



# Celebrating Our First 125 Years

The Westmoreland Bar Association celebrated its first 125 years of service to the Westmoreland County, Pa., community with a gala on Saturday, October 1, at the Westmoreland County Courthouse. A slideshow of our first 125 years can be viewed online at [westbar.org](http://westbar.org); more photos from the event can be viewed on pages 12 and 13, or by WBA members at [wbaphotos.shutterfly.com](http://wbaphotos.shutterfly.com).



## Member Directories Available

Just in time for the 125th anniversary of the Westmoreland Bar Association, the newest pictorial membership directory is available. WBA members can stop by WBA Headquarters during regular business hours for a complimentary copy.

If you prefer to have it mailed, send us a check for \$5 and we'll drop it in the mail for you. Additional copies are available at \$5 each.

And just a reminder—you can access the same membership information online anytime at [westbar.org/attorneys](http://westbar.org/attorneys).



SEE PAGES 12-13 FOR MORE PHOTOS FROM THE 125TH ANNIVERSARY GALA.

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President's Message

# Counselor ... Coach ... A Combination of Both

by Michael J. Stewart, Esq.

On September 9, 2011, I had the unique and pleasant experience of making a joint presentation with my daughter at the annual Behavioral Health Update



Conference presented by Torrance State Hospital. When I was first approached by Dr. Safdar Chaudhary to speak at the conference, I explained to the good doctor that my area of concentration was divorce and I would be glad to share my observations over the last 34 years on what I refer to as the "emotional stages" of a divorce. He encouraged me to proceed.

Acknowledging that I was incapable of preparing a PowerPoint on my own, I immediately recruited the assistance of my daughter, Dr. Kathleen J. Stewart, Psy.D. To begin the process, I prepared a list of my random thoughts regarding the emotions of parties I have observed in divorce and how the same impacted the divorce process. Katie took my random thoughts and produced research which in many cases supported my observations. Clearly, divorce is both a legal process as well as a psychological process. I would like to share with you the main thrust of our presentation.

The legal process is stressful and oftentimes frustrating for the litigants. The personal nature of divorce only magnifies the anxiety a party experiences. He or she is in unfamiliar territory. Divorce is about change. There are economic changes, none of which are comfortable. You may be required to move, you may not see your kids on a daily basis. For most of us, change is unwelcome, often

involves loss, and often is scary. Guilt, anger, humiliation, and fear are universal in divorce. It is essential that matrimonial attorneys do not underestimate the emotional fragility of their clients and offer direction at a pivotal time in their client's life.

In preparing our presentation, my daughter and I reviewed an article entitled "The Psychology of Divorce," by Sam Margulies, published in *Psychology Today*. Mr. Margulies stated that "the most important psychodynamic of divorce is the issue of mutuality and how it develops. In very few divorces do the two partners mutually decide on the divorce at the same time."

This is true. The party initiating the divorce may have spent the last few years of marriage emotionally preparing for divorce whereas the "non-initiator" may be anywhere on a continuum from resigned acceptance to utter shock and surprise.

If the parties are on the same or similar emotional level, it has been my experience that you are able to move forward with the economic issues and conclude the divorce. Oftentimes, the "non-initiator" is emotionally crippled and ill-prepared to proceed with life-changing decisions. Despondency, depression, and sadness are common. Studies show that in comparison to married men, men who go through a divorce are six times as likely to suffer from depression in the following two years. Divorced/divorcing women are three-and-a-half times as likely to suffer depression in comparison to their married peers. During the first

two years following separation, both genders experience increased physical difficulties and illness due to the effects of unusually intense stress on the immune system. Secondary anxiety undermines the ability of the parties to concentrate at work, attend to children's needs, etc.

Studies have also established that the first two years following separation present the most intense challenges for the parties. This is also the time when there is opportunity for positive change. Oftentimes we are representing a party who has been overly dependent upon his or her spouse and the separation

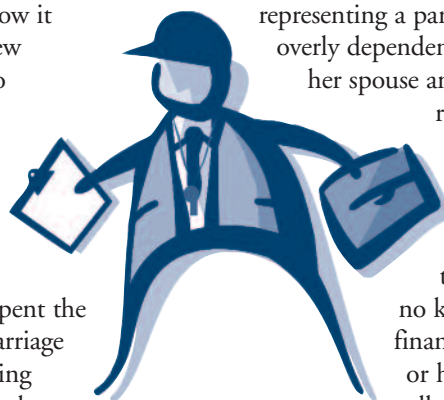
reveals the client's previously unseen vulnerability.

A new client often reveals that he or she has no knowledge of family finances, relies on his or her spouse to make all economic decisions,

and can offer no assistance in preparing for litigation. This client is in your office only because family members or friends told him or her "you need an attorney." This is an opportunity for an attorney to initiate positive change on behalf of a client.

First and foremost, you need to recognize that you are not a mental health counselor and should assist your client in obtaining professional counseling/therapy when needed. Second, assure your client that the "system" will allow him or her sufficient time to "emotionally catch up" with the initiator and that in the interim, you will protect his or her economic interests. Third, familiarize your client with the provisions of the

*continued on page 8*



# Remembering John D. Ceraso

*Editor's note: John D. Ceraso passed away on April 6, 2011. A son of the late Louis H. Ceraso, he is survived by his mother, Carolyn; his daughters, Elle and Kate Ceraso, of Apollo; fiancée, Jennifer Sanner, of Lower Burrell; sisters, Sharon and her husband, Frank Wolfe, of Ford City, and Sara and her husband, David Kovass, of Canfield, Ohio; and six nieces and nephews.*

by David A. Regoli, Esq.

It is still very difficult for me to believe that my friend is no longer a phone call away, down the hall in another office, or off in the Courthouse somewhere. This past April, after being ill for a couple of years, my friend, John David Ceraso—Johnny—went on to a better place, peacefully, with his family at his side. I haven't deleted his contact information from my cell phone because in

doing that, I would have to admit he's not here anymore. For the same reason, it's taken me almost six months after I was asked to finish this piece.

Johnny and I were the best of friends since we were little kids. I really don't recall not knowing him or not being friends with him. As young kids, we had our own secret handshake: when we shook hands, we interlocked our pinky fingers. That handshake stayed with us until one of the last times I saw him in the hospital just before he died.

John and I graduated the same year from St. Joseph High School in Natrona. For the last 28 years, we always bragged that we graduated first and second in our class: John was first, I was second. What we never told anyone was that they lined us up according to height.

John went to college at Duquesne University and graduated from their

law school in 1990. He became a member of this bar in 1990 and started his career in the Public Defender's office. John loved working in that office.

He had a passion for representing the underdog and the downtrodden. Although he came from a home that provided him with many privileges, he never believed that he was better than any other person or client.

He loved representing someone without worrying about charging a fee or becoming involved in the business aspects of practicing law. Working in the Public Defender's office gave him that satisfaction.

John did not have a confrontational personality. If his client wanted a trial, John never argued and gave him a trial; he always conducted himself with the utmost respect for the client, the witnesses, and the court.

John and I tried many cases together over the last 20 years. There were times that I could tell that his easy-going disposition was what the jury needed. In those cases, I enjoyed sitting back and watching the jury fall in love with his style and personality.

I always admired John and looked up to him. He came from such a well known and respected family. His dad, Lou, and uncle, Tom, were two of the finest attorneys to ever practice in Westmoreland County.

As a kid, John was always the one with a few bucks in his pocket. It wasn't only because his family was well

*continued on page 4*



▲ John D. Ceraso

## Looking for a special way to remember someone?

### Births • Deaths • Marriages • Anniversaries Making Partner • Passing the Bar

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

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



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](mailto: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](http://www.westbar.org/thesidebar).

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# Remembering John D. Ceraso *continued from page 3*

off, it was also because he started working at an early age cutting grass and doing landscaping. If we went to the convenience store, John always made sure that all of his friends got anything they wanted. He was generous to a fault.

In high school, he was the same. Anytime we got in anyone's car to go somewhere, he made sure that if the driver needed gas, we could fill up at the Gulf station where he simply signed his name. He knew his dad wouldn't mind. John was happy if you were happy. Despite the fact that we graduated high school together, he finished college in four years and I took five. He started law school. I had no idea what I wanted to do. He encouraged me to go to law school. He said how cool would that be, we can work together. Needless to say, I am a lawyer today because John Ceraso encouraged me to go to law school. We did everything together. We fulfilled the dream of working together. We traveled together, including several trips to Las Vegas and Atlantic City. We always double dated and sometimes we even dated the same girl. We both had red Alfa Romeos. His was a sedan. Mine was a convertible.

After we both became lawyers, his dad realized that we needed to also look like lawyers and sent us to buy clothes at the short-person store in Cleveland, Ohio. We bought entire wardrobes for both of us.

John was really a Mini Me of his father. Those who remember Lou would say, without question, that he was truly a fine gentleman. John was also a fine gentleman. Both had soft voices and never displayed any disrespect to a court, another attorney, or an opposing party. They had class—the kind of class that you could not teach. Louie was a great mentor for John in the early days. Unfortunately, Lou fell ill and was forced to retire at an early age because of his health



▲ *Johnny Ceraso and David Regoli—the best of friends since they were little kids.*

problems. When Lou died, I think some part of Johnny died with him. He truly missed his dad and his dad's guidance.

Johnny followed almost all of his dad's examples. The only one he never mastered was dressing like his dad. Louie was by far the best-dressed attorney. His clothes were tailored to perfection and he was wrinkle-free. Now, Johnny—well that was a different story.

Johnny would take a brand new suit off the rack and somehow destroy it before he got to the office. He was notorious for spilling coffee on his shirt or tie. He even used his tie to clean his glasses. He used the bottom of his shirt as a napkin. That wasn't so bad, but half of the time, he forgot to tuck it back into his pants. Louie's shoes were the finest that you could buy. They never had a scratch or smudge. Johnny's were also the finest, but, the moment he put them on, he destroyed them.

The last few years were difficult for John and those who loved him so much. Although he struggled with his problems, he never lost his truest and best character trait: John was happy when you were happy.

I never met a person who knew John who didn't like him and immediately consider him a friend. He made friends wherever he went. The last couple of years, when I would encounter a judge, a lawyer, or friend of Johnny's when I entered the Courthouse, the first thing they said to me was not, "Hey, how are you?" but, "Hey, David, how is Johnny?"

It was because of his wonderful personality and demeanor. He made time for everyone: from the maintenance staff to the judges, it didn't matter. He often sat on the benches in the lobby and talked to whoever was seated next to him.

Johnny was fortunate enough to have two beautiful daughters, Elle, who is now 14, and Kate, 11. The girls meant everything to him. I can only imagine how difficult it would be to be a divorced parent. Although he did not see them every day, he tried to talk with them and text them as much as he could. He cherished his weekend overnights with them. When he came to the office on Monday mornings, he never missed an opportunity to tell me what a wonderful weekend he had.

The weekend before he really got sick and was hospitalized for the final time, he was able to take his daughter, Kate, to Splash Lagoon in Erie with his fiancée, Jennifer, and her daughter. During his final weeks he told me how thankful he was that he was able to go on that trip.

Many have said to me that I was a great friend to John during his difficult time. Yes, I was, but friends who have the kind of relationship we had don't keep score. If we did, I'd freely admit that Johnny was a better friend to me than I to him, and that if the shoe were on the opposite foot, I would want no friend at my side more than John Ceraso.

Rest in peace, my friend. 🌸

# Remembering Robert Wm. Garland

*Editor's note: Robert Wm. Garland passed away on July 11, 2011. He is survived by his wife Dottie; his six children, Summer Friedlander and her husband, Duffy, Colleen Robinson and her husband David, Holly Garland and her husband, Ken Ficerai, Gregory Garland and his wife Mardi, Timothy Garland, and Robert Garland and his wife, Margie; thirteen grandchildren, Gregory and Stephen Garland, Ryan and Max Friedlander, Gabriella, Caleb, and Noah Ficerai-Garland, Oliver, Dominick, Luke, and Kipp Robinson, and Robert and Thomas Garland; and his sister, Jean Lackey, of Boaz, Alabama.*

by Ken Ficerai, Esq.

“He was such a gentleman.” I can't count the number of times I heard that after Bob Garland passed away this summer. I knew Bob personally and professionally for over twenty years and I know how true that is. Bob was intelligent, honest, and competent, he was patient, helpful, and humble, and he was quiet, peaceful, and kind. In a word, he was a gentleman.

Bob was a member of what Tom Brokaw described as the greatest generation any society has ever produced. As a young man, Bob enlisted in the Air Cadets in June 1942 when he was an undergraduate at the University of Pittsburgh. He became a navigator in the 436th Troop Carrier group, a part of the Ninth Air Force serving in World War II. It was his job to transport troops to the invasion of Normandy, to Utah Beach, to the invasion of southern France in Operation Anvil, and to Operation Market Garden, the Rhine River assault in September 1944. He also helped land supplies to General Patton's 3rd Army and transported wounded in need of medical assistance. In recognition of his bravery and distinguished service, Bob was awarded the Air Medal with four oak leaf clusters, the European/African Campaign ribbon with seven battle stars and the 436th Presidential Unit Citation.

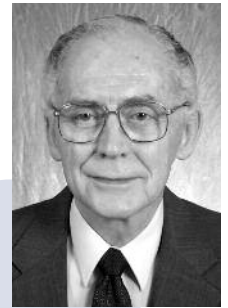
You would never know any of that from the stories Bob told. He could talk about the war for hours and often

did, particularly with Christy Walthour, a fellow war veteran and Bob's law partner for many years. But he never boasted or bragged. The stories I remember him telling were of taking a box of chocolates to an English family denied such treats by rationing, of sharing a cake he was given after retrieving wounded soldiers with his friends, and of splitting a case of champagne with the men in his barracks after returning from a mission into France. Bob never showed off his medals, but on a shelf near the dining room he prominently displayed a pair of cups from England's Royal Air Force for holding hard-boiled eggs.

He would calmly recall taking the southern route across the Atlantic Ocean in complete radio silence, and being solely responsible for navigating

his plane to a small island with no runway lights for refueling, using only his instruments and the stars, as if he were sitting on the swing in his backyard showing me the Little Dipper. Then, almost as an afterthought, he would remark how lucky he was to not have been shot by the bullets coming up through the plane's floor.

Bob neither sought nor appreciated attention for his accomplishments. Although he came home to a hero's welcome after the war, Bob was more enthused about meeting another Robert Garland—the one responsible for devising the nation's first plan for Daylight Saving Time—than by any of the attention he himself received. I never truly appreciated the quiet pride he maintained for both his military service and his physical fitness until he wore his original military uniform to



▲ Bob Garland

*continued on page 6*



**Excela Health** in Westmoreland County is searching for a Full Time Paralegal. This position will support the Legal function in preparation of transaction documents, corporate filings, minutes, correspondence and other corporate matters. Completion of an Associate Degree program for Paralegal/Legal Assistant or its equivalent plus a minimum 5 years experience as a litigation paralegal dealing with a wide range of responsibilities is required. Experience with e-discovery also is required. Medical terminology knowledge and understanding of complex litigation and legal citations is preferred. Discover more about our leading edge healthcare facilities and services and explore the many opportunities available to join our exceptional team. Learn more and apply online at: [www.excelahealth.org](http://www.excelahealth.org) **referencing req #: 11-0613. EOE M/F/D/V**

## Remembering Robert Wm. Garland *continued from page 5*

the Bar Association Christmas dinner several years ago, nearly 60 years after he was discharged.

After receiving an honorable discharge from the service, Bob completed his undergraduate degree at the University of Pittsburgh, graduating *magna cum laude*. He then went on to Pitt's School of Law, serving on Law Review and obtaining his law degree in 1951. Bob was the solicitor for the City of Jeannette for a number of years and practiced law in Westmoreland County with the law firm of Walthour and Garland until he retired in 2004. He was a member of the Westmoreland and Pennsylvania Bar Associations, was admitted to practice before the United States Supreme Court, and the Pennsylvania Supreme, Superior, and Commonwealth Courts.

Throughout his years of practice, Bob epitomized all that is good about being a lawyer. He knew what he was doing, and he did it well. He was

diligent, honorable and trustworthy in the representation of his clients, and his knowledge of real estate and estate law was unsurpassed. He was a man of few words and you could trust what he said implicitly. Although Bob was never loquacious or verbose, he was a gifted and eloquent writer who loved reading and writing poetry. One of his poems was published several years ago.

In addition to being a war hero and an outstanding lawyer, Bob was also a loving and devoted husband to his wife of 63 years, Dottie. Together they raised their family of six children, two of whom, Holly and Rob, are also lawyers. Bob had 13 grandchildren. He loved to watch them run and play in his back yard. He often joined them in badminton, crochet, wiffle ball, or kick ball, usually thereafter serving up Klondike bars and root beers from the seemingly endless supply he kept on hand. When the time was right, he

also picked raspberries with them from the bushes he had planted nearby.

The avid interest Bob developed in the stars and the weather as a navigator continued throughout his life. He paid close attention to the weather, knew how much longer or shorter each day would be, and when the best time was to plant most anything. He loved to garden and to work in the yard and he devoted the same care, time, and attention to gardening as he did to everything else in his life. If Bob did something, he did it right. He didn't take short cuts and he didn't cut corners.

Throughout his life and his career, Bob was known as a man who loved God, his family, and his country. I knew him in all those ways, but most of all I knew him as my father-in-law, my friend, and a true gentleman in every sense of the word. 🍷

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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.

# QA

## Terry O'Halloran, Director of the Domestic Relations Office of Westmoreland County

*Editor's note: Earlier this year, Greensburg attorney Terry O'Halloran was named Director of the Domestic Relations Office of Westmoreland County, replacing John Graham, who retired after almost 25 years on the job.*

### Q CONGRATULATIONS! WHAT PAST JOB EXPERIENCE LED YOU TO THIS POST?

**A** In 1993, I was hired as Solicitor for the Domestic Relations Office. I worked part-time, consulting with the Director on legal issues relating to the courts, other counties, and state and federal rules and regulations. It was an active position that required me to be at the office for at least some part of every day.

Then, 1 1/2 years ago, I assumed the full-time post of IV-D Attorney, that is, the prosecuting attorney who goes after the 20% or so of people who are in contempt for non-payment of their child support.

### Q HOW DOES YOUR ROLE AS DIRECTOR DIFFER FROM WHAT YOU'VE DONE IN THE PAST?

**A** In this role, I'm more of a problem-solver.

### Q IS IT ACCURATE TO SAY THAT THE DOMESTIC RELATIONS OFFICE IS AN ARM OF THE FAMILY COURT SYSTEM?

**A** Absolutely! Historically, Family Law was a less-than-respected branch of the Court of Common Pleas. But now, nationwide, the concept of providing financial support for children has become an objective judicial function with the responsibility of determining paternity, calculating the amount of child and spousal support owing, and enforcing those orders. The need is there. And this office has come such a long way.

### Q WHERE DOES THIS OFFICE GET ITS FUNDING TO OPERATE?

**A** We are part of the budget passed every year by the County Commissioners, but we receive about 66% reimbursement from the federal government—Title IV-D of the Social Security Act, specifically, Welfare. In fact, people who apply for cash grant assistance from Welfare for their children must file support complaints against the other parent in this Office as a prerequisite to receive those cash grants. That way, the responsible parent reimburses Welfare for the cash assistance paid to the children by the government.

### Q ARE THERE ANY THINGS YOU WILL CHANGE NOW THAT YOU ARE DIRECTOR?

**A** John left this office in pretty good shape. His best legacy was giving me this staff of over 60 employees, particularly Deputy Director Kathy Heckman, who excel at what they do. This office wasn't broken, so I don't need to fix anything.

### Q IN OTHER WORDS, YOU HAVE A SMOOTHLY OPERATING SYSTEM.

**A** That's true. The Feds measure our performance officially by six standards such as amount of support collected, number of support orders entered, amount of arrears collected, etc., and Pennsylvania was the first state to comply with all six standards that they set. In particular, by those measures, Westmoreland County is one of the better-performing counties in the state. By full compliance with those standards, we receive our full reimbursement from the federal government. That makes our budget very happy!

### Q WHAT'S ON THE HORIZON FOR THE FUTURE?

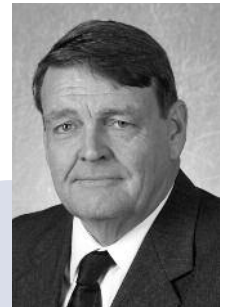
**A** Well, now that we've complied with their standards for a couple of years, the bar is being raised. They are looking beyond the standards and objectives to see if we are meeting them as inexpensively and as efficiently as we can. So that will be something to work on. That means the standards for our audits will be changing and we will have to adapt to that. After all, it's their money, so they can tell us how to spend it.

But beyond looking simply at the bottom line, we would like to get better at what we do in areas like community outreach and "preventive maintenance." In truth, it's cheaper to raise kids when families stay together, or at least get along. We just this summer entered into a contract with PIC and the "Dads Matter" Program in an effort to find employment for the "terminally under-employed." We partner with the Blackburn Institute to address the problem of spousal abuse. And we're trying to raise our clients' awareness of the necessity of paying child support earlier in the legal process so that arrears aren't so daunting when the court order finally comes down to begin payments.

And, of course, the technology that allows us to find all sources of income available to the parties is always improving.

### Q GOOD LUCK TO YOU IN YOUR NEW POST.

**A** Thank you. I'm honored to be in charge of such a fine group of people. I'm hoping they'll make my job a lot less difficult. 🍀



Terry O'Halloran

# President's Message *continued from page 2*

Pa. Divorce Code, especially the insignificance of "fault" and the significance of the timeframes set forth in the no-fault provisions of the Code under Sections 3301(c) and 3301(d). Fourth, address



necessary change in a positive manner.

While we are sometimes quick to criticize our state legislature, it is my opinion that our Divorce Code allows for a period of emotional adjustment. Under Section 3301(c) of the Divorce Code, both parties may consent to the entry of a decree in divorce at any time after 90 days from the service of the divorce complaint. Under Section 3301(d) of the Divorce Code, one party may unilaterally proceed and request the entry of a decree in divorce after two years of living separate and apart. These time restraints protect both parties and could be thought of as affording each party sufficient time

to work through the different levels of emotions parties experience during a divorce. It is rare that you would find two parties emotionally and economically prepared to conclude the divorce 90 days after its initiation. The two-year wait period often allows the "non-initiator" to "catch up" in terms of mourning the relationship, mobilizing coping skills and his or her support network, adjusting to change, etc. It also provides for "light at the end of the tunnel" for the initiator. It provides counsel with the opportunity to dispose of issues that need to be addressed before resolution can be accomplished.

While divorce is an adversarial process, studies indicate that greater than 90% of the divorce cases settle prior to trial. The trial involves winning and losing, while settlement requires cooperation and negotiations. How the attorney approaches both of these may set the emotional tone that will remain throughout the process.

If your client has been wronged, he or she may want to address fault and be dead set on "winning." While there is room for empathy in the divorce process, the sooner counsel can get his or her client to focus on the future and not the past, the sooner settlement can be realized. Educate your clients about the cost of ongoing litigation, both emotionally and financially. Where children are involved, stress the need to maintain a relationship with the former spouse. Preparing for the future takes the emphasis off past hurts and turns attention to upcoming tasks, goals, opportunities, and hopefully, future happiness.

In closing, I remind my fellow matrimonial lawyers what we do ... we set people free. Hopefully, we give them the opportunity to achieve the greatest goal of all, peace of mind. ☺

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\*Discounts are available where state laws and regulations allow, and may vary by state. To the extent permitted by law, applicants are individually underwritten; not all applicants may qualify. Savings figure based on a February 2011 sample of auto policyholder savings when comparing their former premium with those of Liberty Mutual's group auto and home program. Individual premiums and savings will vary. Coverage provided and underwritten by Liberty Mutual Insurance Company and its affiliates, 175 Berkeley Street, Boston, MA. © 2011 Liberty Mutual Insurance Company. All rights reserved.



## Committee Reports

# Great Opportunity to Serve

## ***Nominating Committee***

The Nominating Committee is accepting letters of application for positions on the Board of Directors, Membership Committee, and Building Committee.

At the annual meeting of the WBA on April 4, 2011, the membership unanimously voted to increase the size of the WBA Board. Every year, the membership will be voting to elect two Directors to the Board for a three-year term. Although a board member may be elected to become an officer, it is possible that their service to the board would end in three years. This is a great opportunity for those who want to serve for only three years.

### **RESPONSIBILITIES OF BOARD MEMBERS**

The Board of Directors ensures that the WBA's mission, services, policies, and programs are carried out. Applicants should have experience in WBA activities such as chairing a committee, attending bar functions, and being active in the bar community. In addition, they must be able to think clearly and creatively, and work well with people, individually and in a group.

Interested candidates should know that the responsibilities include attending each monthly board meeting, the annual board retreat, and planning retreat, all bar association and foundation activities, and serving at the president's request.

Two three-year terms are available. The Directors will:

- Attend all board and appropriate committee meetings and special events.
- Serve on committees and offer to take on special assignments.
- Inform others about the Westmoreland Bar Association and its activities and functions.



- Assist the board in carrying out its fiduciary responsibilities, such as reviewing the organization's annual financial statements.
- Take responsibility and follow through on given assignments.
- Contribute personal and financial resources in a generous way according to circumstances.
- Open doors in the community.

### **RESPONSIBILITIES OF THE MEMBERSHIP COMMITTEE**

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

Membership Committee member will:

- Attend monthly committee meetings.
- Personally interview and educate applicants on the workings of the WBA, including committee assignments, staff responsibilities, and new lawyer opportunities such as the mentor program, the Young Lawyers, and Pro Bono.
- Make recommendations for membership eligibility and class (participating or associate).

### **RESPONSIBILITIES OF THE BUILDING COMMITTEE**

The Building Committee is responsible for maintaining the management and upkeep of Bar Headquarters. One five-year term is available. The Building Committee member will:

- Attend quarterly committee meetings.
- Be knowledgeable about the utilization of Bar Headquarters for business and social functions.

*continued on page 10*

## Lawyers' Exchange

(Free to all members of the WBA)

**LEGAL SECRETARY WANTED** Experience required. Pay and benefits commensurate with experience. Greensburg area. 724-837-3333.

**ASSOCIATE WANTED** MEARS, SMITH, HOUSER & BOYLE seeks to hire associate. Please send résumé to Office Manager, 127 N. Main Street, Greensburg, PA 15601. All replies will be kept strictly confidential.

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

# Committee Reports

*continued from page 9*

- Help to develop annual budget for operation of building.
- Make recommendations to Board of Directors on matters of concern in building upkeep.

Any member interested in running for the above positions should submit their petition to the Chair of the Nominating Committee, c/o the WBA by **December 5, 2011**. See the insert in this issue, or download an application from [www.westbar.org](http://www.westbar.org).

For further information about any position, contact a Nominating Committee member. The members of the Nominating Committee are: Barbara J. Christner, Chair; Jack L. Bergstein; David S. DeRose; Timothy J. Geary; Karen L. Kiefer; Annaliese P. Masser; James P. Silvis; Scott O. Mears, Jr.; Donald J. Snyder, Jr.; and Michael V. Quatrini. 🐾

## Retention Committee

**O**n November, 8, the voters of Westmoreland County will vote on the question of whether Common Pleas Court Judges Debra A. Pezze and Richard E. McCormick, Jr., should be retained for additional ten-year terms.



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



▲ *The Hon. Debra A. Pezze*

The Westmoreland Bar Association recently conducted a poll of its participating members to determine how the lawyers, who practice before these judges, answer the question of whether these two judges should be retained. Individual members were asked to vote either “in favor of” or “in opposition to” retention.

The results show that Westmoreland Bar Association attorneys overwhelmingly support both Judge Pezze and Judge McCormick, Jr., with a substantial majority “in favor of” retention in the November election. WBA President Mike Stewart announced the results as follows:

- Judge Pezze—96%
- Judge McCormick, Jr.—93%.

“Member polls regarding the retention of local judges are an important part of our mission of community service and education,” said Attorney Stewart.

“Our goal in publicizing these results is to help voters be better informed when retaining judges.”

By law, an incumbent judge can seek a new term in office on a yes-no retention basis in the general election. The election is non-partisan and non-political. 🐾

# BRIEFLY SPEAKING



**The Hon. John J. Driscoll** will be the guest of honor at the 2011 Distinguished Citizen Dinner on Thursday, November 10, at the Fred Rogers Center at Saint Vincent College, sponsored by the Westmoreland Fayette Council of the Boy Scouts of America. The Distinguished Citizen program is to recognize individuals for outstanding contributions to the Westmoreland County community while helping raise needed funds for the Westmoreland Fayette Council. Tickets and sponsorships are available by calling 724-837-1630 or e-mail [tim.dingman@scouting.org](mailto:tim.dingman@scouting.org).



Pittsburgh attorney **David S. Pollock** of Pollock Beggs Komar Glasser LLC has been named to the 2012 edition of *The Best Lawyers in America* in collaboration with the U.S. News & World Report. Selection to Best Lawyers is based on a rigorous peer-review process and is described by *The American Lawyer* as “the most respected referral list of attorneys in practice.” This is the third year in a row Pollock has been honored by inclusion in the publication.

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# foundation focus

## College and Law School Scholarships Awarded



The Westmoreland Bar Foundation recently awarded college scholarships to two students who participated in the county-wide Mock Trial Competition, a contest between area high school teams who compete in simulated legal trials. Winning teams proceed to regional, state and national playoffs.

*Nathan Kong* is a 2011 graduate of Franklin Regional High School and a member of the winning county Mock Trial team. Nathan says Mock Trial changed his life: "I used to be a timid, shy freshman," he says, "and now I have become a confident, motivated college student, all thanks to Mock Trial. To receive the Mock Trial Scholarship was an honor beyond words and I am truly grateful for everything Mock Trial has brought to me." Nathan is attending Case Western University in Cleveland, Ohio, to study Cognitive Science and Biochemistry. He is the son of Jing Kong and Wei Lin.

*Kaylyn Farneth*, a 2011 graduate of Valley High School, is attending the University of Pittsburgh to study Education and Theatre. She is the daughter of Richard and Pamela Farneth.

### LAW SCHOOL SCHOLARSHIPS

The Foundation also awarded three law school scholarships to Westmoreland County residents for the 2011-12 school year.

*Meghan McClincy*, from Greensburg, was awarded \$2,200 from the **Wayne R. Donahue** and the **Donald Laird Hankey Memorial Scholarships**.

These scholarships were named for two lifelong residents of Westmoreland County. Both were sole practitioners and members of the Westmoreland Bar Association. Meghan, who is a third-year law school student at PSU Dickinson School of Law, is a graduate of Greensburg Central Catholic and Kenyon College in Ohio. She interned with the Westmoreland District Attorney's office and is currently interning with the Army JAG Corps in Fort Drum, N.Y. Meghan hopes to pursue a law career in public service.

*Douglas Francken*, from Export, was awarded \$1,500 from the **Donald Laird Hankey Memorial Scholarship**. Doug is a second-year student at George Washington School of Law, transferring from PSU Dickinson School of Law. A graduate of Greensburg Central Catholic and the University of Virginia, Doug

intends to concentrate his law practice in Contract and Business Law.

**The Honorable David H. Weiss Memorial Scholarship** is named for the former President Judge of the Court of Common Pleas in Westmoreland County. This scholarship is awarded to a Westmoreland County resident enrolled in the University of Pittsburgh School of Law. *David Mulock*, a graduate of Pittsburgh Central Catholic and the University of Maryland, has been awarded the Weiss Scholarship. David is a resident of Murrysville and is a first-year law student at the University of Pittsburgh School of Law. 🌟

## Volunteers for Justice

The Pro Bono Program extends thanks to all the attorneys who volunteered their time from July to September 2011: Timothy Andrews, Marla Blum, Rebecca Brammell, John Bumbaugh, Faith Burns, Sean Cassidy, Debra Cribbs, Abby De Blassio, P. Louis DeRose, Rebecca Fenoglietto, Ronald Fonner, Charles Fox IV, Dennis Gounley, John Hauser III, James Kelley, Jr., Karen Kiefer, Maureen Kroll, Irene Lubin, Shirley Makuta, Charles Mason, Jr., Philip McCalister, Paul Miller, Jr., Les Mlakar, Donald Moreman, Debra Nicholson, Keith Nicola, Terence O'Halloran, Andrew Skala, Robert Slone, Harry Smail, Jr., Michael Stewart, Michael Stewart II, Joanne Wilder, Susan Williams, Ron Zera. 🌟

## gen•er•os•i•ty

(jen' e-ros' i te) n. pl. -ties 1. Liberality in giving or willingness to give; a scholarship funded by the generosity of anonymous donors. 2. Nobility of thought or behavior; magnanimity. 3. Amplitude; abundance. 4. A generous act.

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September 2011 Civil Trial Term

# Jury Trial Verdicts

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

Of twenty-seven cases listed for the September 2011 Civil Jury Trial Term, four settled, eighteen were continued, two were transferred to arbitration, and one was taken under advisement. The two civil jury trials during the September 2011 civil trial term are summarized below.

## AMERICAN NATIONAL PROPERTY AND CASUALTY COMPANY V.

**HEATHER GODZIN, NADINE ORD, A/K/A NADINE GODZIN, KERRY ORD, AND DONALD W. KOOSER, AND DONALD A. KOOSER  
NO. 10075 OF 2009**

*Cause of Action: Declaratory Judgment—Insurance Coverage*

On June 4, 2006, Heather Godzin was operating a 1990 Toyota 4Runner, which was owned by her parents, Nadine Godzin (a/k/a Ord) and Kerry Ord, when she was involved in a two-car accident on Route 31 in Mount Pleasant Township, Westmoreland County. The other vehicle was owned and operated by Donald W. Kooser; his son, Donald A. Kooser, was a passenger in the vehicle at the time.

At the time of the accident, the vehicle driven by Heather Godzin was insured by Infinity Leader Insurance Company, not the Plaintiff, American National, and there was no dispute as to the applicability of the Infinity policy to the loss. At the time of the accident, Heather Godzin, who obtained her driver's license two days before the accident, resided with her parents, the named insureds on a policy of liability insurance provided by Plaintiff. The policy contained a "regular use" exclusion. The issue before the jury was whether the 1990 Toyota 4Runner was an insured car and whether the "regular use"



exclusion of the insurance policy was applicable under the circumstances.

Plaintiff filed a declaratory judgment action against the injured persons and the alleged insureds (parents of Heather Godzin) for a legal determination as to whether there was excess coverage from Plaintiff on behalf of alleged insureds to compensate the injured parties.

*Plaintiff's Counsel:* Joseph A. Hudock, Jr., Summers, McDonnell, Hudock, Guthrie & Skeel, P.C., Pgh.

*Defendants Kooser's Counsel:* Donald J. McCue, McCue & Husband Law Firm, Connellsville

*Trial Judge:* The Hon. Anthony G. Marsili

*Result:* Verdict in favor of Plaintiff.

## LawSpeak

"Mr. Dodd, do you often act for both sides in a case?" I said. "Not often, Mr. Rockefeller, but I am always ready to do so when both sides want an honest lawyer."

— John D. Rockefeller, Sr.

The jury found that the alleged insureds were not insured by Plaintiff, so no excess coverage was available.

**MARIE G. BLATNIK**

V.

**THE CATHOLIC DIOCESE OF GREENSBURG; AND THE EPIPHANY OF OUR LORD PARISH  
NO. 6953 OF 2008**

*Cause of Action: Negligence—Premises Liability—Slip and Fall*

On or about July 20, 2006, Plaintiff slipped and fell when she was attending a meeting in the basement of The Epiphany of Our Lord Church in Monessen, Westmoreland County. When Plaintiff went to get a glass of water, she slipped and fell on a wet substance on the floor near the water fountain. Plaintiff sustained injuries including an L2 compression fracture and lumbar pain that radiated to the spine and hip.

Plaintiff alleged that Defendants knew, or in the exercise of reasonable care, should have known about the existence of the substance before her fall, and failed to correct, remedy, remove, or repair the area, making it safe for the intended users of the hall. Plaintiff introduced videotaped expert testimony of her treating physician, Eric C. Chamberlin, M.D., at trial.

*Plaintiff's Counsel:* Cynthia M. Porta-Clark, Porta-Clark & Ward, LLC, Pgh.

*Defendants' Counsel:* Bernard P. Matthews, Jr., Meyer, Darragh, Buckler, Bebenek & Eck, P.L.L.C., Gbg.

*Trial Judge:* The Hon. Anthony G. Marsili

*Result:* Verdict in favor of Defendants. The jury found that Defendants were not negligent and entered a unanimous verdict in their favor. 🌸

# To-Wit: You Never Know

by S. Sponte, Esq.

“Are you certain of that?” Judge inquired during my oral argument, peering directly down at me over the silver reading glasses that sat precariously perched halfway down her hawk-talon nose. Having launched that query, she then cocked her head sideways and scrunched up her mouth, as if grappling with an unseen foe.

Some colleagues may have seen her body language as nothing more than just another of those thousands of vacuous motilities all of us do every day. Others, those desperate to wrench any information they can from the vast incertitude of oral argument, might have taken it as a reproach, as if she had instead pointed her index finger at her temple and twirled it counterclockwise. To me though, it just looked like she needed to get to a bathroom, and so I responded *eo instante*.

“Yes, Your Honor, I am certain of it,” I lied, slowly taking off my own reading glasses and placing one of the temple pieces pensively into my mouth. That’s my erudite motility. I learned it from the doctor in that hemorrhoid television commercial, and it’s the one I always employ when I’m uncertain of my position. I use it quite a lot.

At argument’s end, Judge announced she would take the matter under advisement, and my young associate and I left the courtroom. “How can you stand this?” she moaned. “How can you stand not knowing what Judge is thinking or what she’s going to do or even when she’s going to do it? It drives me friggin’ crazy. Oh God, I want a sticky bun.”

It wasn’t that I didn’t have a clue. Near the end of my presentation, Judge had said, “I really hate your case and I’m not that fond of you either.” I think that was a clue.

But my associate’s angst reminded me once again what I’ve known and accepted for many years: that the practice of law is chock full of things we just never know.

Every fact, every opinion, indeed every word, gets filtered through the neurons of other members of our professional populace—the judges, the juries, the opposing counsels, each one of them replete with their very own fiercely independent fantasy system, each one of them taking in the selfsame information, processing it to the tune of his or her own drum, and each one coming up with a result that on the very smartest day you ever had in your whole life you could never have ever predicted.

This is chaos, utter chaos, and as a concomitant consequence, our

*continued on page 16*



## Intellectual Property Law Patents, Trademarks, Copyrights

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

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

## To-Wit: You Never Know *continued from page 15*

profession is awash with doubt like a mangy dog is awash with fleas. No wonder so many members of both species itch like crazy so much of the time.

It's been a long while since I've had such an incessant urge to scratch, but once upon a time ... "Tell me how can you do this," I implored Leonard as we left the courtroom to await the jury's decision following a week-long personal injury trial some forty years ago. He was my first law boss and remains my iconic mentor long after his passing. "How can you just go back to the office and concentrate on something else while the jury is still making up its mind?"

"Discipline," he replied. "We can't do anything about the jury now, but what we can do is help our other clients. So I go back to work."

Of course, I found out much later that Leonard didn't exactly go back and lock himself in his office to

work. What he did was go back and lock himself in his office to devour sticky buns.

These days I don't spend a whole lot of time fretting about the vagaries of law. When I read opinions that decide

**“Our profession is awash with doubt like a mangy dog is awash with fleas.”**

the same set of facts in different ways, I accept it as an inevitable byproduct of human intercourse. When I can't get opposing counsel to agree with me in a dispute between our clients, I accept it as a given that opposing counsel are frequently just not as smart as I am. And when, as in the case at hand, I know with certainty that I haven't convinced a judge of the

correctness of my position and that I am going to lose, I just take it in as additional confirmation that not every judge advances to the bench on the strength of their intellectual acuity. Yes, yes, it may be a wildly narcissistic defense mechanism but it's surely better for my cholesterol than sticky buns.

Today came Judge's opinion and order granting us summary judgment. "We won," my associate gurgled as she came charging into my office, the opinion clutched in her grateful and trembling hand. "I'm totally surprised."

"Me, too," I replied. "It was a good result." After she departed, I sat there quiet and alone, contemplating this unexpected outcome. "Well, well, well," I thought to myself. "You never know." And then, strangely, I started to itch all over. 🐾

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Westmoreland Revisited

# Slavery, Abolition, and the Law

by The Hon. Daniel J. Ackerman

In the 1960s, searching titles was one of the rites of passage for a young lawyer. More established practitioners, who had clients with sufficient financial soundness to buy and sell real estate, would often farm this work out to new members of the bar who could use a little money. I did some of this work for different lawyers, one of whom is still in practice, for \$35. Not \$35 an hour, but \$35 per title; and, if things went well, I would complete the search in a day or a day and a half.



▲  
The Hon. Daniel J. Ackerman

On one occasion, while busily laying the foundation for my fortune in the recorder's office, I came upon an extraordinary document. As I started writing this article, I chided myself for not making a photocopy of it, and then remembered that in the 60s, the photocopy machine had yet to make its debut in the recorder's office, or, for that matter, anywhere else in the courthouse; a time when lawyers had to copy official documents in longhand.

The document, recorded in the early 19th century, was not a deed, but a bill of sale. And, not for the sale of land, but for the sale of a human being here in Westmoreland County. A morally perverse commercial transaction, not shamefully conducted in secret, but placed on record so that neighbors in the county, and for that matter, the whole world, would know that the ownership of this woman had changed and now she was the chattel of another.

How could this be? Were not the trade in and the use of slaves confined to those states below the Mason-Dixon Line? The answer, I now know, is no;

which leads us to consider how the commonwealth, based on William Penn's vision of tolerance, came to deal with a problem that was not to be solved short of war.

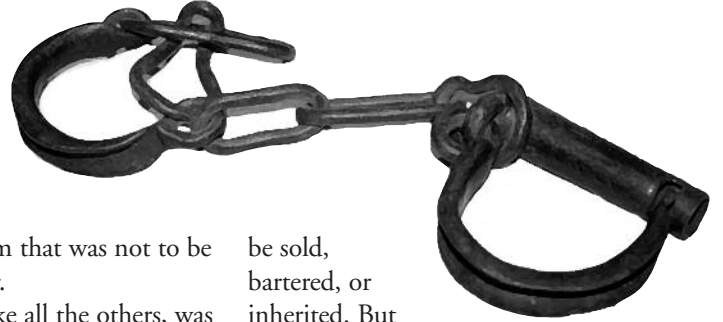
Pennsylvania, like all the others, was a slave-holding colony, and in like manner, William Penn owned a dozen slaves who were put to work on his estate, Pennsbury. Surprising as that is, it also appears that in the earliest days of the colony, the majority of African slaves, who were to be found in the Philadelphia area, were owned by Quaker masters. Slavery, however, preceded the Penns, starting in the Delaware Valley as early as 1639.

African slavery was not the only form of bondage in the colonies. Between 1727 and 1754, Germans—some 58,000 of them—and 16,000 Scotch-Irish entered the colony as indentured servants. They also could

be sold, bartered, or inherited. But there was a palpable difference, for most came voluntarily and assumed peonage in exchange for their transport to America, and their servitude was limited to a term of years. Their position was enviable when compared to the lesser number of African slaves in Pennsylvania (11,000 by 1754), who were brought here against their will and were in bondage for life in the absence of manumission.

The legislature gave statutory recognition to African slavery in 1700, and in the same year created a separate penal code to apply to blacks, slave or

*continued on page 18*



## where in the world IS THE WBA MEMBER?

### SEPARATED AT BIRTH?



On a recent trip to Ketchikan, Alaska, Dan Joseph met a bald eagle, with whom he shares a startlingly similar proboscis profile. "Was just like staring in the mirror sideways," remarked Dan. The eagle had no comment.

KETCHIKAN, ALASKA

# Slavery, Abolition, and the Law *continued from page 17*

free, with harsher penalties and denying them the right to a jury trial.

The “peculiar institution” of slavery in Pennsylvania did not follow the plantation model of the southern states. Rather, since slavery’s early beginnings were centered in the Philadelphia area, servitude was largely shaped to meet the demands of urban life. By 1700, 10% of the households in Philadelphia owned slaves, used primarily as domestic servants, while others were purchased to be laborers in the iron industry and the construction trades, or to work on the docks of the busy port. Some fortunate few become trade apprentices. The agricultural use of slaves spread out beyond Philadelphia, but never grew to the extent exhibited in the southern states. While there were some large landholders in Pennsylvania, most of their estates were forested, and farming was, for the most part, found on smaller tracts of land which grew a variety of grain crops, and did not call for a large workforce. The farmer who did own slaves often owned only one or two who might work alongside him in the field. But to the individual slave, bondage was oppressive regardless of its scale. The number of African slaves in Pennsylvania reached a peak of about 30,000 during the French and Indian War, because the conflict interfered with the influx of European indentured servants; and many of those males already working in the colony as indentured servants were drawn off into the military. Slavery filled the gap.

The war’s end brought a new flow of European immigration, which, over time, depressed the slave trade in Pennsylvania: by 1790, the commonwealth counted 3,700 slaves against 6,500 free blacks. A similar decline was experienced in the southern states as well, and many thought that slavery would soon die from economic obsolescence. But an upsurge in demand for slaves in the south was surprisingly spurred by technology—the invention of the cotton gin, which enabled planters to put more acreage under cultivation.

In Pennsylvania, slavery continued to diminish and by 1840, the tally was 47,854 free blacks and 64 slaves. As mentioned, from earliest times, the slave trade in Pennsylvania was concentrated mostly in Philadelphia and the surrounding southeastern counties. This was due to Philadelphia’s position as a port of entry, and the proximity to Maryland and Virginia where the slave trade flourished.

The Allegheny Mountains proved an impediment to the expansion of slavery into the west, and those settlers who did cross the mountains generally lacked the financial resources to purchase slaves. This did not mean that slave trade or slave ownership did not have a foothold here, as

evidenced by the 1827 deed, recorded by the Westmoreland County Recorder of Deeds in Deed Book 17 at page 22, for the sale of a nineteen-year-old woman in Greensburg.

The general decline in slave ownership was not simply due to market conditions. The General Assembly had taken a bold step. With the American Revolution still being waged, the legislators drafted the Act of March 1, 1780, which began with a preamble steeped in terms of both gratitude and duty.

*“[W]hen we look back on the Variety of Dangers to which we have been exposed, and how miraculously our Wants in many instances have been supplied and our Deliverances wrought, when even Hope and human fortitude have become unequal to the Conflict; we are unavoidably led to a serious and grateful Sense of the manifold Blessings which we have undeservedly received from the hand of the Being from whom every good and perfect Gift cometh. Impressed with these Ideas we conceive that it is our duty, and we rejoice that it is in our Power, to extend a Portion of that freedom to others, which hath been extended to us ... It is not for us to enquire, why, in the Creation of Mankind, the Inhabitants of the several parts of the Earth, were distinguished by a difference in feature or Complexion ...*



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R.R.

Sale of Black Bette  
 Alex. Johnston Esq.  
 To  
 Alexander McKinney

Know all men by these presents that I Alexander Johnston of the Borough of Greensburgh County of Westmoreland and State of Pennsylvania for and in consideration of the sum of one hundred and twenty five dollars to me in hand paid before the sealing and delivery of these presents, by Alexander McKinney of the Borough County, and state aforesaid, the receipt whereof I do hereby acknowledge, have bargained and sold & by these presents do grant, bargain and sell unto the said Alexander McKinney a certain Mulatta Girl named "Bettey" born on the eleventh day of May A. D. 1728 returned to the Prothonotary the twenty first day of October A. D. 1728 reference being had to the records will more fully appear, said Mulatta being the daughter of Jane a slave for life. For myself my heirs and assigns and against all and every person or persons with well and truly defend the servitude of said Mulatta to him the said Alexander McKinney agreeably to the act of the assembly in such case made & provided. Witness my hand & seal this twenty first day of June one thousand eight hundred & twenty seven

Attest Wm. Kinney  
 Received the above consideration above mentioned in full  
 Westmoreland County S.S.

A. Johnston [Seal]  
 A. Johnston

Personally appeared before one of the Commonwealth Justices of the peace for the County aforesaid Alexander Johnston, who acknowledged the foregoing instrument of writing to be his act and deed and declared that the same may be recorded as such. Witness my hand and seal this twenty first day of June, Eighteen hundred and twenty seven

J. G. Spayth [Seal]

Recorded the 27<sup>th</sup> day of June 1827

◀ The Allegheny Mountains proved an impediment to the expansion of slavery into the west. Those settlers who did cross the mountains generally lacked the financial resources to purchase slaves. This did not mean that slave trade or slave ownership did not have a foothold here, as evidenced by the 1827 deed, recorded by the Westmoreland County Recorder of Deeds in Deed Book 17 at page 22, for the sale of a nineteen-year-old woman in Greensburg.

Nor can we overlook the effect upon the populous of black enlistment in the Continental Army during the Revolution. When, in 1775, Washington was attempting to transform the army from an unwieldy assembly of state militia units into a national force, he had to take note of several factors: the service of black soldiers with militia units from New England at Concord, Lexington, and Bunker Hill; the British offer of freedom to slaves who would run away to take up arms with them; and the fact that enlistments to the full-time army were half of expectations. He decided early in the war that the Continental Army would be open to black enlistment.

“Whatever his motivations,” historian Ron Chernow wrote, “it was a water-shed moment in American history, opening the way for approximately 5,000 blacks to serve in the Continental Army, making it the most integrated fighting force before the Vietnam War. At various times, blacks would make up anywhere from 6 to 12% of Washington’s army.”

The Pennsylvania General Assembly did not consider the issue of slavery to be closed with the Act of 1780. Over the next 70 years, it would play a game of legislative chess with the United States Congress. Pennsylvania’s legislature would respond to the federal fugitive slave laws enacted to stem the flow of runaway slaves seeking refuge here, in other northern states, and Canada. The first of these federal laws was the Fugitive Slave Act of 1793, intended to put teeth into

*continued on page 20*

“We esteem a particular Blessing granted to us, that we are enabled this Day to add one more Step to universal Civilization by removing as much as possible the Sorrows of those, who have lived in undeserved Bondage ... Weaned by a long Course of Experience from the narrow Prejudices and Partialities we had imbibed, we find our Hearts enlarged with Kindness and Benevolence towards Men of all Conditions and Nations...”

Such a preamble, one might expect, would lead into an immediate and full emancipation of all Pennsylvania slaves, but the act was entitled “An Act for the Gradual Abolition of Slavery.” It provided that any child born to slave parents after the date of the act would be emancipated from slavery on his or her twenty-eighth birthday. But the act, nonetheless, was quite remarkable, for here, eight decades prior to the Civil War, was the country’s first emancipation law. Its provisions also precluded the purchase of new slaves within the commonwealth, and slaves who were brought into the state by their owners would become free if they stayed six months. (In 1790, when Philadelphia was the capital, President

Washington shuttled his household slaves back and forth to Mount Vernon to avoid application of the law.) The right to a trial by jury was extended under the act to “Negroes and Mulattos as well as Slaves,” and the penal code, previously applicable only to them, was abolished, so that all inhabitants of the commonwealth would be subject to the same criminal laws. It was a remarkable piece of legislation for 18th century America.

Of course, such legislation did not just come out of the blue. Anti-slavery sentiment was widely held from the earliest days of the colony, and the ownership of slaves by some Quakers in Philadelphia did not represent a consensus within the Society of Friends favoring such conduct. As early as 1688, slavery was denounced by a meeting of Friends in Germantown, and Quakers, along with other religious denominations—Presbyterians and Congregationalists in particular—became active in the abolitionist movement. The Pennsylvania Abolition Society, founded in 1775, was the first of many abolitionist groups that would soon spring up throughout the north, and in southern states as well, prior to the Civil War.

# Slavery, Abolition, and the Law *continued from page 19*

Article 4, Section 2 of the United States Constitution, which provided, until it was amended out of the Constitution in 1865: “No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up, on claim of the party to whom such service or labor may be due.”

When this first fugitive slave act was enacted by Congress, Pennsylvania already had in place the Act of March 29, 1788, which amended the Act for the Gradual Abolition of Slavery, by adding: “No Negro or Mulatto slave ... shall be removed out of this state, with the design and intention that the place of abode or residence of such slave or servant shall be thereby altered or changed.” The state and federal governments were now at odds with each other.

On March 25, 1826, Pennsylvania, finding that the 1788 Act was not dissuading slave catchers from below its border, enacted the first law in the country deliberately intended to thwart the Fugitive Slave Act. It was one of many such “Personal Liberty Laws” passed by northern legislatures; and, it rested upon a commonly held belief in the former colonies that any state could nullify federal law of which the state did not approve. This was a northern “states’ rights” argument that many feared might lead to the dissolution of the Union.

The Act made the kidnapping of any Negro or mulatto a felony. And, it was not restricted to slaves, since slave-catchers were taking little effort to distinguish between runaway slaves and freemen, who had never been slaves or who had been granted freedom by their former owners. In addition, and to the relief of those who were systematically assisting runaways

through what was to become known as the “Underground Railroad,” the Act denied Pennsylvania magistrates jurisdiction to recognize any matter arising out of the federal fugitive slave law and imposed a fine against them if they entertained such cases; notwithstanding the federal act’s provision giving state magistrates jurisdiction in runaway cases. It was an application of what became known as the Freedom Principle—“Once free, always free.”

The conflict of laws problem existing between the commonwealth and the national government was eventually considered by the

Supreme Court in *Prigg v. Pennsylvania*, 41 U.S. 539, 10 L.Ed. 1060 (1842). Prigg and three cohorts had abducted Margret Morgan, a black woman, born into slavery, who in 1832, came to Pennsylvania from Maryland and lived here in freedom for the intervening years. The slave catcher, Prigg, had been engaged to bring her back to Maryland. Prigg was convicted of kidnapping under the Pennsylvania

act and appealed his conviction until it was before the Supreme Court.

Writing for the Court, Justice Joseph Story resolved the conflict issue in favor of the central government, rendering the Pennsylvania act unconstitutional, stating: “The legislation of congress, if constitutional, must supersede all state legislation upon the same subject; and by implication prohibit it.” *Id.* at 617. But as for enforcement, the states were not required to implement the federal fugitive slave law, nor were their judges bound to hear cases attempting to enforce it. Implementation and enforcement were the sole responsibility of the federal government.

Pennsylvania continued to be a thorn in the side of federal enforcement with legislation which, among other things, made slave owners incompetent to testify as witnesses to their ownership of runaway slaves, putting them to the expense of bringing third parties as witnesses to prove their claim. It also produced a statute providing for immediate emancipation to slaves brought to Pennsylvania by their masters.

As part of the Great Compromise of 1850, dealing with whether slavery could be extended into the territories, Congress passed the Fugitive Slave Act of 1850 authorizing the appointment of federal commissioners in every county in the United States who had authority to issue certificates of removal for fugitive slaves, and making interference with this process a criminal offense. At hearings before these commissioners, blacks—slave or free—were not permitted to testify and the commissioners were paid based upon a fee schedule of \$10 if a certificate of removal were granted, and \$5 if it were denied. (The discrepancy was “justified” because the former required more paperwork.) This fugitive slave law gave added impetus to the growth of



## INTERESTED IN THE UNDERGROUND RAILROAD IN WESTERN PENNSYLVANIA? LEARN MORE AT:

- LeMoyné House, 49 Maiden Street, Washington, Pa., the home of Dr. Francis Julius LeMoyné, an ardent abolitionist, and the first of only a half dozen sites designated as a National Historic Landmark of the Underground Railroad.
- Blairsville Area Underground Railroad Project, 116 East Campbell Street, Blairsville, Pa.
- Heinz History Center in Pittsburgh will exhibit *From Slavery to Freedom: The Underground Railroad and the Legacy of Freedom in Western Pennsylvania*, beginning November 2012.

the Underground Railroad, which has been called “the greatest movement of civil disobedience since the American Revolution,” and persuaded many fugitive slaves, and those who supported them, that their ultimate destination should be Canada. It also led to public violence, as in the case of the Christiana Riots of 1851, which led to the federal prosecution of thirty-eight Lancaster County abolitionists for treason—the largest treason prosecution in the history of the country, and one that failed to obtain a conviction.

As if things could not get worse, the Supreme Court handed down the Dred Scott decision in 1857 which held that people who were slaves and their descendants could never be United States citizens, nor would they be protected by the Constitution. The opinion also held that slavery could not be prohibited in the federal territories. In writing the history of the Supreme Court, Charles Evans Hughes called the decision “a self-inflicted wound.”

National tensions on the issue were now at a breaking point and legal battles would give way to four years of unprecedented violence, with the issue reaching a climax in the passage of the 13th Amendment in December 1865. After all that went before, the matter found resolution in thirty-two words: “Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, nor any place subject to their jurisdiction.”

While the arguments of abolitionist lawyers had been rejected by the Supreme Court, their arguments, and those of other abolitionist legislators and lawyers for citizenship and the franchise, would eventually take root in the 13th, 14th, and 15th Amendments. 🐾

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# G

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# Letters to the Judge

**Y**our honor, Sir,  
Well it's almost here; the day you can robe up in your anti-chamber and step out into the O'yeahs and the All Rises and smile right into the television cameras. The paper here says that the Pennsylvania Supreme Court is going to do it, and that before you can say "I find you guilty," even the most common of the common pleas courts will be on TV as well.

My cellmate, Jeeter, says that it is going to be fraught with danger, but then he gets a kick out of using the word "fraught," and he knows that his appearance was not necessarily made with TV in mind. He says there is no need to worry about lawyers acting up and putting on a show, since they are performing all the time anyway. He recalls that during his trial the judge made some trite little remark and smiled at the jury, and though it wasn't the least bit humorous, the lawyers beamed and chuckled as if he were some comic genius. He said it was as good a performance as he has ever seen.

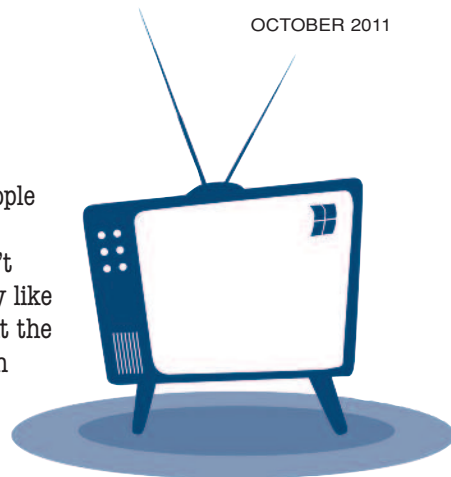
It is people like him and his kin, he thinks, who will play to the cameras. "If there had been cameras and microphones in court when I was sentenced," he insisted, "I would have told the world just what manner of imbecilic jurist would impose that sort of a sentence for something that at its root was no more than a prank."

And then there are people like his cousins on his mother's side who don't believe they should pay like everyone else and want the world to take their own scrip in place of money, and believe

that all the laws from A to Z are unconstitutional. These guys, acting as their own attorneys, will welcome the opportunity, according to Jeeter, to preach, what even Jeeter, who is no pillar of the establishment, views as unabashed anarchy, or at least some unvarnished and unsavory language directed toward those to whom they feel unkindly.

Jeeter's concerns will, however, not amount to a hoot with the Supreme Court, and the cameras will soon be in place; so since I want nothing but the best for you, your honor, let me suggest that you do whatever is necessary to get into courtroom number 4 where, by sitting to the side of the room, your handsome profile will be viewed to your best advantage. A little Grecian Formula might be called for, or perhaps you should consider the urgings of those hair transplant people, who are also on TV. And for goodness sakes, with retention not so far off, get those pictures of the family and the dog out of your chambers and onto the bench.

Your friend,  
Ricky H. Benbow, Sr. 🐾



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## Funding for Sign Language and CART Interpreters Available

**P**BA members who provide legal services to the deaf and hard of hearing may now apply to receive up to \$150 for sign language interpreters or CART fees for interpreters' appointments, up to a maximum of two appointments per quarter (until the reimbursement fund is exhausted).

The PBA House of Delegates first approved establishment of the fund in 2007 to assist PBA members with the payment of interpreter/CART fees at a rate of up to \$100 per quarter. The House of Delegates voted to increase the rate last month based on anecdotal evidence from the Legal Services to Persons with Disabilities Committee that showed the reimbursement rate was insufficient.

For more information, contact the PBA's Louann Bell at 800-932-0311, Ext. 2276, or [Louann.Bell@pabar.org](mailto:Louann.Bell@pabar.org). 🐾

# Actions of the Board

## JULY 20, 2011

- Retention ballots were mailed to WBA participating members; agreed to release raw data and percentages to the press.
- LRS letters went out to participating attorneys who may owe the WBA for referrals. Board agreed that it is the duty of the WBA to continue to follow up with the lawyers and perhaps consider banning them from LRS participation until payment is received for outstanding cases.
- Agreed to hold a wine and cheese gathering at the conclusion of the Tim Hewitt's October 18 talk.
- Reported that approval from the commissioners for the build-out of the lawyers lounge and pro bono office has been received.
- Learned that a presentation to both Judge Ackerman and Judge Ober will be made at the first Inns meeting.
- Heard that the libraries are interested in presenting civics education programs to the community and agreed to partner with interested libraries to do this project.
- Agreed to seek to book the Penn Stater Hotel for the 2013 Bench/Bar Conference, and to sign the contract with Bedford Springs for 2012.
- Reported that the WBA received a grant from the Pennsylvania Insurance Fund for reimbursement for the laptop that is used for PBI simulcasts.
- Learned that the Memorial Service transcript was made into a booklet by WBA employee Susan Zellner and was sent to each family member; the same material is downloadable from westbar.org.
- Decided that the three general members of the Nominating Committee will be: Annaliese Masser

## 44th Annual Red Mass Held at Saint Vincent



WBA President Michael J. Stewart (left) with W. Thomas McGough (right), Chief Legal Officer for UPMC. McGough was the keynote speaker at the 44th annual Red Mass held at Saint Vincent Basilica on Friday, September 23. Sponsored by the Diocese of Greensburg and Saint Vincent Archabbey and College, the Mass was concelebrated by Bishop Lawrence E. Brandt and Benedictine Archabbot Douglas R. Nowicki. A reception and luncheon followed at the Fred M. Rogers Center at Saint Vincent College. The Red Mass dates back to the 13th century when it marked the official opening of the new term for courts in most European countries. 🍷

(1), Scott Mears, Jr. (2), and Jim Silvis (3), with each serving the years as determined by the board.

- Reviewed a letter received from the Client Security Fund, which outlined their desire that fee dispute panels convene and make a decision, regardless of whether the attorney participates in the hearing. Agreed to forward to Fee Dispute Committee Chair Harvey Zalevsky.
- Learned that the Boy Scouts are no longer sponsoring a law explorers post.
- Heard request from the Disciplinary Board for the WBA to store copies of wills for lawyers who are going

through a conservatorship, and agreed to not undertake that responsibility.

## AUGUST 17, 2011

- Reviewed retention results: 93% for Judge McCormick, Jr., and 96% for Judge Pezze.
- Learned that Judge Caruso called a meeting with Chris DeDiana, Linda Broker, and Mike Stewart to discuss asking WBA members to serve as monitors for guardianship cases as is being done in Dauphin County.
- Heard that space is currently being built out for a lawyers lounge in the Courthouse.
- Agreed to continue to offer the Bridge the Gap program to new lawyers at NO FEE.
- Agreed to hire Dave Cremonese's band, The LaVelles, for this year's holiday dinner dance. 🍷



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## save the date!

**December 3: Holiday  
Dinner Dance, Fred M.  
Rogers Center, Latrobe**

## CALENDAR OF EVENTS

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

### NOVEMBER

- 8** [PBI CLE] 15th Annual Family Law Update, 8:30 a.m. to 1 p.m.
  - 11** Courthouse closed in observance of Veterans Day
  - 15** Family Law Committee, Noon
  - 16** [CLE] Overview of "PA New Fair Share Act," Noon to 1:45 p.m.  
Board Meeting, 4 p.m.
  - 17** Elder Law & Orphans' Court Committees, Noon  
Ned J. Nakles American Inn of Court, 5 p.m.
  - 24** Courthouse closed in observance of Thanksgiving
  - 25** Courthouse closed in observance of Thanksgiving
- ### DECEMBER
- 3** Holiday Dinner Dance, Fred M. Rogers Center, Latrobe
  - 5** [CLE] Eyewitness Evidence: How Accurate Is It & Do Jurors Care? Noon to 1:15 p.m.
  - 7** WBF Trustee Meeting  
Ned J. Nakles American Inn of Court, 5 p.m.
  - 8** Santa Claus is coming to the WBA!
  - 9** [CLE] Bridge the Gap, 9 a.m. to 1:15 p.m.  
After-Work Holiday Party (tentative date)
  - 12** [CLE] ABCs of Landlord-Tenant Issues, Noon to 1:15 p.m.
  - 14** [CLE] Video Compliance Period Seminar, 9 a.m. to 3:15 p.m.
  - 20** Family Law Committee, Noon
  - 21** Board Meeting, 4 p.m.
  - 26** Courthouse closed in observance of Christmas

## 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](http://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.