



Fall Events Spotlight 125th Anniversary, Guest Speakers

SATURDAY, OCTOBER 1: 125TH ANNIVERSARY GALA

by P. Louis DeRose, Esq.

A little more than 125 years ago, on July 12, 1886, a group of lawyers practicing in Westmoreland County met in Greensburg to form an organization originally called the

“Westmoreland Law Association.” The group drafted a purpose of the Association which read in part:

- To maintain the honor and dignity of the profession of the law.
- To increase its usefulness in promoting the due administration of justice.
- To cultivate social intercourse and fraternal feelings among its members.
- To found and maintain a law library.

Forty-three years later, the Westmoreland Law Association joined the statewide lawyers association known as the Pennsylvania Bar Association. As a result of that jointure, the local group began to call itself the Westmoreland Bar

Association, eventually becoming a non-profit corporation and owning its own building for the members’ use and enjoyment. Serving the 400,000 citizens of Westmoreland County, the Bar Association now has nearly 500 members.

On October 1, 2011, from 6:30 to 9:30 p.m., at the venerable

Westmoreland County Courthouse, the WBA will celebrate its first 125 years of “service with honor and dignity.” There will be heavy hors d’oeuvres by award-winning Chef Gary Klinefelter of Solstice Restaurant in Greensburg, and a cash bar. A string duo will provide background music, and a slideshow of

present and past members will be running all evening. All Westmoreland Bar Association members are invited and their guests are welcome. It will be a black-tie (preferred, but not required) event. We hope as many members as possible will come to socialize with other lawyers and judges and to join the Executive Board of the WBA as it honors the retired Bar members and widows of deceased members. 🍷

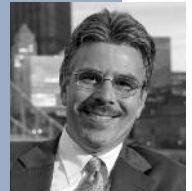


TUESDAY, SEPTEMBER 27: AN EVENING WITH KEN GORMLEY

Join the Westmoreland Bar Association, in association with Pitt-Greensburg,

for a special evening with Kenneth Gormley, dean of the Duquesne Law School, and author of “The Death of American Virtue,” on Tuesday, September 27, 2011. Gormley will provide an apolitical in-depth look at the

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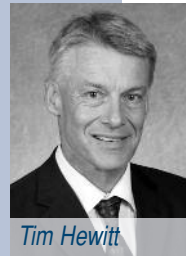
Ken Gormley
Photo: Richard Kelly

TUESDAY, OCTOBER 18: AN EVENING OF FIRE AND ICE WITH TIM HEWITT

What would make a lawyer run every

Pittsburgh marathon, six Iditarod races (winning five and setting two world records), and cross Death Valley in the Badwater 135-mile Ultramarathon? And how does that kind of athleticism translate into running a successful law

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Tim Hewitt

President's Message

Team WBA

by Michael J. Stewart, Esq.

Team WBA has been performing at a fast and furious pace since April 2011. We have identified and addressed several matters including the following:



PRO BONO

Members of the Board have met with Laurel Legal Services leaders Cindy Sheehan, Kathleen Kemp, and Sam Rosenzweig to discuss specific areas where the Bar Association may assist LLS. LLS has suffered serious cuts in financial support (see page 7). In coordination with our Pro Bono Program, we are attempting to recruit attorneys to provide legal services for clients who otherwise could not afford representation. Areas of the law where assistance is needed include, but are not limited to, mortgage foreclosures, landlord-tenant actions, bankruptcies, and custody cases. It is worth noting that during the first quarter of 2011, nearly 50% of the custody cases at the custody conciliation level in Westmoreland County involved pro se litigants.

CIVICS EDUCATION PROGRAM

The Board is attempting to lay the groundwork for our members to present an ongoing civics education program in Westmoreland County middle schools. We are working closely with the Pennsylvania Bar Association in developing the program, which will provide our attorneys an opportunity to give back to their local schools and communities.

ESTABLISHMENT OF PRO BONO OFFICE AND LAWYERS LOUNGE IN THE COURTHOUSE

Over the last several months, WBA Board members have been meeting with county officials to solicit their support in relocating the Pro Bono Office to the Courthouse and establishing a Lawyers Lounge at the Courthouse. It is an obligation of our profession to provide representation to all citizens requiring legal assistance, not simply those who can afford it, and the WBA is pleased that county government recognizes and appreciates our efforts. It is anticipated that having both the Pro Bono Office and a Lawyers Lounge located under the Courthouse dome will greatly enhance the quality of our Pro Bono Program and the participation of WBA members. Therefore, Team WBA approached the County Commissioners regarding office space for both, and we have been working closely with county officials to make this project a done deal.



NED J. NAKLES AMERICAN INN OF COURT

Team WBA and the Executive Board of the Ned Nakles Inn of Court have been working hand-in-hand to promote membership in the Inn of Court. Clearly, if we want to promote civility and a sense of community amongst our members, there is no better forum than the Inn of Court. Team WBA will promote participation in the Ned Nakles Inn of Court

amongst our judges, experienced attorneys, and young lawyers alike. I read a quote in a recent ABA article that stated "our law schools teach ethics, but not how to act as an attorney ... Teaching the concept of proper 'manners' as a litigator would be helpful." The Ned Nakles Inn of Court can provide that lesson.

125TH ANNIVERSARY CELEBRATION OF THE WBA

Team WBA, under the direction of local historian and member Lou DeRose and his faithful sidekick, Judge Dan Ackerman, has been planning the 125th Anniversary Celebration of the WBA. Said celebration shall be held on Saturday, October 1, 2011, under the golden dome of our Courthouse.

LEGISLATIVE INVOLVEMENT

As lawyers, it is our duty to protect our profession. We must become leaders of legislative change in the state of Pennsylvania. Very few legislators practice law. Only about 20% of the members of the General Assembly have law degrees and, unfortunately, some of those have taken positions not supportive of the ideals of our profession.

Proposals unfavorable to our profession, including tax on legal services, proposals to do away with advertising in local bar journals, legislation to transfer authority over lawyers from the courts to

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Committee Reports

25th Annual Bench/Bar: A Veteran's Perspective

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

What's this? Another sign up for the Bench/Bar? How many is that? 25?

Are you sure?

Yes, it's true. This year's Bench/Bar Conference in Wild, Wonderful West Virginia was the 25th annual iteration since the institution of the event at Lakeview Resort in 1986. It's come a long way, baby, but from my perspective it's also at a crossroads—and not the crossroads near Lakeview that caused some of us to take a wrong turn and end up driving the interstate instead of the first tee.

Normally, the Bench/Bar review is assigned to a first-timer, a Bench/Bar virgin (hard to imagine, huh?), to recount his or her impressions of a maiden professional sojourn out of the county. While I thought I saw a fresh face or two at the conference, there was seemingly a dearth of neophytes in attendance. Accordingly, this wizened old veteran has been called back into service.

As I said earlier, we played golf at Lakeview, a lovely course about nine miles from The Waterfront Place Hotel, the conference's headquarters this year. Highlights of our collective faux par endeavors included another monster drive from Jim Silvis, Jr., accompanied, as always, by the jealous gnashing of teeth from Jim Silvis, Sr., and an attempt by the President Judge to integrate his passions for golf and hunting by trying to take down a doe lurking in the woods with his drive on a dogleg left. The doe, evidencing far



▲ *Always on call, Judges McCormick and Blahovec take a moment off from the festivities of the Bench/Bar Conference to review some work that they brought with them from chambers.*

better hand-eye coordination than the judge, ducked effortlessly out of the way, and a five wood and three wobbly putts later, Judge Blahovec had bagged himself a singular par.

I have to say, I miss the old format—a scramble with team pairings intended to balance out abilities. That format always seems to bring about a good mix of colleagues, some of whom, except for being able to rely heavily in this instance on the golfing ability of their betters, have no chance of ever winning anything at all.

Then it was off to Morgantown, identifiable only by the presence of the Mon River at our backs, and the hotel. Although it would have been fitting and proper to be able to look out of my hotel room window and see a couch or two on fire, the highest form of accomplishment possible for many

WVU students, my view instead was of the cemetery across the way, a gentle reminder that I should try hard not to overdo it again this year.

Because we golfed, we got back well after lunch was served. Our noontime repast consisted of what was still left on the tables before the wait staff could finish clearing. (Memo to planners: golfers like lunch, too.) (Memo written by Beth Orbison, as all of my memos are.)

As for the Millstein and Knupp CLE Matinee-At-The-Movies, I'm told that it was a highly intellectual presentation. I had been warned of that in advance, so I stayed away. It was a documentary on the Reverend Phelps and his nutty family band of funeral-picketing bigots, followed by a discussion of the First Amendment's

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the **sidebar**

the sidebar is published bimonthly as a service for members of the Westmoreland Bar Association. Letters to the Editor should be sent c/o WBA, 129 North Pennsylvania Avenue, Greensburg, PA

15601-2311, fax 724-834-6855, or e-mail westbar.org@westbar.org. the sidebar welcomes submissions from members or non-members. Please submit to the Articles Editor, c/o WBA.

Back issues from 2000 to the present and a comprehensive, searchable index are available online at www.westbar.org/thesidebar.

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Committee Reports *continued from page 3*

protection of extreme speech. Oh, for the good old days of *The People v. Larry Flynt* or *Order in the Court with the Three Stooges*. (Memo to planners: golfers like movies, too.)

Off-site, there was bicycling, sporting clays, and tennis. Larry Kerr, former Clydesdale in the 5K race, bolted to the front in the bicycling—followed close behind by Beth Orbison—never to be caught. That reminds me of the year that Larry subjected himself to hair removal torture as a fund-raiser for the Bar Foundation, an activity that Larry is seemingly able to contribute to every six hours or so. Rumor has it that there is now a permanent fund established at the Foundation, the sole

purpose of which is to ensure that Larry keeps his shirt on at all future Bar Association events. Just a rumor.

Once again, the BarFlies did not have a dress rehearsal for this year's production, because once again, there wasn't a "this year's" production. But the word is that they are champing at the bit to resurrect their oft-offensive, oft-officious off-Broadway approximations of theater. I can't speak for you, but as for me I'm dusting off my tap shoes and athletic supporters in wild anticipation. Sooner or later, like it or not, you're all going to have to listen to me sing once again.

Just prior to the cocktail hour, a chronologically masterful piece of scheduling, many of our members

competed in tossing their cookies, so to speak. Just how one places an Oreo on the forehead and works it into the mouth without the use of one's hands still remains a mystery.

Dinner was billed as an indoor BBQ. (That's West Virginian for barbeque or barbecue—they also don't care if you spell it ketchup or catsup.) That was because there was very little outdoor to go to, but we went anyway to watch the lightning and smell the cigars.

There was a new band this year, J Boggs and the Mudcats, but I could swear I'd seen them somewhere before. There were also some new dance steps, otherwise known as stumbles.

I didn't get around to visiting the Young Lawyers Hospitality Room, and neither did most of the young lawyers, as many of them had apparently already set off in search of M'town nightlife. I intended to do the same until I recalled the view from my hotel window.

Bright and early Friday morning (was that Friday morning?), the substantive CLE programs were had, consisting of Bob Johnston's 57th consecutive ethical rendering of *The Barber of Seville*, or "How to Avoid the Close Shaves of Malpractice," followed by Judge Marsili's and my presentation on why civil court is ever-so-much more restful than criminal and family court.

That first Bench/Bar was twenty-five long years ago, fueled by a free bar and the newness of the concept. Each Bench/Bar has its own history, from Bill Caruthers, Sr., moderating a CLE on gender issues, to a bar dive or two from Reg Belden. We've been to

Team WBA *continued from page 2*

the Legislature, and acts to diminish joint and several liability, will all come up for debate. Few legislators witness how the laws they pass are implemented. A prime example is the recent custody act adopted. More questions than answers exist six months after its passage.

Each one of us can be a resource to legislators to enact laws or to modify ones to bring about positive change. Although we all have good intentions, a busy schedule or other priorities may result in our failing to initiate contact with our state representatives. Therefore, I encourage all of us to take advantage of the grass-roots contact list maintained by the PBA. Please consider signing up (www.pabar.org) so when the PBA needs to contact your legislator, you are able to do so as a constituent.

How else do we demonstrate to our legislators that we are serious? Through financial support. The PABAR-PAC is becoming a powerful lobbying resource. It accepts money from individuals to support those legislators who are friends of our

profession. Only donations from individuals may be used in making campaign contributions. Your personal support is imperative. Pennsylvania lawyers are being dramatically outspent by other organizations, including but not limited to the PA Association of Realtors PAC, the PA Medical Society, and the PA Insurance PAC. Our legitimate self-interest and our duty to our profession and our clients mandates that we invest in protecting our need to be heard on Capitol Hill.

In closing, I quote my fellow County Bar President Jill M. Scheidt, of Berks County, when soliciting her members for support of the PABAR-PAC: "No doubt some of you will question why we must invest so much of our time, talent, and financial resources to protect our legal system and the clients that we serve. I can only offer this: if we don't, who will? Join me in continuing the cause."

Mighty proud to be your President. 🍷



**SEE PAGE 10 FOR
PHOTOS FROM THE 25TH
ANNUAL BENCH/BAR
CONFERENCE!**

Lakeview, The Wisp, Nemaocolin, Seven Springs, Hidden Valley, Rocky Gap, The Waterfront Place in Morgantown, and Marcellus Shale in Venango County. What's next? Who knows? As long as I get a good lunch, I'm happy. 🍷

Editor's note: What's next, he asks? Who knows, he asks? We know! The historic and beautiful Bedford Springs Resort & Spa is the site for the 2012 Bench/Bar Conference. Mark your calendars for June 14-15 and plan to join us as we continue to celebrate the 125th anniversary of the Westmoreland Bar Association.

Co-Chairs John Hauser and Peg Tremba guarantee a memorable fun-filled conference with great food, unbeatable ambiance, and worthwhile programming. For more information on this resort, visit the website at historichotels.org/hotels-resorts/omni-bedford-springs-resort-spa/.

Family Law Committee

On October 18, at Noon, the Family Law Committee will be hosting a one-hour lunch and learn CLE presented by Nicole Zicarelli on standing, parenting plans, and relocation issues under the new custody statute.

Return the registration form inserted in this issue, or register online at www.westbar.org. 🍷

Political Action Committee

by Charles C. Mason, Jr., Esq.

As a law student in the 70s, I worked as a law clerk for the Republican caucus of the Pennsylvania State Legislature. My bosses were Kenneth B. Lee, the Speaker, a practicing attorney from Sullivan County; Robert Butera, the Majority Leader, a practicing attorney from Philadelphia; and Matthew Ryan, the Majority Whip, a practicing attorney from Delaware County. Their counterparts on the Democratic side were K. Leroy Irvis, the Minority

Leader, a practicing attorney from Pittsburgh; and our own James Manderino, the Minority Whip, a practicing attorney from Monessen. Do you see a common denominator here?

In those days, the job of a legislator was part-time, so these men practiced law for a living when they were not in Harrisburg. Back then, many, if not a majority, of the legislators were attorneys. Today, lawyers are a minority in the legislature and hold very few positions of leadership. Why do I give you this bit of trivia? To show why it is important that the Bar Association have a voice on Pennsylvania's Capitol Hill.

Fewer lawyers in the legislature, combined with anti-lawyer sentiment, means that we must protect our interests—not only our own interests

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▲ Chuck Mason

G

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Daniel Joseph

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as a profession, but those of our clients. Remember: the line from Shakespeare—"The first thing we do, let's kill all the lawyers"—was not intended to make society better, but to take away individual rights and control society.

The purpose of our PAC is to make us more visible and give us access to the legislators whose districts are within Westmoreland County (The PABAR-PAC contributes to candidates statewide.). It was set up as a conduit for contributions to legislators—contributions are not given to the executive branch, the judiciary, or to local offices. A legislator does not need to pass a litmus test to receive a contribution, and the PAC is not used to reward a legislator for a vote that was favorable to the Bar Association. This would violate Pennsylvania law.

Our Bar Association is made up of individuals with diverse interests—

Republicans, Democrats, Libertarians, Green Party members and maybe even Prohibitionists (God forbid). We have members who are personal injury attorneys, defense attorneys, domestic relations attorneys, transactional attorneys, in-house corporate attorneys: the list goes on. Our interests are not always the same, and sometimes even compete with one another. That is why the PAC must be bipartisan and reach out to legislators of all different stripes.

If a legislator has an anti-lawyer agenda, we may refrain from contributing to his campaign. Similarly, we may give preferential treatment to WBA and PBA members running for the legislature in our county. But the PAC is not just about financial support. It is also a grass-roots network of individuals who personally contact legislators to advocate the Bar's

position on issues that affect the legal profession.

The local PAC was meant to support and supplement the PABAR-PAC and your contribution to the local PAC should not be in lieu of a contribution to the state PAC. Likewise, a contribution to the local PAC is not a substitute for a campaign contribution to an individual candidate.

The system is not perfect. Sometimes contributions from the PAC will be made to candidates who you feel are unworthy. However, those contributions may be necessary to give the Bar Association both visibility and accessibility to the legislators. You never know when you may need to talk to a legislator about an issue important to our Bar. Through the local PAC, we have the opportunity to exercise our right to petition our government and special interest groups to meet the needs of our profession. 🐾

where in the world IS THE WBA MEMBER?



"My son, Charles, and I traveled through western India for two and one-half weeks in March. Charles had been teaching in Kathmandu, Nepal, so we met in New Delhi, hired a driver, and wended our way

past camels, cows, dogs, and monkeys through Jaipur, Udaipur, Pushkar, Agra, and all of the little villages and farmland along the route. Here I am at a 14th to 15th century Jain temple in Ranakpur in Rajasthan. The temple is entirely made of marble with distinctive domes, turrets and cupolas. Its 1,444 marble pillars are all carved differently in exquisite detail; no two are the same. The physical and spiritual beauty of the site is indescribable." —Beth Orbison

RANAKPUR, INDIA

Real Estate Committee

The Real Estate Committee has established the following as its schedule of meetings:

- Wednesday, September 14, 2011
- Wednesday, November 9, 2011
- Wednesday, January 11, 2012
- Wednesday, March 14, 2012
- Wednesday, May 9, 2012

All meetings will be held at Noon at WBA Headquarters in Greensburg. Mark your calendars and register online at www.westbar.org. 🐾

Got News?

Do you have news to share with the sidebar? Making Partner? Marriage? Birth? Anniversary? Accomplishments? Send us a fax at 724.834.6855 or e-mail us at westbar.org@westbar.org, and we'll publish your news in the next available issue.

Call To Action

Economy Taking Toll On Laurel Legal Services

by *Cindy Sheehan, Esq., Laurel Legal Services Executive Director*

After forty-four years of continuing services, Laurel Legal Services is struggling to make ends meet to maintain offices and staff, and to provide quality representation to our poverty client population in six counties.

Our revenues began to shrink drastically a few years ago when interest rates started their decline, causing a precipitous drop in our IOLTA funds, which at one time provided 20% of our income.

This year, we also saw a cut in our federal Legal Services Corporation funds, and the fiscal year that began July 1, 2011, brought a cut in state funds, and a further reduction in

IOLTA funds. We had been attempting to maintain the level of services with several new federal grants from stimulus funds, including one for mortgage foreclosure prevention assistance and one for homelessness prevention, but those are coming to an end with the completion of federal stimulus spending. The state legislature did extend a temporary filing fee bill that should offset the cut in legal services funds in the budget that was passed, but the reauthorization of the Access to Justice Act, a major source of funding, is still pending, and new, more drastic cuts have been proposed for next year from our federal Legal Services Corporation funds.

In an effort to cut costs, we have left five attorney positions unfilled. We have also laid off one attorney,

one paralegal, and two clerical staff, and asked staff to take a pay cut and furlough days. The Greensburg office has seen the retirement of Vera Ducruet, the departure of Lee Ann Pruss, and the loss of part of the time of Kathleen Kemp, who was assigned new duties to supervise three other small offices so that a new managing attorney would not be required.

We also gave up a third of our space in our Johnstown office, and renegotiated telephone contracts to save money. We have now reduced our

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▲ *Cindy Sheehan*

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I would be happy to accept referrals on Personal Injury and Wrongful Death cases. Reasonable referral fees are paid in accordance with the Code of Professional Responsibility.

dicta

The Challenge of Pro Se Litigants

by The Hon. Daniel J. Ackerman

If you have ever had to face off against a pro se litigant, by the end of the litigation you may have come to the conclusion that you would have preferred the challenge posed by the very best lawyer in the county, providing you don't think that lawyer is you.

Pro se litigants pose a problem, not only for their opponents, but for the legal system as well. And being a pro se litigant is to start on a path that most often is self-destructive. There have been few, if any, successful attempts at self-representation. The only one that comes to mind is William Penn's triumph in defending his right to express his Quaker beliefs in 1670. Since then, it has been mostly downhill for those wanting to act as their own lawyer.

Fifty years ago, the legislature recognized this fact and provided that when confronted with the possible loss of liberty, a person was entitled to counsel paid for at public expense; resulting in the creation of the public defender system. No such public funding is presently available for those facing civil legal problems, nor is it likely to arise in the current economic climate.

Those who are the most unable to pay counsel may turn to Laurel Legal Services or the Pro Bono Program of the WBA when seeking representation, but all would agree that the demand is

larger than these programs can meet. No suggestions will be found here on how to cure this systemic shortfall.

Rather, the following simply touches on the impact of pro se litigants upon the courts and lawyers, an impact that in itself is often needlessly costly to courts, lawyers, and their clients.

For the most part, empathy certainly exists for those forced into

self-representation due to poverty; but you will also find in the mix some of the most problematic individuals; those disputatious souls who shun lawyers and believe that only they are fit to advance their cause; and if they save a buck, all the better. This, of course, is their right. Self-representation is a corollary to one's right to counsel. The exercising of the right in unskilled hands, however, can be very messy indeed. Even lawyers who represent themselves put themselves at a disadvantage because they lack the objectivity that counsel provides.

Many litigants need to understand that the right of self-representation is personal and doesn't permit them to represent their spouses, other family members, or their own closely-held corporations, who may be joined with them in the same action. To do so would constitute the unauthorized practice of law. Since the court has the right to insure against unauthorized representation, the judge should make this limitation known at the outset. The judge should also advise the

“Self-representation is a corollary to one's right to counsel. The exercising of the right in unskilled hands, however, can be very messy indeed.”

Economy Taking Toll On Laurel Legal Services

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staff to the bare minimum necessary to handle our emergency priority cases in domestic violence, emergency custody, loss of housing, income, or essential benefits. We are operating an evening Helpline two nights a week with a small IOLTA grant to provide some information and advice to clients we can't see in the office, and to identify the top priority emergency situations.

In a recent meeting with leaders of the Westmoreland Bar, including President Mike Stewart and Executive Director Diane Krivoniak, we asked for the support of the Bar in encouraging more pro bono efforts

and supporting legislative efforts to maintain or increase our funding.

Laurel Legal Services welcomes the help of all Bar members in this effort. We will be conducting an annual direct mailing campaign in a few months and hope you will remember and support us in our work to provide access to the civil court system for the disadvantaged. Tax deductible donations can be made online at laurellegalservices.org through Donate Now, or by mail to Laurel Legal Services, Inc., 306 South Pennsylvania Avenue, Greensburg, PA 15601. 🌱

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Spotlight on Bill Stillwagon



Q WHAT JOBS DID YOU HAVE BEFORE BECOMING A LAWYER?

A Farm laborer, supermarket cashier, and construction laborer.

Q WHICH WAS YOUR FAVORITE AND WHY?

A All equally challenging and rewarding.

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

A A client represented to me when asked where he obtained a large sum of money, that he brought it into the country in a loaf of bread!

Q WHAT QUALITY DO YOU MOST LIKE IN AN ATTORNEY?

A Honesty.

Q WHAT IS YOUR FAVORITE JOURNEY?

A To England, Germany, and Austria.



Q WHAT IS YOUR GREATEST REGRET?

A My father didn't live long enough to see his grandchildren.

Q WHO ARE YOUR HEROES IN REAL LIFE?

A All of the men and women serving in the Middle East.

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

A Your word is your bond.

Q WHAT DO YOU CONSIDER YOUR GREATEST ACHIEVEMENT?

A Development of a premier golf community.

Q WHAT IS YOUR IDEA OF PERFECT HAPPINESS?

A Being able to live and work without need to earn money.

Q WHAT IS YOUR MOST TREASURED POSSESSION?

A My family.

Q WHAT IS IT THAT YOU MOST DISLIKE?

A Dishonesty and lack of respect for others.

Q WHAT IS YOUR GREATEST EXTRAVAGANCE?

A My wine cellar.

Q WHAT TALENT WOULD YOU MOST LIKE TO HAVE?

A To be a good golfer.

Q WHAT DO YOU VALUE MOST IN YOUR FRIENDS?

A Loyalty and dependability.

Q WHAT IS YOUR MOTTO?

A "Any man can do anything if he really wants to." 🍷

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LawSpeak

"Nothing is more striking in the history of the Court than the manner in which the hopes of those who expected a Judge to follow the political views of the President appointing him have been disappointed."

— Charles Warren, 1 Supreme Court in U.S. History 22 (1922)

Dicta: The Challenge of Pro Se Litigants

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pro se litigant that he or she cannot look to the court for guidance; that they will be held to the same standards applying to lawyers; and that the judge will not intervene to prevent the litigant from making an obvious error which may be fatal to their cause.

Self-representation is on the rise. The recent economic downturn plays a role, as does the access to legal forms and “advice” procured through the internet. Also, there exists, in some, an ingrained distrust of lawyers coupled with an egocentric desire to appropriate the lawyer’s role.

This role-playing often prolongs the proceedings, making them more costly to all concerned. Litigants without counsel often seem to believe that more is better. What motions are allowed in the Rules of Civil Procedure? The more filed the better. Counsel can also get caught up in this and respond in kind. Soon an action that on its face showed little promise has taken a life of its own that will try the patience of the court. Might it not be better to fast track these actions, which have little chance of settling, and get them before a jury that will render the inevitable result and quickly give the parties their day in court?

It would seem that pro se litigation will always be with us. Medical malpractice filings in Pennsylvania dropped some thirty percent following the filing of the rule requiring a certificate of merit as a condition for maintaining the action. Perhaps the rules committees serving the bench and bar should consider something of a similar nature that would deter some of the more frivolous actions brought without the aid of counsel. 🍷

Candid Camera: 2011 Bench/Bar Conference



▲ *Always known for his creative wearing of candy, Moe outdoes himself this year with his starry crown of M&Ms.*



▲ *And what would any Bench/Bar Conference be without the two smartest women in the association?*



▲ *“You’re never gonna get that thumb in your ear, you keep drinkin’ like that.”*



▲ *Everyone always said Dick had a good head on his shoulders, but no one ever said it looked so goofy.*



▲ *“I’ve never told you this before, Cindy, but I really have this thing for taller women.”*



▲ *“I’ve never told you this before, Diane, but I really have this thing for taller women.”*



▶ *“I’ve never told you this before, but I really have this thing for taller men.”*

To-Wit: The Ruling Class

by S. Sponte, Esq.

Object,” opposing counsel said first thing of my client’s deposition in that shrill, whining voice I have come to know only too well.

“To what?” I responded wearily. “My client was just taking the oath.”

“I have never before in my career seen anyone about to lie so grievously,” she shot back. She thereafter launched into yet another of her abysmally irrelevant tirades, this time comparing her client to Saint Francis and mine to the misbegotten offspring of Sekhmet and Torquemada.

We had not met prior to the start of this case, but I knew well in advance about her combative, scorched-earth approach to lawyering. Legend has it she has never lost a jury trial. At least that’s what it says on her letterhead.

She has thus far frumped and muttered and bombasted her way through this otherwise interesting case

with objections and tantrums at every turn, at every pleading and at every discovery request, as if my presence, nay, my very existence, was an outrage. Once, during oral argument, she even

“What is nuttiness but disagreeable, contentious, and irrational honed to perfection? Add to that a profound love of one’s own narcissism and voila, the perfect lawyer.”

raised a sartorial objection to the color of my tie (“way too damned mauve”), and during another, she actually bared her teeth and charged in my direction, backing off only after noticing the

crucifix my associate was wearing around her neck. Believe me when I tell you, I’ve divorced women far less difficult than this.

When I walked into the office this morning, my secretary scurried for shelter. “Look at the morning mail,” she shrieked in terror from behind the locked bathroom door, “and then take a Xanax. I’ll come out in forty-five minutes.”

And there, amidst the flotsam of bills and the jetsam of advertisements, lay the latest edition of Superlawyers Magazine. I took one look at the front cover and was struck dumb—well, make that struck “less smart.” There, beaming at me in full color regalia, was opposing counsel. At first I didn’t recognize her. I think it was the smile that threw me off.

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Dennis B. Rafferty is a founding partner of the firm and concentrates his practice in the areas of civil and criminal litigation and school law.

Joyce Novotny-Prettiman is an associate at the firm and concentrates her practice in the areas of personal injury, school law, civil litigation and collaborative law.



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To Advertise, Or Not To Advertise. That Is The Question.

by *The Hon. Daniel J. Ackerman*

A motorist traveling through the agricultural heartland of central Florida will encounter numerous billboards, which, despite their numbers, treat only three subjects: fireworks, vasectomies, and lawyers. This observation admittedly may have nothing to do with the question of lawyer advertising, but it does suggest its ubiquitous nature.

Lawyer advertising on a commercial scale has not always been with us; and even today most members of the bar do not advertise their services beyond the covers of the yellow pages. Many bar members can remember when local and state bar associations, including the WBA, forbid advertising as “unprofessional,” a ban that was struck down by the Supreme Court in

1977 in *Bates v. Arizona*, 433 U.S. 350, as an unconstitutional restriction of commercial speech.

Since then, lawyers have, for the most part, been ambivalent about advertising. There are those who still frown upon it and perhaps blame it for what they deem to be diminished public respect for the profession, but such criticism should be reserved for individual tasteless or misleading ads rather than the general concept of advertising. Most lawyers, we suspect, would like to emulate the success of some local

firms in southwestern Pennsylvania who have prospered by broadly advertising their services.



Intense advertising has caught on in some areas of practice and not in others. Tort lawyers primarily use it, as well as family court, social security, and bankruptcy practitioners. We are unaware of any lawyer whose primary practice is in the area of probate, corporate,

or real estate law, who has turned to advertising for clients, other than in the most subtle forms; and for civil defense lawyers, representing the interests of insurance carriers and their policy holders, advertising (Sue Our Client: Please!) is obviously a needless expense. But the question in the minds of many plaintiff's lawyers and general practitioners is, “Would it work for me?”

One local lawyer said that he has tried advertising and marketing, but saw a marginal return for his efforts. Another has advertised since he first entered the practice of law in the early 1980s and continues to enjoy not only the stream of clients that are generated, but the notoriety and “local celebrity” status that comes with having his photo prominently displayed on billboards. And yet another finds that his advertising dollars are best spent in the development of a website, hiring a production company to polish and enhance his image, all in an effort to foster client confidence in his legal abilities.

Before one even considers the cost, perhaps they should look to the rules

To-Wit: The Ruling Class

continued from page 11

I could hardly believe it. I had heretofore deemed “Superlawyers” a title reserved for the princes and princesses of the profession, the ruling class, not the disagreeable, contentious, irrational knavette I saw before me.

A quick and desperate phone call to Dr. Y. U. Kranki, the noted lexicologist and chronicler of the world at law proved instructive.

“Lookit,” he said, “if you were out to hire a lawyer, isn't disagreeable, contentious and irrational exactly what you'd want?”

“Well, maybe,” I replied, “but what I'm describing here is not skillful lawyering, it's abject nuttiness.”

“And what is nuttiness but disagreeable, contentious, and irrational honed to perfection,” he replied. “Add to that a profound love

of one's own narcissism and voila, the perfect lawyer.”

I have to admit his logic was irrefutable. So if I'm to go screech to screech with opposing counsel in this case, I'll have to alter my approach. I haven't got time to master the dark adversarial arts as well as she has, but immediately before the next deposition I'm going to have all my fingernails pulled out. Then let's see who can shriek the loudest.

And who knows, maybe a contretemps of that magnitude will garner the attention of the editor over there at Superlawyers. And then who knows? Maybe, just maybe, he'll hold next month's cover for me. 🐾

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

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March, May, and July 2011 Civil Trial Terms

Jury Trial Verdicts

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

March 2011 Trial Term

Of thirty-three cases listed for the March 2011 Civil Jury Trial Term, thirteen settled, nineteen were continued, and one case was held for the next trial term. There were no civil jury trials during the March 2011 civil trial term.

May 2011 Trial Term

Of forty-seven cases listed for the May 2011 Civil Jury Trial Term, nine settled, twenty-nine were continued, one ended in a non-suit, one was tried non-jury, and one case was held for the next trial term. There were five civil jury trials during the May 2011 civil trial term.

**PHYLLIS M. SABOL AND
RONALD SABOL, HER HUSBAND
V.**

**ANTHONY P. DECESARE, AN
INDIVIDUAL, THEODORE M.
DECESARE, AN INDIVIDUAL, AND
DECESARE CORPORATION
V.**

**FIVE STAR DRYWALL AND
GARY SABOL
NO. 9723 OF 2006**

*Cause of Action: Negligence—
Personal Injury—Premises Liability*

On May 7, 2006, Plaintiff-Wife was visiting a house under construction in Export, Pa. Plaintiff-Wife's son, Gary Sabol, one of the Additional Defendants, owned the house. In the course of walking across the floor, she stepped on some type of material that was covering a hole in the floor. Plaintiff-Wife fell through the hole into the basement and suffered personal injuries.

Plaintiff and her husband filed an action against the Original Defendants, the general contractor, asserting claims of negligence and loss of consortium. The Original



Defendants deny they were at fault and subsequently brought the Additional Defendants into the lawsuit. The Additional Defendant, Five Star Drywall, was a sub-contractor and Gary Sabol was the owner of the property. Original Defendants alleged that one or both of the Additional Defendants were negligent and the cause of Plaintiff's injuries. Each Additional Defendant, independent of one other, denied the allegations made by Original Defendant.

The damages issue was resolved through mediation and the sole issue before the jury was the issue of liability between Original Defendants and Additional Defendants.

Plaintiff's Counsel: William R. Caroselli, Caroselli, Beachler, McTiernan & Conboy, L.L.C., Pgh.

Original Defendants' Counsel: Dwayne Ross, Latrobe

Additional Defendant Five Star Drywall's Counsel: Paul T. Grater, Pgh.

Additional Defendant Gary Sabol's Counsel: Daniel T. Moskal, Law Office of Joseph F. Weimer, Esq., Pgh.

Trial Judge: The Hon. Anthony G. Marsili

Result: The jury found that Original Defendant DeCesare was

47% negligent, Additional Defendant Five Star Drywall was 24% negligent, and Additional Defendant, Gary Sabol was 29% negligent.

BARBARA STERRETT

V.

**RAYMOND WENDLER, AN
INDIVIDUAL, AND DINA
DECESARE, AN INDIVIDUAL,
D/B/A SERENITY HAIR SALON
NO. 2260 OF 2006**

*Cause of Action: Negligence—
Personal Injury—Premises Liability*

On December 10, 2004, Plaintiff Barbara Sterrett slipped and fell down a set of steps located outside of a beauty salon owned and operated by Defendant DeCesare and property owned and maintained by Defendant Wendler. Plaintiff alleged that there was a slippery condition on the stairs, which was caused by Defendant Wendler when he applied a chemical sealant to the stairs five days prior to the incident. Plaintiff alleged that each Defendant had either actual or constructive notice of the dangerous condition and breached a duty to their business invitees, which resulted in Plaintiff sustaining a serious fracture to her ankle.

Plaintiff did not retain an expert to testify about the properties of the chemical sealant. The parties stipulated that Plaintiff incurred medical expenses in the amount of \$19,644.

At the conclusion of the Plaintiff's case, both Defendants made motions for non-suit, arguing both that Plaintiff failed to prove what actually caused her fall and that Defendants had neither actual nor constructive notice of a dangerous condition on the business premises.

Plaintiff's Counsel: Matthew T. Logue and William S. Stickman IV,

continued on page 14

Jury Trial Verdicts *continued from page 13*

Del Sole Cavanaugh Stroyd LLC, Pgh.

Defendant Wendler's Counsel: Brian

J. Smith, Dell, Moser, Lane & Loughney, LLC, Pgh.

Defendant DeCesare's Counsel:

Dennis J. Slyman, Gbg.

Trial Judge: The Hon. Richard E.

McCormick, Jr.

Result: Judgment of Non-Suit in favor of Defendants.

REBA POPOVICH, AN INDIVIDUAL V.

LOIS DUNN, AN INDIVIDUAL NO. 10223 OF 2007

*Cause of Action: Negligence—
Personal Injury—Automobile Collision*

This cause of action arose out of a motor vehicle collision that occurred on December 3, 2005, on State Route 66 in Penn Township. The Plaintiff was traveling south on Route 66 when the Defendant attempted to make a left turn and failed to yield to the Plaintiff's oncoming vehicle, resulting in a head-on collision. Defendant did not contest her negligence, but did deny that the cervical injuries and bruises suffered by Plaintiff constituted serious impairment of a body function such that she would be entitled to money damages for pain and suffering under the Pennsylvania Motor Vehicle Responsibility Law.

Plaintiff presented the testimony of Plaintiff's primary care physician and Defendant presented the videotaped testimony of an orthopedist who did an independent medical examination of the Plaintiff.

Plaintiff's Counsel: Jeffrey D.

Monzo, Galloway Monzo, P.C., Gbg.

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

Trial Judge: The Hon. Richard E.

McCormick, Jr.

Result: Judgment in favor of Defendant. The jury found that Plaintiff did not prove that she suffered a serious injury which

constituted serious impairment of a body function caused by the accident.

PERRY A. PICKENS, ADMINISTRATOR OF THE ESTATE OF BERNICE A. PICKENS, DECEASED

V.

YESHVANT A. NAVALGUND, BRINDA K. NAVALGUND AND DAYO NAVALGUND ASSOCIATES, P.C., D/B/A DNA HEALTH SYSTEMS NO. 1233 OF 2008

*Cause of Action: Medical Malpractice—
Wrongful Death/Survival*

Ms. Pickens had a long history of back pain. She came under the medical care of the Defendants, who are pain specialists, in September 2004, and for the next year, they treated her with steroid injections, a spinal cord stimulator, and medications. Eventually, after three trial runs, Defendants recommended the implantation of an intrathecal morphine pump that delivered morphine, a pain killer, directly into her cerebrospinal fluid. On February 1, 2006, Plaintiff's Decedent died at home, twenty hours after Defendant Doctor Yeshvant Navalgund implanted an intrathecal morphine pump in Ms. Pickens' back.

Plaintiff claimed that Ms. Pickens died from respiratory depression

produced by an overdose of morphine administered by Defendants. He argued that she was not a candidate for intrathecal morphine therapy; that she was given too high of a morphine dose; and that she should have been monitored in the hospital for at least twenty-four hours before being discharged.

Defendants argued that conservative methods were not successful in minimizing Ms. Pickens' pain, which led to the joint decision to conduct trials and implant the pump. Defendants' experts testified that Defendants did not deviate from the applicable standard of care and that her death was not caused by the negligent conduct of the Defendants.

Plaintiff's Counsel: Michael Louik and Jon R. Perry, Rosen, Louik & Perry, Pgh.

Defendants' Counsel: James W. Kraus, Pietragallo Gordon Alfano Bosick & Raspanti, LLP, Pgh.

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

Result: Judgment in favor of Defendant. The jury found that the Defendants' conduct fell below the applicable standard of care, but that their negligence was not a factual cause of any harm to the Plaintiff.

FRANCES A. MOLSKY V.

THOMAS K. STANG AND IVAN PERBONISH NO. 8622 OF 2006

*Cause of Action: Negligence—
Motor Vehicle Accident*

On November 29, 2004, Plaintiff was traveling west on East Pittsburgh Street in Greensburg. As she was stopped for traffic, waiting to make a left-hand turn into the Davis Center, Plaintiff alleged that Defendant Perbonish, who was in the eastbound lane closest to her, waved her on through traffic to complete her turn. As she was attempting to make the

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turn, Plaintiff's vehicle collided with Defendant Stang's vehicle in the far right-hand lane of eastbound traffic. As a result of injuries sustained in the collision, Plaintiff claimed damages for medical bills, loss of enjoyment of life, pain and suffering, humiliation, and embarrassment.

Defendant Perbonish maintained that he was not present at the scene of the accident at the date and time the accident occurred and was not liable in any manner for the accident. Defendant Stang maintained he was lawfully traveling in his lane of travel when Plaintiff made a left turn directly in front of him thereby causing the collision.

Plaintiff's Counsel: Daniel S. Soom, New Castle

Defendant Stang's Counsel: Christopher M. Fleming, Snyder & Andrews, Wexford

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

Trial Judge: The Hon. Gary P. Caruso

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

KEVIN C. NIXON

V.

WESTMORELAND REGIONAL HOSPITAL

NO. 5130 OF 2009

Cause of Action: Negligence—Personal Injury

On June 4, 2007, Plaintiff arrived in a moving truck at the loading dock of Defendant Hospital to pick up medical equipment and furniture to move to another facility. Defendant's metal hinged loading dock plate was placed on the back of the truck to serve as a ramp in order for Plaintiff and his co-worker to walk back and forth to the hospital to load the equipment. At the end of the loading job, Plaintiff and his co-worker attempted to lower the loading dock plate off the back of the truck and the dock plate dropped, landing on and causing injuries to Plaintiff's hand.

Plaintiff maintained that Defendant was negligent for failing to have hospital personnel at the dock site to assist Plaintiff with the loading dock ramp. The failure to have personnel present to assist Plaintiff breached the duty Defendant owed Plaintiff as a business invitee. Defendant maintained it was the negligence of Plaintiff's co-worker in dropping the loading dock plate on Plaintiff's hand that caused Plaintiff's injuries.

Plaintiff's Counsel: E. J. Julian, Julian Law Firm, Washington, Pa.

Defendant's Counsel: Christian W. Wrabley, Thomson, Rhodes & Cowie, P.C., Pgh.

Trial Judge: The Hon. Gary P. Caruso

Result: Verdict in favor of Defendant and against Plaintiff. The jury found that Defendant was negligent, but there was no causal connection between its negligence and Plaintiff's injuries.

July 2011 Trial Term

Of thirty cases listed for the July 2011 Civil Jury Trial Term, seven settled, twenty were continued, one was transferred to arbitration, and one case was held for the next trial term. There was one civil jury trial during the July 2011 civil trial term.

GARY AMATO AND QIN AMATO, HIS WIFE,

V.

SHANE HALL

V.

DANIEL DENTON

NO. 14324 OF 2008

*Cause of Action: Negligence—Personal Injury—
Automobile Collision*

On June 19, 2007, Plaintiff-Husband was stopped at a stop sign in the eastbound lane of North Hills Road at its intersection with School Road in Murrysville. Defendant Hall was at a stop sign on the westbound side of North Hills Road. Defendant Hall failed to yield the right of way to oncoming traffic on School Road and, as a result, drove his vehicle directly into the path of Additional Defendant Denton's vehicle. The resulting collision pushed Hall's vehicle into Plaintiff's car, which allegedly caused Plaintiff to suffer injuries.

Prior to trial, Plaintiff entered into an out-of-court settlement with Defendant Hall. Plaintiff and Additional

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To Advertise, Or Not To Advertise *continued from page 12*

pertaining to lawyer advertising found in Rule 7.2 of the Rules of Professional Responsibility, which among other things, regulates the content of the ad. In addition, reading the *Report of the Pennsylvania Bar Association Task Force on Lawyer Advertising* (May, 2007), which is available online, is recommended.

But where should a lawyer put his or her advertising dollars? The Wall Street Journal recently noted: “Advertising, long the leading source of local newspaper revenue, has fallen by half. Advertisers now use online search, free online classifieds, and other targeted marketing options outside the traditional media.” If you haven’t noticed, the telephone books, like newspapers, are getting thinner. If you Google “lawyers,” those at the top of the list are not there by chance, they have paid a premium for their position.

Should you want your name on the highway, a billboard on a well-traveled route will cost about \$2,000 a month, and that is after an investment of at least \$1,000 for the artwork. One local lawyer who has made such an investment also has gone to the other end of the spectrum by putting his firm’s name on Little League jerseys as a reminder to the local community.

While many people in a lawyer’s hometown may know his profession, it doesn’t follow that they know the type of law he practices. So advertising can be a hedge against hearing from an acquaintance, who has signed a contingent fee agreement elsewhere, “Oh, I didn’t know you did that kind of work.”

Broad-based advertising on billboards or television undoubtedly will increase the number of inquiries a lawyer will receive, but will it increase the number of clients? If the advertising campaign is effective—and according to those who are familiar with advertising, that takes years—significant time will have to be spent on screening calls. Similar to mining for precious metals, a lot of rock and sand will have to be removed before a workable vein is uncovered. Many new callers will voice complaints, but few will present a factual scenario that will support a worthwhile cause of action or present a situation that justifies a lawyer’s time.

While it is desirable to get your name before the public, simply being

in court or occasionally getting your name in a newspaper article doesn’t always make you well known. Oftentimes, during voir dire, prospective jurors are asked whether they know or have heard of counsel who will try the case, and overwhelm-

ingly, they have not. This has proven true even in the rare case where the lawyer was running for judicial office and had campaign signs posted throughout the county!

On a final note, while there are numerous ways to spend advertising dollars, they will be well spent only if the content is true and free of exaggeration. Unless your aim is simply to give your colleagues a good laugh, you should probably not promote yourself as a personal injury lawyer if you can only count the number of juries to whom you have presented tort claims on one hand.

Not advertising at all is preferable to a misleading ad. 🐾

Beth Orbison, Esq., contributed to this article.



Jury Trial Verdicts *continued from page 15*

Defendant agreed to bifurcate the trial, first asking the jury to make a determination as to liability.

Plaintiff attempted to establish at trial that Additional Defendant failed to have his vehicle under control, exceeded the speed limit, and failed to exercise reasonable care in proceeding through the intersection. Additional Defendant asserted that Defendant’s vehicle suddenly appeared in his path and that he had no time to avoid the collision.

Plaintiffs’ Counsel: James B. Cole, Pgh.

Defendant’s Counsel: Dennis J. Slyman, Gbg.

Additional Defendant’s Counsel: David M. McQuiston, Pgh.

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

Result: Jury found that Defendant was negligent; Additional Defendant was not negligent. Verdict in favor of the Additional Defendant. 🐾

on the move?

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

bookmark What Have You Been Reading?

by Kathleen Nagy Kemp, Esq.

If you are what you read, I am not sure what I would make of the olio of books that I have been reading lately. I am in the middle of Jean M. Auel's **THE LAND OF**



▲
Kathleen Nagy
Kemp

PAINTED CAVES, the latest (and last, she promises) of the Earth's Children series which started with *The Clan of the Cave Bear*. Remember Daryl Hannah in animal pelts? This novel is much the same as the others. It is a very interesting and imaginative story about people at the end of the last Ice Age. Ayla, the heroine, has tamed a wolf and horses, much to the chagrin of the other cave dwellers. She has invented techniques for lots of ordinary daily activities which the other people of the time have not had the creativity to discover. I am eager to see what trouble she gets into and what she

invents in this book. Is she the one who invents the wheel?

I am also in the middle of Christopher Hitchens' **THOMAS JEFFERSON: AUTHOR OF AMERICA**. The book is part of the Eminent Lives series. These are brief biographies of "canonical figures" written by otherwise-famous authors. Jefferson's life is a tale known to most, but Hitchens has a very interesting and down-to-earth approach to the founding fathers. He gives a very light touch to the history we all have learned, but expands on some interesting minutia.

Michio Kaku is an eminent scientist who is familiar to fans of the Science Channel and the Discovery Channel. He steps aside from his scholarly pursuits to host shows and write books for us scientist-wannabes. His book, **PHYSICS OF THE IMPOSSIBLE**, explores phenomena from force fields to time travel and extra-sensory perception. He categorizes each as "impossible today, but not a violation of the laws of physics" or just plain "never could happen because they violate the laws of physics." His

writing is not as clear and readable as Brian Greene's, but his insights are still very enjoyable. It is his way of organizing the topics which makes understanding easier.

Jonathan Franzen's **FREEDOM** will be recognizable by anyone who was cognizant during the sixties. It is the story of college friends as they age. The story itself is compelling enough, but Franzen illuminates the souls of the individuals he writes about. There are ideas and feelings that I have never seen expressed in writing. It is not only a great story with insights into the human condition but also has a satisfying ending.

THREE CUPS OF TEA was recommended to me by my daughter. Some of her friends had gone to Greg Mortenson's lecture in Pittsburgh and were fascinated. The book is an account of Mortenson's initial efforts to bring education to the girls of Pakistan through the Central Asia Institute. Along the way, he builds more than fifty schools, gets kidnapped, is the subject of a fatwa, hikes or drives through much of Pakistan and Afghanistan, and tries to raise money for the schools. Mortenson continues his story in **STONES INTO SCHOOLS**. Both are very interesting and have good maps. I find myself referring to the maps when I listen to the news about the area.

Margaret Atwood has completed the second in a trilogy of books she planned about a dystopian future. **THE YEAR OF THE FLOOD** was released in 2009. The earlier book, **ORYX AND CRAKE** was released in 2003. Both books involve the same people and the same era, but from different points of view. I first became acquainted with Atwood when I read *The Handmaid's Tale*. She seems to have a very dim view of the future, but each of the books is really just an extrapolation of conditions as they are

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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.



What Have You Been Reading? *continued from page 17*

today. She anticipates what will happen if multinational corporations run the world.

WAITING FOR GERTRUDE, by Bill Richardson, is a wonderful little book featuring reincarnation. The illustrious persons buried in the Pere-Lachaise cemetery in Paris are reincarnated as the feral cats that inhabit the place. Each cat retains the personality of the individual whose spirit is residing within him or her. The tale is told by Alice B. Toklas as she waits for Gertrude Stein to join her in this other world. Oscar Wilde, Sarah Bernhardt, Maria Callas, Colette, Rossini, and Marcel Proust are some of the notable cats of the drama. Jim Morrison causes trouble, as can be expected. This book is just a delight.

Anyone who watches *Castle* on ABC on Monday nights will love **NAKED HEAT** and **HEAT WAVE** “written” by Richard Castle. The TV show is about a New York City crime

writer who kills off his bread-and-butter character and then starts a new series based on a female detective with whom he becomes enamored after helping the police find a killer who is mimicking the deaths in his novels. The books are extensively featured in the TV show and then they show up in book stores. The real author is not revealed but there is lots of speculation on the internet. The best part about these books is the fun of reading a book written by a fictional author. The whole thing reminds me a lot of the movie *Adaptation*, but that is a discussion for another day. The books are different from the show although based on the same characters. They are perfectly good crime fiction and fun to read.

I have also become a fan of Gregory Maguire. His *Wicked* is well-known and tells the Wizard of Oz tale very differently from L. Frank Baum. Maguire has also written other tales

with a very different point of view. The latest one that I came across is **MIRROR MIRROR**. It is the tale of Snow White and the Seven Dwarfs in which the wicked queen is Lucretia Borgia. The tales come alive by personalizing the characters and placing them in some context. It seems there actually was a time when princes were a dime a dozen and they could ride off with the poor but beautiful daughters of one of their subjects. Bianca’s (that’s Snow White: who really names their daughter Snow White?) peril is more real because we know the history of Lucretia and her cruel and craven family.

Waiting on my nightstand is Katharine Graham’s **PERSONAL HISTORY**. My best friend from as far back as high school loaned the book to me. She says it is really good and very readable. Of course, the topic must be interesting considering the author. I am eager to start it. 🐾

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

Westmoreland Revisited

Coal and Our Courts: The Strike of 1910

by The Hon. Daniel J. Ackerman

If your grandfather or great-grandfather worked in the mines of Westmoreland County in 1910, his life expectancy in such an unsafe



▲
The Hon. Daniel J. Ackerman

environment likely fell short of the 48.4 year national average. And while there were 2.1 million union members in the United States, he would have not been one of them. During the prior decade and a half, the coal operators of the Irwin Gas Coal Basin had successfully derailed

all attempts at organization.

He would have had a number of things to grumble about in addition to the back-breaking labor he traded for a living, such as, working a ten-hour day, while his counterparts in the Pittsburgh Coal Basin worked eight, at a higher rate of pay. He would have probably been paid around 80¢ for filling a pit car with coal while working for one of the county's seven coal operators, and soon would be dismayed to learn that his employer had begun using new wagons or pit cars that held more than the ton he had been loading, with no corresponding increase in pay.

Everyone knew he had a dangerous job, and in 1910, measures were taken to improve safety. The Bureau of Mines banned the use of black powder, compelling the use of one of several other more expensive explosives, along with the adoption of improved safety lamps. However, it was the miners, not the operators, who purchased their own explosives and lamps. At the same time, the operators



▲
On March 7, 1910, Keystone Coal and Coke Company fired 100 workers for attending a United Mine Workers of America organization meeting. Keystone miners walked off the job, and striking miners and their families were evicted from their company homes. Twenty-five tent cities sprang up to accommodate the homeless—including this one in Export where 103 tents were put to use—all financed by the UMWA. [Photo: Westmoreland County Historical Society]

cut wages to 58¢ for every ton-and-a-half of coal. These events precipitated an invitation to the United Mine Workers of America for yet another attempt at organization. On March 7, 1910, Keystone Coal and Coke Company fired 100 workers for attending an organization meeting and the Keystone miners walked off the job, soon to be followed by others from across the county.

The resulting strike traumatized Westmoreland County. Striking miners and their families were evicted from their company homes, and 25 tent cities sprang up to accommodate the homeless, all financed by the UMWA. Outside of Export, 103 tents were put to use. The operators engaged new immigrant workers, preferably those who spoke no English, not telling them they were being hired to break

the strike. Violence became common, and during the course of the strike, 16 people would be killed, mostly miners and family members.

During the conflict, the operators relied on the force wielded by their own employees deputized by the sheriff, the Coal and Iron Police—a private industrial police force established by the General Assembly, but employed and paid by the coal companies—and the Pennsylvania State Police, to protect their property and to thwart the goals of the strikers. These organizations, to their discredit, and to the shock of the community, seemed to do more to promote the violence than they did to restore order.

All the strikers, however, were not pacifists; numerous company-owned structures and houses were burned or

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Coal and Our Courts continued from page 19

blown up and close to 1,000 miners and strike sympathizers would be jailed. The courts would soon have their hands full.

The first to mount the steps to the county's two-year-old courthouse were the operator's lawyers in search of an injunction against the strikers, and they got what they came for. There is no way to recount all of the legal actions or criminal prosecutions which arose out of the strike,

so we will focus on two reported cases that capture some of the attitudes of the era: *Westmoreland Coal Company v. United Mine Workers of America, et al.*, 1 WLJ 3 (1911-12); and, *Shields, Sheriff v. Westmoreland County*, 1 WLJ 253 (1911-12). Both opinions are by Judge Alexander D. McConnell, who served from 1895 to 1921.

The *Westmoreland Coal Company* opinion, in which Judge McConnell explains why he is holding a number of union officers and members in contempt of a prior injunction order, for conducting mass marches by the strikers to their places of meeting, is of interest because it contradicts an interpretation of the injunction, given to it by some historians, that the court had barred the strikers from using the public roads. It is also interesting that his opinion begins with the sentence: "We would much prefer to put what we have to say in better order than is possible to do orally"; and ends with: "This sentence is directed to be written out in longhand and a copy furnished to the Sheriff."

Despite his stated reservations, the ten-page opinion, rendered from the bench, conveys his reasoning with clarity. It explains the terms of the injunction as follows.

"They [the strikers] were 'enjoined and restrained from conducting or engaging in marches past the mines, property and works of said Westmoreland Coal Company; from unlawfully assembling at and near the works of the said company for the purpose of holding meetings at such places at any time, and from assembling on the highways at any place or places where the miners of the said company ordinarily pass to and from their work, and from preventing said employees from going peaceably along said highways, and also from attempting by noise, intimidation, threats, personal violence, or by any other means to interfere with the employees of said company in



▲ Coal miners were paid around 80¢ for filling a pit car with a ton of coal while working ten hours a day for one of Westmoreland County's seven coal operators. In 1910, operators cut wages to 58¢ for every ton-and-a-half of coal that was mined. [Photo: National Archives]

their desire to labor, or with any of the property of said company, until further order of this Court ..."

The miners and employees of the company referred to in the order are, of course, the workers hired to replace the strikers. The opinion continues:

"We have time and again said that men have the right to work for any wages that they see fit. All men have the right to refuse work if the

wages are not satisfactory, but neither class has the right to interfere with the contracts that the others make ... It is an unlawful thing, by intimidation or threats, or by show of force, or the display of numbers to attempt to make a man who is willing to work take counsel of his fears rather than his judgment ... The injunctions are not made to apply simply to breaches of the peace; they have a much wider scope. Of course any actual violence would constitute a breach of the peace and would constitute a breach of this injunction, but the injunction is more comprehensive than that.

"What is more terrifying than a large body of hostile men? The courage of the firmest men is liable to be affected by such a show; and if that was not the object of these continued, these frequently repeated marches, what was the object? We have heard no other object given. The camp enclosing some eleven acres, is located at one point, and under a show of passing out of the camp, where ample room exists for any proper meeting, and under a show of marching from that place to a smaller place to hold the meetings, the terms of this injunction have been violated by marching past the works and the houses of the employees of the plaintiff company. We would be very callow indeed if we drew any other inference from the facts that have been shown in this case. There is no other purpose; there is no other design than that of working upon the fears of those who are employed by the company. The marches have been timed to either meet the hour when these men go to work or the hour when these men come from work. The show that is made is a show for the eyes of the employees of this company, and they need not be told that showing is a hostile one ... The marches past the works with a view of intimidation of those who desire

to work is a violation of the substance of this injunction ...”

Having reached that conclusion, Judge McConnell imposed sentence upon twelve individuals, noting: “We do not believe in severity of punishment, but we do believe in vindication of the law.”

Each was fined \$50, which, in 1910, was a considerable sum. For example, even at their previous earnings, a miner would have to load 62½ tons of coal to earn that amount. Further, the miners were remanded to the custody of the sheriff until the fines were paid.

Judge McConnell’s opinion, published June 7, 1911, of course made no reference to the purported omen of the previous August, arising from an incident at the courthouse. On August 30, 1910, on what was reported as a clear, windless day, the scales came loose from the grip of the statue of Justice on the exterior of the courthouse and crashed to the pavement below. From this, the strikers, labor leaders, and some editorial writers divined that that true justice was on the side of the strikers and that Justice had thrown down her tools in disgust.

The following month, the operators filed civil actions seeking as much as \$500,000 in damages against the UMW and twenty-eight individuals. These suits would later be withdrawn and may well have been filed in the hope of intimidating the defendants.

On July 1, 1911, the striking miners, some 5,000 to 6,000 out of the original 16,000 to 17,000, ended their walkout of sixteen months without obtaining any of the concessions they had sought from the operators.

The end of the strike did not terminate the litigation. On February 3, 1912, Judge McConnell would pen an opinion which was not nearly as clear or pointed as his oral rendering in the *Westmoreland Coal* case. Perhaps this was due to the fact that he was trying to justify a result that will strike us as somewhat shocking. The action was *Shields, Sheriff v. Westmoreland County*.

The county controller had surcharged the sheriff for funds that came into his hands during the strike and the sheriff appealed to the court of common pleas. Under the procedures of the day, the court designated the sheriff as the plaintiff, and the county as the defendant.

The amount was considerable: \$42,641 (about \$100,000 today) was paid to the sheriff by the coal operators. Of this amount, the coal companies paid the sheriff \$22,919.25 for securing extra deputies for service during the strike, and \$19,721.75 for deputizing coal company employees. The sheriff deemed that these amounts were owed to him personally for services beyond his statutory duties and, therefore, the county had no claim to the funds.

The court found that there was no public duty which compelled the sheriff to procure additional deputies, and when he went out and found them, he was acting pursuant to a private agreement with the coal companies, therefore, the county had no claim to the \$22,919.25. The remaining

\$19,721.75 was treated differently, but with the same result. For this amount he had done nothing, save swearing in the employees put forward by the operators, who remained under their full control, not his. This amount the court found to simply to be the fruits of extortion, but the operators were not parties seeking redress. In finding for the sheriff, Judge McConnell reasoned:

“The issue in this case does not seek to make the court an instrument for consummating an illegal act, and as between the parties to this case, no question of illegality is involved. The victims of the extortion, if any such there be, are not parties to this litigation. The county cannot, because of a wrong inflicted on the coal companies, successfully claim the money wrongfully taken from them as its own.”

It appears that the coal operators took no offense to the sheriff’s actions, and likely viewed the money as well spent. And there the matter ended. There were probably some at the time who were glad that the lady’s scales had not yet been replaced. 🐾

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Save the Date!

The Young Lawyers of the Westmoreland Bar Association are hosting the third annual fund-raiser for CASA of Westmoreland on **Thursday, September 15, 2011**, from 4:00 to 6:30 p.m. at The Headkeeper in Greensburg.

Complimentary food, beer, and wine will be served. Those 35 or younger pay just \$25 per person; those 36 and older pay \$50. All proceeds benefit CASA of Westmoreland County. Pre-registration and payment strongly recommended: www.westbar.org. 🐾



**everyone
welcome!
bring a
friend!**

Lazzaro Shares Expertise In Live Tax Webinar



▲ Joe Lazzaro

WBA Board Member Joe Lazzaro participated in a live webinar on June 9, 2011, on municipal and school district taxation law. The Pennsylvania Association of School Business Officials (PASBO) broadcast the Internet webinar from its headquarters in Hershey, Pa. PASBO produced the half-day program to educate school district business managers and Act 32 tax collection committee delegates on the best practices for earned income tax collection, mandatory tax withholding of employee payroll for businesses, and the legal challenges associated with county-wide tax collection consolidation.

Joe addressed the acquisition and evaluation of electronic tax data, software identification and overview, data export

BRIEFLY SPEAKING

issues, and employer education. He also discussed options for tax filing online for individuals and businesses. 🌱

Pollock Elected To Leadership Positions



▲ David Pollock

Pittsburgh attorney David Pollock has been elected to leadership positions in the International Academy of Matrimonial Lawyers (IAML), the American Academy of Matrimonial Lawyers (AAML), and the Pennsylvania Bar Association Family Law Section.

David was elected to the Board of Managers of the US chapter of the IAML, having previously served from 2004–2007, and was re-elected Treasurer of the AAML's Pennsylvania Chapter, a post he has held since 2006. This year also marks his 16th as Editor in Chief of *Pennsylvania Family Lawyer*, the official quarterly publication of the PBA Family Law Section. 🌱

HOW STRONG ARE YOUR ADVISOR'S STRATEGIES?



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Our investment strategy does not assure profit or guarantee against loss.

Grant Helps Bring PBI Simulcasts To WBA HQ

The Pennsylvania Bar Insurance Trust Fund has awarded the Westmoreland Bar Association \$841 to cover costs of a purchase of a laptop for use with the PBI simulcasts shown at the WBA headquarters. The WBA now offers one PBI simulcast CLE seminar each month at the WBA headquarters.

The Pennsylvania Bar Insurance Trust Fund was established to promote educational and charitable activities within the legal profession and the administration of justice, particularly in the Commonwealth of Pennsylvania. 🌱

wba

Actions of the Board

MAY 18, 2011

- Membership Committee report accepted as submitted: Charles Grudowski, associate.
- Proposed October 1 as tentative date for 125th anniversary at Courthouse.
- John Greiner will be overseeing the Nuremburg Trial CLE program with help from Alan Berk.
- Civics Ed project will be handled by Joe Lazzaro, John Greiner, and David DeRose; agreed that a meeting be set ASAP.
- Agreed to book Megan Suite for next week's memorial service because RSVPs are well over 50 attendees.
- Adopted the proposed Nominating Committee composition; agreed to work this into the current members for the 2012 election process and implement the proposed composition for the 2013 election year.
- Approved letter to be sent to all LRS participating attorneys explaining the procedure of checking on all referred cases for the purpose of collecting payments owed to LRS.
- Reviewed the proposed Senate Bill 500, which is supported by the PBA and 10 local bar associations and agreed to reach out to local legislators to educate them on this matter.

JUNE 15, 2011

- Membership Committee report accepted as submitted: Susan Ott, associate.
- President's Report:
 - Met with Pro Bono committee to discuss how to increase pro bono participation.
 - Confirmed Tim Hewitt to speak at a community event that will also serve as our quarterly meeting. Location may be museum.

—Met with Greg McCloskey about the lawyers lounge and pro bono offices. County architect is drawing up plans and will get back to us after the plans are received.

—Attended client security fund dinner.

- Agreed that Civics Education Committee should meet and decide how to best approach the schools over the summer so that program is ready to launch in September.
- YL Chair reported that croquet tourney was a success.
- CASA event is set for September 15; board shared ideas on how to promote the event and how to raise additional funds.
- Learned that Peg Tremba has volunteered her pool for the site of a Summer YL party and agreed to seek to have this in August.
- Agreed to invite Don Rega, YL Chair-Elect, to attend the WBA board meetings.
- Agreed to adopt a resolution in favor of SB 500 stated similarly to Schuylkill's and to deliver to local legislators, the PABE, and the PBA.
- Agreed to look at the Penn Stater for the 2012 Bench/Bar Conference.
- Agreed to ask John Hauser and Peg Tremba to serve as Bench/Bar Committee Co-Chairs.
- October 1 is confirmed for the 125th anniversary gala at the Courthouse.
- Voted to purchase, rather than lease, a new Sharp color copier. 🐾

Tim Hewitt's faces of fire and ice. Top: Tim competes in the Badwater Ultramarathon, a 135-mile race in California from Death Valley to the portals of Mount Whitney. Temps rarely fall below 110°F, and may rise as high as 130°F. Bottom: Tim competes in the Iditarod, a race of around 1,150 miles between Knik and Nome, Alaska. Temps at night often go as low as -50°F.



Fall Events Spotlight

continued from page 1

KEN GORMLEY (continued)

Ken Starr/Bill Clinton story in this talk that begins at 7 p.m. in the Mary Lou Campana Chapel & Lecture Center at the University of Pittsburgh at Greensburg.

A \$5 suggested donation (payable at the door) will benefit the Westmoreland Bar Foundation and includes a Q & A session, light refreshments, and book signing.

The evening is sponsored by the WBF, The Belden Family Fund, and the University of Pittsburgh at Greensburg. Reserve your place online at www.westbar.org. 🐾

TIM HEWITT (continued)

practice? Find out at the WBA Fall Quarterly Meeting when our own WBA member and ultramarathoner, Tim Hewitt, will discuss his remarkable journeys, and the mental fortitude it takes to be—as author Ed Mayhew calls him—“the toughest athlete in the

world.” Not a bad title for a 5'9" 150-lb 56-year-old.

The Fall Quarterly Meeting will be held in the Campana Chapel at the University of Pittsburgh at Greensburg on Tuesday, October 18, at 7 p.m. The event is free and open to the public. A wine and cheese reception will follow in the Hempfield Room at UPG (walking distance from the chapel).

Plan to join us and reserve your place online at www.westbar.org. 🐾



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CALENDAR OF EVENTS

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

SEPTEMBER

- 5** Courthouse closed in observance of Labor Day
- 8** Membership Committee, Noon
- 14** Real Estate Committee, Noon
Ned J. Nakles American Inn of Court, 5 p.m.
- 15** Elder Law & Orphans' Court Committees, Noon
- 20** Family Law Committee, Noon
- 22** [CLE] Persuasive Tactics in the High-Tech Courtroom, 4 to 5 p.m., Judge Marsili's Courtroom
- 23** Red Mass, Noon, Saint Vincent Basilica, Latrobe
- 27** [CLE] Introduction to Dependency Court Practice in

Westmoreland County, 9 a.m. to 4 p.m.

An Evening with Ken Gormley, 7 to 9 p.m., University of Pittsburgh at Greensburg

OCTOBER

- 1** 125th Anniversary Gala, 6:30 to 9:30 p.m., Westmoreland County Courthouse
- 18** [CLE] Family Law Hot Topics, Noon to 1:15 p.m.
WBA Fall Quarterly Meeting featuring Tim Hewitt, 7 p.m., University of Pittsburgh at Greensburg
- 25** [CLE] Fundamentals of Bankruptcy, Noon to 2:15 p.m.

LAWYERS CONCERNED FOR LAWYERS CORNER

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