received gift bags thanks to donations from local businesses and charitable organizations.

Lawyers' Exchange*

(*Free to all members of the WBA)

PBA QUARTERLY ISSUES WANTED The Law Library would appreciate receiving donations of future or back issues of the *Pennsylvania Bar Association Quarterly*. Contact Law Librarian Betty Ward at eward@co.westmoreland.pa.us for more information.

PROFESSIONAL OFFICE SPACE 2700 square feet; will subdivide and build out to specifications; Masonic Building, Second Floor; 132 South Main Street, Greensburg, PA 15601. Contact Mike Stewart @ 724.836.0321.

AVAILABLE Purdon's Pa. Statutes Annotated, the complete set; Dunlap Hanna Pa. Forms, eight-volume set. Call the Bar office at 724.834.6730 for more information.

REQUEST FOR PROPOSAL: BOARD SOLICITOR The Board of Directors of The Arc of Westmoreland, Inc. is seeking proposals for the position of Board Solicitor to provide legal counsel to the Boards of Directors of The Arc's family of corporations. This is a paid position. The Solicitor would be expected to attend each board meeting. Proposals must include the following information: Name of firm; Address; Telephone; E-mail; Contact; Specialties; Years in Practice; Non-Profit Experience; Retainer and Fee Schedule; References. *Proposals are due no later than January 15, 2003.* Submit proposals to Rose Marie D. Appel, President, Board of Directors, The Arc of Westmoreland, Inc., RD 12, Box 227 Donohoe Rd., Greensburg, PA 15601.

ATTORNEY SEEKING POSITION Newly admitted member of the PA Bar seeks entry-level position. Former Judicial Clerk, interested in all areas of the law, enthusiastic, hard working, self-reliant. Please contact Matthew Prather, Esq., 724.882.3793.

Candid Camera: 2002 Holiday Dinner Dance



“Nice bow tie there, kid.”

▲ “Hey, Stilts, one more off-color remark about my height and this beer is goin’ where the sun don’t shine.”



Why on earth is this woman smiling? ▶



▲ “Gosh, Marnie, maybe it’s that ‘minister’ thing, but come the holidays, I can’t keep my hands off you.”



◀ “You know, I used to have throngs.”

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Since 1991, the Westmoreland Bar Foundation has raised thousands of dollars to assist the poor, disabled, elderly and children in our community. Through the **Memorial Program**, you can honor a colleague or loved one with a contribution to the Foundation. Your gift will help serve the needs of our own who have nowhere else to turn for legal services.

If you would like to make a gift to the Foundation as a meaningful expression of respect, please make check payable to the Westmoreland Bar Foundation and mail to WBA Headquarters, 129 N. Pennsylvania Ave., Greensburg, PA 15601-2311.



▲ “OK, Nina, now here’s the plan ... the minute they all get drunk, we set fire to the tree.”

Demurrer to the Evidence *continued from page 15*

I told them not to worry about Mr. Neckeraur because I was going to walk him out of that courtroom.

When the trial began, I took the first fourteen prospective jurors as the twelve-person jury with the two alternates. The district attorney prosecuting the case thought I must be losing my touch to so cavalierly accept the first fourteen people called. Judge William Franks also looked quizzically at me.

The presentation of the prosecution's case took place in just one day with about 18 to 20 witnesses testifying as to the chain of possession in Virginia and also testifying as to the chain of possession in Florida. My only cross-examination of each one of those witnesses was to ask them if they had anything more to add. Of course they all answered no. The district attorney and the Judge continued to look at me with a puzzled expression on their face as to the paucity of cross-examination.

When the district attorney rested at 3:45 the afternoon of the trial, the Judge turned to me and said the defense may begin. I said, "Your honor, I would like to ask the district attorney if he has anything more at all to add." The district attorney petulantly replied of course he had nothing more to add.

I asked the Judge to pose the same question to the district attorney as I had. The Judge shrugged and said, "Does the district attorney have any more evidence at all on any issue on this case to add?" Again the district attorney replied, "No, I have nothing more to add." The Judge, a little impatiently, asked, "Does the defense now wish to begin?" I replied, "No, your Honor, I demurrer to the evidence."

The district attorney looked shocked and the Judge asked, "On what basis, Mr. Bloom?" I said, "Your Honor, we have heard close to 20 witnesses today and not one of them ever said or established that this motor home in question was ever in Fayette County. Under those circumstances there is no jurisdiction in Fayette County for the trial of this case and that is the reason for my demurrer." I then handed him a 15-page brief on the issue of the demurrer to the evidence when there is no testimony concerning the locus of the crime being in the county in which the defendant is charged.

After a few minutes of reading through the brief, the Judge turned to the district attorney and said, "Mr. district attorney I think Mr. Bloom has something here. You have until 9:00 a.m. tomorrow to come up with an answer to this demurrer."

The next morning at 9:00 the district attorney rose to his full height and said, "I would like to reopen the case to establish the additional evidence needed." I rose to my feet and said, "Your Honor, I must vigorously protest. What are they going to do? Make up evidence that did not exist

yesterday? The district attorney assured both myself and Your Honor that he had absolutely nothing more to add. Since that is what he said yesterday he must be getting ready to make something up and manufacture evidence!"

As the district attorney started to sputter and reply to my statement, Judge Franks stated, "Mr. Bloom was right, the record was closed after assurances from the district attorney that he had nothing more to add."

The district attorney then said, "This is rebuttal testimony." I again protested, "Rebuttal to what, your Honor? I've offered no evidence. There is nothing to rebut." Again Judge Frank said I was correct in my legal position.

He then stated for the record, "The demurrer is granted and this case is dismissed." The district attorney said, "Your Honor, I'm going to appeal this." I then said to the district attorney that there is no appeal from the granting of a demurrer since it is the equivalent of a jury verdict of not guilty. The Judge stated that I indeed was correct and that this case is over with.

My client and his coterie of friends adjourned at about a quarter to ten to the bar at the Mount Vernon Inn a short distance from the courthouse. As we toasted our victory, with sufficient lubrication to relax all concerned, the most important witness in any criminal case, Mr. Green, arrived in copious amounts thus rendering the day even happier.

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CALENDAR of Events

JANUARY

- 1 New Year's Holiday
- 8 Membership, Noon
- 15 Real Estate, Noon
- 16 CLE Lunch 'n Learn: Ethical Dilemmas: All In A Day's Work, Noon
- 20 Martin Luther King Holiday
- 21 Family Law, Noon
Criminal Law, 4 p.m.
Board Meeting, 4 p.m.
- 23 CLE Lunch 'n Learn: Criminal Defense Basics, Noon
- 28 Solo/Small Practice, Noon

FEBRUARY

- 12 Membership, Noon
- 17 Presidents' Day Holiday
- 18 Family Law, Noon
Board Meeting, 4 p.m.
- 20 Elder Law/Orphans' Court, Noon
- 27 Vision Group, Noon

TOP TEN

Top Ten Events of Your Year

1. Your secretary's boyfriend flunked the bar exam.
2. Your best medical malpractice client still can't pee in a straight line.
3. Changing your name worked.
4. At least one of your kids got off smack.
5. No more of your law school classmates have died.
6. The picture of you that your dry cleaner put up over his cash register because your check bounced is one of your favorites.
7. You don't need to spend wasteful dollars on malpractice insurance because you don't have enough clients to justify it.
8. You can say with certainty that you know nothing about your escrow account being out of balance because you haven't balanced it in eight months.
9. The pizza at the CLE Lunch 'n Learn had pepperoni on it.
10. You haven't been found out yet.



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