

founded 1886

# The Communiqué

## President's Corner



J. Tyler Dinsmore  
 WVBA President

**ASBESTOS LITIGATION.** In the 70's, it was the piece of litigation that you didn't get into because you thought it wouldn't last. In the 80's, you thought it might be a nice book of

business for the next five years. In the 90's, you thought it's got to end soon. Well, in 2002, asbestos litigation is still alive and still kicking strong in West Virginia. In fact, West Virginia courts have become one of the five hottest spots in the United States for asbestos litigation. There are between 18,000 and 36,000 active asbestos cases on the dockets of various Circuit Courts throughout our state, and more cases are filed weekly.

This litigation impacts everyone's practice. In a real estate closing: Are there asbestos in the property to be purchased? In the merger or acquisition practice: What is the asbestos liability of the acquired company? Asbestos litigation is a concern for all West Virginia lawyers inasmuch as the administration of justice in our state is being severely impacted by it. The West Virginia courts are struggling with the issue of timely providing these plaintiffs their day in court, while at the same time providing the defendants with their procedural and substantive due process rights.

At the 116th Meeting of The West Virginia Bar Association this September, we will have the opportunity to hear from Judge Martin Gaughan of the 1st Judicial Circuit (Brooke, Hancock and Ohio counties) who has been assigned by the West Virginia Supreme Court the

unenviable task of resolving all West Virginia asbestos litigation.

Judge Gaughan has graciously agreed to speak to The Bar Association on his plan for resolving asbestos litigation in our state. The following weekend, he will start a mass common issues trial involving approximately 150 defendants whose culpability may be determined for up to 8,000 different plaintiffs. Judge Gaughan has to struggle with *forum non conveniens* issues - determining what issues are common between these various defendants, and how to instruct the jury on the issue of punitive damages - just to name a few. Judge Gaughan's charge by the Supreme Court is daunting inasmuch as all previous attempts to resolve asbestos litigation in the state of West Virginia have failed and have led to the number of cases still pending.

*(continued on page 2)*

**Make your reservations now!**

The 116th Annual Meeting  
 of  
 The West Virginia Bar Association

The Homestead Resort  
 Hot Springs, Virginia  
 September 19 - 21, 2002

*Details inside!*



**Be there!**

The West Virginia  
 Bar Association

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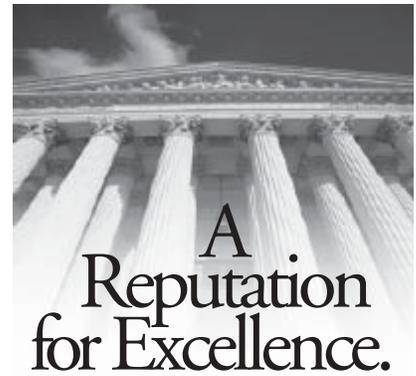
## Calendar of Events

- June 13, 2002 "Legal Ease" Cocktail Reception  
Purple Iris, Martinsburg  
5:30 PM to 7:30 PM  
Hosted by the Young Lawyers Division
- June 28, 2002 Ethics CLE Seminar (\*\*3 hours credit\*\*) Presented by Professor Forest J. Bowman  
Holiday Inn-Charleston House, Charleston  
1:30 PM to 5:00 PM  
Sponsored by The WVBA
- July 31, 2002 Post Bar Exam Party  
Joey's, Charleston  
Immediately following the Bar Examination  
Hosted by the Young Lawyers Division
- September 19-21, 2002 Annual Meeting  
Homestead Resort, Hot Springs, VA  
Hosted by The WVBA
- October 5, 2002 Tailgate Party  
Mountaineer Field, Morgantown  
2 hours prior to the WVU vs. Maryland game  
Hosted by Young Lawyers Division

## Remembrance

Donald Dale Ezel  
Born: 09/19/19  
Died: 03/11/02  
Wheeling, WV

Harold H. Smith  
Born: 01/28/18  
Died: 02/17/02  
Concord, NC



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(Dinsmore . . . continued from page 1)

How successful Judge Gaughan will be in meeting his charge from the Supreme Court will impact your practice. If you are in a defense firm and attempting to determine where to marshal resources, Judge Gaughan's success is going to impact your decision regarding staffing. If you are a plaintiff's lawyer, Judge Gaughan's decisions should impact your decision regarding the asbestos plaintiff who walks through your door seeking representation. All of us who are involved in the administration of justice in this state are going to be impacted since trying 36,000 cases will require significant judicial resources.

As you probably can tell, I am excited to have Judge Gaughan speak to us about this situation. We will also have Justice Elliott ASpike@ Maynard give us the West Virginia Supreme Court's perspective of the asbestos crisis in our state. It is a very interesting and complex situation which should be, at the very least, entertaining.

I hope that all who receive this letter will make every effort to attend The West Virginia Bar Association's Annual Meeting. It promises to be an excellent event!

## The Value of Bar Memberships

Charles M. Love, III

To practice in West Virginia we must belong to the West Virginia State Bar Association. Membership is mandated by the West Virginia Supreme Court of Appeals. The State Bar was created by this association in 1947 at the request of the Supreme Court and is the Court's vehicle for regulation of the practice.

The State Bar has a Constitution and Bylaws which are approved by the Court and may be found in Volume 1 of the Code. This is the mandatory or "integrated" bar. I recommend your reading of the Constitution and particularly the Bylaws for the organization we all are required to support.

All other bars are voluntary. They include The West Virginia Bar Association and county or local bar associations. Additionally, there are

"specialized" associations - the West Virginia Trial Lawyers Association, the West Virginia Defense Trial Counsel Research Institute and others devoted to special interest and particular areas of practice.

I encourage all lawyers to belong to and participate in as many of the voluntary associations as you can reasonably afford from a cost and time standpoint. They all serve laudable functions in terms of education and enhancing the stature of the profession. One of the most valuable contributions made to our profession by the State Bar and voluntary bars is the enhancement of collegiality amongst lawyers.

Our profession is one of advocacy, and more often than not involves attempting to persuade courts, juries and other lawyers of the merit of our view in a particular matter. This more often than

not creates emotional stress for everyone. There are many lawyers whose practice is of a nature that they do not come in contact with other lawyers - or many of them - on a regular basis.

By attending bar meetings you have the opportunity to broaden your relationships, meet "adversaries" on a truly neutral ground and discuss matters of common interest without the stressful overlay. Sharing a meal or a drink with one who, in other forums, is or may be an adversary leads to a much more positive attitude about relationships - all of which benefits clients and our profession.

Join us at the Homestead for the annual meeting of the voluntary West Virginia Bar Association on September 19-21 and have a great time! It will be good for everyone.



Join us for our next

## "Legal Ease" Cocktail Reception

Thursday - June 13, 2002  
5:30 pm to 7:30 pm

Purple Iris  
Martinsburg

### A special Thank You to our Wheeling Legal Ease Sponsors:

Bailey Riley Buch & Harman LC  
Bowles Rice McDavid Graff & Love PLLC  
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Steptoe & Johnson PLLC

## A note from our Executive Director

Pryce M. Haynes II

So far this year, several exciting things have occurred which should strengthen the Bar Association. The Virginia Bar Association and The WVBA have entered into an agreement to hold a joint meeting July 10 – 13, 2003 at The Greenbrier. This combined meeting will serve as our Annual Meeting for 2003. It is anticipated there will be approximately 350 registrants (not including spouses and guests) attending this meeting with an extensive CLE program!

The dues increase for 2002 was well received. Although we lost a few members as a result of the increase, we have picked up a number of new members, offsetting the loss. This increase in dues has strengthened our finances and given us the resources to

expand our programs and be more responsive to our membership.

The Young Lawyers Division has been busy this year in their efforts to recruit new members and increase the awareness of The Bar Association by hosting several social events. Due to their efforts and the generous support of several law firms who co-sponsored these events, they have been very successful! Wheeling was the venue for the first “Legal Ease” reception in April. Last month, their annual Bench & Bar Reception was held in Charleston at the Robert C. Byrd Federal Courthouse (pictures below).

Coinciding with the Bench & Bar Reception, the YLD conducted a raffle for free registration and lodging for our 116th Annual Meeting at The

Homestead. Herb Stapleton, from Huntington, won the prize, and Dick Bolen, the seller of the winning ticket, also won free registration and lodging. Congratulations to Herb and Dick!

For those members in the Eastern Panhandle, mark your calendars for the next YLD Legal Ease to be held June 13th at The Purple Iris in Martinsburg. Spouses and non-members are welcome!

Registration for the 116th Annual Meeting is starting to pick up. The pace seems to be ahead of last year, indicating we should have a record turnout and another successful meeting at The Homestead. Don't miss it – Be There!



Kit Francis and Charlie Love



John Meisner, Mimi Dinsmore and Tyler Dinsmore



Jeanne and Howard Persinger



Mark Browning, Judge Paul Zakaib and Jill Bentz



Judge Tod Kaufman, Pryce Haynes II, Ronald Rossi, Jill Bentz, Julie Haynes and Pryce Haynes III

### Thank you to our Bench & Bar Sponsors!

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Dick Rowe and John Taylor

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**Thomas Campbell**  
*Vice-President and State Manager*

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## It pays to be a member of The WVBA!

## Ramblings

Jay C. West, Jr., President-Elect

I don't like lawyer jokes. If I were an engineer, an accountant, a doctor, a used car salesman or in any other calling, I would find jokes about such calling offensive.

I am a trial lawyer and proud of it. I represent people and I am honored anytime a person feels enough confidence in me to hire me to represent him.

What I do not understand is why my work as a plaintiff's trial lawyer is perceived differently from the work of the lawyer representing the defendant. We both have clients, we both try cases to juries and we both have sometimes enjoyed the thrill of victory and other times have suffered the agony of defeat. However, it seems that in the minds of many, successes by plaintiffs are viewed as examples of a legal system out of

control while successes by defendants are viewed as examples of lawsuit abuse. In actuality, what our system of jurisprudence provides is a level playing field. Judges can and do dismiss meritless lawsuits. But when the case goes to the jury, it is the six persons (now twelve in medical negligence cases) who serve on the jury who decide the fate of the litigants. Forty years of experience and observation convince me that the jury system provides all the protection any litigant needs.

The civil action which results in an adverse verdict to a plaintiff evokes just as much distrust of the jury system by the plaintiff as does an adverse verdict to a defendant. If one understands these realities how can it be disputed that it is the jury system which provides stability in our system of justice; and how can it be convincingly argued that the system needs fixing?

When Citizens Against Lawsuit Abuse first hit the airways and billboards, I was alarmed by the case histories which were utilized as examples of lawsuit abuse. I contacted the local CALA spokesman asking for the cases relied upon. The cases identified were from California, and further checking revealed that they actually demonstrated how well our system works. CALA embraced the shocking facts of the cases to make its point, but failed to tell the rest of the story, namely, that one of the cases was dismissed on motion and the other was terminated by summary judgment.

I have no problem with criticisms of our system of jurisprudence, if justified, but I do believe the whole story should be told.



## Snapshots from the Wheeling Legal Ease Reception



Judge Fred Stamp, Jim Companion and Bill Ihlenfeld



Arch Riley, Jr., Ann Harmon, Jamison Speidel and Theresa Camilletti



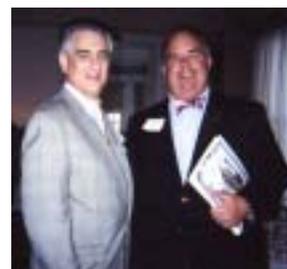
John Bailey, Patrick Casey and Sandra Chapman



David Croft, Sue Farnsworth and Joe Gompers



Vaughn Miller, Bill Ihlenfeld and Bill Ihlenfeld, II



T.C. McCarthy, Jr. and Pryce Haynes II

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