



FOR PENNSYLVANIA YOUNG  
LAWYERS, HERE'S WHAT'S...



# AT ISSUE

A PUBLICATION BY AND FOR THE YOUNG LAWYERS DIVISION  
OF THE PENNSYLVANIA BAR ASSOCIATION

## TAXING ISSUES FOR CHURCHES AND CHARITIES — AN EXAMINATION OF RECENT CASES ON REAL ESTATE TAXES AND EXEMPTIONS

By Brett M. Woodburn

In 2004, the Commonwealth Court was asked to decide to what extent a church was subject to paying real estate taxes. The law in question included Section 2(a)(i) and Section 2(a)(v) of Article VIII of the Pennsylvania Constitution. Article VIII of the Pennsylvania Constitution addresses taxation and finance, and Section 2 identifies exceptions and special provisions. In particular, Section 2.(a)(i) provides that, "The General Assembly may by law exempt from taxation: (i) Actual places of regularly stated worship." Section 2.(a)(v) provides that, "The General Assembly may by law exempt from taxation: (v) Institutions of purely public

charity, but in the case of any real property tax exemptions only that portion of real property of such institution which is actually and regularly used for the purposes of the institution."

The analyses are interesting for anyone whose practice touches on churches, institutions of purely public charity and real estate taxes.

*Wesley United Methodist Church v. Dauphin County Bd. of Assessment Appeals*, 844 A.2d 57 (Pa. Commw. 2004).

The Wesley United Methodist Church purchased two tax parcels immediately adjacent to the church for use as

a parking lot. The church requested an exemption from the real estate taxes from the Dauphin County Board of Assessment Appeals arguing that the parking lot was "reasonably necessary" for the successful operation of the church. The testimony elicited before the trial court showed a steady decline in membership during the months and years before the church annexed the parking lot. However, since the church purchased the two tax parcels and made a parking lot, membership more than doubled. The senior pastor of the church testified that it was his opinion that without the parking lot, membership would decline to the point where the church would have to close.

In opposition, the board argued that the parking lot was not a place of "regular, stated worship." The board concluded that because services were not actually held in the parking lot, it was not exempt from real estate taxes under the Pennsylvania Constitution.

The Pennsylvania Supreme Court spoke about this issue in *Second Church of Christ Scientist of Phila. v. City of Phila.*, 157 A.2d 54 (Pa. 1959). In that opinion, the Supreme Court concluded that a parking lot is "an adjunctive use of the property but not part of regular, stated worship and not actually used for that purpose." *Id.* at 56. The board argued that *Second Church* is directly on point; therefore, the parking lot was not exempt from real estate taxation.

The trial court considered circumstances in which local ordinances require a certain number of parking spaces to be provided for the occupancy and use of the property. When such circumstances exist, parking lots are regarded as necessary for the enjoyment and occupancy of

## KAYAKING WITH THE RIVER RAT

By Jeremy Boby

The sun beat down one day in early August, and all along the river people were basking on the smooth, warm rocks. The heat of the sun-baked rocks was tempered by the chilly 60-degree river that began at the bottom of a deep lake far away in the mountains of Maryland. The sunbathers spent their time swimming in the cool water, napping on the warm rocks and watching the kayaks and rafts floating down the river.

The expert boaters wooed the unexpected and informal crowd by playing inside the wildly foamy holes just downstream from huge underwater rocks. Most of the boaters just surfed, playfully bouncing about the waves. Some of the more accomplished boaters dazzled the sunbathers by doing flips and cartwheels and other gravity defying aqua-acrobatics in their kayaks. And they made every-thing look deceptively easy.

What the crowd didn't know was that each of the kayakers paid for their skills with many painful bumps, bruises, swollen knees, chipped elbows and a myriad of other minor (though very painful) injuries.

On that fateful August day, the crowd was going to be entertained by the painful side of kayaking, and I was the star! Although it was only my second time piloting a kayak, I was about to take my first run down the Loop — the first class III section of the Lower Youghiogheny. When teaching beginners, most guides ease boaters into tackling the rapids; a beginner will start in flat water (class I), and then slowly build up to other classes as he or she improves.

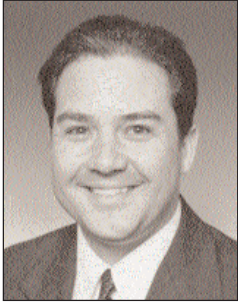
However, my guide (the River Rat) was old school, which meant baptism by fire — er, I mean water. I was thrown into the Loop without the benefit of les-

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## WHAT'S AT ISSUE

You are reading what will be my final article as chair of the Young Lawyers Division. I am taking this opportunity to encourage all young lawyers to partici-



**Wells**

lawyers to make an important contribution to their communities and to our profession.

The YLD has always played an important role in public service programs aimed at educating the public about the law. One of our most important contributions has been the Statewide Mock Trial Competition. For several years I had the good fortune of serving as an attorney coach for my local high school. This experience permitted me to learn firsthand the benefits of working with students. I was able to demonstrate for my students the hard work, preparation and attention to detail that is required in order to effectively present a case to a jury. The students gained a better understanding of how our system of trial by jury works. We had a great deal of fun, too. The students' parents enjoyed watching their children perform in a courtroom setting. Everyone involved in the Mock Trial program comes away with a better understanding of the role that lawyers play in society — and the public perception of our profession is made better because of it.

The Mock Trial program is not the only program through which young lawyers have historically played an important role in educating the public. Other examples include the We the Jury, Project PEACE and I Signed the Constitution programs. Given recent attacks on the image of our profession and the increase in legislative efforts to encroach upon the rights provided

*James A. Wells is the current chair of the PBA Young Lawyers Division.*

under our legal system, there could not be a better time for young lawyers to continue this tradition of public education by participating in the upcoming Law Day program.

If you are not sure how to participate in the Law Day program, the PBA has taken steps to make this easy for you. The PBA partners with many county bar associations to sponsor programs in local schools. You should contact your county bar association to find out whether there is an existing program that you can join. The PBA also provides a free lesson plan guide and tips for classroom visits to all lawyer volunteers. The Law Day 2005 brochure and registration information can be found on the PBA Web site at [www.pabar.org/lawdayinformation.shtml](http://www.pabar.org/lawdayinformation.shtml). Finally, you should attend the

*Given recent attacks on the image of our profession and the increase in legislative efforts to encroach upon the rights provided under our legal system, there could not be a better time for young lawyers to continue this tradition of public education by participating in the upcoming Law Day program.*

PBA Annual Meeting May 4-6 in Pittsburgh, where Pennsylvania Supreme Court Justice Michael Eakin, veteran civics teachers and I will present a program to teach lawyers how to put on a one-hour civics program for kids.

The opportunity to participate in Law Day only happens once a year. All young lawyers should take advantage of this opportunity. Do it for your community. Do it for your profession. Do it for yourself. Whatever the reason, just do it.

## AT ISSUE

Editor

Brett Woodburn

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# KAYAKING WITH THE RIVER RAT

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sons. He convinced me to abandon all common sense and paddle out into that maelstrom of foamy water by appealing to my vanity. He told me that was the way he learned (which I later discovered was actually true) and that he thought I could handle it (which had to be a total lie). He told me I would be a better paddler in the end, but I really didn't believe that I would survive the first day.

Whitewater kayakers all wear a piece of equipment called a skirt. The "hem" of the skirt is elastic, and stretches over the opening of the kayak to keep the water out. Kayakers all must learn the Eskimo Roll, a trick of balancing the body and the paddle that enables a kayaker to defy gravity and flip their boat right side up without bracing against any solid objects. The skirt keeps the boat from filling with water and sinking while upside down. When a kayaker is unable to flip the boat, the only way out is to pull the skirt and to get out of his boat. This is called a wet exit — or just plain swimming.

There were three other experienced kayakers in the group that day, and my guide taught them using the same dubious method. That day, they got to watch as someone else got worked in every ugly hole, and swam at least once on every single rapid. So these four guys had four distinct roles when I went swimming. One guy got my boat, one guy got my paddle, one guy got me and one guy got to laugh (or help in emergencies).

My role was simple: bounce down the rapid, bruising every inch of my soft, sedentary 240-pound body, while holding my feet up in front of me to keep my ankles from getting trapped between rocks. Although ankle entrapment is rare, my guides told me that it is almost 100 percent fatal, even in two feet of water. They didn't realize it, but I could barely swim. If it weren't for the life vest, I'm sure I would not have made it. But I was trying not to think about any of that, and the guys kept telling me that I was doing well. I wonder if they were just saying that so that I would come back for more.

Since I could not manage an Eskimo Roll (think barrel roll in a plane), I was doomed to go upside down and stay that way! That meant I had to pull the skirt holding me in the upside-down boat and swim to the surface every single time.

*Jeremy Boby is the YLD Zone 6 co-chair.*

Swimming is the friendly term that guides and irascible river rats use with the uninformed and uninitiated, but it truly fails to convey the terror encountered while plummeting pinball-like down a steep cliff overflowing with raging water and littered with bruising rocks. The adrenaline rush temporarily masked the pain of nature's bumpers and flippers as my out-of-shape body smashed against the barren craggy rocks. But adrenaline was not enough to mask the agony of cracking my knee, hip or elbow, and the river cared nothing for fairness, liability or compensation for pain and suffering.

The first rapid was appropriately called Entrance Rapid. It looked relatively small as I went through it, with just a few small drops, but dropping just two feet into a foamy roaring hole was a whole new experience for me. My friends were yelling encouragement to me, telling me which way to lean as I came

*Since I could not manage an Eskimo Roll (think barrel roll in a plane), I was doomed to go upside down and stay that way!*

careening through the rapid. I struggled to hear to them over the roar of the river, sometimes not understanding their river jargon until it was too late. I managed to stay upright through the whole rapid, and was feeling quite smug until I got flipped in some calm water (with no rocks). Thus did I learn that "eddy" is more than a first name.

As I spluttered to shore with the help of my four guides, the River Rat told me that Entrance Rapid is the most dangerous rapid on the river at high water, and at least one person has been killed there. Although some of the white water holes in Entrance Rapid were large, I couldn't believe that the rapid I just traversed killed someone. As I emptied my boat of the dark, fishy river water and climbed back in, the guide explained how to lean upstream as I coasted into an eddy so I wouldn't flip next time. I thought I had learned my lesson — until the next time I found an eddy, and the time after that, and the time after that. But a few times I actually got into eddies without flipping.

"Okay," said the River Rat, "this is Cucumber Rapid. Whatever you do, don't go upside down in the upper part of this next rapid, because the water is so shallow the rocks will ruin your smile." Adrenaline and fear and mingled with

my sweat, as my childhood phobias of water and dentists kicked into high gear. My guide told me to "be-bop" through the first part of the rapid, as he pointed to a spot in the middle of the river. I had no clue what he meant by be-bopping, but I watched him lead the way, using his hips to rock-and-roll the boat over and around barely submerged rocks that varied in size from a mailbox to a minivan. Hell, one was as big as train car!

I went over my first rock, and I struggled to compensate with my hips so I didn't flip over. My abs cried out in protest at their first call to duty since gym class in the '80s. Each second seemed like an eternity as I struggled to maneuver through the field of rocks. However terrifying the rocks, I did manage to stay upright in the critically shallow upper portion of the rapid. I saw the River Rat shoot back to the middle of the river, but I instinctively hugged the riverbank believing that I was safer closer to shore. Thus my fatal flaw. Instead of remaining where I thought I was safe, I should have paddled headlong into what seemed dangerous. The first lesson of whitewater kayaking is: paddle! And while I should have paddled with all the force my flabby arms could muster, instead I was paralyzed in midstroke, with bugged out eyes and a hugely gaping mouth from which emanated a primal scream that echoed through the canyon over the roar of the water.

A brief geography lesson is necessary here. The river typically spans from 75-150 feet. In this one rapid, however, the whole river is wedged into a quarter of that width. Picture the force behind that flue of water. The impact of that water shot me straight toward an invisible menace, a submerged rock at the base of the largest whitewater hole in Cucumber Rapid. I hit the top of the hole and was instantly thrown upside down. I pulled the skirt and swam out of the boat just as my right hip slammed right on the submerged rock, after which I was pushed into a wall of water, popping up moments later in safe, deeper water. My hip throbbed dully as I bobbed up and down a series of waves, fear and excitement turning to relief as the whitewater flowed into flatwater.

I went the wrong way, flipped six ways to Sunday, swam and slammed my butt against a big rock. But I didn't flip in the upper part of the rapid. I didn't

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# MOCK TRIAL PROVIDES VALUABLE LIFE EXPERIENCE

By Jillian D. Zuhl

Entering its 21st year, the John S. Bradway Mock Trial Program is one of the premier activities of the PBA's Young Lawyers Division. The mock trial competition brings together volunteers in the legal and educational communities. Judges, lawyers, paralegals, teachers and students from across the state compete in mini trials— learning not only the case materials and the law, but also some valuable life lessons about the justice system.

This year, the case materials feature the case of Linda and Jon Gallo, as executors of the Estate of Keith Gallo, deceased v. Riley Urbanski a/k/a Skee Poll individually and d/b/a Thugs&Skees, a sole proprietorship. This fictional civil action is brought by the parents of a young man who died from injuries caused by a crowd-crushing incident at a rap concert. The parents claim that the performer Skee Poll incited the crowd to charge the stage while performing a song, resulting in the death of their son. One of the issues raised by the performer is that s/he cannot be liable because music lyrics are protected speech under the First Amendment.

Teams from schools across the state began their first round of competitions

*Jillian Z. Duhl is the State Mock Trial Co-Chair.*

in early February. Students get to star in the roles of plaintiff and defense attorneys as well as key witnesses, including Cameron Campbell, concert attendee and cousin of Keith Gallo; Chris Zimmerman, the crowd watch manager for the Watchoverya Arena, where the event occurred; Riley Urbanski/Skee Poll a professional rap artist and music producer; and D'Arcy Ace, an independent consultant to the entertainment industry on issues of crowd control and safety. As students prepare for and perform these roles, they come away with a newfound confidence and eagerness to serve their communities and schools in a positive way.

This may best be illustrated with last year's winning team Overbrook High School from the Philadelphia region. In December of last year, Overbrook High School's teacher Philip Beauchemin was struck with a life-threatening illness and three-quarters of the mock trial team dropped out. In fact, all but five students gave up. Yet it was those five students, along with their attorney advisor Khadijah Scott (a former student inspired into law by her mock trial experience), who kept their dream alive and went on to win the state competition, edging out over 260 of some of the state's most prominent schools. As Beauchemin

recovered from his coma, the tight-knit team rallied by his bedside and even held practices in his home. Their dedication inspired not only their teacher, but also their principle and the entire school. Overbrook High School had been wrought with violence that year but ended it as a unified student body rallying behind not a sports team but a academic mock trial team that went on to compete in the National Mock Trial Competition May 2004.

So, as you read this article and are intrigued by such a wonderful competition that inspires students from across Pennsylvania to do more, there are ways that you too can help. The regions across the state are looking for attorneys, paralegals and judges to help serve in trials. You can serve as a judge or juror/scorekeeper determining who wins the trial and providing valuable critique for the students as they move forward in the competition. Moreover, you can be part of the exciting state finals that take place on April 1-2 in Harrisburg. We are seeking scoring jurors and judges at this time for the finals. Please contact Jayanne Hayward at the Pennsylvania Bar Association at 1-800-932-0311, Ext. 2223 or Jayanne.Hayward@pabar.org to become a part of this life-changing event.

## KAYAKING WITH THE RIVER RAT

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smash my head or teeth against any rocks. Satisfaction was short lived though, as the rigors of swimming required me to actually attempt to use my legs, sending jolts of agony from my battered butt. But, I did get to keep all of my teeth.

My guides were all around me in their boats. "Well, he's smiling, maybe he can handle this," said River Rat, obviously confusing a wince with a smile. I almost made it to shore before I realized I chipped my elbow. I couldn't imagine handling this beating on a regular basis. Although I hurt from six distinct parts of my body at the same time, I wasn't seriously injured. I learned that chipped elbows are occasionally painful and slow to heal, but require no medical attention. They are also cheaper to fix than are chipped teeth. In fact, most kayaking injuries are minor and require no med-

ical treatment.

I finished the day with more bumps and bruises than redundancies in a young lawyer's brief, but I survived. I let the River Rat and his pack thrash me two more times on the class III-IV rapids of the Lower Youghiogheny before I started going to flatwater training classes. Although less exciting than Cucumber, the class II creeks taught less painful lessons. I also learned faster than did the other beginners in my classes. The terrifying whitewater swims are now much less frequent, happening only a few times a year instead of 10 times a rapid. My arms are no longer flabby and I am 60 pounds lighter than when I started paddling. I've never been quite the same since that first day, but I wouldn't recommend letting a River Rat trash you on a class III river your first time paddling — even if it does make you a better paddler.

## UPCOMING EVENTS

*March 3-5 — CCBL, Nittany Lion Inn, State College.*

*April 1-2 — YLD Statewide Mock Trial Competition, Dauphin County Courthouse/Crowne Plaza, Harrisburg.*

*May 4-6 — PBA Annual Meeting, Hilton Pittsburgh, Pittsburgh.*

*July 29-30 — YLD Summer/New Admittee Meeting, Rocky Gap Lodge, Cumberland, Md.*

# TAXING ISSUES FOR CHURCHES

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the church, and the board exempts the parking lots from real estate taxes. The trial court viewed this discrepancy as fundamentally inconsistent and the Superior Court agreed.

The Superior Court determined that the testimony established that the parking lot was necessary for the level of participation that would allow the church to continue having worship services. It further concluded that the parking lot was reasonably necessary for the occupancy and enjoyment of the church. The Superior Court agreed with the trial court that the board's approach as to exempting a parking lot from real estate taxes was inconsistent, and affirmed the trial court's approval of the exemption.

Judge Robert Simpson dissented from the majority opinion, stating that an intermediate appellate court should apply the law as set forth by the state Supreme Court. The board appealed this issue to the Supreme Court and oral arguments were held on Dec. 1, 2004.

## ***St. Aloysius R.C. Church v. Fayette County Board of Assessment Appeals*, 849 A.2d 293 (Pa. Commw. 2004).**

Fayette County undertook a county-wide reassessment. As part of that process, the appraiser valued the parish house owned by St. Aloysius Roman Catholic Church and determined that both levels of the house were subject to the county, local and school taxes. The church appealed this decision to the Fayette County Board of Assessment Appeals that denied the appeal and determined that the church was not entitled to an exception for the parish house.

The church appealed the board's decision to the Fayette County Court of Common Pleas. In support of its appeal, the church offered testimony about the function of each floor of the parish house. The first floor was used exclusively to conduct the routine business of the parish. Relying on this testimony, the trial court determined that the first floor of the parish was used "primarily for public charity," and held that the first floor of the parish was exempt from the realty taxes. The board did not appeal this determination.

*Brett Woodburn is an attorney with the Harrisburg firm, Caldwell & Kearns. He is the editor of At Issue and serves as co-chair of Zone 3 of the YLD. To contact him directly, visit [www.caldwellkearns.com](http://www.caldwellkearns.com).*

The church also offered uncontroverted testimony about how the second floor of the parish house was used: as housing for the local priest and the support staff. However, it also offered the following services to the community: a) allowed for a place to hold retreats, missions, prayer services and training programs for the parish ministries; b) offered a place for priests recuperating from illnesses; c) occasionally housed missionaries; d) offered a place for prayer services and Bible studies; and e) periodically served as a refuge for travelers. The trial court held that the second floor of the parish house was not exempt from realty tax. It was from this decision that the church appealed.

The church argued for an exception from the taxes because the parish house is an "institution of purely public charity," as provided in Article VII, Section 2(a)(v) of the Pennsylvania Constitution of 1968. To qualify as an "institution of purely public charity," the church must establish that it advances a charitable purpose, donates a substantial portion of its services, benefits a substantial class of people who legitimately benefit from charity, relieves the government of some of its obligations and operates free from private profit motives. See *Hospital Utilization Project v. Commonwealth*, 487 A.2d 1306 (Pa. 1985).

The Commonwealth Court affirmed the trial court, but did not directly address the "purely public charity" exception. Instead, the court examined the more narrow "place of regularly stated religious worship" exception. Because

the church is, obviously, a religious entity, the court began its analysis by recognizing that the Pennsylvania Supreme Court has held that parsonages generally do not qualify for tax exemption under the "regularly stated religious worship" exemption because that exemption is limited to the actual space on which the religious worship occurs. See generally *Second Church of Christ Scientist v. City of Phila.*, 157 A.2d 54 (Pa. 1959). The Commonwealth Court held that the second floor of the parish house was used primarily as a residence, and only secondarily as a place to hold religious meetings or classes.

The Commonwealth Court decided that because the second floor of the parish house did not qualify for the "regularly stated religious worship" exemption, it should not be granted the benefit of the more broad "purely public charity" exemption. The court explained that allowing the church to benefit from the broad exemption when it could not find relief from the more restrictive exemption would be contrary to the rules of constitutional construction. "[W]here there is a conflict between a specific constitutional provision, which is applicable to a particular case, and certain general provisions which, but for the conflict, might apply, the specific provision will prevail." *St. Aloysius*, 849 A.2d at 297. Under these facts, the Commonwealth Court held that a church functioning as a church could not receive an exemption for its parsonage under the "purely public charity" exemption.

## YLD SEEKS NOMINATIONS

The YLD Nominating Committee, chaired by Steven R. Serfass, is accepting applications from YLD members interested in seeking nomination to run as candidates for division chairperson-elect, secretary, treasurer and division delegate at the 2005 Annual Meeting (May 4-6 at the Hilton Pittsburgh, Pittsburgh).

If you are interested in being nominated by the Nominating Committee under Article IV, Section 2, of the by-laws, please submit your qualifications and a brief biographical sketch by Feb. 28, 2005 to Steven R. Serfass, 232 Delaware Avenue, Palmerton, Pa. 18071, fax: (610) 826-8082.

If you wish to be nominated by petition under Article IV, Section 4 of the by-laws, please send your materials with a petition signed by at least 15 members of the YLD by April 4, 2005 to the above address or fax number. Send a copy of all materials to Jayanne Hayward, YLD coordinator, Pennsylvania Bar Association, 100 South Street, Box 186, Harrisburg, Pa. 17108-0186.

The YLD bylaws can be found on the PBA Web site at [www.pabar.org](http://www.pabar.org). Serfass can be reached at (610) 826-8080 to answer any questions you may have regarding the election process.

# WEAPONS OF MASS DESTRUCTION

By Scott P. Sigman

## ***Commonwealth v. Johnnie, Harry, and Benjamin Bellmon (26th District)***

Pennsylvania's first weapons of mass destruction case began its jury trial Nov. 1, 2004. Following a July 2003 drug raid at 1715 N. Marshall Street in North Philadelphia, defendants were charged with weapons of mass destruction, risking a catastrophe, violations of the uniform firearms act and other related charges, including drug offenses.

The police recovered three grenades, an armor piercing artillery dart, 20,000 rounds of ammunition, three fully loaded semi-automatic handguns (one with functional laser sights), one fully loaded .357 magnum inside a 3.5 pound bag of marijuana, assault rifles in various stages of assembly, two sniper suits, ammunition-making equipment, video camera surveillance equipment, digital scales, numerous full drug packets ready for sale, drug packaging equipment and drug paraphernalia. Johnnie Bellmon and two of his sons, Harry and Benjamin, were arrested inside the property after the July raid.

Police began this case investigating the murder of one of Bellmon's sons that occurred in the living room of the N. Marshall Street home in April 2003. Since then, Bellmon's other sons, Richard and Harry, along with his brother-in-law Jonathan Logan, were shot in September 2004. Richard Bellmon and Jonathan Logan died as a result of that shooting. Two grandchildren were also shot, but they survived. In the July raid police observed numerous bullet holes in the living room area of the home.

Assistance District Attorney Scott P. Sigman presented 27 witnesses and 156

*Scott P. Sigman, Esq. is an assistant district attorney with the Special Narcotics Prosecution Unit. He also is a YLD Zone 1 co-chair.*

exhibits during the two-week trial. One of the notable witnesses was a U.S. Army sergeant with 15 years of experience assigned to the Ft. Dix EOD (Explosive Ordinance Disposal Unit), who served two tours of duty in Afghanistan and two tours of duty in Iraq, and specialized in disarming nuclear weapons and IEDs (improvised explosive devices). The sergeant testified that the Bellmons had two of three components needed to make the inert grenades operable (black powder and primer); all that they needed to arm the grenades was a screw available at any hardware store.

Another notable witness was the imprisoned gangster rapper from the RAM Squad (Richard Allen Mafia), Tommy Hill, a/k/a John Wilson. Hill testified that the Bellmon family was in a drug turf war with Dawud Bey and that Bey killed Bellmon family members. Hill further testified that the Bellmons were planning to retaliate with grenades and guns, intent on avenging the deaths in this highly residential area — three blocks from Temple University's main campus and surrounded by schools and churches. Hill explained that the Bellmons were going to load the grenades prior to use.

Defense attorneys asked Hill if he was making up this case like rappers make up songs, Hill responded, "I rap about selling drugs and acting like a gangster because that is what I do, I sell drugs and I act like a gangster, I rap about reality, this case is about reality!"

The defense attorneys did not dispute that the defendants knew Hill or that the drugs were found in the house. They claimed that these defendants were selling water ice, not drugs, even though no water ice paraphernalia was found.

After hearing all of the evidence, the judge would not allow the jury to consider the WMD charge, stating that he

did not believe that these defendants could make the grenades live even though the defense had no expert testimony. The jury returned a verdict of guilty for each defendant on every charge they were allowed to consider.

## ***Commonwealth v. James Hogeland (15th District)***

Pennsylvania's second weapons of mass destruction case began Dec. 28, 2004. The defendant, James Hogeland, was charged with weapons of mass destruction, risking a catastrophe, violations of the uniform firearms act and other related charges, including drug offenses stemming from a July 2004 drug raid at 6532 Torresdale Avenue in northeast Philadelphia.

During the raid, one-half kilogram of crystal meth was recovered along with bombs, bomb making equipment and 21 firearms — some with homemade silencers. The defendant received regular shipments of meth that were mailed from Arizona to Philadelphia. The HIDTA Parcel Task Force, the Philadelphia Police North Narcotics Field Unit and the District Attorney's Office were able to intercept a package that contained a half-kilo of crystal meth. The package was then outfitted with an electronic tracking device and a controlled delivery was made at the Torresdale Avenue address. Soon after the delivery, police executed a search and seizure warrant, at which time they encountered a violent pit bull (requiring four officers to discharge firearms), numerous rifles, shot guns, hand guns, explosive making equipment and a live IED (improvised explosive device).

After presenting five witnesses including a member of the Philadelphia Police Bomb Disposal Unit, Judge Marsha Neifield held all charges for trial. A trial date has not yet been set.

YLD SUMMER MEETING  
YLD SUMMER MEETING  
YLD JULY 29-30  
YLD SUMMER MEETING  
YLD SUMMER MEETING  
ROCKY GAP LODGE, CUMBERLAND, MD.

## EDITOR'S COMMENT

# OVERCOMING OBSTACLES TO YOUNG LAWYER PARTICIPATION

By Brett Woodburn

**E**leven. What a number. Depending on the point of reference, eleven can be an impressive number! It can refer to a football team or an ace in the hole. This time, eleven refers to the number of YLD members that attended at least some of the Midyear Meeting in the Bahamas. Is eleven a good number or not? You decide.

The Young Lawyers Division leadership totals 29: seven officers and 22 members of the executive council. Not all of the attendees were officers or members of the executive council, but the total number of young lawyers who attended the meeting exceeded more than one-third of the total YLD leadership. That sounds respectable. Consider, however, that across the commonwealth, the YLD has approximately 8,504 members. Is eleven as exciting now? Why? Why did our division, a division that envisions itself as a leader within the bar association, present such low numbers at the Midyear Meeting?

I think that there are a number of reasons and a few excuses. Each of us who did not attend the meeting, and those of us who have missed the Midyear Meeting in years past, can offer reasons, explanations and excuses why we did not go or have not gone. I do not claim to have any answers and I do not presume to pass judgment on anyone who cannot or did not attend the meeting. Take the time to read this and to give it some thought. Just maybe we can change some things that will allow our numbers at the Midyear Meeting to better reflect our representation within the leadership roles of the PBA.

Maybe we should first turn to the senior bar for help addressing this concern. As young lawyers (and YLD members), we had to spend nearly \$2,200 to stay four nights in the Bahamas. What was available to us specifically to justify our time away from our elusive Quest to Master the Almighty Billable Hour? The \$2,200 was not a final total, because it did not include airfare or meals. (Sure, I can stand to lose a few of these holiday pounds, but...)

The CLE programs were interesting, but limited in their application to our young practices. As YLD members, we have been to, or had the opportunity to attend seminars that offer suggestions about how to deal with difficult judges. The concept of a "difficult judge" has not been well defined in our seminars. Despite this shortcoming, the reality of our practices is that there is very little that we can do to guide, cajole,

convince or badger a "difficult judge" to be less, well, "difficult!" A CLE on appellate work, while intellectually appealing, is probably something few young lawyers address, unless it is in the administrative law arena. The dialogue between the bench and the Legislature can be interesting, depending on the topic. The YLD sponsors the Day on the Hill each October. Unless the topic of debate is something that directly affects our practices or our lives, there is less draw to this session than the topic deserves. There were not any CLE presentations offered by the YLD, nor were any of our members participating as presenters or panelists. Would it work to have representatives from the YLD participate in developing a session that would appeal to both senior bar and YLD members? Certainly, there is much that we can learn from each other.

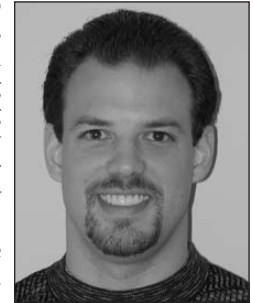
We do have the YLD Summer Retreat, so maybe the Midyear Meeting is not a place for us to contribute to the program. Fair enough.

I am (relatively) young. I am (relatively) new to the practice of law. I am eager to become involved and to interact with the leaders of the senior bar and the leaders from the bench! And it sure would be nice to have a few drinks, maybe smoke a cigar with a Supreme Court justice! What a great opportunity, both personally and professionally! But can I justify the time away from the Quest?

The two factors that I have heard from YLD members that affect their decision not to attend the Midyear Meeting are time and money. The PBA offered a minor subsidy for my trip, conditioned upon attending the YLD business meeting. The subsidy covered my airfare, and the YLD meeting was more form than substance. (With eleven people attending, what business could be accomplished?) We could spend time talking about upcoming ABA trips, but I bet that topic interests fewer YLD members than it attracts. My practice is influenced on a daily basis by what is going on within the legal and legislative communities within Pennsylvania. I want to be a part of the process — I want to learn from our current leaders within the bar, and I want to offer my perspective on the practice of law in Pennsylvania today. Let's be fair. Many within the leadership of the senior bar are far removed from their time as a young lawyer.

Members of the senior bar have shared

with me that they are not comfortable making (more) money available to assist YLD members in attending the Midyear Meeting. After all, the PBA does not offer such assistance to solo practitioners or to attorneys in general. A young lawyer working for a "Big Law Firm" can earn far more than many solo practitioners, so why should the PBA help one and not the other?



If you have **Woodburn** been practicing law for 20 years or more and have not yet faced the realities attendant with sending kids to college, then you cannot appreciate the 600-pound financial gorilla that rides on many of our backs. Many attorneys who have been practicing for more than 20 years earn more in a month than it cost them to attend one year of law school. Many bring home more earnings in the first quarter of the year, than it cost them for three years of law school (excluding room and board). Today's young lawyer faces debt following three years of law school that approaches or exceeds six figures! And that figure may not include any loans that they may carry from their undergraduate education. Many of us have education loans of which the total principal exceeds many mortgages.

This segues into the second factor: TIME! The time constraints that our employers place on us are daunting. How many young lawyers have billable hour requirements? Of those with billable hour requirements, how many approach an annual requirement of 1,800 to 2,000 hours? Do the math — 2,000 billable hours requires one attorney to bill eight hours a day, five days a week, 50 weeks a year. How many hours do you have to work before you can ethically bill for eight hours of work? Young lawyers spend long hours and weekends at the office, pursuing the Quest to Master the Almighty Billable Hour. If we have a family, when do we see them? How many lawyers do you know under 40 who are no longer married or are no longer married to the same person? How many of you who employ young lawyers encourage them to become

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# PBA PRO BONO OPPORTUNITIES

By David Trevaskis

One in five. Twenty percent. The fifth Beatle. These are the odds stacked against people in poverty accessing justice. Pennsylvania Legal Services estimates that only one in five who are eligible for civil legal aid in the commonwealth actually receive direct legal assistance from an attorney. But what can a young lawyer do?

Pro bono service is often viewed as the province of older, more established lawyers who have the professional and financial freedom to give generously of their time and resources. Young lawyers are too busy building their practices and handling all of the other aspects of their lives to have much to offer, right? Wrong! Young attorneys have an important role to play in civil legal aid for the neediest among us — and in fulfilling that role, young lawyers often gain as much as they give. Pro bono work offers young lawyers tremendous responsibility, a range of experiences for professional growth and a chance to network with and be seen as a peer of the more seasoned pro bono attorneys in their community.

As it does with many PBA efforts, the Young Lawyers Division provides the energy and enthusiastic “ground troops” for the PBA Pro Bono Office. Thanks to its members, civil legal aid is in better shape today than it was when the PBA first created its Pro Bono Office. The successes in the field — from increased funding for civil legal aid programs through the Access to Justice Act to the development of new, online resources such as PALawHelp.org and PProBono.net that benefit both clients and attorneys — reflect YLD leadership and support for delivering legal services to the poor.

The Pro Bono Office, which staffs both the Legal Services to the Public Committee and the Task Force on Student Loan Forgiveness and Repayment Assistance, is looking for more young lawyer participation. There are four subcommittees of the committee: Local Support, Development, Pro Bono Conference and Law Schools. These subcommittees provide the direction for much of the PBA’s pro bono efforts.

The Local Support Subcommittee is dedicated to increasing the number of

lawyers involved in pro bono activity. Since each county has a unique pro bono structure and approach, the work here requires intensive and extensive local contact. The Local Support Subcommittee is exploring conducting a statewide survey to try to capture a better picture of the pro bono efforts across the state. Some counties, such as Dauphin County, have adopted the subcommittee’s suggestion to value pro bono hours at a locally based fee. This allows the analysis to include not only the number of attorneys involved, the total number of cases handled and the total number of hours donated, but also a total dollar amount for the work.

The Development Subcommittee is charged with seeking additional funding for civil legal aid. Much needs to be done in the area of funding, beginning with eliminating the sunset provisions of the Access to Justice Act. Working with other

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*Pro bono work offers young lawyers tremendous responsibility, a range of experiences for professional growth and a chance to network with and be seen as a peer of the more seasoned pro bono attorneys in their community.*

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leaders from around the state, task members from the committee are pursuing this with the Pennsylvania House and Senate leadership. Cy Pres also is an area of subcommittee interest. There will be another round of IOLTA pro bono grants this spring, and the PBA is working closely with potential applicants to make sure that the funds allocated have a significant impact on the field.

The Pro Bono Conference Subcommittee is working with the Allegheny County Bar Association to organize the fourth annual PBA Pro Bono Conference as part of the PBA annual meeting in Pittsburgh. The focus of the conference will be on mediation as a new paradigm in pro bono service. This will be an exciting time to be in Pittsburgh as Heinz Foundation challenge funding has allowed the Allegheny County Bar Association to create its own pro bono coordinator position and long-time civil legal aid advocate and past PBA Committee Chair Bob Racunas is poised to become president of the local bar.

The Law School Subcommittee has many innovative ideas, such as using

loan forgiveness and debt reduction to improve the ability of new lawyers to provide civil legal aid. The subcommittee also is developing ways that law students can be inculcated with the ethic of pro bono so that they join the profession ready to serve. Recent efforts include joint PBA/Phi Alpha Delta Legal Service fraternity programs at Widener-Harrisburg School of Law and law-related education outreach by the PBA with the Black Law Student Association at the University of Pennsylvania School of Law.

The Task Force on Student Loan Forgiveness and Repayment Assistance, led by chairs Louis Rulli (Philadelphia), Sam Cooper (Dauphin) and Maureen Kelly (Allegheny), has YLD Chair James Wells as a key member. Given its vital mission of trying to find ways to make civil legal aid jobs more accessible to young lawyers with large law school debts, this group’s work affects young lawyers significantly. The task force initially met February 2004 in Harrisburg and has worked through conference calls and small group meetings since that time. At its initial meeting, the task force decided to break into four work groups:

1. Law Schools. Review law school loan reduction assistance programs (LRAPs) and latest reports on student loan obligations; contact law school career planning and placement offices and public service programs, interact with law school deans, faculty, students; review and analyze innovative approaches to the problem at law schools around the country.

2. Employers. Review and analyze student loan programs and policies of public and private employers, legal services programs, and nonprofit organizations.

3. Funders. Review and analyze student loan programs of funders: legislative initiatives, higher education assistance agencies, foundations, financial institutions, bar associations.

4. Research. Compile external resources, studies, articles, latest developments regarding student loan obligations and assistance programs; provide needed information to the workgroups.

Some of the task force work groups overlap in their mission with the ongoing work of the committee. Where that occurred, committee members shared information and ideas with the task

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## EDITOR'S COMMENT

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involved with the state and local bar associations? How many of you who employ young lawyers let them know that you support their participation (within reason) financially or otherwise recognizing the time commitment?

The PBA meetings are valuable; all of them are. I have personally benefited from meeting with, talking with and socializing with other attorneys, judges and justices. Through my own personal and professional growth, my firm has benefited. I have been involved with my local bar association and the PBA for more than seven years — most of my career as an attorney. The benefits are just now starting to coalesce. I have contacts across the commonwealth within the bench and bar. And I am just now starting to feel comfortable calling on these contacts, whether to refer a case, to ask a question about practice or procedure, or to have lunch when traveling.

I missed the last two Midyear Meetings (one was for personal reasons with which we all must deal on occasion). I practice law hard. I work at it diligently and try to get better on a daily basis. When I play or vacation, I do not want to spend my time or my family's time with other lawyers I barely know. In this respect, I think I am like many other young lawyers (and YLD members) trying to develop my career. When I scrape together a few (and far-between) days out of the office, I want to give them to my family. But I also want to go to the Midyear Meeting because I want to be involved with my bar association. I care about the profession and where I think that it is headed.

Maybe the senior bar is less concerned whether or not the YLD has an active presence at the Midyear Meeting than at other meetings. And if so, perhaps this perspective is justified. At what level has the YLD participated at the Midyear Meetings in years past? What do the members of the YLD have to offer the senior bar at the Annual Meeting? Tough questions with tougher answers — but these are not to be addressed today.

With any group dynamic, there are many facets that come into play and that must be considered. Oftentimes, factions within the group become bogged down in

the quagmire of self-fulfillment, perpetuating the problem rather than breaking it down to its smaller components to try and develop a fix.

Should the PBA pay for all YLD members to attend the Midyear Meeting? Of course not. Certain officers within the YLD are partially compensated to attend the Midyear Meeting. I think that is the right approach; there should be an incentive for the leaders to attend the Midyear Meeting. But the YLD is composed of far more than its "leaders." It would benefit both the senior bar and the YLD to have greater participation, to have a more extensive exchange of ideas at the Midyear Meeting. How can this happen?

Some suggest that that YLD members should not be required to stay at the same location at which the Midyear Meeting is held. The PBA tried this in the past, but with what success? In all honesty, I am not sure that I would want to stay at a different location, because you lose much of the interaction and socialization that makes up the core of this meeting. Maybe this does warrant reconsideration.

What about creating a fund of money from which YLD members can draw to offset some of the costs of attending the Midyear Meeting? Rather than capping the amount of PBA contribution at \$500 or \$1,000, put the money in a pot to be divided equally among those attending. Where

would the money come from? Perhaps it is time to reexamine and prioritize which programs best benefit the membership, and fund them accordingly. Hard questions; hard answers.

Perhaps we can reach out to the leadership within the senior bar to help us. I do not presume to know how other firms and offices manage their resources. However, I do know what I hear from YLD members from across Pennsylvania. Many do not feel that they have the support of their employers to take time away from the office to attend PBA meetings. Some have limited allowable time away from the office, whether it is for PBA events or family vacations. Some have so much pressure placed on them to attain the Quest, that all else falls by the wayside.

The simple truth is that we, as young lawyers, need the mentoring, leadership and guidance that comes only with years of experience practicing law. Law has become too demanding and too competitive to allow for the mentoring as it once occurred. We need our more senior leaders to do just that: Lead us. Help us. Guide us.

And in turn, we as young lawyers (and YLD members) owe a debt to be paid to the senior bar through attendance, service to the bar, service to the community and guidance to those who follow us.

## PRO BONO

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force. The overall picture for the field is daunting. The debt burden on newly minted lawyers seeking careers in civil legal aid or other public service is overwhelming. Examples of \$100,000+ debt loads balanced against starting salaries as low as \$25,000 per year in some counties abound. There are some efforts to relieve that burden, from law school LRAPs to fellowships such as the Martin Luther King Fellowships of Pennsylvania Legal Services, but they are few and far between. The other side of the spectrum also is being evaluated as various partners in the Pennsylvania Legal Assistance Network (PLAN includes the PBA, PLS, PA IOLTA and many other organizations) seek support for pension options as the civil legal aid field ages.

Much still needs to be done, but it is exciting to note the progress being made. With the continued assistance of the YLD, more progress will follow.