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**THE NEWSLETTER OF THE
WESTMORELAND BAR ASSOCIATION
VOLUME XXXII, NUMBER 3
AUGUST 2020**

Regaining Our Essentiality

by Pamela Ferguson, Esq.

As the days turned to weeks and the weeks turned to months, our empty calendars glaringly reminded us of the fragility of normalcy. At no time in our history had attorneys been non-essential to the fabric of our society. Our lifeblood, the Constitution, mandates our essentiality for we are the vessel through which Americans' rights are protected, or at least that has always been the case, until now.



Pamela Ferguson

When President Judge Rita Hathaway ordered the courts closed to all "non-essential functions" on March 16, 2020, the word "essential" took on a whole new meaning. In accordance with the Pennsylvania Supreme Court's Declaration of Judicial Emergency, only emergency matters in each division of the courts would be permitted judicial access. All other functions, including jury trials, were deemed non-essential and cancelled until further order of court.

Hunkered down in our homes, our offices shuttered, and access to the courts severely limited, our essentialness evaporated before our eyes and we questioned whether we could continue to represent our clients. While our

brick-and-mortar buildings enhance our practice of the law, our ability to do our job is not dependent upon their open doors. Like many other professionals, our office work can be done remotely; however, office work is only part of our representation.

To effectively represent our clients, we need to be both a reasoned counselor and a zealous advocate. Neither is more important than the other. Together they provide the



balance necessary to determine when to fight and when to settle. It is an

important balance the experienced lawyer understands, and a necessary one to provide proper advocacy for our clients. But, what happened when one was taken away, when all we had was our ability to

counsel with no arena in which to provide our zealous advocacy? Could

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Our Retiring Editor

Among various definitions pertaining to the verb retire, the initial one set forth in the American Heritage Dictionary is to withdraw. It's hard to imagine that anyone ever used this word, or any of its inflected forms, in the same sentence with the name David Millstein, the high-tension, livewire editor of the periodical that you are now holding in

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Our Retiring Editor continued from page 1

your two hands. Yet, it is true: David has, in fact, withdrawn—hung up his eyeshades, and tossed his red pencil into his overflowing wastebasket, for, alas, he is no longer the editor of *the sidebar*. Before you do harm to yourself with some sharp instrument, let me assure you that his S. Sponte column and other musings will continue on these pages as fast as he can turn them out under the hot semi-tropical sun.

In 1995, then-WBA President Denis Zuzik appointed David as the editor of this tract. If Denis ever had any regrets, they don't appear in the public record, and if he has any now, well, it's too late. During David's 25 years as editor, he infused this local publication with an energy, an effort, and an intensity that made it rise above its humble designation as a newsletter. Yet for all his impact, apart from the small print at the bottom of page three identifying the editorial board, it is almost impossible to find his name or likeness in any issue. Like Oz's wizard, David works in the shadows behind a screen.



David Millstein's first (Vol. VII No. 1, January/February 1995) and last (Vol. XXXII, No. 1, March 2020) issues as Editor of the sidebar.

If *the sidebar* has a signature piece, it is the column which is simply titled, "To-Wit," which holds up a carnival mirror to the practice of law that is so engaging and funny that you no longer regret being a lawyer. For several years, the authorship of these articles, attributed to an S. Sponte, Esq., was a mystery, and our bar was engaged in a prolonged guessing game as to who it was, whose column was also being published

statewide by the PBA in its magazine,

The Pennsylvania Lawyer. I don't remember how David's cover was blown, but it was. Perhaps he lost his anonymity with the 1990 publication of his book—which still used his *nom de plume*—an anthology titled *The Collected Humor of an Uncollected Mind*.

The number of his hilarious "To-Wit" articles is now in the hundreds, but so that I don't sound like a sycophant, I should point out that only two of them have been made into major motion pictures.

During David's tenure at the helm, *the sidebar* dramatically expanded its coverage, with a regular message from the WBA president, human

interest stories involving bar members, in-depth commentary on current legal issues, new member sketches, synopses of jury trials, coverage of WBA committees and the bar foundation, a column on local history, coverage of candidates seeking judicial office, and pieces encouraging *pro bono* representation (with David setting a real-life example); a list that is, however, less than complete. I believe that one of the reasons *the sidebar* has achieved some success is that David gave other members of the committee the freedom to write what interested them, and all major decisions were decided by consensus.

Even the appearance of *the sidebar* evolved. Before David, issues were printed on birch bark, and then heavy-duty brown wrapping paper. He put the product on glossy stock, and later added color, using many more photos. Candid photographs were taken at all bar activities, and David grabbed them up for publication, underscoring them with comments demonstrative of his acerbic wit. It is a tribute to the even-tempered manners of our bar members that none of them ever invited him to step out into the alley.

We're delighted that even though he is a thousand miles away, that his wit and wisdom will continue to appear on these pages, but his presence at the head of the conference table during our board meetings will, indeed, be sorely missed.

And to David, when you read this, know that you have

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Remembering Margaret Picking

Editor's note: Margaret Picking died Thursday, March 12, 2020, after several years of illness. Preceded in death by her father, Willis, she is survived by her mother, Lois E. Picking, of Irwin; her brother, Dr. David C. Picking, of Allegheny Township; and her nephew, John E. Picking (fiancée Clare), of Lower Burrell, as well as numerous close friends and professional colleagues whom she cherished.

by Donna McClelland, Esq.

It has been a few months since my friend, Margaret Picking, passed away. It still does not seem real. I was there in the hospital when her health was rapidly declining. I was there when she was laid to rest with military honors in a small historic cemetery in Chambersburg, Pa., her family's birthplace. Yet still, I find myself starting to call her, seeking her advice which was always filled with calming good sense.

I first met Peggy in 1984 when we were both young lawyers in the Westmoreland County District Attorney's Office. At that time, Peggy was still carrying a military demeanor from her stint with the United States Army JAG Corps. She was a disciplined and dedicated prosecutor who worked hard to serve the community and ensure that it was a fair, safe and protected world for everyone. This approach to the law never left her.

John Driscoll, now Judge Driscoll, was our boss and friend. Judge Driscoll fondly recalls Peggy as a model prosecutor: "Peggy came to the District Attorney's office straight from the army in 1982. During her six years there, she brightened the office and was admired by everyone. She was accomplished, diligent, and very organized, but what drew so many into her office—more

accurately, her cubicle—in the late afternoons was her open and wonderful, ever-ready sense of humor. Laughter emanated! And, Peggy was trusted. I never heard her talk derogatorily about others or even swear! Cuss words at times flow freely in a district attorney's office, but never from Peggy. She was valued, admired, and loved by her peers through a long career and is missed by all who knew her."

“In Peggy's mind, the courtroom was a place where justice was at stake, where a voice for victims could be had, and where everyone who came to court played an important role.”

Peggy left the District Attorney's Office for a position as a prosecutor with the state Office of Attorney General. In 1989, Peggy went to work with the United States Attorney's Office in Pittsburgh where she found a home for the rest of her career. Over the years, Peggy handled cases involving child pornography, computer fraud, money laundering, bank fraud, illegal drug trafficking, and terrorism.



Many of the cases she prosecuted ended up in the national news or involved high-level international criminal syndicates. You never would know this, though, from Peggy. She was never impressed with herself (although she was an impressive lawyer and would have been justified), nor did she ever seek to impress anyone else. She was just herself, doing the work she felt she needed to do. Her reputation in the federal court world was as a prosecutor who was fair, honest, and always prepared.

Peggy believed in the Constitution and the rule of law. She never held it against a defense attorney for making a good argument or trying a hard-fought case. On the other hand, she had no patience for attorneys, either prosecution or defense, who disregarded the rules of evidence or who tried to gain an unfair advantage in court. In Peggy's mind, the courtroom was a place where justice was at stake, where a voice for victims could be had, and where everyone who came to court played an important role.

More to the point, Peggy was unfailingly polite and respectful to

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the sidebar

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Remembering Margaret Picking *continued from page 3*

everyone, from judges to defendants. She didn't lose her temper in trial when counsel on the other side got out of hand. She simply took a breath and continued presenting the evidence until the verdict came back on her side.

Eventually, Peggy became a supervisor in the U.S. Attorney's Office and willingly shared her experience with younger lawyers. One of the now senior United States attorneys remembers that Peggy telephoned her in the weeks before she started with the Pittsburgh office to make her feel welcomed. No one had reached out like that to her before or since. Another assistant U.S. attorney remembers how freely Peggy made herself available to the younger lawyers for questions and advice. Yet another remembers Peggy's laughter, sense of humor, and ability to turn a seeming disaster into a funny story. Peggy's influence in the

U.S. Attorney's Office will be felt for years to come.

Peggy retired from the active practice of law in 2015, finally conceding to multiple sclerosis, a disease she had been fighting for many years. Until her death, though, she kept up with the required CLEs and maintained her bar license just in case she would be able to act as counsel for a non-profit that might need her. She was determined not to let her disintegrating health make her feel sick. Peggy still enjoyed visits from her many friends, welcoming them into her home for coffee, dinner, or conversation.

Despite her own difficulties, Peggy remained more interested in helping others sort out their issues than discussing hers. She continued to take calls to answer legal questions or to act as a sounding board for trial tactics. To her credit, Peggy even engaged in legal debates with me

(a criminal defense attorney) so that I could resolve a troubling question of law or fine-tune an argument. In Peggy's world view, justice was justice and the Constitution had to be protected no matter what side you were on.

To her friends, Peggy's loyalties were clear and well-defined. Our country was first; her family came a very, very close second; and her friends immediately next. Peggy was funny, kind, and smart. She remained open to the world as it became ever smaller for her due to her illness. She tried to be patient when the obstacles presented by her health were clearly trying her determination. She was the kind of lawyer I try to be. She was a friend to everybody in a way that I can never be. She will be missed. Our legal community is diminished by her passing; our broader community is made less decent without her. ■



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Remembering David L. Robinson

Editor's note: David L. Robinson passed away on Sunday, March 15, 2020. David married Colleen Garland in 1995 and they have four sons: Oliver, Luke, Dominick, and Kipp. Memorials may be made to the First Presbyterian Church, 300 S. Main Street, Greensburg, PA 15601, or to a charity of your choice.

by Donald R. Rigone, Esq.

Dave Robinson and I were, at different times, associates, law partners, and landlord/tenant, but more importantly, for more than fifty years we were friends.

Dave was admitted to practice a few years before me and an associate and partner in his father's law firm, Robinson, Fisher & Long. I later became an associate then partner there, too. Our firm was located in the Robinson Building, which Dave owned and which had long ago been his grandmother's residence. After I closed my sole practice office there seven years ago and moved it to my home, Dave was kind enough to allow me to keep my closed files stored there, and provided a parking spot for me when I had to be in Greensburg. In return, I was always available to meet with him and field his calls to discuss and make suggestions for

his ongoing cases. We met in person or talked by phone every few weeks, even when Kushleen

and I sat out the winter months in Florida. In fact, Dave called just a few weeks before his passing to discuss a legal matter and just catch up.

Dave's personality was interesting, both old time and ultra modern. Let me explain what I mean by that. In his approach to any legal matter, he did what lawyers did a long time ago: he looked under every rock—several times—for clues and facts without regard to the time it took or the resources necessary. Nothing was overlooked. That took persistence, and Dave's middle name could have been "Persistence." He learned that from his father, Paul Robinson, one of the preeminent Westmoreland County defense attorneys from the 1920s to the 1960s.

But Dave was also on the leading edge of technology. I think he was the first attorney in our county to purchase a mainframe computer—and I'm not talking about a laptop. His computer was huge, noisy, and threw off enough heat to roast marshmallows. It completely filled the space under a large desk in his secretary's office. The software then was primitive, and I questioned him on the cost and time it took to do anything, but he wanted to stay at the head of the race as advances were made, not play catch-up later. He always kept up with new technological advances and was, until the end of his life, as knowledgeable about using it as any of my grandchildren, and that's saying a lot.

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LawSpeak

"Where justice is denied, where poverty is enforced, where ignorance prevails, and where any one class is made to feel that society is an organized conspiracy to oppress, rob, and degrade them, neither persons nor property will be safe."

Frederick Douglass, 1886

Remembering David L. Robinson *continued from page 5*

Dave always had some side project going. Selling eggs and vegetables as a youth, digging out the dirt basement of the Robinson Building to build in a library and office there, raising Christmas trees at his Indiana County farm, developing real estate on the east side of Greensburg, and other things too numerous to mention. He worked at something constantly. Years ago he incorporated a business that he used for many of his projects: D & D Enterprises. He told me it stood for “Dave & Dad.”

Dave was an airplane pilot nearly all his life. He told me he got his private pilot’s license before he was old enough to drive a car. I flew with him a number of times and never felt safer in the air. One of his favorite sayings was, “There are old pilots, and there are bold pilots, but there are no old, bold pilots.” He was persistently safe.

Dave was a world-class athlete in several sports, including rowing and swimming. He was introduced to rowing at the University of Pennsylvania, and competed in that sport at the highest international levels nearly all his life, including in the finals or semifinals four times for a spot on the U.S. Olympic team. Rowing was his passion, even to the point of having a vanity license plate that simply said “ROW.”

He also participated in competitive swimming and bicycling and ran just to keep in shape, all with unflagging persistence. On his 80th birthday in February, he swam 81 laps at the Greensburg YMCA. How’s that for persistence?

Dave and Colleen’s children came when he was in his 60s, and a more doting father to Oliver and the triplets, Kipp, Luke, and Dominick, there could not have been.

At an age when his contemporaries were welcoming grandchildren, Dave was raising four sons, and loving it. Whatever they wanted to try sportswise was okay with Dave. Kipp liked golf, and so Dave took that up, too, in his mid-70s. I played with him a few times, and it wasn’t pretty! But it didn’t matter to Dave, he still persisted. Sadly, Dave’s passing deprives his sons of the friendship,

knowledge, and camaraderie they could have shared in coming years. Had Dave lived, I could easily have seen a future corporation being formed called “D & S Enterprises”—for Dave & Sons.

One last thing I want to pass on: Dave was one of the most even-tempered people I ever knew. In over fifty years, I never saw him lose his temper; upset at legal outcomes, yes, but never out of control. We should all be so! ■

“On his 80th birthday in February, he swam 81 laps at the Greensburg YMCA. How’s that for persistence?”



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Remembering Thomas J. Godlewski

Editor's note: Thomas J. Godlewski died Thursday, April 2, 2020. Preceded in death by his wife, Karen, he is survived by his daughters, Gretchen Lawrence, of New Hope, Pa., Alexis Jackman, MD (Patrick), of Greenwich, Conn., and Rachel Godlewski (Matthew Carper), of Minneapolis, Minn.; grandchildren, Meredith and Theodore Carper, and Charlie Jackman; and numerous nieces and nephews. Memorials may be made to Seton Hill University, 1 Seton Hill Drive, Greensburg, PA 15601.

by Donald R. Rigone, Esq.

During the summer of 1968, between my second and third years at law school, I clerked for my preceptor, Earnie Long, primarily searching titles at the Courthouse. It was not only an opportunity to learn the grass roots of title work, but also to meet lots of real lawyers. Among those was Tom Godlewski.

He was two years younger than I, but already newly admitted to the Bar (I had taught high school history a few years before entering law school). Tom and I hit it off immediately. Maybe it was our similar ages or ethnic backgrounds, but whatever it was, we bonded for the next fifty-two years. During that time, among other things, we were neighbors on Seminary Avenue in Greensburg awhile, hunted together, golfed together, ate lunch together, and partied together.

In the early years, we were both aspiring trial lawyers learning the craft, and so used one another as sounding boards to bounce off ideas. More than once I can remember my home phone ringing in the middle of the night:

Me: "Hello?"

T.G.: "You awake?"

Me: "Yeah, I had to get up to answer the phone."

T.G.: "I have a case starting tomorrow, here's what I'm going to say ..."

Or when we lived just a block apart in Greensburg, and he just happened to be walking his dog late in the evening past our house—same conversation.

I was one of the few who knew Tom's nickname, given to him when he was at Duquesne Law School: "Boomer." Boy, did they get that right. No shrinking violet, his personality was ALPHA all the way. He was not prone to quiet and moderation in anything. You knew when Tom was in the room, and it was not put on just to make an impression.

Tom was decidedly liberal in his political thought, and never forgetting his ethnic roots, especially enjoyed protecting the weak and vulnerable.

As a teenager, he had been a physical standout and not averse to confrontation—in fact he looked forward to them. He was born with extraordinary strength, and long arms, plus, he was big. Once one of our Judges (may he R.I.P.) got really angry with Tom over something that happened in an ongoing trial, and invited Tom outside threatening an a** whipping. Tom warned the Judge if that occurred, the Judge would end up with a broken jaw! Fortunately, the Judge quickly reassessed the situation and withdrew the invitation.

In our early years of practice, many of us young, Pittsburgh Street lawyers worked Saturdays and ate lunch that day together at the Elks. George Conti, Jim Silvis, John O'Connell, John Mika, Tom, and I sat at a round table there along with older lawyer,



Henry Waltz, each adding our seminal lessons while absorbing all we could from the others, especially from more-experienced Henry. Those lunches were like seminars of Dos and Don'ts, and we all grew.

After college at Bowling Green, Tom married Karen Gardner and they had three beautiful, bright, and talented daughters, Gretchen, Alexis, and Rachel. One of his friends once told me if she ever came back in another life, she hoped it would be as one of Tom's daughters—no one ever was treated better.

There must be a lot of truth in the saying, opposites attract: Tom, big, boisterous and demanding; Karen, petite, refined, and giving—but what a couple they made. Kushleen and I were friends with Tom and Karen, and her untimely death just two years ago from a rare illness was most shocking, and still brings a tear to my eye.

About eighteen years ago, Tom's health began deteriorating from a myriad of conditions, and numerous operations and required treatment forced Tom into a wheelchair. Karen became his dedicated caregiver, and her passing, I have no doubt, shortened his life, too.

Although he had a large legal practice and represented many wealthy clients and their companies, Tom was decidedly liberal in his political thought, and never forgetting his

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MARCH 2020 TRIAL TERM

Of the 7 cases on the March 2020 Civil Jury Trial list, 3 settled, 2 were continued, and 2 proceeded to jury trial.

**CRYSTAL-MICHELLE FOSCHIA
AND ROSEMARIE FOSCHIA**

V.

**COMMONWEALTH OF
PENNSYLVANIA DEPARTMENT
OF TRANSPORTATION
NO. 215 OF 2015**

Cause of Action: Eminent Domain

On October 27, 2014, the Commonwealth of Pennsylvania Department of Transportation acquired a 2,986-square-foot slope easement through a declaration of taking on property located at 211 East Pennsylvania Avenue in New Stanton Borough, owned by Crystal-Michelle Foschia and Rosemarie Foschia. The purpose of the taking was for reconstruction of Interstate 70. After a Board of Viewers determined that \$25,000 was the just compensation for the taking, Plaintiffs appealed and demanded a jury trial to determine the just compensation that they were entitled to as a result of the taking.

Plaintiffs presented evidence that just compensation for the taking totaled \$80,000, an amount calculated based on the difference between the fair market value of the property prior to the take and the resulting fair market value of the property after the take. Plaintiffs argued that the property in the area of the slope easement was rendered useless as a result of the take, that the noise level on the property increased as a result of the construction and the removal of a privacy fence and trees, and that they lost parking spaces for a

JURY TRIAL VERDICTS

**MARCH, MAY, AND JULY 2020
TRIAL TERMS**

BY LEEANN PRUSS, ESQ.,
AND CAITLIN BUMAR, ESQ.

dog grooming business located on the property. An expert real estate appraiser supported Plaintiffs' calculation of just compensation.

Defendant presented evidence that the just compensation for the taking totaled \$10,000. According to Defendant's expert real estate appraiser, the fair market value of the property only decreased by that amount because the taking was a slope easement rather than a fee simple, Plaintiffs did not, in fact, lose any parking spaces as a result of the take, and the loss of the privacy fence and trees did not actually

increase the noise level on the property. A sound expert testified that the noise level would only increase one decibel as a result of construction, which is not discernible by the human ear.

In addition to the testimony presented, the jury viewed the property at issue.

Trial Dates: March 2–4, 2020

Plaintiffs' Counsel: John M. O'Connell, O'Connell & Silvis, LLP, Gbg.

Defendant's Counsel: Tamara J. Mahady, Pgh.

Trial Judge: The Hon. Chris Scherer

Result: Verdict in favor of the Plaintiffs in the amount of \$15,000.

KRISTI HALL

V.

**ERIE INSURANCE EXCHANGE
NO. 3563 OF 2017**


*Causes of Action: Motor Vehicle—
Negligence—Underinsured Motorist*

This case involved a two-vehicle accident which occurred on January 24, 2016. Mr. Robert Ames rear-ended Plaintiff, Kristi Hall, while she was stopped at an on-ramp waiting to merge onto Interstate 70. Plaintiff sustained injuries to her knee, neck, shoulders, back, and head. Defendant Erie Insurance Exchange was Plaintiff's insurance carrier at the time of the accident; she elected limited tort coverage. As Mr. Ames' insurance coverage was insufficient to compensate the Plaintiff, Plaintiff instituted this underinsured motorist action against Defendant. Negligence on the part of Mr. Ames was stipulated to by the parties.

Plaintiff argued at trial that Mr. Ames' negligence was a factual cause of her injuries, and so she was entitled to past medical expenses, future medical

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New Leadership Elected at Virtual Annual Meeting

At the Annual Meeting of the Westmoreland Bar Association held on Monday, April 6, Scott E. Avolio assumed the office of president.

An attorney for 20 years, Scott is the founder and managing partner of Avolio Law Group, LLC, in Greensburg, where he concentrates

his practice in municipal law, estate law, and civil litigation. He also serves as the solicitor for the Municipal Authority of Westmoreland County, Hempfield, Arona and the county controller's office.

Scott succeeds Joyce Novotny-Prettiman and is serving a one-year term as President.

Due to the COVID-19 emergency, the meeting was held through a virtual webhost (Zoom) and was attended by 71 members; of the 71, 66 were voting members.



WBA President
Scott E. Avolio

ELECTION RESULTS

Judith Petrush was elected to a one-year term as Vice President and Maureen S. Kroll was chosen to serve a three-year term on the Board of Directors. Rounding out the Board are President-Elect Dennis N. Persin; Directors Christopher Haidze and Angelea Allen Mitas; Past President Joyce Novotny-Prettiman; and Secretary/Executive Director Alahna O'Brien.

Amanda Nuzum Faher was elected to serve a five-year term on the Membership Committee. John N. Ward was elected to serve a five-year term on the Building Committee.

WESTMORELAND BAR FOUNDATION ELECTION RESULTS

The annual meeting of the Westmoreland Bar Foundation immediately followed the WBA virtual meeting. Peter Cherellia, Janice Galloway, Edgar Hammer III, Diane Murphy, and Bruce Tobin were unanimously reelected to the WBF Board of Trustees. They will each serve through 2023. ■

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New Member Sketches

The following new members have been approved by the Membership Committee and Board of Directors.

RYAN H. JAMES has been admitted as an associate member of the WBA. He earned a bachelor degree in poli sci/philosophy from Allegheny College and his J.D. from the Thomas M. Cooley Law School. Ryan is a solo practitioner in White Oak.

SADIE M. MARAK was admitted as a participating member of the WBA. Sadie received her bachelor degree in poli sci from Washington

& Jefferson College and her juris doctor degree from Duquesne University. She is an associate with Geary, Loperfito & Generelli, LLC, in Vandergrift.

CHARLES W. PHILLIPS, II, has been admitted as a participating member of the WBA. Charles earned a bachelor degree in mathematical science from the United States Air Force Academy and his J.D. from the University of Pittsburgh. He is an associate with Tremba Kinney Greiner & Kerr, LLC, in Greensburg. ■

Remembering Thomas J. Godlewski *continued from page 7*

ethnic roots, especially enjoyed protecting the weak and vulnerable. Moderation is not a term I would use to describe Tom, especially his representation of clients. Zealous is a more fitting description. His legal representation of a client was tempered only by ethics. Other than that, he went full bore, just as it should be.

Tom started out in association with the late Joe Bonidy, and there are lots of Westmoreland County lawyers still practicing today who started their practice either as an associate or partner with Tom—an Alumni Group of renown—Old Mike Stewart, Dan Hewitt, Fran Murrman, Scott Avolio, John Ward, O’Connell & Silvis (again the Older), just to name a few. Any of them could have written this piece, perhaps with more insight, but I asked to be allowed to remember Tom, because I just wanted to do it.

The last two years since Karen died, Tom and I kept in touch mostly by

text messaging and a few phone calls. He left Greensburg and stayed at a facility in eastern Pennsylvania near his daughter, Gretchen, and ended up in assisted living in Minneapolis near his daughter, Rachel.

I last heard from Tom in January—a text response from him thanking me for remembering his birthday (not hard since it’s the same day as mine). He brought me up-to-date regarding his further health deterioration and hospitalizations, so when Rachel let me know Tom had died, it did not come as a surprise.

If I had a need for anything, I have no doubt Tom would have supplied it, if he could. I am cognizant that Tom was an acquired taste, not to everyone’s liking, but Tom, Karen, Kushleen, and I shared many experiences and good times together over more than fifty years, and I could not have asked for a truer friend. ■

Jury Trial Verdicts

continued from page 8

expenses and lost wages. Plaintiff additionally argued that she had suffered a serious bodily injury sufficient to overcome limited tort restrictions, and she additionally requested damages for pain and suffering and loss of enjoyment of life. Defendant argued that Mr. Ames’ negligence was not a factual cause of Plaintiff’s injuries, and that she did not suffer a serious bodily injury which would allow recovery of special damages. A directed verdict on the limited issue of factual cause was entered by this Court in favor of Plaintiff.

Trial Dates: March 3–5, 2020

Plaintiff’s Counsel: Ashley Henkle and Amanda L. Nese, Simon & Simon, PC, Pgh.

Defendant’s Counsel: LeeAnn A. Fulena, Robb Leonard Mulvihill LLP, Pgh.

Trial Judge: The Hon. Harry F. Smail, Jr.

Result: Verdict in favor of the Plaintiff in the amount of \$13,000 for lost wages, \$5,724.46 for past medical expenses, and no damages for future medical expenses, for a total of \$18,724.46. The jury did not find that Plaintiff had suffered a serious bodily injury.

MAY 2020 TRIAL TERM

Due to the COVID-19 pandemic, the May 2020 Civil Trial Term was cancelled. Of the 6 cases on the May 2020 Civil Jury Trial list, 1 settled and 5 were continued.

JULY 2020 TRIAL TERM

Due to the COVID-19 pandemic, the July 2020 Civil Trial Term was cancelled. Of the 10 cases on the July 2020 Civil Jury Trial list, 1 settled and 9 were continued. ■

To-Wit: Cowering In Place

by S. Sponte, Esq.

I think it fair to say that our local bar association has not had to endure a massive crisis such as this Coronavirus pandemic since the Harvey Weatherwax matter of '33. Some older members of the bar no doubt have heard something about what has come to be known as "the Weatherwax Polemic." It happened long before I started practicing, but not so long as to have been forgotten by lawyers still practicing when I started. Then, at some bar association meetings during the dark and cold of a desolate winter evening, after they had had a few martinis or a half dozen shots and beers, they would recount it in the kind of hushed tones usually reserved only for their confessions.

Weatherwax, it seems, was represented by a local lawyer in a nasty divorce. Since he already had a much younger chippie on the side, his wife

was what was then known as "the injured and innocent spouse." That meant that under the divorce law prevailing at that time, Old Harv couldn't

“Almost all colleagues venture out to their offices only rarely, usually just to gaze longingly at their open files and weep hysterically at their bank statements and unpaid bills.”

get a divorce unless his wife consented. That also meant that under prevailing divorce customs at that time, wife refused to consent unless she got the house, all the money, all the pension, all the cars, all the dogs, and all the kids.

Now usually when a man already has a new chippie on the side, the

results of such negotiations are a foregone conclusion, and as I heard it, Harvey was as usual as a

man gets. All he would be left with was his new chippie, and when he added up how much she was going to cost him, he went berserk. Threatening conduct illegal in every state but that of his mind, he wandered the downtown streets armed with sufficient weaponry to shoot, stab, pummel, garrote, or manually dismember every lawyer in town.

"Why is he singling out the lawyers?" every lawyer asked from hiding, "It's the judges he should be mad at."

But in hiding they remained, intending to squat in their homes until Weatherwax was either captured



continued on page 12

G


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Duke George



Daniel Joseph

To-Wit: Cowering In Place *continued from page 11*

or divorced. More than two months passed during which they shivered in their basements, supping on tinned food and hardtack, until, *mirabile dictu*, Mrs. Weatherwax latched herself onto a lusty, aged, and dying multi-millionaire, the trifecta for all women similarly situated, and she consented to the divorce *eo instantur*. Thus peacefully ended the Weatherwax Polemic without so much as a single fatality but for Harvey himself who passed away six months later from extreme exertion.

This current pandemic is different only in that there is now no corporeal antagonist lurking about to apprehend or divorce, and it appears that at the present time every colleague, excepting perhaps those who needed more than three attempts to pass the bar exam, remains safely and appropriately cosseted at home, hopefully beyond the reach of this invisible and potentially lethal enemy.

It does not need to be said that this is having a profound impact on the legal profession, but there, I said it anyway. Courts are closed, row offices are closed, both the district attorney and public defender offices are closed, the minor judiciary offices are closed longer than usual, and all legal processes have come to a grinding halt. Almost all colleagues venture out to their offices only rarely, usually just to gaze longingly at their open files and weep hysterically at their bank statements and unpaid bills. Many have called me for advice on their financial conundrums, asking only that I respect their confidences. For now I can share with you only in an anonymous and generically classified fashion what their greatest concerns are. There will be plenty of time for me to breach their confidences in future columns.

PERSONAL INJURY LAWYERS – The almost ubiquitous concern here is that with so many folks sheltering in place, there is going to be an enormous

drop in the number of auto accidents, workman's compensation claims, wrongful deaths, etc. "How are we expected to make a decent living if people aren't suffering and dying," was pretty much the unanimous concern.

I pointed out that with so many people staying home, household products such as washers, dryers, ovens, microwaves, televisions, and the like, with vastly increased usage, were likely to blow up or catch fire at a much higher rate, thus causing more product liability claims than ever. "Certainly, there will be serious injuries, and probably many deaths," I counseled, and that seemed to make them all feel better.

FAMILY LAW LAWYERS – This group was especially apprehensive about their economic situations. "Our business has completely dried up," they wailed.

"Lookit," I told them, "things may be tough now, but you are facing a bonanza. Every married couple is now together 24/7, many with children now permanently at home. Have you any idea how much personal angst and misery is going on out there now, how many divorces, custody and support actions will percolate up when this is over?" To a colleague, that calmed them down.

ADMIRALTY LAWYERS – Surprisingly, I received a few calls from this most esoteric of law specialties. I had to disappoint every one of them by explaining that just because everybody was running around screaming "we're sunk," doesn't mean they're going to get a lot of new business.

ESTATE LAWYERS – None of them called me.

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where in the world IS THE WBA MEMBER?



Having requested a quiet scenic vacation spot where the population would be sparse due to COVID, the Millstein/Kress Travel agency booked me into the former Kenmar Hotel in New Kensington. Upon arrival, I found out that it had been demolished over 30 years ago. Sleeping on the street wasn't my initial choice, but the price was right. My suggestion if you're looking for anything more upscale is to try a different travel agency. — Dan Joseph

DOWNTOWN NEW KENSINGTON, PA

Westmoreland Revisited

The Industrialization of Slavery

by Daniel J. Ackerman

On August 7, 1903, Erskine Ramsey wrote to H. C. Frick, “The operation of the convict mines has been very remunerative.”

Mr. Ramsey had been recently pushed out of his role as the head of the Tennessee Coal and Iron Railroad (TCI), a company which the year before had set a record for coal production and eventually would be the South’s largest commercial enterprise. Now, he was writing to Frick, who was on the board of the newly created United States Steel Corporation, and one of its major stockholders, to see if Frick could be enticed by a few business ventures Ramsey was proposing. The letter was not from some unknown promoter, for Ramsey once worked for Frick as an engineer, here in western Pennsylvania, and would be taken seriously.

Four years later, in a move orchestrated by J.P. Morgan in an attempt to save a faltering stock market, U.S. Steel would acquire TCI and, in the bargain, both remove a competitor and obtain its largest subsidiary, which would come to operate 3,722 coke ovens, 4 limestone quarries, and 20 blast furnaces, in and around the newly created city of Birmingham, Alabama. Included in the package were the convict mines referenced in Mr. Ramsey’s letter. Whether Ramsey’s letter to Frick extolling the use of convict forced labor at TCI was an incentive will never be known, but it certainly didn’t prove to be an impediment to the acquisition. The assets acquired included the right to be the absolute master of some 400 coal miners, toiling against their will, at TCI’s Pratt mine in Alabama.

SLAVERY BY ANOTHER NAME

The 13th Amendment added to the Constitution in 1865 abolished both slavery and involuntary servitude,

“except as a punishment for crime whereof the party shall have been duly convicted.”

In our vision of the world, we may recognize peripherally that our license plates come to us through convict labor, as does much of the maintenance and services performed within the prison system; not to mention the flowers and grasses which adorn the exterior of our own courthouse every spring. Some will be surprised to know

The convict leasing system which existed in the South during the last decades of the 19th century and the early decades of the 20th, was far more pernicious and horrifying than we can imagine.

that chain gangs, once pervasive through the southern states, still exist in a few, as in Arizona, for example, where they are maintained for both men and women, though they are now filled by volunteers seeking relief from the boredom of being warehoused.

However, the convict leasing system which existed in the South during the last decades of the 19th century and the early decades of the 20th, was far more pernicious and horrifying than we can imagine. Not only did it pervert the Constitution and make a sham of the judicial and legislative functions, it retained all of the barbarism of antebellum slavery: floggings, separation of families, deprivation of freedom of choice, inadequate diet and shelter, and often, even the taking of lives. And it went on for the best part of six decades with only a few isolated voices raised against it.

Proponents of convict leasing, had they been aware of today’s terminology, would have argued that it was a simply an economic stimulus program for the South, whose economy had been shattered by the Civil War and the subsequent emancipation of most of its labor force. They would have viewed it as a win-win situation where the lessors—the states and their county and local governments—were relieved of the cost of housing and



Daniel J. Ackerman

maintaining prisoners, while receiving a flow of income back, while the lessee industrialists and farmers would benefit from a reliable and renewing source of labor whose cost was negligible. Of course, there were losers, the former enslaved men and their progeny; for the system, as implemented, would make sure that the vast majority of the leased chattel were African-Americans, with the intended, but mostly unspoken, plan of “putting the Negro in his place.”

ONE STEP FORWARD, TWO STEPS BACK

The decade after the end of the Civil War found the newly freed population in an extreme state of poverty, a condition also common to a large percentage of southern whites. In comparison to post-war economies in other defeated countries, historian Samuel Eliot Morison wrote, “The economic plight of the South in 1865 was deplorable; far worse than that of central Europe in 1919 or 1945.” The U.S. Congress recognizing a need to reconstruct the vanquished southern states passed legislation a month prior to the war’s end creating the

continued on page 14

The Industrialization of Slavery *continued from page 13*

Freedmen's Bureau to assist the millions of those formally enslaved and poor whites who were left destitute. The assistance offered provided help in securing food, shelter, and medical aid, the creation of over 40 hospitals, and the establishment of free schools for the largely illiterate population. While the bureau's 900 agents were often ridiculed, and even threatened by diehard former Confederates, including members of the newly formed Ku Klux Klan, their presence was more or less secured by occupying Union soldiers.

The 15th Amendment to the Constitution, adopted in 1870, gave African-American men the right to vote and the implementation of that right resulted in the election of former slaves to Congress and to positions in state, county, and municipal governments throughout the South; a development which didn't sit well with a majority of even moderate southerners.

All of these advancements, which had stimulated hope in African-American communities, would change with the election of Rutherford B. Hayes to the presidency in 1876. Hayes fulfilled a campaign promise to the southern states to end Reconstruction and withdraw U.S. troops from the region. The door to the hen house was now left ajar.

NEW LEASES ON LIVES

The leasing of convicts to perform labor under civilian supervision goes back to the 1840s, and perhaps beyond. With the end of Reconstruction, there was a need to revamp the labor market in a comatose economy and southern legislators provided their answer—make laws that will provide more convicts—but not too many white convicts.

State legislatures taxed their ingenuity in creating new criminal laws and punishments that would appear to have universal application, but which



Convict miners in their sleeping quarters in Birmingham in 1907. Alabama was the last state in the nation to end the practice of leasing convicts to industries for their labor. Photo courtesy of the Birmingham Public Library Archives.

everyone knew would seldom if ever be enforced against whites; some statutes bluntly applied only to African-Americans, perpetuating, what Samuel Eliot Morison called a “firm and almost unanimous resolve by Southerners of European descent to keep the South a ‘white man’s country.’”

A Mississippi statute mandated African-American workers to enter into labor contracts with white employers by January 1 of every year or face arrest. Alabama, Florida, and North Carolina made it a crime for a black man to change employers without permission. Selling cotton after sunset was criminalized in order to prevent sharecroppers from selling to anyone other than the property owner. Gambling, obtaining goods under false pretenses, selling whiskey, obscene language, violating a contract with whites, illegal voting, adultery, bigamy, bastardry, miscegenation, homosexuality, carrying a weapon, riding in freight cars, and speaking loudly in the presence of a white woman were all criminalized, subjecting the offender to potential forced labor.

But the most common offence used was vagrancy, which was so broadly defined that any freed person not under the protection of a white man could be charged. In a time of severe economic depression, any person who could not demonstrate that he had money on his person was subject to arrest and conviction. Perhaps even worse than the vindictive acts of these legislative bodies was the complicity of what little law enforcement there was, and the courts, particularly the justices of the peace, who ushered unsophisticated defendants into industrial bondage.

PUNISHMENTS NOT BEFITTING THE CRIMES

Justices of the peace, sheriffs, and their deputies did not receive a wage; they worked under a fee system where fees could be collected only upon conviction, as part of the defendant's sentence. Acquittals produced no fees.¹

Few of those convicted had the means to pay a fine or costs. Even costs and a small fine, which amounted to \$25, equaled a poor man's income for several months. The justice of the peace would explain that the defendant's inability to pay would result in imprisonment, but that he could arrange for an employer to pay the amount due for him, provided the defendant would be willing to sign an employment contract to work off the debt over a period of six months, a year, or whatever term was required. Many employers, whether in industry or agriculture, had financial arrangements with some justices to provide them with all the convicts coming out of their courts. There also were brokers who would pay the fines and costs and then sell the convicted defendant's contract to the highest bidder.

¹ The same was true for justices of the peace in Pennsylvania until they became salaried employees as mandated by the Pennsylvania Constitution of 1968.

The contracts, which nearly all the defendants were unable to read, placed them in a complete state of involuntary servitude equal to that which existed before the war; putting the employer in the role of the master, with the right to control all aspects of the employee's life and the right to inflict corporal punishment for any infraction on the employee's part. Having surrendered all of their rights, these predominantly African-American "employees" were, in fact, slaves who would be ill-fed, ill-clothed, and ill-housed. Some would literally be worked to death. In fact, their plight may be said to be worse than that of the antebellum enslaved worker, where a young healthy man was worth \$1,000 or more; for these less valuable workers under the lease system could be replaced for a pittance if they didn't survive.

These young men, handicapped by the place and time of their birth, were destined for hard labor in the coal mines, quarries, coke plants, foundries, timber operations, turpentine camps, and plantations. Many would feel the lash on their backs, and if that proved ineffective, even water torture—what would today be called waterboarding—a method favored by some convict managers because the prisoner would recover more quickly and return to work sooner. More than a few would die from accidents, disease, exposure, overwork, and murder—all because of who they were, rather than what they had done.

By 1890, over 10,000 African-American men were working as forced laborers in the South. To employers, the

contract term providing for the duration of their labor was of little interest. Records were lost or destroyed, and prior to the end of the term, a pretext for new charges could be asserted, extending the bondage for years. In 1898, an official listing of crimes for those serving as forced laborers showed that the largest category listed was "Not given."

The consequences of the system were obvious to employers. Leased convicts provided a hedge against unionization by free workers; they received uncompensated labor that was completely within their control; and the system cowed African-American communities, since any black who fell into disfavor with white officials could be swept up and put at hard labor on the slightest pretext. The racial intent of the system couldn't be denied; in one count of 1,000 convicts in two Alabama mines, just 70 were white.

This went on decade after decade. In 1929, two sheriffs in Mississippi were reported to have received between \$20,000 and \$30,000 each for procuring laborers for the system. Its pernicious presence would continue until the Second World War. As for when TCI abolished the practice, it can't be said, but Douglas A. Blackmon, a journalist with the Wall Street Journal and author, notes that U.S. Steel published a commemorative history honoring TCI in 1960 which contained no mention of convict leasing.

The horrors in this mostly forgotten story arise out of a series of egregiously wrong and basically unopposed decisions by legislators, law enforcement, courts, industrialists, and perhaps most of all, the public. These decisions arose out of a poisonous mixture of racial fear and hate, as well as greed, which, as we have seen, still cast their shadows across the land. ■

*Once to every man and nation
comes the moment to decide,
In the strife of Truth with Falsehood,
for the good or evil side.*

*James Russell Lowell
The Present Crisis (1844)*

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First Person

The Forever School

by David J. Millstein, Esq.

It was the Boyd School, two buildings in a field separated by maybe a hundred yards and located on Route 30 in Unity Township just east of Beatty Crossroads. One building was white wooden frame, one large room, grades 1-4, one teacher. The other was red brick, one large room, grades 5-8, one teacher. I had my first two years of preliminary education there before it was abandoned in favor of the then newly constructed Mt. View School, and I loved it. Everyone I know who went there did as well, and we all still speak of it with profound reverence.



David J. Millstein

Each building had two outhouses, one for each of the sexes we knew about then, a hand-operated, outside water pump, and a coal bin from which we daily carried the coal in buckets to feed the antiquated stove that heated each building. It was an honor to be chosen to carry in the coal each day, just as it was a punishment to be required to tidy up the outhouse. I did way more of the latter than the former, and that's



The Boyd School located on Route 30 in Unity Township, just east of Beatty Crossroads. The school opened in 1830 and closed in 1953.

how I first developed a lifelong loathing for the malodorous scent of those primitive necessities, a sensory memory with concomitant gagging only rekindled these days when I read a brief from opposing counsel.

The buildings are long gone, a recycling center currently occupies that space. For many of us though, the buildings still stand and always will. It's been 67 years since I was last there, but I still see them clearly. It's where I learned my ABCs, and

longhand writing, it's where I learned to shoot marbles and flip baseball cards and play Dodge Ball and Rover, Red Rover, and it's where almost everybody liked almost everybody, and it was idyllic.

Originally there was just a single brick building which opened in 1830. It was lost to fire in 1861 and was replaced by the white frame building I attended. By 1914, the operation of the coke ovens in Beatty had drawn enough new labor and families to the area that the school required a second building, and that's when the red brick schoolhouse was built for grades 5-8.

As interesting as those facts may be, they contain no emotion, so let's go there now. My teacher was Agnes Kintz, and everyone addressed her as "Miss Kintz." Everyone! Even her parents called her "Miss Kintz." Though she passed twenty-two years ago at the age of 91, she is, like the school itself, still very much standing in memory.

She started teaching there in 1925 when she was 17, and she taught there until it closed in 1953, thereafter continuing to teach at the Mt. View



Miss Kintz (the tall one in the back row) and her students at the Boyd School in Unity Township. One of them is the author. Can you guess which one?

School for another twenty years. She fills the earliest of my memory cells like a gray-hair-tied-in-a-bun, wispy, calico-attired colossus because that's what she was.

Briefly, and it has to be brief lest this become encyclopedic, let me tell you about her: she taught four grades in one room; she taught reading, writing (the Peterson method, round, round, ready, write), math, geography, and history, among others. During the twice-a-day recesses and lunch breaks we often played pick-up softball, and she pitched for both sides. Acting as her own umpire, she led the league in strikeouts fifteen years running; she supervised Rover, Red Rover; she watched over us as we gallivanted through the bushes and the fields, scraping knees and bloodying noses, and she fixed them all; she arbitrated all disputes and settled all grievances, and there was no right of appeal; at lunchtime, to augment what was, I'm sure, a very meager salary, she sold penny candy and those small bottles of wax filled with flavored, sugared liquid which, when you bit the top off, you could drink and then chew the wax until the flavor was gone; she sold bubble gum and licorice whips and ice cream with wooden spoons and photos of cowboy stars on the underside of the lids; she sternly and unrepentantly administered discipline when required, and she rewarded us when appropriate with the greatest and holiest of tasks, the Dusting Of The Erasers. She was also the only teacher I ever had who never once screeched the chalk across the blackboard.

In addition, it sometimes happened that a kid failed to timely make it to the outhouse, or never even tried. On such occasions, she would, when olfactorily alerted, have all of us, all four grades, stand by our desks while she made the rounds sniffing every derriere until the culprit was, uh, detected. It was always one of the same two or three kids, but she never prejudged; she smelled everyone regardless of race, age, creed, color or gender, and that was probably my

first exposure to and appreciation of both equal protection and due process of law.

She was one of the guys, she was one of the girls, she was extraordinarily kind but you never crossed her, she was tough as nails but you told her everything, and you never didn't love her. That's who she was, and it was almost exclusively because of her that attending the Boyd School, for me and pretty much everyone else who did, will always be a living, loving memory. She made it a forever school because she was a forever teacher.

For most folk, primitive things like the Boyd School have been gone for so long that they are far beyond their experiences. Outhouses are not often on the tips of people's tongues anymore. Yet on those infrequent occasions when conversations turn in that direction, Boyd School alumni, particularly those like me who transgressed on a fairly regular basis, can boast with a kind of sludge-colored pride that when it comes to outhouses, we know something of what we speak, and for that we owe Miss Kintz as well. ■



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Regaining Our Essentiality *continued from page 1*

we still adequately practice our craft? How would the family lawyer seek compliance with a custody or support order? How did the criminal lawyer protect the constitutional rights of the accused? How did the contract lawyer enforce performance of contractual obligations? How did the workers' compensation lawyer overcome an unlawful refusal to pay benefits? Questions that three months ago would never have crossed our lips are now engrained in our daily thoughts, as we struggle to maintain some semblance of our pre-pandemic lives.

When the majority of what we do and how we practice becomes non-essential, must we close our doors and remove the shingle, or could we, in some capacity, provide the guidance and advocacy that our profession requires? As there was no precedent for what we experienced, and are still experiencing, the answer to that question is fluid—a word heard daily in response to this virus. The longer the shutdown continued and our access to the courts remained limited, our ability to adequately represent our clients as we had in the past diminished. The pace of this diminishment depended on our willingness to change how we normally handle cases and on our ability to use other avenues to resolve our clients' cases.

An unexpected, yet promising, consequence of the courts' closure was an increase in the number of clients willing to settle out of court. Even in family law, where retribution through protracted litigation is often the preferred path—we have all heard tales of parties fighting over who gets the Tupperware—parties were choosing to settle. Family law practitioner Patricia Elliott saw an increase in the number of clients willing to work things out, and embraced her role as counselor.

"I believe that the practice of family law perhaps more than other areas of practice, necessitates the concept of being a counselor-at-law. This is due in



large part, to the emotional volatility that is inherent in the breakdown of the family unit. In these unprecedented and uncertain times, it has become even more critical to embrace the role of "counselor," because without any possible immediate recourse from the courts, fear of non-compliance with custody and support orders is heightened," she said.

Personal injury attorney Mike Ferguson also experienced a greater ability to settle cases under quarantine. "Insurance companies are currently sitting on large cash reserves due to the lack of incoming claims. As a result, they have been more responsive and generous than before," said Mike. "I don't expect it to last, but it is a rare opportunity to strike while the iron is hot and take advantage of their desire to settle claims and reduce their cash stockpile."

To encourage resolution of workers' compensation cases, Pennsylvania Governor Tom Wolf signed an executive order relaxing the requirements for settlement. Judges were temporarily authorized to approve settlements (compromise and release agreements) upon receipt of all documents and telephonic testimony from the injured worker and his/her attorney. The need for additional witness signatures on the documents was temporarily set aside by the

Governor. As long as the workers' compensation judge was confident that the individual participating in the telephonic hearing was the injured worker whose case was pending before the court, and that injured worker fully understood the settlement and was not under the influence of any substances that would impair his or her ability to understand the terms of the settlement, the judge was authorized to formally approve the agreement and effectuate settlement.

Emily Shaffer, former managing attorney for the Blackburn Center, was also negotiating settlements, when appropriate, to help her clients attain closure and a final order, instead of waiting for access to the court. Like Patricia, Emily saw a benefit for certain clients in reaching an out-of-court resolution.

"My style as an attorney has always been to give my client the opportunity to settle the case before fighting," she said. "I truly believe that it is more beneficial for a client to have a voice in their final agreement rather than have a stranger decide all aspects for them. Now, more than ever, I feel that clients have a great opportunity to talk things out and attempt to settle."

But, what happens when settlement is not appropriate, and might actually be dangerous? "We are working hard on keeping in contact with all of our clients to make sure they are OK—especially those clients who are still living with or in close proximity to an abusive partner," Emily said, grateful that she had not yet had to file any emergency PFAs. However, she was concerned about the potential for an increase in domestic violence with each day the quarantine continued.

Not all areas of the law have been conducive to working from home, as real estate lawyer April Schachtner and criminal defense attorney Tim Andrews can attest.

On March 19, 2020, when Governor Wolf ordered the closures of

all non-life sustaining businesses, April was faced with the unenviable task of advising her real estate clients that their closings had been indefinitely postponed. Adding confusion to her frustration, April explained how her industry was faced with two diametrically opposed directives as to how to proceed: “On March 24, 2020, in contradiction to Governor Wolf’s order that all activities related to real estate cease, Secretary of the U.S. Treasury Steven Mnuchin issued a directive identifying settlement and insurance services as critical infrastructure and mandating that local governments ensure the continuity of critical financial sector functions,” she said.

Fortunately, clarification came on April 10, 2020, when the Pennsylvania Department of State, in consultation with the Governor’s office, issued a memorandum permitting real estate closings for those transactions that were under contract prior to March 18, 2020. As Westmoreland County’s path turned from “red” to “yellow,” April noticed a return to a new “business as usual,” one that included “paisley-colored face masks and a room heavily laced with the scent of lemon breeze Lysol.”

Because much of his representation of clients is spent in court, Tim Andrews was significantly limited in what he

could do for his clients. Communicating with the DA’s office through email and text, seeking release of his clients who were incarcerated on misdemeanor charges, and dismissal of bench warrants were the only functions he was able to perform during the state’s “red” phase. As

we transitioned to “yellow,” courts opened for pleas and motions, with defendants and counsel participating by video conference. As time progressed, and safety precautions, such as installation of Plexiglas partitions, were implemented, attorneys and, in some instances, defendants were permitted to appear in person.

Jury trials remain elusive. The first trial term since March began in August and some of the logistics that had to be resolved included: Will witnesses

be required to testify by Webex or may they appear and testify in person? Will incarcerated defendants continue to participate by video, and, if so, will their relegation to video participation violate their constitutional rights? Can social distancing requirements be met during jury selection and trials, and, if not, how long can a defendant’s right to a speedy trial be waived? These questions threatened to overwhelm an already overwhelmed judicial workforce.

For lawyers, guided by precedent, who hone their craft through meticulous research of the laws, rules, and regulations enacted to promote and maintain an ordered society, this surreal fight against an invisible enemy upended our daily routines and thrust us into an abyss, where those very laws, rules, and regulations no longer applied. It is our duty as counselor and advocate to keep abreast of the changes and acclimate to our new world. Despite our initial non-essential designation and the shuttering of our brick-and-mortar law firms, we are necessary and will play a significant role in the future of our country. As we enter a “new normal,” it is our responsibility to find the best avenues to resolve our clients’ legal issues, whether it be through more out-of-court resolutions or through technological resources for in-court proceedings. We might even find that some of our new ways are better than our tried and true ways. Only time will tell. We will get through this, but, please, wear a mask and social distance! ■

“Despite our initial non-essential designation and the shuttering of our brick-and-mortar law firms, we are necessary and will play a significant role in the future of our country.”

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A Note to Our Readers: Publication Delay

Demands imposed by the chaos of the COVID-19 pandemic and the upcoming move of the WBA offices to North Maple Avenue have pushed back the publication of this issue, which normally would have appeared in June, until now. Please bear with us during this period of transition.



129 North Pennsylvania Avenue
Greensburg, PA 15601-2311

www.westbar.org

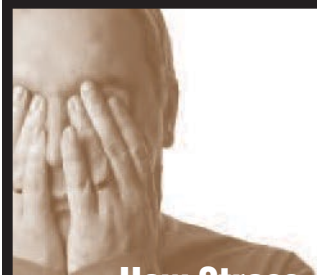
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*Westmoreland Bar Association
Westmoreland Bar Foundation
Westmoreland Law Journal
Westmoreland Academy of Trial Lawyers
Ned J. Nakles American Inn of Court*

EFFECTIVE SEPTEMBER 1, 2020,
OUR NEW ADDRESS WILL BE
100 N MAPLE AVE
GREENSBURG PA 15601-2506

Phone, fax, emails remain the same.



How Stress Affects Lawyers

Stress affects all people and all professions. Stress in the legal profession, however, is well-documented. Lawyers work in an adversarial system with demanding schedules and heavy workloads, which may contribute to increased stress levels.

Lawyer assistance programs are available to help lawyers manage stress effectively. Contact Lawyers Concerned for Lawyers for help: www.lclpa.org.

LAC Committee members:
Joyce Novotny-Prettiman, Tim Geary,
Jim Antoniono, Chris Skovira,
Linda Broker, Stuart Horner,
Tom Shaner, Linda Whalen.

IrvTalks: Depression, Stress & Burnout - Impairment in The Legal Profession & What YOU Can Do About It

— LIVE — 1 Ethics Credit Available



An accredited provider for the PA Board of Continuing Legal Education

Topics of Discussion:

1. The early warning sings of impairment, with special emphasis on depression, stress & burnout.
2. The free service that Lawyers Concerned for Lawyers provides to lawyers, judges, their family members & law students.
3. A close look at what barriers exist that prevent lawyers and judges from seeking the help they need.
4. The role that education plays in breaking the stigma & fear associated with addiction & mental illness in the legal profession.
5. Special emphasis will be placed on what callers to LCL Confidential Helpline can expect.
6. How best to approach the impaired individual as well as the ethical considerations that surround a referral to LCL or JCJ.

Speaker:

***Brian S. Quinn, Esquire**

Education and Outreach Coordinator for LCL

September 16, 2020: Depression, Stress & Burnout - Impairment in The Legal Profession and What YOU Can Do About It

Name: _____

Attorney ID #: _____

Phone _____

Pre-Registration Fees

___ WBA Members \$35 per credit hour

___ Non-Members \$55 per credit hour

Non-Credit:

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Enclosed is my check made payable to the Westmoreland Bar Association.

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To qualify for Pre-Registration Seminar Fees - Please return this form and your payment to the WBA Office, _____ **by 12 pm September 15, 2020.**

**Wednesday,
September 16, 2020
12:00 pm - 1:00 pm
WBA Headquarters**

Seminar Fees:

PRE-REGISTRATION:

(Must be prepaid & received at the WBA office by 12 pm September 15, 2020.)

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WBA Members - \$35 per credit hr.

Non-Members - \$55 per credit hr.

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WALK-IN:

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WBA Members - \$45 per credit hr.

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Lunch will be provided.
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For refund policy information, or if special arrangements are needed for the disabled, please contact the WBA Office at 724-834-6730, or by email at westbar.org@westbar.org.

Westmoreland County Workers' Compensation Practice 101

— LIVE — 1 Substantive Credit Available



An accredited provider for the PA Board of Continuing Legal Education

This workers' compensation course is designed to provide basic information regarding topics needed for representation of individuals in workers' compensation claims under the Pennsylvania Workers' Compensation Act.

Topics of Discussion:

A. The Initial Client Interview

1. Have client complete a background packet.
2. Provide basic outline of a WC case and PA law which applies to the case
3. Set reasonable expectations.
4. Explain serial hearing process.
5. Sign fee agreement.

B. The Anatomy of a Workers' Compensation case

1. Calculation of AWW and TTD rate
2. Hearing process
3. Development of Medical Evidence
4. Burden of Proof
5. Workers' Compensation Judge Decision
6. Workers' Compensation Appeal Board
7. Commonwealth Court

C. Communication

1. Avoid ER or Insurance Carrier contact
2. Report all changes - especially medical

D. Cautions

1. Surveillance
2. Social Media
3. Independent Medical Evaluation

E. Interrelationship with other benefit programs

1. Social Security Disability
2. Unemployment Compensation
3. Short Term and Long Term Disability

Speakers:

***Ronald J. Fonner, Esquire**

QuatriniRafferty

***Michael V. Quatrini, Esquire**

QuatriniRafferty

September 28, 2020 - Westmoreland County Workers' Compensation Practice 101

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Non-Credit:

____ FREE

To qualify for Pre-Registration Seminar Fees - Please return this form and your payment to the WBA Office,

by 12 pm September 25, 2020.

**Monday,
September 28, 2020
12:00pm - 1:00pm
WBA Headquarters**

Seminar Fees:

PRE-REGISTRATION:

(Must be prepaid & received at the WBA office by 12 pm September 25, 2020.)

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FREE

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Non-Members - \$55 per credit hr

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please contact the WBA Office at

724-834-6730, or by email at

westbar.org@westbar.org.

What Video Options Will Work For Your Next Case?

— LIVE — 1 Substantive Credit Available



An accredited provider for the PA Board of Continuing Legal Education

How attorneys are using video technology to their advantage in litigation.

From courtroom admissibility issues to a nuts and bolts breakdown of filming an effective video deposition, this presentation will help attorneys understand what options they have to use video technology to their advantage in litigation.

Over my 13 years in the hot seat at trial, I have seen my share of effective video playbacks as well as not-so-successful clips. I will share my insight along with real examples of the following:

- Video for Depositions
- Video for Demand
- Specialty Video (Drone, Surveillance, Site Inspection, Etc.)

Speaker:

***Jody Wolk, Director, Business Development**

Precise, Inc.

October 8, 2020 What Video Options Will Work For Your Next Case

Name: _____

Attorney ID #: _____

Phone _____

Pre-Registration Fees

___ WBA Members \$35

___ Non-Members \$55

Non-Credit:

___ \$10

___ Waived for Young Lawyers (practicing 10 years or less)

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Card # _____

Expiration Date _____ 3-digit code _____

Credit Card Billing Address _____

To qualify for Pre-Registration Seminar Fees - Please return this form and your payment to the WBA Office, _____ **by 12 pm October 7, 2020.**

**Thursday,
October 8, 2020
12:00 pm - 1:00 pm
WBA Headquarters**

Seminar Fees:

PRE-REGISTRATION:

(Must be prepaid & received at the WBA office by 12 pm October 7, 2020.)

CLE Credit

WBA Members - \$35 per credit hr.

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Non-Credit

\$10

Waived for Young Lawyers (practicing 10 years of less)

WALK- IN:

CLE Credit

WBA Members - \$45 per credit hr.

Non-Members - \$55 per credit hr

Non-Credit

\$20

Waived for Young Lawyers (practicing 10 years of less)

Lunch will be provided.

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