

# Adams County Legal Journal

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Vol. 39

March 6, 1998

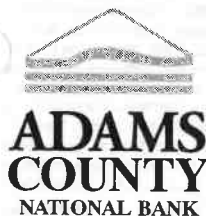
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## ANNOUNCEMENT OF CONTINUING LEGAL EDUCATION PROGRAMS

1. *Taxpayer Relief Act of 1997*. Tuesday, March 17, 1998—9:00 a.m.  
Room 307, Adams County Courthouse—Credits: Substantive Law—4,  
Ethics—0.
2. *Representing an Individual Entering a Nursing Home*.  
Wednesday, March 18, 1998—9:00 a.m.  
Room 307, Adams County Courthouse—Credits: Substantive Law—6,  
Ethics—0.
3. *Civil Litigation Update*. Wednesday, March 25, 1998—9:00 a.m.  
Adams County Cooperative Extension Office—Credits: Substantive  
Law—5, Ethics—1.
4. *Litigating in Orphans' Court*. Wednesday, April 22, 1998—9:00 a.m.  
Room 307, Adams County Courthouse—Credits: Substantive Law—5,  
Ethics—1.
5. *Pennsylvania Workers Compensation Practice and Procedure*.  
Monday, June 15, 1998—9:00 a.m.  
Room 307, Adams County Courthouse—Credits: Substantive Law—5,  
Ethics—0.

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## ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-195 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 8th day of May, 1998, at 10:00 o'clock in the forenoon at the Court-house in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN piece, parcel or tract of land situate, lying and being in Union Township, Adams County, Pennsylvania, bounded, limited and described as follows, to wit:

BEGINNING for a corner at a steel pin on the West side of Pennsylvania State Legislative Route No. 01070 at Lot No. 4 on the hereinafter referred to Subdivision Plan of lots; thence along said Lot No. 4, South eighty-two (82) degrees eleven (11) minutes forty (40) seconds West, two hundred (200) feet to a point at other lands now or formerly of S. Edward Murphy; thence along said last mentioned lands, North six (6) degrees fourteen (14) minutes twenty (20) seconds West, One hundred nine and thirty-two hundredths (109.32) feet to a point at Lot No. 6 on the hereinafter referred to Subdivision Plan of Lots; thence along said Lot No. 6, North eighty-four (84) degrees fifty-one (51) minutes forty-five (45) seconds East, two hundred (200) feet to a steel pin on the aforesaid West side of said Pennsylvania State Legislative Route No. 01070; thence along the West side of said Pennsylvania State Legislative Route No. 01070, by a curve to the left having a radius of two thousand six hundred forty-four and forty-two hundredths (2,644.42) feet, the long chord of which is South six (6) degrees thirteen (13) minutes five (5) seconds East, ninety-nine and ninety-seven hundredths (99.97) feet, an arc distance of one hundred (100) feet to a point on the West side of said Pennsylvania State Legislative Route No. 01070, the point and place of BEGINNING. CONTAINING 20,896 square feet. (Being known on a plot or plan of a series of lots laid out by S. Edward Murphy and bearing date of July 31, 1969, and recorded in Plot Book I, page 55, and known as "Pine Grove Heights," as Lot No. 5.)

BEING THE SAME PREMISES WHICH Alfred A. Weaver and Claudette Weaver by Deed dated September 15, 1995, and recorded in the office of the Recorder of Deeds for the County of Adams on September 18, 1995, in Deed Book Volume 1083, Page 217, granted and conveyed unto Lynn L. Kjelstrom and Lisbeth Kjelstrom.

SEIZED and taken into execution as the property of **Lynn L. Kjelstrom and Lisbeth Kjelstrom** and to be sold by me

Raymond A. Newman  
Sheriff

Sheriff's Office, Gettysburg, PA  
February 10, 1998.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 1, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.  
3/6, 13 & 20

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-801 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 17th day of April, 1998, at 10:00 o'clock in the forenoon at the Court-house in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in Hamiltonban Township, now being Carroll Valley Borough, Adams County, Pennsylvania, being Lot No. 202 in Section J, bounded and described as follows:

BEGINNING at a point in the cul-de-sac of Field Trail at Lot No. 201; thence in the cul-de-sac and by said Lot North 3 degrees 11 minutes 40 seconds West, 200 feet to Lot No. 187; thence by said Lot and by Lot No. 186, South 87 degrees 23 minutes 40 seconds East, 231.11 feet to lands of George C. Steinberger; thence by said lands South 23 degrees 45 minutes West, 213.34 feet to Lot No. 203; thence by said Lot in the cul-de-sac of said Meadow Trail, North 87 degrees 23 minutes 40 seconds West, 133.94 feet to the place of beginning.

HAVING erected thereon a dwelling known as 15 Field Trail, and bearing Tax I.D. No. 2-141.

SUBJECT to easements, restrictions, covenants, and conditions of record, including matters shown on recorded plats.

BEING the same premises which Victoria M. Petrosky and Theresa J. Petrosky, by their Deed dated September 26, 1996, and recorded in the Recorder's Office of Adams County in Deed Book Volume 1274, page 261, granted and conveyed unto Theresa J. Petrosky.

SEIZED and taken into execution as the property of **Theresa Petrosky** and to be sold by me

Raymond A. Newman  
Sheriff

Sheriff's Office, Gettysburg, PA  
February 18, 1998.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his

office on May 11, 1998, and distribution will be made in accordance with said schedule, less exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.  
3/6, 13 & 20

## INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that **Articles of Incorporation for COVINGTON ENTERPRISES, INC.**, were filed under the provisions of the Business Corporation Law of the Commonwealth of Pennsylvania, Act of December 21, 1988, P.L. 1444, No. 177.

Daniel M. Frey & Associates  
Solicitors

3/6

## FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that **Application for Registration of Fictitious Name** was filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on February 6, 1998, pursuant to the Fictitious Name Act, setting forth that **Thomas J. Moody, Jr.** is the only individual interested in a business, the character of which is a window cleaning service, and that the designation under which the business is and will be conducted is **DONNIE'S WINDOW CLEANING COMPANY** and that the location where said business is and will be conducted is 1543 Biglerville Road, Gettysburg, PA 17325.

Gary E. Hartman  
Solicitor

3/6

## NOTICE

NOTICE IS HEREBY GIVEN that **Adams County National Bank**, Guardian of the Estate of **Tabitha J. Kennell**, now **Tabitha L. Flemig**, a minor, appointed as such on November 22, 1994, has filed its First ar Final Account and Schedule of Proposed Distribution as Guardian with the Clerk of Courts of Common Pleas of Adams County, Orphans' Court Division, Commonwealth of Pennsylvania, and that the same will be presented to said Court for confirmation and approval on April 13, 1998, at 9:00 A.M.

Adams County National Bank  
Guardian  
Lincoln Square Office  
Gettysburg, PA 17325

Ronald J. Hagarman, Esquire  
110 Baltimore Street  
Gettysburg, PA 17325

3/6 & 13

**CALEDONIA ACRES PROPERTY OWNERS ASSOC. VS.  
SOUTH MOUNTAIN DEVELOPMENT CO., INC., ET AL.**

1. An inquiry into whether a missing party is indispensable involves several considerations such as: (1) Does the absent party have an interest related to the claim; (2) If so, what is the nature of the interest; (3) Is the right or interest essential to the merits of the issue to be resolved; (4) Can justice be afforded without violating the due process rights of the absent party; (5) Would a final adjudication leave defendants at risk of incurring multiple or inconsistent obligations with respect to liability?

2. Dismissal for laches is proper only if the existence of failure to act with due diligence and resulting prejudice is clear on the face of the record.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 89-S-687 CALEDONIA ACRES PROPERTY OWNERS ASSOCIATION VS. SOUTH MOUNTAIN DEVELOPMENT CO., INC., ESTATE OF JOHN R. BOGGS, DECEASED RUTH F. BOGGS, AND FRANKLIN TOWNSHIP, ADAMS COUNTY, PENNSYLVANIA.

Samuel Tetter, Esq., for Plaintiff

Gary Hartman, Esq., for Defendant

John White, Esq., for Franklin Township

**ADJUDICATION**

Spicer, P.J., April 17, 1997.

Before entering findings of fact, we think a preliminary comment is in order. Some may find it interesting that this case originally began as an action before a district justice for money damages. After judgment was entered for plaintiff against one defendant, an appeal was taken to this court. The action was then expanded to the present one in equity. A question may remain whether plaintiff seeks money damages or a decree directing defendants to bring roads in a private subdivision into compliance with a township ordinance. However the case may have begun, it definitely has taken on the character of a claim for equitable relief.

**FINDINGS OF ACT**

No party has requested specific findings of fact and the court enters facts in narrative form.

Plaintiff (POA) is a not-for-profit corporation organized in 1989. Membership is restricted to lot owners in a residential development in Franklin Township, Adams County, known as Caledonia Acres. The lot owners maintained an unincorporated association for about three years, prior to incorporating.

The subdivision or development originally consisted of 103 lots and was begun sometime in 1959 by the corporate defendant (SMDC). POA membership consists of 22 lot owners, accounting for 42 lots. A

total of 55 owners hold title to 99 lots. The number of lots has shrunk because some have been consolidated. POA does not represent a majority of lot owners, and nothing appears in individual deeds authorizing POA or requiring membership in the organization.

The beginning of the development cannot be assigned a particular date. John Boggs (Boggs), along with two friends, conceived of an idea to sell mountain lots to people who resided mainly in the Baltimore area. A brochure was prepared and distributed. Customers came and, as in the case of one woman, fell in love with the location. The price was right (\$600.00) and, despite rather primitive conditions, 28 lots were sold prior to 1967.

Each of the three promoters had a particular talent or skill. One had experience in blacktopping. Most importantly, Boggs was an enthusiastic salesman who believed in his product. It was Boggs who retained title to roads, collected road assessments and acted as general manager for the development. He advocated the formation of a property owners' association from early on in the development's history. Until his decline in health, which began around 1986, he made sure that roads were drained and maintained. He told owners that the responsibility for roads lay on them and roads were in better condition than at present. Most owners believed that, given time, Boggs would see that roads were constructed in suitable fashion. However, as one witness said, time ran out. Boggs died in 1989 and deterioration in road conditions accelerated. After his death, his son John F. Boggs, offered to sell the road system and ponds for \$1.00, but could find no buyer.

Ruth F. Boggs did nothing that would warrant individual liability on her part.

The road system can be roughly described as being 33 feet in width and beginning at the southern edge of U.S. Route 30. On draft, it somewhat resembles a balloon shaped like a Q, with the neck at the north. Proceeding roughly southward, the eastern part of the loop is called Pine Ridge Road. The southernmost part, which is the farthest up the mountainside, is Hill Crest Road. School House Hill Road lies to the west. Two roads, Wagner and Greenwalt, generally proceed east and west from Pine Ridge to School Hill Road, within the loop. There are several appendages which need not be discussed. The development is also traversed by a Texas Eastern gas transmission pipeline, north of Wagner Road.

Texas Eastern blacktopped a portion of Pine Ridge Road and POA raised an additional \$6000.00 to finish Wagner Road. Some lot owners may have resented what they considered preferential treatment given to an owner on this last mentioned road. One witness referred to Wagner as "Keefer Boulevard."

Most deeds contained a condition requiring a lot owner to pay an annual road maintenance fee of \$10.00. About ten deeds set this sum at \$30.00. Some owners have paid fees in varying amounts, but generally no fees have been paid since 1987. No accounting has ever been made by Boggs, or his personal representative, concerning fees.

Deeds all contained conditions that the roads remain private and that road fees be paid. Most owners did not bother to read these conditions nor to check records concerning the roads, agreements between SMDC and the Township, or whether the developer posted a performance bond. Several witnesses expressed the sentiment that they assumed the Township was doing its job and it never occurred to them to check. However, at least one, Ronald Reuse, was fully aware of the lack of bond when he purchased his second lot in 1988.

Franklin Township's involvement with the development began June 1, 1966, when Ordinance 5 of 1966 became effective. This ordinance was passed in accordance with the Second Class Township Code, 53 P.S. §66257. As authorized by the Code, the subdivision ordinance authorized Township to waive strict compliance with the ordinance and allow sales of lots "subject to conditions necessary to assure adequate streets and other public improvements." Subsequent amendments, including a recodification, continued the authority to waive strict compliance. §800 of 1984 ordinance; see also 53 P.S. §10512.1.<sup>1</sup>

Township's measures to ensure that roads were adequate took the form of agreements between SMDC and Township. Generally, these provided that the roads were to remain private, but contained provisions for possible future dedication. And agreement dated July 6, 1970, which was recorded August 23, 1971 in the Office for the recording of Deeds in Adams County in Book 14, page 405, provided inter alia:

1. That although developer plans not to offer for dedication any of the roads shown on said plan, developer agrees that should be (sic) in the future offer such roads,

A. That such road or roads shall be in good state of repair, as certified by the township engineer, OR that the

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<sup>1</sup>We heretofore erroneously commented that subsequent ordinances contained no such waiver, nor were such waivers authorized by the Municipalities Planning Code. Opinion of July 24, 1991, reissued July 29, 1991. More diligent research has indicated otherwise. The point is unimportant with respect to the original approval, since subsequent amendments could not legally affect it. *Wanamaker v. Township of Whitmarsh*, 77 Montgomery County 58, 23 D&C 2d 544 (1960). However, it might have been relevant to three approvals following amendments. However, those involved nothing really germane to this case. Two involved consolidations of lots and the third pertained to lot sizes in a particular section of the subdivision.

owners of the lots along such road or roads shall include with the offer of dedication, the offer of sufficient money, as estimated by the township engineer, to restore the road or roads to a good state of repair.

Plaintiff's Exhibit 5.

Another agreement, dated February 24, 1981, and also recorded, on March 3, 1981, in the aforesaid office in Book 37, page 485, contained similar language, but went on to provide:

2 (d) That if the said private road is offered to the Township for dedication all costs of repair, if necessary, shall be assessed against the owners of the lots adjoining the private road on a front foot basis. All costs of repair are to be determined by Township Engineer.

Plaintiff Exhibit 11

Roads as presently existing do not qualify as township roads. Cartway, right of way width, drainage, base and slope are disqualifying conditions. In 1993, the cost of bringing the roads into somewhat of a state of compliance with township standards was \$520,000.00.

Not all roads are in the same condition, and there is some dispute as to rankings. Wagner and portions of Pine Hill Ridge Road are in fairly good condition. The rest are not, with Greenwalt being the worst. Lots the southeast portion of the development have been assembled in what may be described as a nature preserve.

### CONCLUSIONS OF LAW

1. This court is without jurisdiction to afford relief because of plaintiff's failure to join all lot owners as parties of this action.
2. The lot owners who are members of POA are guilty of laches.
3. Plaintiff is not entitled to relief.

### DISCUSSION

It is quite apparent that POA represents a minority of owners in the development and lacks authority grounded in deed conditions to act on behalf of those owning lots. An inquiry into whether a missing party is indispensable involved several considerations. Supreme Court recently posed four questions: 1) Does the absent party have an interest related to the claim; 2) If so, what is the nature of the interest; 3) Is the right or interest essential to the merits of the issue to be resolved; 4) Can justice be afforded without violating the due process rights of the absent party? *Centolanza v. Lehigh Valley Dairies, Inc.* 540 Pa. 398, 658 A.2d 336 (1995). An additional consideration is whether a final adjudication would leave defendants at risk of incurring multiple or

inconsistent obligations with respect to liability. 3 Standard Pennsylvania Practice 2d §14:177

The first two questions posed in *Centolanza*, *supra*, are easily answered. The interests of missing owners is precisely the same as those participating through POA. The third is also fairly easily answered. The interests of missing owners is essential to the merits of this case, because the road system must be viewed in toto, not in parcels upon which particular lots abut.

Plaintiff assumes that the issue of liability may be resolved by any individual lot owner, without participation by others. With respect to this argument, several observations are readily warranted. If we view this action as one for damages only, based upon negligent enforcement of an ordinance, the question becomes who shall be the recipient and administrator of any fund ordered? If we view the case as involving a decree directing the Township to perform roadwork, the existence of recorded agreements would make cost-sharing an appropriate inquiry. We simply cannot address that issue without the missing owners. We cannot consider whether a front-footage assessment should be ordered to defray some of the costs.

There may also be owners who want nothing done to roads. We mentioned that several lots have been combined to form what has been described as a nature preserve. Some of the owners may not be entitled to any relief, since title to their lots can be traced to a time preceding the enactment of a subdivision ordinance.

Ordinance 5 of 1996 provided that dedication offers could be considered by the township if made by 60% of the abutting property owners. POA represents less than half of such owners.

Lastly, it is evident that owners who were not joined would not be bound by any decree or judgment issued by this court. Those owners are free to sue defendants on the same theories advanced in his case, exposing them to multiple liability.

We also find that plaintiff is guilty of laches. We discussed laches in the opinion reissued July 29, 1991, noting that dismissal is proper only if the existence of failure to act with due diligence and resulting prejudice is clear on the face of the record, citing *Estate of Marushak*, 488 Pa. 607, 413 A.2d 649 (1980).

The record established during the hearings clearly indicates that road conditions have been an obvious and continuing problem, and that Boggs told anyone willing to listen that those problems were the responsibility of lot owners. Those interested were able to discover that no bond had been filed. Recorded documents clearly placed responsibility on owners.

Despite these danger signals, people decided to trust Boggs and rely upon his promises to remedy the situation. We would think that anyone with minimum knowledge of road costs would understand that considerable money was potentially involved. Nobody appeared to be interested enough to ask or wonder where funds would come from. Plaintiff, or those owners who formed and control it, waited until SMDC was out of existence and Boggs was dead, leaving an insolvent estate. There is no basis for holding Ruth Boggs liable.

In the court's prior opinion, we stated that Township's liability was secondary, and that it could recover its losses from the developer. It has been prejudiced by delay in bringing this action, because the developer is no longer available as a source of reimbursement.

We have not discussed the liability of neither Boggs' estate or SMDC because it is obvious that neither is a resource.

The last issue we address concerns whether Township may generally be held liable, under principles espoused in *Safford v. Board of Commissioners, Annville Township, Lebanon County, Pennsylvania*, 35 Pa. Commonwealth 631, 387 A.2d 177 (1978). Township argues that the case before us is distinguishable from the Commonwealth Court decision, in that roads at Caledonia Acres were always contemplated as remaining private. We do not find the characterization of public, as opposed to private, roads is in itself conclusive. Under the ordinances, roads in any subdivision would remain private unless and until accepted by dedication. See also 53 P.S. §66256(j), now repealed but under which the 1966 ordinance was enacted. However we do find *Safford* inapposite for the following reasons: 1) as pointed out in our prior opinion, ordinances speak for the Township; 2) All ordinances contained a waiver provision; 3) Written agreements, appearing of record, spelled out the respective obligations of parties with sufficient clarity to indicate that the waiver provision had been invoked.

We regret having to decide as we do. The character of the area has changed drastically since the sixties and most lots have been improved with dwellings. We think Township is subject to criticism for the manner in which the situation was addressed, but this does not warrant holding it liable.

#### DECREE NISI

AND NOW, this 17th day of April, 1997, the complaint in equity is dismissed. This decree is entered nisi this date and will be confirmed absolute if no exceptions are filed within ten days hereof.



## ESTATE NOTICES

**NOTICE IS HEREBY GIVEN** that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

## FIRST PUBLICATION

## ESTATE OF CLARA M. KETTERMAN, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania  
 Executor: Richard Lee Ketterman, 2370 York Road, Gettysburg, PA 17325  
 Attorney: Buleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

## ESTATE OF MADELINE E. NICHOLSON, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania  
 Executor: James M. Nicholson, 138 Twin Lakes Dr., Gettysburg, PA 17325  
 Attorney: John W. Phillips, Esq., 101 W. Middle Street, Gettysburg, PA 17325

## ESTATE OF MARY E. PENTZ, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania  
 Executors: Kenneth B. Bream, 534 Main Street, McSherrystown, PA 17344; Cynthia Ann Bream, 534 Main Street, McSherrystown, PA 17344  
 Attorney: James T. Yingst, Esquire, Rudisill, Guthrie, Nonemaker, Guthrie & Yingst, 40 York Street, Hanover, PA 17331

## ESTATE OF MARTHA B. SPENCE, DEC'D

Late of Franklin Township, Adams County, Pennsylvania  
 Executrix: Sandra K. Spence, 1071 Poplar Springs Road, Orrtanna, PA 17353  
 Attorney: David K. James, III, Esquire, 234 Baltimore Street, Gettysburg, PA 17325

## SECOND PUBLICATION

## ESTATE OF WADE FRANKLIN HOOK, a/k/a WADE F. HOOK, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania  
 Executrix: Melverda P. Hook, 195 Ridgewood Drive, Gettysburg, PA 17325  
 Attorney: Keefer Wood Allen & Rahal, LLP, Attn: Robert R. Church, Esq., P.O. Box 11963, Harrisburg, PA 17108-1963

## ESTATE OF CORA E. OELLIG, DEC'D

Late of Oxford Township, New Oxford, Adams County, Pennsylvania  
 Co-Executors: Robert Henry Oellig, 192 Hershey Road, Hummelstown, PA 17036; Barbara Ann Teets, P.O. Box 30, McKnightstown, PA 17343

## ESTATE OF DONALD W. STORM, DEC'D

Late of Oxford Township, Adams County, Pennsylvania  
 Executor: Clinton C. Bankert, c/o 230 York Street, Hanover, Pennsylvania 17331  
 Attorney: John James Mooney, III, Esquire, Mooney & Associates, 230 York Street, Hanover, PA 17331

## ESTATE OF BEULAH M. WINTRODE, a/k/a BEULAH MAE WINTRODE, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania  
 Executor: Adams County National Bank, Lincoln Square, Gettysburg, PA 17325  
 Attorney: Puhl & Eastman, Esqs., Attorneys at Law, 16 Lincoln Square, Gettysburg, PA 17325

## THIRD PUBLICATION

## ESTATE OF MILDRED W. BENNER, DEC'D

Late of 230 Benner Road, Gettysburg, Adams County, Pennsylvania  
 Administratrix, d.b.n.c.t.a.: Susan Benner, 230 Benner Road, Gettysburg, PA 17325  
 Attorney: John A. Wolfe, Esq., Wolfe & Rice, 47 West High Street, Gettysburg, PA 17325

## ESTATE OF MARY L. GARRETSON, DEC'D

Late of the Borough of Arendtsville, Adams County, Pennsylvania  
 Executor: Adams County National Bank, Lincoln Square, Gettysburg, PA 17325  
 Attorney: Puhl & Eastman, Attorneys at Law, 16 Lincoln Square, Gettysburg, PA 17325

## ESTATE OF RICHARD HAMILTON, DEC'D

Late of Butler Township, Adams County, Pennsylvania  
 Executors: Richard E. Hamilton, 286 Long Lane, Lititz, PA 17543; Keith B. Hamilton, 402 Gregory Lane, Bellefonte, PA 16823  
 Attorney: Robert E. Campbell, Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

## ESTATE OF JACKIE L. HARBAUGH, SR., a/k/a JACK L. HARBAUGH, SR., DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania  
 Executrix: Martha E. Harbaugh, 34 North Franklin Street, Gettysburg, PA 17325  
 Attorney: Audrey E. Woloshin

## ESTATE OF GLADYS M. HULL, DEC'D

Late of Straban Township, Adams County, Pennsylvania  
 Executrices: Linda L. Keller, 1911 Old Harrisburg Road, Gettysburg, PA 17325; Susanne H. Bely, 3 Rebecca Lane, Hanover, PA 17331

## ESTATE OF MICHAEL J. KELLY, DEC'D

Late of Reading Township, Adams County, Pennsylvania  
 Executor: Joseph Kelly, 766 Oatman Street, York, PA 17404  
 Attorney: Sharon E. Myers, Esq., 29 North Duke Street, York, PA 17401

## ESTATE OF RAYMOND W. KESSLER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania  
 Executors: Harold L. Kessler, R.D. #1, Box 1038, Brodbeck's, PA 17329; Jean E. Yingling, 9 Charles Avenue, Hanover, PA 17331  
 Attorney: James T. Yingst, Esquire, 515 Carlisle Street, Hanover, PA 17331

## ESTATE OF ISABELLE L. NACE, DEC'D

Late of Oxford Township, Adams County, Pennsylvania  
 Executor: Farmers Bank & Trust Company, a division of Dauphin Deposit Bank & Trust Company, 13 Baltimore Street, Hanover, PA 17331  
 Attorney: Stonesifer and Kelley, 209 Broadway, Hanover, PA 17331

## ESTATE OF WILBUR PITTENTURF, DEC'D

Late of Reading Township, Adams County, Pennsylvania  
 Co-Executors: Harvey W. Stimer, Jr.; Dorothy Ruppert  
 Attorney: David C. Smith, Esquire, 334 Main Street, McSherrystown, PA 17344

## ESTATE OF HANNAH O. SHAFER, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania  
 Executors: R. Donald Shafer, 1222 Blossom Terrace, Boiling Springs, PA 17007; Samuel J. Shafer, 1320 Herr's Ridge Road, Gettysburg, PA 17325  
 Attorney: Robert E. Campbell, Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

## ESTATE OF MARGARET A. STALLSMITH, DEC'D

Late of the Borough of Biglerville, Adams County, Pennsylvania  
 Executrix: Constance Lee Machamer, 15 Ardmore Drive, Hummelstown, PA 17036  
 Attorney: Richard E. Thrasher, Esq., Buleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

## ESTATE OF PEARL A. STARRY a/k/a PEARL S. STARRY and PEARL A. S. STARRY, DEC'D

Late of Tyrone Township, Adams County, Pennsylvania  
 Executors: Gene A. Starry, 1443 East Berlin Road, New Oxford, PA 17350; Dean E. Starry, 2908 Robin Road, York, PA 17404; Joyce S. Snyder, 1441 East Berlin Road, New Oxford, PA 17350  
 Attorney: Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

**SHERIFF'S SALE**

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-862 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 27th day of March, 1998, at 10:00 o'clock in the forenoon at the Court-house in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

**REAL PROPERTY OF  
MARK H. HAINES and DONNA L. HAINES  
32 CYPRESS TRAIL  
FAIRFIELD, PA**

ALL THAT TRACT OF LAND situate, lying and being in Carroll Valley Borough (formerly Liberty Township), Adams County, Pennsylvania, being Lot No. 92 in Section R1, bounded and described as follows:

BEGINNING at a point in the center of Faircloth Trail at other lands of Charnita, Inc.; THENCE by said lands South 11 degrees 14 minutes 40 seconds East, 181.30 feet to a point; THENCE continuing by said lands and by Lot No. 112 South 74 degrees 12 minutes 40 seconds West, 158.97 feet to Lot No. 93; THENCE by said Lot North 11 degrees 14 minutes 40 seconds West 193.89 feet to a point in the center of said Faircloth Trail; THENCE in said Faircloth Trail North 78 degrees 45 minutes 20 seconds East, 158.47 feet to the place of BEGINNING.

SEIZED and taken into execution as the property of **Mark H. Haines and Donna L. Haines** and to be sold by me

Raymond A. Newman  
Sheriff

Sheriff's Office, Gettysburg, PA  
February 10, 1998.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 20, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.  
2/20, 27 & 3/6

**SHERIFF'S SALE**

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-915 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 27th day of March, 1998, at 10:00 o'clock in the forenoon at the Court-house in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot of ground situate in the Borough of Littlestown, Adams County, Pennsylvania, known as the eastern part of Lot No. 35, more particularly described as follows:

BOUNDED on the South by East King Street; on the West by the other part of said Lot No. 35; on the North by a twenty feet wide alley; and on the East by lot now or formerly of Dr. E.K. Foreman; comprising in front on East King Street 22 feet or the whole space between the Eastern wall of the Alexander C. Shorb brick house (now P.O.S. of A. Building) and now or formerly

of Dr. E.K. Foreman's line be the same more or less in width, and in depth 264 feet to a twenty feet wide alley.

HAVING ERECTED THEREON a commercial building containing a store room and three apartments and garages known and numbered as 12 East King Street, Littlestown, Pennsylvania.

TAX MAP NO. 8-174

BEING THE SAME PREMISES which Lester F. Berkheimer and Madeline M. Berkheimer, husband and wife, by deed dated January 24, 1997, and recorded in the Office of the Recorder of Deeds of Adams County in Record Book 1321, Page 77, granted and conveyed unto Rodney B. Messinger and Stephanie J. Messinger, Mortgages herein.

SEIZED and taken in execution and to be sold as the property of Rodney B. Messinger and Stephanie J. Messinger, judgment debtors and real owners.

SEIZED and taken into execution as the property of **Rodney B. Messinger and Stephanie J. Messinger** and to be sold by me

Raymond A. Newman  
Sheriff

Sheriff's Office, Gettysburg, PA  
February 9, 1998.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 20, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.  
2/20, 27 & 3/6

**SHERIFF'S SALE**

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-686 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 24th day of April, 1998, at 10:00 o'clock in the forenoon at the Court-house in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that improved tract of land situate on the western side of Kime Hatchery Road, T-650, in Tyrone Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a railroad spike set 2 feet west of the center line of Kime Hatchery Road, T-650, which point of beginning is more particularly established on the survey and subdivision plan hereinafter referred to; thence in and along Kime Hatchery Road, T-650, and by lands of Evelyn E. Kime Estate, South 3 degrees 59 minutes 25 seconds West, 58 feet to an existing railroad spike in the center line of said Kime Hatchery Road, T-650; thence continuing in and along Kime Hatchery Road and by lands of Evelyn E. Kime Estate, South 14 degrees 11 minutes 54 seconds West, 172 feet to a railroad spike set 3 feet west of the center line of Kime

Hatchery Road; thence leaving Kime Hatchery Road and through a steel pin set back 25 feet from the beginning hereof and by lands of Lynn F. Kime and Sandra S. Kime, North 83 degrees 51 minutes 6 seconds West, 177.04 feet to a steel pin; thence continuing by lands of same North 2 degrees 25 minutes 56 seconds East, 230.91 feet to a steel pin; thence continuing by lands of same and through a steel pin set back 25 feet from the center hereof, South 83 degrees, 16 minute: seconds East, 213.92 feet to a railroad spike set 2 feet west of the center line of Kime Hatchery Road, T-650 the point and place of BEGINNING. CONTAINING 1.050 acres.

BEING the same premises which Lynn F. Kime and Sandra S. Kime by deed dated December 30, 1994 and recorded in the Office of the Recorder of Deeds in and for Adams County in Deed Book 984, Page 23, granted and conveyed to Michael M. McKenrick and Leonora A. McKenrick.

SEIZED and taken into execution as the property of **Leonora A. McKenrick and Michael L. McKenrick** and to be sold by me

Raymond A. Newman  
Sheriff

Sheriff's Office, Gettysburg, PA  
February 14, 1998.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 18, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.  
2/27, 3/6 & 13

**INCORPORATION NOTICE**

NOTICE IS HEREBY GIVEN that Articles of Incorporation for J & W CAULKING APPLICATORS, INC., were filed under the provisions of the Business Corporation Law of the Commonwealth of Pennsylvania, Act of December 21, 1988, P.L. 1444, No. 177.

Thomas E. Miller, Esquire  
Miller & Shultis  
Solicitors

3/6

**INCORPORATION NOTICE**

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed by THE GENERAL'S BEEF JERKY COMPANY with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania. The corporation is incorporated under the Pennsylvania Business Corporation Law of 1988.

Teeter, Teeter & Teeter  
Solicitor  
108 West Middle Street  
Gettysburg, PA 17325

3/6

# Adams County Legal Journal

Vol. 39

March 13, 1998

No. 42, pp. 229-244

## ANNOUNCEMENT OF CONTINUING LEGAL EDUCATION PROGRAMS

1. *Taxpayer Relief Act of 1997*. Tuesday, March 17, 1998—9:00 a.m.  
Room 307, Adams County Courthouse—Credits: Substantive Law—4,  
Ethics—0.
2. *Representing an Individual Entering a Nursing Home*.  
Wednesday, March 18, 1998—9:00 a.m.  
Room 307, Adams County Courthouse—Credits: Substantive Law—6,  
Ethics—0.
3. *Civil Litigation Update*. Wednesday, March 25, 1998—9:00 a.m.  
Adams County Cooperative Extension Office—Credits: Substantive  
Law—5, Ethics—1.
4. *Litigating in Orphans' Court*. Wednesday, April 22, 1998—9:00 a.m.  
Room 307, Adams County Courthouse—Credits: Substantive Law—5,  
Ethics—1.
5. *Pennsylvania Workers Compensation Practice and Procedure*.  
Monday, June 15, 1998—9:00 a.m.  
Room 307, Adams County Courthouse—Credits: Substantive Law—5,  
Ethics—0.

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**SHERIFF'S SALE**

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-195 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 8th day of May, 1998, at 10:00 o'clock in the forenoon at the Court-house in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN piece, parcel or tract of land situate, lying and being in Union Township, Adams County, Pennsylvania, bounded, limited and described as follows, to wit:

BEGINNING for a corner at a steel pin on the West side of Pennsylvania State Legislative Route No. 01070 at Lot No. 4 on the hereinafter referred to Subdivision Plan of lots; thence along said Lot No. 4, South eighty-two (82) degrees eleven (11) minutes forty (40) seconds West, two hundred (200) feet to a point at other lands now or formerly of S. Edward Murphy; thence along said last mentioned lands, North six (6) degrees fourteen (14) minutes twenty (20) seconds West, One hundred nine and thirty-two hundredths (109.32) feet to a point at Lot No. 6 on the hereinafter referred to Subdivision Plan of Lots; thence along said Lot No. 6, North eighty-four (84) degrees fifty-one (51) minutes forty-five (45) seconds East, two hundred (200) feet to a steel pin on the aforesaid West side of said Pennsylvania State Legislative Route No. 01070; thence along the West side of said Pennsylvania State Legislative Route No. 01070, by a curve to the left having a radius of two thousand six hundred forty-four and forty-two hundredths (2,644.42) feet, the long chord of which is South six (6) degrees thirteen (13) minutes five (5) seconds East, ninety-nine and ninety-seven hundredths (99.97) feet, an arc distance of one hundred (100) feet to a point on the West side of said Pennsylvania State Legislative Route No. 01070, the point and place of BEGINNING. CONTAINING 20,896 square feet. (Being known on a plot or plan of a series of lots laid out by S. Edward Murphy and bearing date of July 31, 1969, and recorded in Plot Book I, page 55, and known as "Pine Grove Heights," as Lot No. 5.)

BEING THE SAME PREMISES WHICH Alfred A. Weaver and Claudette Weaver by Deed dated September 15, 1995, and recorded in the office of the Recorder of Deeds for the County of Adams on September 18, 1995, in Deed Book Volume 1083, Page 217, granted and conveyed unto Lynn L. Kjelstrom and Lisbeth Kjelstrom.

SEIZED and taken into execution as the property of **Lynn L. Kjelstrom and Lisbeth Kjelstrom** and to be sold by me

Raymond A. Newman  
Sheriff

Sheriff's Office, Gettysburg, PA  
February 10, 1998.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 1, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

3/6, 13 & 20

**SHERIFF'S SALE**

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-801 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 17th day of April, 1998, at 10:00 o'clock in the forenoon at the Court-house in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in Hamiltonban Township, now being Carroll Valley Borough, Adams County, Pennsylvania, being Lot No. 202 in Section J, bounded and described as follows:

BEGINNING at a point in the cul-de-sac of Field Trail at Lot No. 201; thence in the cul-de-sac and by said Lot North 3 degrees 11 minutes 40 seconds West, 200 feet to Lot No. 187; thence by said Lot and by Lot No. 186, South 87 degrees 23 minutes 40 seconds East, 231.11 feet to lands of George C. Steinberger; thence by said lands South 23 degrees 45 minutes West, 213.34 feet to Lot No. 203; thence by said Lot in the cul-de-sac of said Meadow Trail, North 87 degrees 23 minutes 40 seconds West, 133.94 feet to the place of beginning.

HAVING erected thereon a dwelling known as 15 Field Trail, and bearing Tax I.D. No. 2-141.

SUBJECT to easements, restrictions, covenants, and conditions of record, including matters shown on recorded plats.

BEING the same premises which Victoria M. Petrosky and Theresa J. Petrosky, by their Deed dated September 26, 1996, and recorded in the Recorder's Office of Adams County in Deed Book Volume 1274, page 261, granted and conveyed unto Theresa J. Petrosky.

SEIZED and taken into execution as the property of **Theresa Petrosky** and to be sold by me

Raymond A. Newman  
Sheriff

Sheriff's Office, Gettysburg, PA  
February 18, 1998.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a sched-

ule of distribution will be filed by the Sheriff in his office on May 11, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

3/6, 13 & 20

**FICTITIOUS NAME NOTICE**

NOTICE IS HEREBY GIVEN that on June 3, 1996 a certificate will be filed under the Fictitious Name Act approved December 21, 1988, P.L. 1444, in the Office of the Secretary of the Commonwealth of Pennsylvania, setting forth that Jeffrey K. Weatherly, 32A West King Street, Littlestown, PA 17340 and Michael P. Troxell, 251 Crum Road, Fairfield, PA 17320 is/are the only person(s) owning or interested in a business, the character of which is carpentry and that the name, style and designation under which said business is and will be conducted is T & W TRIM and the location where said business is and will be located is 32A West King Street, Littlestown, PA 17340

**INCORPORATION NOTICE**

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for the purposes of obtaining a Certificate of Incorporation of a proposed business corporation to be organized under the provisions of the Pennsylvania Business Corporation Law of 1988, approved December 21, 1988, P.L. 1444, No. 177, as amended.

The name of the corporation is **TOWN & CAMPUS HAIR CARE, INC.**

Swope, Heiser & McQuaide  
104 Baltimore Street  
Gettysburg, PA 17325

3/13

COMMONWEALTH OF PENNSYLVANIA  
VS. TERRY LEE HARGET

1. One who challenges the constitutionality of a statute bears a heavy burden.
2. Pennsylvania's Megan's Law creates a presumption that Defendant is a "sexually violent predator" that must be rebutted by defendant by clear and convincing evidence.
3. The definitions provided in Megan's Law as adopted in Pennsylvania are not void for vagueness.
4. The hearing required by Megan's Law as adopted in Pennsylvania is not a trial in which the defendant is being prosecuted for a crime and thus does not violate his constitutional rights to a jury and to have proceedings brought by information.
5. Defendant has no constitutional right to have counsel present at the psychiatric assessment required by Pennsylvania's Megan's Law.
6. Megan's Law as adopted in Pennsylvania violates defendant's Fifth Amendment rights by requiring that he participate in a psychiatric evaluation which will determine whether his maximum sentence should be increased to life.
7. The enhanced sentencing set forth in Megan's Law as adopted in Pennsylvania does not violate the Double Jeopardy Clause of the Constitution.
8. A first time offender labeled as a "sexually violent predator" is being "punished" under Pennsylvania's Megan's Law for his mental status in violation of the Eighth Amendment of the United States Constitution and Article I, Section 13 of the Pennsylvania Constitution.
9. In order to have standing, a party must have an interest which is "direct, substantial and present" as contrasted with a remote or speculative interest.
10. The defendant does not have a privacy right which precludes the dissemination of information regarding his arrest and verdict under Pennsylvania's Megan's Law.
11. Pennsylvania's Megan's Law does not violate the fundamental right to reputation protected by the Pennsylvania Constitution as the State has a compelling interest in notifying the public.

In the Court of Common Pleas, Adams County, Pennsylvania, Criminal No. CC-678-96, COMMONWEALTH OF PENNSYLVANIA VS. TERRY LEE HARGET.

Michael A. George, Esq., District Attorney  
Anthony Miley, Esq., for Defendant

OPINION ON DEFENDANT'S MOTION FOR  
EXTRAORDINARY RELIEF

Kuhn, J., February 9, 1998

This case is before us on a Motion for Extraordinary Relief challenging the Constitutionality of what is commonly known as Pennsylvania's Megan's Law (42 Pa.C.S.A. 9791-9799.6). Argument was heard on November 10, 1997 and this Opinion follows.

STATEMENT OF FACTS

On September 9, 1996, Defendant, Terry Lee Harget, was arrested and charged with six counts of aggravated and indecent assault. The

evidence, viewed in a light most favorable to the Commonwealth, revealed the following facts. Defendant, a friend of the victim's family, was in the bedroom of the 12-year-old victim when she went to sleep. The victim awoke because she felt pain and discovered Defendant's finger in her vagina. She told Defendant to stop what he was doing and when he continued rubbing the outside of her vagina she ran to her parents' bedroom and told them what had happened.

On March 11, 1997, a jury found Defendant guilty of two counts of indecent assault under Section 3126(7) and (8) of the Crimes Code as misdemeanors of the first degree. 18 Pa.C.S.A. § 3126(7) - (8). Two members of the Sexual Offender Assessment Board later evaluated defendant and determined that he fit the profile of a "sexually violent predator." Defendant filed a Motion for Extraordinary Relief on May 27, 1997 and sentencing was continued until this Court could make a determination on the constitutionality of Megan's Law.

### MEGAN'S LAW

Megan's Law was enacted in response to the death of 7-year-old Megan Kanka. Megan was assaulted and killed by Jesse Timmendequas, a twice-convicted child sexual abuser. On October 21, 1995, Governor Tom Ridge signed Act 24 of 1995 into law and later signed Act 46 of 1996 into law, amending Act 24.

The legislative intent in enacting Megan's Law was set forth in 42 Pa.C.S.A. § 9791 as follows:

**§ 9791. Legislative findings and declaration of policy**

**(a) Legislative findings.**— It is hereby determined and declared as a matter of legislative finding:

(1) If the public is provided adequate notice and information about sexually violent predators and certain other offenders, the community can develop constructive plans to prepare themselves and their children for the offender's release. This allows communities to meet with law enforcement to prepare and obtain information about the rights and responsibilities of the community and to provide education and counseling to their children.

(2) These sexually violent predators pose a high risk of engaging in further offenses even after being released from incarceration or commitments and that protection of the public from this type of offender is a paramount governmental interest.

(3) The penal and mental health components of our justice system are largely hidden from public view and lack of information from either may result in failure of both systems to meet this paramount concern of public safety.

(4) Overly restrictive confidentiality and liability laws governing the release of information about sexually violent predators have reduced the willingness to release information that could be appropriately released under the public disclosure laws and have increased risks to public safety.

(5) Persons found to have committed such an offense have a reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government.

(6) Release of information about sexually violent predators to public agencies and the general public will further the governmental interest of public safety and public scrutiny of the criminal and mental health systems so long as information released is rationally related to the furtherance of those goals.

**(b) Declaration of policy.**—It is hereby declared to be the intention of the General Assembly to protect the safety and general welfare of the people of this Commonwealth by providing for registration and community notification regarding sexually violent predators who are about to be released from custody and will live in or near their neighborhood. It is further declared to be the policy of this Commonwealth to require the exchange of relevant information about sexually violent predators among public agencies and officials and to authorize the release of necessary and relevant information about sexually violent predators to members of the general public as a means of assuring public protection and shall not be construed as punitive.

42 Pa.C.S.A. § 9791.

Megan's Law requires an offender to keep his address registered with the State Police for a period of ten years if he has been found guilty of one of the following offenses:

(1) Persons convicted of any of the following offenses that are classified as a felony and involve a victim who is a minor:

18 Pa.C.S. § 2901 (relating to kidnapping) except by a parent.

18 Pa.C.S. § 3121 (relating to rape).

18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse).

18 Pa.C.S. § 3125 (relating to aggravated indecent assault).

18 Pa.C.S. § 5902(b) (relating to prostitution and related offenses).

18 Pa.C.S. § 5903(a)(3), (4), (5) or (6) (relating to obscene and other sexual materials and performances).

(2) Persons convicted to any of the following offenses regardless of the age of the victim:

18 Pa.C.S. § 3121

18 Pa.C.S. § 3123

18 Pa.C.S. § 3125

18 Pa.C.S. § 3128(a) and (b) (relating to spousal sexual assault).

(3) Persons convicted of 18 Pa.C.S. § 3126 (relating to indecent assault) when the offense is a misdemeanor of the first degree.

42 Pa.C.S.A. § 9793(b).

After the offender is found guilty of one of the predicate offenses, the Act creates a presumption that the offender is a “sexually violent predator.” 42 Pa.C.S.A. § 9794(b). This presumption may be rebutted by clear and convincing evidence at a pre-sentence hearing before the trial court. Prior to the hearing, two members of the Sexual Offender Assessment Board conduct an assessment of the offender to determine if, in their opinion, he should be labeled a “sexually violent predator.” The board members take the following factors into account when making their assessment:<sup>1</sup>

(1) Age of the offender.

(2) Offender’s prior criminal record, sexual offenses as well as other offenses.

(3) Age of the victim.

(4) Whether the offense involved multiple victims.

(5) Use of illegal drugs by the offender.

---

<sup>1</sup> These factors are not all inclusive and the board members may consider other factors they deem relevant.



(6) Whether the offender completed any prior sentence and whether the offender participated in available programs for sexual offenders.

(7) Any mental illness or mental disability of the offender.

(8) The nature of the sexual contact with the victim and whether the sexual contact was part of a demonstrated pattern of abuse.

(9) Whether the offense included a display of unusual cruelty by the offender during the commission of the crime.

(10) Any behavioral characteristics that contribute to the offender's conduct.

42 Pa.C.S.A. § 9794(c).

When determined to be a "sexually violent predator," Megan's Law establishes notification provisions which require the chief law enforcement officer to notify a number of people of the offenders presence in their community.<sup>2</sup> 42 Pa.C.S.A. § 9798(b). Notification must be given to neighbors, the director of the county children and youth service agency, the superintendent of each school district and the equivalent for private and parochial schools, the director of each licensed day care center and preschool program, and the president of each college and university within 1,000 feet of the offender's address.

Once determined to be a "sexually violent predator" the offender is also subject to more stringent sentencing than if he was not found to be such a predator. The sentencing includes a maximum sentence of life. 42 Pa.C.S.A. § 9799.4(a). The "sexually violent predator" is also required to attend monthly counseling sessions at his own cost. 42 Pa.C.S.A. § 9799.4(b).

## LEGAL DISCUSSION

Defendant has raised numerous Constitutional arguments against Megan's Law claiming the following provisions of both the federal and commonwealth Constitutions have been violated: due process, self incrimination, double jeopardy, cruel and unusual punishment, bill of attainder, and privacy.

## CONSTITUTIONAL CHALLENGES

Initially, we note that "[o]ne who challenges the constitutionality of a statute bears a heavy burden." Commonwealth v. Rodgers, 430 Pa.

<sup>2</sup> The notification is to contain the convicted sexually violent predator's name, address, offense convicted of, status as a "sexually violent predator," and photograph. 42 Pa.C.S.A. § 9798(a).

Super. 253, 257, 634 A.2d 245, 247 (1993). The Superior Court has held that:

Lawfully enacted legislation enjoys a presumption of constitutionality. All doubts relating to the constitutionality of a challenged enactment must be resolved in its favor. *Edmonds v. Western Pennsylvania Hospital Radiology Associates*, 414 Pa. Super. 567, 574, 607 A.2d 1083, 1087 (1992). A party raising a constitutional challenge bears the burden of rebutting the presumption of constitutionality by a “clear, palpable, and plain demonstration that the statute violates a constitutional provision.” *James v. Southeastern Pennsylvania Transportation Authority*, 505 Pa. 137, 142, 477 A.2d 1302, 1304 (1984). See also: *Singer v. Sheppard*, 464 Pa. 387, 393, 346 A.2d 897, 900 (1975).

*Dansby v. Thomas Jefferson University Hospital*, 424 Pa. Super. 549, 553, 623 A.2d 816, 818 (1993) alloc. den., 651 A.2d 538.

However, since the landmark decision of *Marbury v. Madison*, 5 U.S. 137, 2 L. Ed. 60 (1803), courts have had the authority to interpret legislation to ensure its constitutionality. “It is within the especial province and duty of the courts and the courts alone, to say what the law is, and to determine whether a statute or ordinance is constitutional, and no express constitutional authority for such action is necessary; it is a necessary consequence of our system of government.” 16 Am. Jur. 2d Constitutional Law § 150 (1979) (footnotes omitted).

In analyzing possible constitutional violations, it is necessary to determine whether certain state and federal constitutional provisions will be applicable. This determination entails ascertaining whether the statute imposes “punishment.” That question is easily determined in the case at hand because Megan’s Law clearly imposes punishment.<sup>3</sup> Megan’s Law creates a presumption that an offender is a “sexually violent predator” thereby raising the maximum sentence for the predicate offenses, of anywhere from 5 to 20 years, to one for life. Such an extended period of incarceration can only be considered punishment.

If the statute itself was limited only to the notification and registration requirements, the conclusion would be otherwise, as the statute

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<sup>3</sup>The statute states it is not punitive in nature; however, this label is not conclusive. The United States Third Circuit created a test in *Artway v. Attorney General of New Jersey*, 81 F.3d 1235 (3rd Cir. 1996), to determine whether a statute is punitive or remedial. The parties dispute whether the Artway test or a test established later in *United States v. Ursery*, 518 U.S. \_\_\_, 116 S. Ct. 2135, 135 L. Ed. 2d 549 (1996), is applicable. However, we do not feel a detailed discussion of the cases or their applicable tests is necessary because Megan’s Law clearly imposes punishment.

would not be imposing punishment. *Commonwealth v. Gaffney*, PICS Case No. 97-2353 (Pa. Super. Oct. 30, 1997) Olszewski, J. However, in Pennsylvania's Megan's Law, the legislature has gone well beyond the notification and registration requirements to substantially increasing the maximum term of confinement that must be imposed to the offender's lifetime. The Pennsylvania Supreme Court, in *Commonwealth v. Dickerson*, 533 Pa. 294, 621 A.2d 990 (1993), said "[t]he point of sentence enhancement is to punish more severely offenders who have persevered in criminal activity despite the theoretical beneficial effects of penal discipline." *Id.* at 992 (citations omitted) (discussing 42 Pa.C.S.A. § 9714). Thus, the increased level of maximum incarceration established in Megan's Law would clearly constitute "punishment." See, *Commonwealth v. Rickabaugh*, No. 272, 273 Crim. 1997 (Blair January 26, 1998); *Commonwealth v. Dendler*, 560 Crim. 1996 (Schuylkill December 31, 1997); *Commonwealth v. Foley*, No. 20 Crim. 1997 (Franklin December 23, 1997); *Commonwealth v. Alejandre*, No. 3494 Crim. 1996 (Lancaster November 20, 1997).

## DUE PROCESS

### 1. Burden of Proof

Defendant argues that the statutory presumption created in Megan's Law violates his due process rights. He claims the burden of proving he is a "sexually violent predator" should rest with the Commonwealth and that he should not be required to rebut this presumption with clear and convincing evidence.

The Legislature has directed the Assessment Board and the Court to presume that a person convicted of one of the predicate offenses is a "sexually violent predator." 42 Pa.C.S.A. § 9794(b). Thus, the Legislature has combined registration and notification requirements with mandatory sentences significantly in excess of that which can be otherwise imposed for the predicate offense.<sup>4</sup>

Initially, we note that the Legislative findings are limited to the need for registration and community notification as a protective measure. 42 Pa.C.S.A. § 9791. Nowhere in those findings is there any hint that one who commits a predicate offense is likely, let alone highly likely, to engage in predatory sexually violent offenses due to a mental

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<sup>4</sup>Megan's Law directs a maximum sentence of life for those found to be "sexually violent predators." 42 Pa.C.S.A. § 9799.4(c). The predicate offenses have much lower maximum sentences. 18 Pa.C.S. § 2901 (20 years); 18 Pa.C.S. § 3121 (20 years); 18 Pa.C.S. § 3123 (20 years); 18 Pa.C.S. § 3125 (10 years); 18 Pa.C.S. § 5902(b) (7 years); 18 Pa.C.S. § 5903(a)(3), (4), (5), or (6) (5 years); 18 C.S. § 3126 (when misdemeanor of the first degree) (5 years).

abnormality or personality disorder. 42 Pa.C.S.A. § 9792. At most, the legislative findings suggest that a “sexually violent predator” poses a high risk of engaging in further offenses. 42 Pa.C.S.A. § 9791(a)(2). That conclusion is significantly different than finding that one who commits a predicate offense need always be labeled a “sexually violent predator.” Thus, we begin with a statutory presumption for which no basis in fact has been established.

The United State’s Supreme Court has held that the constitution requires “proof of a criminal charge beyond a reasonable doubt.” In *Re Winship*, 397 U.S. 358, 362, 90 S. Ct. 1068, 1071, 25 L. Ed. 2d 368, 374 (1970). The Supreme Court held that “the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.” *Id.* at 375. Clearly, this rule is applicable to the prosecution of a defendant charged with a crime. However, in the case of Megan’s Law, the determination of whether the defendant is a “sexually violent predator” is not a separate crime independent of the predicate offense. See, *United States, ex. rel., Gerchman v. Maroney*, 355 F.2d 302 (3rd Cir. 1966) (holding the determination of whether a defendant constitutes a “threat of bodily harm to members of the public” and is thus subject to an enhanced maximum sentence is not a separate offense but is independent of the determination of guilt on the underlying offense).

Under Megan’s Law, the defendant has already been found guilty of a predicate offense and the hearing is conducted to make a separate factual determination of the defendant’s mental status. This hearing is not a prosecution for a new crime; however, it is also not simply a sentencing hearing. The Legislature has established a hybrid proceeding.

As the hearing is not a criminal prosecution, the full array of due process rights normally provided to a defendant in such a proceeding, such as proof beyond a reasonable doubt, are not required. However, here the Defendant is entitled to more than “minimal due process protections” provided in sentencing hearings because his maximum sentence may be substantially increased. *United States v. Davis*, 710 F.2d 104, 106 (1983). The United States Supreme Court has “required additional procedural protections...when a convicted individual is sentenced to a longer term of imprisonment pursuant to a statute which requires additional fact-finding by the sentencing judge.” *Id.* at 106 (citing *Specht v. Patterson*, 386 U.S. 605, 87 S. Ct. 1209, 18 L. Ed. 2d 326 (1967)). Thus, such protections should also be afforded a defendant in a hearing conducted pursuant to Megan’s Law.

Recently, in *E.B. v. Verniero*, 119 F.3d 1077 (3rd Cir. 1997), the Court discussed the allocation and extent of the evidentiary burden required under New Jersey's Megan's Law. There, the only issue was the burden required for the registration and notification provisions of New Jersey's Tier 2 and 3 classifications. Citing *Matthews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976), the Court noted that due process requires consideration of three factors: (1) the private interest that will be affected by the official action; (2) the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the Government's interest, including the function involved and the fiscal and administrative burden that the additional or substitute procedural requirements would entail. *Id.* at 334-35. The Court then observed that the Supreme Court has applied *Matthews* in the context of a challenge to the preponderance of the evidence standard in *Santosky v. Kramer*, 455 U.S. 745, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982) (whether due process required a state to prove its case in a termination of parental rights proceeding by clear and convincing evidence rather than by a preponderance of the evidence), and *Addington v. Texas*, 441 U.S. 418, 99 S. Ct. 1804, 60 L. Ed. 2d 323 (1979) (the state's burden in a civil commitment hearing where the court was required to determine, in a proceeding separate from criminal prosecution and sentencing, whether hospitalization was required for the welfare and protection of the individual and others). In each case "due process required the state to carry the burden of persuasion by more than a preponderance of the evidence, since the preponderance standard requires litigants to share the risk of error in roughly equal fashion." *E.B. v. Verniero*, 119 F.3d at 1107.

Given the aforementioned standards and precedent *E.B.* concluded that,

Given (1) the interest of the registrant and the state in an accurate determination of the relevant issues of fact in a Megan's Law hearing, (2) the absence of a substantial economic or other burden to the state from allocating the burden of persuasion to it, and (3) any conclusion that such an allocation will materially reduce the risk of error in those cases in which the allocation of that burden plays a role, we hold that due process requires that the prosecution shoulder the burden of persuading the court of the truth of the facts upon which she has relied.

*E.B. v. Verniero*, 119 F.3d at 1109.

We find this conclusion cogent and even more persuasive in the context of Pennsylvania's Megan's Law where the factual finding by the Court that one is a "sexually violent predator" has ramifications substantially in excess of registration and notification. In such a hearing the Court is being asked to assess the future likelihood of predatory actions where mental experts note there is a substantial uncertainty. *E.B. v. Verniero*, 119 F.3d at 1108. Here, the risk of error is substantially greater than in civil proceedings; therefore, placing the burden of persuasion on the prosecution will significantly reduce the risk of an erroneous conclusion. Additionally, we do not believe allocation of the burden to the prosecution will materially impair the state's ability to proceed or to identify and pursue persons who are likely to pose a risk of harm to the public.

At this point, we need not decide what standard of proof is required in a Megan's Law hearing because initially that is a legislative function. However, precedent suggests minimum standards. Again, *E.B.* relied on *Santosky* and *Addington* in concluding that proof must be established by clear and convincing evidence. Both cases suggest that where the individual interests at stake are both "particularly important" and "more substantial than mere loss of money" and involve a "significant deprivation of liberty" or "stigma" the clear and convincing standard is mandated. *E.B. v. Verniero*, 119 F.3d at 1111.

We recognize that requiring the prosecution to prove a fact by a preponderance of the evidence in a sentencing proceeding has been constitutionally sanctioned. *McMillan v. Pennsylvania*, 477 U.S. 79, 106 S. Ct. 2411, 91 L. Ed. 2d 67 (1986). In *McMillan*, the Supreme Court upheld Pennsylvania's Mandatory Minimum Sentencing Act, 42 Pa.C.S.A. § 9712, which requires the prosecution to prove at sentencing that a defendant had visible possession of a firearm during the commission of the underlying crime. If that fact is established, the sentencing court is required to impose a five-year *mandatory minimum* sentence. However, as stated repeatedly, the Megan's Law pre-sentence hearing is conducted to determine a fact (that the defendant is a "sexually violent predator") which, if established, will enhance the *mandatory maximum* sentence well beyond what the Crime Code dictates for the predicate offense. The Mandatory Minimum Sentencing Act differs significantly from Megan's Law in that the latter requires a separate pre-sentence hearing, places an onerous burden on the defendant, and increases the maximum penalty for the predicate offense. Therefore, it would appear that a clear and convincing standard is required.

Having ruled that Megan's Law improvidently creates a presumption that must be rebutted by Defendant by clear and convincing

evidence, the Court will not be conducting the hearing required by Section 9794(e) to determine if Defendant is a “sexually violent predator.” Thus, some of the remaining issues become moot. For example, the rights available to Defendant at the hearing need not be ascertained because there will be no hearing. Nevertheless, we will discuss all issues in an effort to be complete in our analysis.

## 2. Vagueness

Defendant argues that the definitions in the statute are vague and thus violate his rights under the Due Process Clause of the Fourteenth Amendment of the United States Constitution and Article I, Section 9 of the Pennsylvania Constitution.<sup>5</sup>

Defendant argues that the definition of “sexually violent predator” is vague. This definition reads as follows:

A person who has been convicted of a sexually violent offense as set forth in section 9793(b) (relating to registration of certain offenders for ten years) and who is determined to be a sexually violent predator under section 9794(e) (relating to designation of sexually violent predators) due to a *mental abnormality* or personality disorder that makes the person likely to engage in predatory sexually violent offenses.

42 Pa.C.S.A. § 9792 (emphasis added).

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<sup>5</sup> The Due Process Clause of the Fourteenth Amendment of the United States Constitution states as follows:

...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend XIV, § 1.

Article I, Section 9 of the Pennsylvania Constitution states as follows:

In all criminal prosecutions the accused hath a right to be heard by himself and his counsel, to demand the nature and cause of the accusation against him, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and, in prosecutions by indictment or information, a speedy public trial by impartial jury of the vicinage; he cannot be compelled to give evidence against himself, nor can he be deprived of his life, liberty or property, unless by the judgment of his peers or the law of the land. The use of a suppressed voluntary admission or voluntary confession to impeach the credibility of a person may be permitted and shall not be construed as compelling a person to give evidence against himself. Notwithstanding the provisions of this section, the General Assembly may by statute provide for the manner of testimony of child victims or child material witnesses in criminal proceedings, including the use of videotaped depositions or testimony by closed-circuit television.

Pa. Const., art. I, § 9.

Mental abnormality is defined as follows:

A congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons.

42 Pa.C.S.A. § 9792.

Personality disorder is not defined in the Act; however, reference can be made to the Diagnostic and Statistical Manual of Mental Disorders which is well accepted in the mental health field. American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders (4th ed. 1994).

The Pennsylvania Supreme Court has explained the notion of vagueness as follows:

“As generally stated, the void for vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.” Mikulan, *supra* at 251, 470 A.2d at 1342, quoting, *Kolender v. Lawson*, 461 U.S. 352, 357, 103 S. Ct. 1855, 1858, 75 L. Ed. 2d 903 (1983). See *Commonwealth v. Burt*, 490 Pa. 173, 177-78, 415 A.2d 89, 91 (1980), quoting, *Colautti v. Franklin*, 439 U.S. 379, 390, 99 S. Ct. 675, 683, 58 L. Ed. 2d 596 (1979) (a statute is void for vagueness if it “fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by statute”). Due process requirements are satisfied if the statute provides reasonable standards by which a person may gauge their future conduct. *Commonwealth v. Heinbaugh*, 467 Pa. 1, 6, 354 A.2d 244, 246 (1976), citing, *United States v. Powell*, 423 U.S. 87, 94, 96 S. Ct. 316, v 320-21, 46 L. Ed. 2d 228 (1975).

*Commonwealth v. Barud*, 545 Pa. 297, 304-5, 681 A.2d 162, 165 (1996).

In addition to this standard, a recent decision by the United States Supreme Court is instructive. The Supreme Court has held that nearly identical definitions of “sexually violent predator” and “mental abnor-



mality” in Kansas’ Sexually Violent Predator Act are constitutional against a substantive due process claim.<sup>6</sup> *Kansas v. Hendricks*, 521 U.S. \_\_\_, 117 S. Ct. 2072, 138 L. Ed. 2d 501 (1997). Kansas’ statute provided for civil confinement of one determined to have a “mental abnormality” or “personality disorder” and who was likely to engage in “predatory acts of sexual violence.” *Kansas v. Hendricks*, 138 L. Ed. 2d at 505.

The Supreme Court stated that it has “traditionally left to legislators the task of defining terms of a medical nature that have legal significance.” *Id.* at 513 (citations omitted). Additionally, the Supreme Court in *Marshall v. United States*, 414 U.S. 417, 427, 94 S. Ct. 700, 706, 38 L. Ed. 2d 618, 626, held that when the legislature “undertakes to act in areas fraught with medical and scientific uncertainties, legislative options must be especially broad and courts should be cautious not to rewrite legislation.”

Thus, in light of the Supreme Court’s decisions, it is this Court’s determination that the definitions provided in Megan’s Law are not void for vagueness. The Courts of this Commonwealth addressing this issue have unanimously held likewise. See, *Commonwealth v. Dendler*, No. 560 Crim. 1996; *Commonwealth v. Foley*, No. 20 Crim. 1997; *Commonwealth v. Alejandre*, No. 3494 Crim. 1996; *Commonwealth v. Morris*, No. 0597 Crim. 1997 (Philadelphia October 29, 1997); *Commonwealth v. Tate*, No. 889 Crim. 1996 (Crawford October 22, 1997); *Commonwealth v. Williams*, No. 922 Crim. 1997 (Erie September 23, 1997); *Commonwealth v. Eldridge*, No. 949 Crim. 1996 (Lawrence September 15, 1997); *Commonwealth v. Koller*, No. 474 Crim. 1996 (Bradford May 19, 1997).

### 3. Criminal Procedure Rights

Defendant argues that his criminal procedural rights, as set forth in the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution and Article I, Sections 6, 9, and 10 of the Pennsylvania

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<sup>6</sup> Kansas’ statute defined “sexually violent predator” as:

any person who has been convicted of or charged with sexually violent offense and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in the predatory acts of sexual violence.

Kan. Stat. Ann. § 59-29A01 (1994).

“Mental abnormality” was defined as a:

congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to commit sexually violent offenses in a degree constituting such person a menace to the health and safety of others.

Kan Stat. Ann. § 59-29a02(b).

Constitution, are violated by Megan's Law.<sup>7</sup> The relevant portions of both constitutions protect a defendant's right to trial by jury and to have proceedings against him initiated by information.<sup>8</sup>

We have previously discussed our determination that the hearing in which Defendant's status as a "sexually violent predator" is decided is not a criminal prosecution in which the full array of defendant's constitutional protections are implicated. In Megan's Law, the criminal prosecution has already occurred and the Defendant has been found guilty of the predicate offense. Again, although some due process rights are warranted at this stage in the proceedings, these rights would not encompass the same protections as when a criminal prosecution is initially tried.

The rights to a jury determination of the facts and to have proceedings brought by information are rights guaranteed to those charged with a crime for which they are being tried. Megan's Law is not a trial in which the defendant is being prosecuted for a crime and thus does

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<sup>7</sup>Supra, note 5. The Fifth Amendment of the United States Constitution provides as follows:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. U.S. Const. amend. V.

The Sixth Amendment of the United States Constitution states:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process of obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

U.S. Const. amend. VI.

Article I, Section 6 of the Pennsylvania Constitution reads, in pertinent part, as follows:

Section 6. Trial by jury shall be as heretofore, and the right thereof remain inviolate...

Pa. Const., art. I, § 6.

Article I, Section 10 of the Pennsylvania Constitution states in pertinent part that "...No person shall, for the same offense, be twice put in jeopardy of life or limb..."

Pa. Const., art. I, § 10.

<sup>8</sup>Defendant has also raised the right to have the Commonwealth bear the burden of proof at trial. As this argument is addressed in detail in the Due Process discussion, we will not discuss it again under defendant's criminal procedure rights.

not violate the Defendant's constitutional rights to a jury and to have proceedings brought by information.

#### 4. Right to Counsel

Defendant argues that the reports submitted by the Board should be suppressed as they were obtained outside the presence of counsel and in violation of the attorney client relationship. Defendant argues these rights under the Sixth and Fourteenth Amendments of the United States Constitution.<sup>9</sup>

Defendant's right to counsel was not violated at the time of his psychiatric assessment. Defendant had the aid of counsel during his trial and throughout his sentencing. The United States Supreme Court in *Estelle v. Smith*, 451 U.S. 454, 101 S. Ct. 1866, 68 L. Ed. 2d 359 (1981), said that a defendant who has adversary proceedings brought against him has the right to the aid of counsel, including in pretrial proceedings. This right is not violated under Megan's Law. Defendant had counsel at the time of trial and throughout the assessment period. Thus, Defendant's right to assistance of counsel was not violated.

Defendant has also argued a right to have counsel present at the time of the psychiatric assessment. However, the right to assistance of counsel, as established in *Estelle* does not necessarily include the right to have counsel present at the psychiatric evaluation. There the Court noted that,

Respondent does not assert, and the Court of Appeals did not find, any constitutional right to have counsel actually present during the examination. In fact, the Court of Appeals recognized that "an attorney present during the psychiatric interview could contribute little and might seriously disrupt the examination." (citations omitted).

*Estelle v. Smith*, 451 U.S. at 470, n. 14.

Additionally, the Pennsylvania Supreme Court, in reviewing a defendant's right to counsel at a pre-sentence interview conducted by a probation department investigator, held that there was no right to have counsel present as it "could only frustrate" the purpose of the interview. *Commonwealth v. Burton*, 451 Pa. 12, 14, 301 A.2d 675, 676 (1973).

Therefore, Defendant has no right under the United States or Pennsylvania Constitutions to have counsel present at the psychiatric assessment required by Megan's Law. Additionally, because Defendant had an attorney representing him at the time of the assessment, his

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<sup>9</sup>*Supra* notes 5 and 7.

right to have the assistance of counsel throughout such an adversary proceeding was not violated.

### SELF INCRIMINATION

Defendant argues his right against self incrimination, as set forth in the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 9 of the Pennsylvania Constitution,<sup>10</sup> is violated under Megan's Law because he is required to give statements in psychiatric evaluations that may be used against him in sentencing.

In *Estelle*, the United States Supreme Court ruled on a similar issue. Smith, was charged with murder and the state sought the death penalty. A pre-trial psychiatric examination of Smith was performed to determine his competency to stand trial. It was decided that he was competent and the case proceeded to trial where the jury found Smith guilty of murder and later sentenced him to death. The United States Supreme Court held that the state's use of the pre-trial psychiatric examination at the penalty phase of the trial violated the defendant's Fifth Amendment privilege against compelled self-incrimination. The Supreme Court declared,

The Court has held that "the availability of the [Fifth Amendment] privilege does not turn upon the type of proceedings in which its protection is invoked, but upon the nature of the statement or admission and the exposure which it invites." *In re Gault*, 387 U.S. 1, 49, 18 L. Ed. 2d 527, 87 S. Ct. 1428, 40 Ohio Ops 2d 378 (1967) ... We can discern no basis to distinguish between the guilt and penalty phases of respondent's capital murder trial so far as the protection of the Fifth Amendment privilege is concerned. Given the gravity of the decision to be made at the penalty phase, the State is not relieved of the obligation to observe fundamental constitutional guarantees. (citations omitted).

*Estelle v. Smith*, 451 U.S. at 462.

In conclusion, the Supreme Court stated that "[a] criminal defendant, who neither initiates a psychiatric evaluation nor attempts to introduce any psychiatric evidence, may not be compelled to respond to a psychiatrist if his statements can be used against him at a capital sentencing proceeding." *Estelle v. Smith*, 451 U.S. at 468.

Although *Estelle* deals with capital punishment, we believe the prospect of receiving a maximum life sentence under Megan's Law is comparable enough in severity to warrant a similar conclusion.

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<sup>10</sup> *Supra* notes 5 and 7.

## ESTATE NOTICES

**NOTICE IS HEREBY GIVEN** that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment out delay to the executors or administrators or their attorneys named below.

## FIRST PUBLICATION

## ESTATE OF ELIZABETH H. BREDBENNER, DEC'D

Late of the Township of Straban, Adams County, Pennsylvania  
 Executrix: Elizabeth Ann Koch, 824 Latimore Creek Road, York Springs, PA 17372; Wm. D. Schrack, III, 124 West Harrisburg Street, Dillsburg, PA 17019-0310

## ESTATE OF CLYDE O. GARBER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania  
 Executors: Stephanie J. Warner; Thomas A. Garber  
 Attorney: Alan M. Cashman, Esquire, 141 Broadway, Suite 230, Hanover, PA 17331

## ESTATE OF WILLIAM PERSHING LL a/k/a WILLIAM P. HALL, DEC'D

Late of Reading Township, Adams County, Pennsylvania  
 Executrix: Sandra Kathleen Hall a/k/a Sandra Hall Schultz, 1 Harrison Drive, East Berlin, PA 17316  
 Attorney: Sharon E. Myers, Esq., 29 North Duke Street, York, PA 17401

## ESTATE OF JOHN W. HARNER a/k/a REV. J. WILSON HARNER a/k/a J. W. HARNER a/k/a J. WILSON HARNER, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania  
 Executors: Royall T. Harner, 4375 Jade Street, Apt. 2, Capitola, CA 95010; Catherine M. Harner, 425 W. King Street, Littlestown, PA 17340  
 Attorney: Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

## ESTATE OF MARIE E. MUNDIS, DEC'D

Late of Berwick Township, Adams County, Pennsylvania  
 Executor: Barry Mundis, 7 Eastwood Drive, Shrewsbury, PA 17361

## ESTATE OF JEAN FOHL-SLAYBAUGH, DEC'D

Late of Biglerville, Adams County, Pennsylvania  
 Executor: Douglas C. Yohe, Latsha Davis & Yohe, P.C., P.O. Box 825, Harrisburg, PA 17108-0825  
 Attorney: Christopher S. Lucas, Esquire, Latsha Davis & Yohe, P.C., P.O. Box 825, Harrisburg, PA 17108-0825

## SECOND PUBLICATION

## ESTATE OF CLARA M. KETTERMAN, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania  
 Executor: Richard Lee Ketterman, 2370 York Road, Gettysburg, PA 17325  
 Attorney: Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

## ESTATE OF MADELINE E. NICHOLSON, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania  
 Executor: James M. Nicholson, 138 Twin Lakes Dr., Gettysburg, PA 17325  
 Attorney: John W. Phillips, Esq., 101 W. Middle Street, Gettysburg, PA 17325

## ESTATE OF MARY E. PENTZ, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania  
 Executors: Kenneth B. Bream, 534 Main Street, McSherrystown, PA 17344; Cynthia Ann Bream, 534 Main Street, McSherrystown, PA 17344  
 Attorney: James T. Yingst, Esquire, Rudisill, Guthrie, Nonemaker, Guthrie & Yingst, 40 York Street, Hanover, PA 17331

## ESTATE OF MARTHA B. SPENCE, DEC'D

Late of Franklin Township, Adams County, Pennsylvania  
 Executrix: Sandra K. Spence, 1071 Poplar Springs Road, Orrtanna, PA 17353  
 Attorney: David K. James, III, Esquire, 234 Baltimore Street, Gettysburg, PA 17325

## THIRD PUBLICATION

## ESTATE OF WADE FRANKLIN HOOK, a/k/a WADE F. HOOK, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania  
 Executrix: Melverda P. Hook, 195 Ridgewood Drive, Gettysburg, PA 17325  
 Attorney: Keefer Wood Allen & Rahal, LLP, Attn: Robert R. Church, Esq., P.O. Box 11963, Harrisburg, PA 17108-1963

## ESTATE OF CORA E. OELLIG, DEC'D

Late of Oxford Township, New Oxford, Adams County, Pennsylvania  
 Co-Executors: Robert Henry Oellig, 192 Hershey Road, Hummelstown, PA 17036; Barbara Ann Teets, P.O. Box 30, McKnightstown, PA 17343

## ESTATE OF DONALD W. STORM, DEC'D

Late of Oxford Township, Adams County, Pennsylvania  
 Executor: Clinton C. Bankert, c/o 230 York Street, Hanover, Pennsylvania 17331  
 Attorney: John James Mooney, III, Esquire, Mooney & Associates, 230 York Street, Hanover, PA 17331

## ESTATE OF BEULAH M. WINTRODE, a/k/a BEULAH MAE WINTRODE, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania  
 Executor: Adams County National Bank, Lincoln Square, Gettysburg, PA 17325  
 Attorney: Puhl & Eastman, Esqs., Attorneys at Law, 16 Lincoln Square, Gettysburg, PA 17325

## NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Monday, March 23, 1998, at 9:00 o'clock a.m.

**HUSSON**—Orphans' Court Action Number OC-7-98. The First and Final Account of Catherine R. Miller Dietz, Executrix of the Last Will and Testament of Mildred A. Husson, deceased, late of Oxford Township, Adams County, Pennsylvania.

**STERNER**—Orphans' Court Action Number OC-9-98. The First and Final Account of Kenneth E. Sterner, Charles R. Sterner and Marie E. Hoffman, Executors of the Last Will and Testament of Glenn L. Sterner, deceased, late of Cumberland Township, Adams County, Pennsylvania.

**CLAPSADDLE**—Orphans' Court Action Number OC-12-98. The First and Final Account of Edith M. Funt, Executrix of the Estate of Anna Clapsaddle a/k/a Anna B. Clapsaddle, deceased, late of Straban Township, Adams County, Pennsylvania.

**HOFFMAN**—Orphans' Court Action Number OC-13-98. The First and Final Account of Robert M. Gillelan, Executor of the Estate of Norman J. Hoffman, deceased, late of Straban Township, Adams County, Pennsylvania.

**SMITH**—Orphans' Court Action Number OC-14-98. The First and Final Account of Michael C. Smith, Administrator of the Estate of David F. Smith, deceased, late of Abbottstown Borough, Adams County, Pennsylvania.

**PETRY**—Orphans' Court Action Number OC-15-98. The First and Final Account of Mark Andrew Rudisill, Administrator D.B.N.C.T.A. of the Estate of Iva R. Petry, deceased, late of Oxford Township, Adams County, Pennsylvania.

**LOEFFEL**—Orphans' Court Action Number OC-24-97. The Second and Final Account of Margaret Adams Rineman, Executrix of the Estate of Margaret R. Loeffel, deceased, late of the Borough of Littlestown, Adams County, Pennsylvania.

Peggy J. Breighner  
 Clerk of Courts

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-686 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 24th day of April, 1998, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that improved tract of land situate on the western side of Kime Hatchery Road, T-650, in Tyrone Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a railroad spike set 2 feet west of the center line of Kime Hatchery Road, T-650, which point of beginning is more particularly established on the survey and subdivision plan hereinafter referred to; thence in and along Kime Hatchery Road, T-650, and by lands of Evelyn E. Kime Estate, South 3 degrees 59 minutes 25 seconds West, 58 feet to an existing railroad spike in the center line of said Kime Hatchery Road, T-650; thence continuing in and along Kime Hatchery Road and by lands of Evelyn E. Kime Estate, South 14 degrees 11 minutes 54 seconds West, 172 feet to a railroad spike set 3 feet west of the center line of Kime Hatchery Road; thence leaving Kime Hatchery Road and through a steel pin set back 25 feet from the beginning hereof and by lands of Lynn F. Kime and Sandra S. Kime, North 83 degrees 51 minutes 6 seconds West, 177.04 feet to a steel pin; thence continuing by lands of same North 2 degrees 25 minutes 56 seconds East, 230.91 feet to a steel pin; thence continuing by lands of same and through a steel pin set back 25 feet from the end hereof, South 83 degrees, 16 minutes 20 seconds East, 213.92 feet to a railroad spike set 2 feet west of the center line of Kime Hatchery Road, T-650 the point and place of BEGINNING. CONTAINING 1.050 acres.

BEING the same premises which Lynn F. Kime and Sandra S. Kime by deed dated December 30, 1994 and recorded in the Office of the Recorder of Deeds in and for Adams County in Deed Book 984, Page 23, granted and conveyed to Michael M. McKenrick and Leonora A. McKenrick.

SEIZED and taken into execution as the property of **Leonora A. McKenrick and Michael L. McKenrick** and to be sold by me

Raymond A. Newman  
Sheriff

Sheriff's Office, Gettysburg, PA  
February 14, 1998.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 18, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

2/27, 3/6 & 13

IN THE COURT OF  
COMMON PLEAS OF  
ADAMS COUNTY, PENNSYLVANIA

NO. 98-S-93  
Action to Quiet Title

RICHARD C. MCCLEARY,  
vs.  
CHARNITA, INC.

NOTICE

TO: CHARNITA, INC., and all others who own property in the area known as SECTION F, CHARNITA, Liberty Township, Adams County, Pennsylvania.

TAKE NOTICE that on January 27, 1998 Plaintiff, RICHARD C. MCCLEARY, filed a Complaint endorsed with a Notice to Defend against you in the Court of Common Pleas of Adams County, Pennsylvania docketed to No. 98-S-93. The Complaint seeks to establish Plaintiff's title to Lot 21, Section F of Charnita.

YOU ARE HEREBY notified to plead to the above referenced Complaint on or before 20 days from the date of this publication or a judgment will be entered against you for the relief requested in the Complaint.

WHEREFORE, the Court of Common Pleas of Adams County, Pennsylvania, has ordered service of the Complaint be made on the Defendants by publication once in the Adams County Legal Journal and one daily newspaper of general circulation in the County of Adams, Pennsylvania. Plaintiff will request the Court to enter a final judgment ordering any possible legal interest the said Defendant might have had in said property be extinguished.

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Adams County Court Administrator  
Adams County Courthouse  
117 Baltimore Street  
Gettysburg, Pennsylvania 17325  
Telephone: (717) 334-6781

3/13

IN THE COURT OF  
COMMON PLEAS OF  
ADAMS COUNTY, PENNSYLVANIA

NO. 98-S-93  
Action to Quiet Title

RICHARD C. MCCLEARY,  
vs.  
CHARNITA, INC.

ORDER

AND NOW, to wit, this 2nd day of March, 1998, upon consideration of the within Motion, it is hereby ordered that Service shall be accomplished as follows:

By publishing a Notice in the form attached to the Motion one time in the Adams County Legal Journal and a newspaper of general circulation for Adams County.

By the Court:  
/s/ Oscar F. Spicer

3/13

NOTICE

NOTICE IS HEREBY GIVEN that Adams County National Bank, Guardian of the Estate of Tabitha J. Kennell, now Tabitha L. Flemig, a minor, appointed as such on November 22, 1994, has filed its First and Final Account and Schedule of Proposed Distribution as Guardian with the Clerk of Courts of Common Pleas of Adams County, Orphans' Court Division, Commonwealth of Pennsylvania, and that the same will be presented to said Court for confirmation and approval on April 13, 1998, at 9:00 A.M.

Adams County National Bank  
Guardian  
Lincoln Square Office  
Gettysburg, PA 17325

Ronald J. Hagarman, Esquire  
110 Baltimore Street  
Gettysburg, PA 17325

3/6 & 13

# Adams County Legal Journal

Vol. 39

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No. 43, pp. 245-256

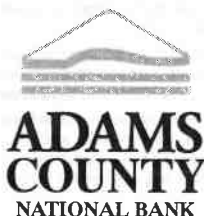
## ANNOUNCEMENT OF CONTINUING LEGAL EDUCATION PROGRAMS

1. *Taxpayer Relief Act of 1997*. Tuesday, March 17, 1998—9:00 a.m.  
Room 307, Adams County Courthouse—Credits: Substantive Law—4,  
Ethics—0.
2. *Representing an Individual Entering a Nursing Home*.  
Wednesday, March 18, 1998—9:00 a.m.  
Room 307, Adams County Courthouse—Credits: Substantive Law—6,  
Ethics—0.
3. *Civil Litigation Update*. Wednesday, March 25, 1998—9:00 a.m.  
Adams County Cooperative Extension Office—Credits: Substantive  
Law—5, Ethics—1.
4. *Litigating in Orphans' Court*. Wednesday, April 22, 1998—9:00 a.m.  
Room 307, Adams County Courthouse—Credits: Substantive Law—5,  
Ethics—1.
5. *Pennsylvania Workers Compensation Practice and Procedure*.  
Monday, June 15, 1998—9:00 a.m.  
Room 307, Adams County Courthouse—Credits: Substantive Law—5,  
Ethics—0.

**Registration through P.B.I. 800-932-4637**

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**SHERIFF'S SALE**

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-195 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 8th day of May, 1998, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN piece, parcel or tract of land situate, lying and being in Union Township, Adams County, Pennsylvania, bounded, limited and described as follows, to wit;

BEGINNING for a corner at a steel pin on the West side of Pennsylvania State Legislative Route No. 01070 at Lot No. 4 on the hereinafter referred to Subdivision Plan of Lots; thence along said Lot No. 4, South eighty-two (82) degrees eleven (11) minutes forty (40) seconds West, two hundred (200) feet to a point at other lands now or formerly of S. Edward Murphy; thence along said last mentioned lands, North six (6) degrees fourteen (14) minutes twenty (20) seconds West, One hundred nine and thirty-two hundredths (109.32) feet to a point at Lot No. 6 on the hereinafter referred to Subdivision Plan of Lots; thence along said Lot No. 6, North eighty-four (84) degrees fifty-one (51) minutes forty-five (45) seconds East, two hundred (200) feet to a steel pin on the aforesaid West side of said Pennsylvania State Legislative Route No. 01070; thence along the West side of said Pennsylvania State Legislative Route No. 01070, by a curve to the left having a radius of two thousand six hundred forty-four and forty-two hundredths (2,644.42) feet, the long chord of which is South six (6) degrees thirteen (13) minutes five (5) seconds East, ninety-nine and ninety-seven hundredths (99.97) feet, an arc distance of one hundred (100) feet to a point on the West side of said Pennsylvania State Legislative Route No. 01070, the point and place of BEGINNING. CONTAINING 20,896 square feet. (Being known on a plot or plan of a series of lots laid out by S. Edward Murphy and bearing date of July 31, 1969, and recorded in Plot Book I, page 55, and known as "Pine Grove Heights," as Lot No. 5.)

BEING THE SAME PREMISES WHICH Alfred A. Weaver and Claudette Weaver by Deed dated September 15, 1995, and recorded in the office of the Recorder of Deeds for the County of Adams on September 18, 1995, in Deed Book Volume 1083, Page 217, granted and conveyed unto Lynn L. Kjelstrom and Lisbeth Kjelstrom.

SEIZED and taken into execution as the property of **Lynn L. Kjelstrom and Lisbeth Kjelstrom** and to be sold by me

Raymond A. Newman  
 Sheriff

Sheriff's Office, Gettysburg, PA  
 February 10, 1998.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 1, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.  
 3/6, 13 & 20

**SHERIFF'S SALE**

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-801 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 17th day of April, 1998, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in Hamiltonban Township, now being Carroll Valley Borough, Adams County, Pennsylvania, being Lot No. 202 in Section J, bounded and described as follows:

BEGINNING at a point in the cul-de-sac of Field Trail at Lot No. 201; thence in the cul-de-sac and by said Lot North 3 degrees 11 minutes 40 seconds West, 200 feet to Lot No. 187; thence by said Lot and by Lot No. 186, South 87 degrees 23 minutes 40 seconds East, 231.11 feet to lands of George C. Steinberger; thence by said lands South 23 degrees 45 minutes West, 213.34 feet to Lot No. 203; thence by said Lot in the cul-de-sac of said Meadow Trail, North 87 degrees 23 minutes 40 seconds West, 133.94 feet to the place of beginning.

HAVING erected thereon a dwelling known as 15 Field Trail, and bearing Tax I.D. No. 2-141.

SUBJECT to easements, restrictions, covenants, and conditions of record, including matters shown on recorded plats.

BEING the same premises which Victoria M. Petrosky and Theresa J. Petrosky, by their Deed dated September 26, 1996, and recorded in the Recorder's

Office of Adams County in Deed Book Volume 1274, page 261, granted and conveyed unto Theresa J. Petrosky.

SEIZED and taken into execution as the property of **Theresa Petrosky** and to be sold by me

Raymond A. Newman  
 Sheriff

Sheriff's Office, Gettysburg, PA  
 February 18, 1998.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 11, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.  
 3/6, 13 & 20

**FICTITIOUS NAME NOTICE**

NOTICE IS GIVEN that an Application for Registration of Fictitious Name was filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on February 4, 1998, pursuant to the Fictitious Name Act, setting forth that Suzanne T. Murray, of 180 Cottage Drive, New Oxford, PA 17350, is the only person owning or interested in a business, the character of which is a Game Park and that the name, style and designation under which said business is and will be conducted is GETTYSBURG GAME PARK and the location where said business is and will be conducted is 320 Zoo Road, Fairfield, PA 17320.

Rudisill, Guthrie, Nonemaker,  
 Guthrie & Yingst  
 Solicitor

3/20



Estelle clearly establishes a defendant's right to be free from self-incrimination during a psychiatric evaluation when the findings of that evaluation may be used against him in the penalty phase of a criminal trial. Thus, Megan's Law violates the Defendant's Fifth Amendment rights by requiring that he participate in a psychiatric evaluation which will determine whether his maximum sentence should be increased to life.<sup>11</sup>

Of course, this problem has also been rendered moot because we will not be conducting a pre-sentence hearing in this case. Therefore, Defendant will not be prejudiced unless the Commonwealth attempts to use information gained from Defendant against him at sentencing. We believe that any use of such information without prior warning that the information could be used against him violates Defendant's constitutional rights.

### BILL OF ATTAINDER

Defendant argues Megan's Law is a Bill of Attainder in violation of Article I, Sections 9 and 10 of the United States Constitution and Article I, Section 18 of the Pennsylvania Constitution.<sup>12</sup>

A Bill of Attainder is "a law that legislatively determines guilt and inflicts punishment upon an identifiable individual without provision of the protections of a judicial trial." *Selective Service System v. Minn. Pub. Int. Res. Gp.*, 468 U.S. 841, 846-47, 104 S. Ct. 3348, 3352, 82 L. Ed. 2d 632, 640 (1984) (citations omitted); see also, *Nixon v. Administrator of General Services*, 433 U.S. 425, 97 S. Ct. 2777, 53 L. Ed. 2d 867 (1977); *Shultz v. W.C.A.B.*, 154 Pa. Commw. 34, 40, 621 A.2d 1239, 1242 (1993).

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<sup>11</sup> We do not agree with the argument that a defendant under Megan's Law may choose to remain silent in the psychiatric evaluation and is therefore not compelled to incriminate himself. If a defendant remains silent he will be faced with an increased sentence of life due to the presumption, applicable to the board and the court, that he is a "sexually violent predator." 42 Pa.C.S.A. § 9794(b). Clearly, the defendant has no *choice* to remain silent under these circumstances. If the initial burden is shifted to the Commonwealth and the presumption is eliminated then a defendant's ability to remain silent will have meaning.

<sup>12</sup> Article I, Sections 9 and 10 of the United States Constitution provide in pertinent part: Section 9. [3] No Bill of Attainder or ex post facto Law shall be passed.

U.S. Const. art.I, § 9, cl.3.

Section 10. [1] No state shall ... pass any Bill of Attainder...

U.S. Const. art. I, § 10, cl.1.

Article I, Section 18 of the Pennsylvania Constitution states:

No person shall be attained of treason or felony by the Legislature.

Pa. Const., art. I, § 18.

Under Megan's Law, guilt is determined through a trial. Then, as is normally the case in criminal proceedings, the case moves to a sentencing phase. Although under Megan's Law, as it is written, a hearing is conducted in the interim in which defendant's status as a "sexually violent predator" is determined, this does not change the fact that defendant's guilt has been determined through a judicial trial. Thus, Megan's Law is clearly not a Bill of Attainder. See, Commonwealth v. Dendler, No. 560 Crim. 1996; Commonwealth v. Foley, No. 20 Crim. 1997; Commonwealth v. Alejandre, No. 3494 Crim. 1996; Commonwealth v. Morris, No. 0597 Crim. 1997; Commonwealth v. Tate, No. 889 Crim. 1996; Commonwealth v. Williams, No. 922 Crim. 1997; Commonwealth v. Eldridge, No. 949 Crim. 1996; Commonwealth v. Koller, No. 474 Crim. 1996.

### DOUBLE JEOPARDY

Defendant argues that the hearing held pursuant to Megan's Law, in order to determine if Defendant is a "sexually violent predator," violates the Double Jeopardy Clause of the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 10 of the Pennsylvania Constitution.<sup>13</sup> Defendant argues the hearing constitutes a separate criminal proceeding punishing him for the same offense for which he was already convicted.

As noted previously in our discussion, it is this Court's determination that the hearing established under Megan's Law is not a separate criminal proceeding in which Defendant is being prosecuted a second time for the same offense. The hearing is a hybrid proceeding which is used to aid the court in sentencing. Although the hearing may affect the sentence received by the offender, we do not believe it rises to the level of being a second criminal prosecution.

This situation is comparable to the enhanced sentencing for crimes involving possession of a deadly weapon. 204 Pa.Code § 303.4. The Pennsylvania Superior Court held that in cases involving an underlying crime and an enhanced punishment for possession of a deadly weapon, there is no double punishment for the same offense. Commonwealth v. Brown, 415 Pa. Super. 534, 542-43, 609 A.2d 1352, 1357 (1992). The Court went on to say that the enhancement:

does not provide for sentencing the defendant twice for the same offense, but rather calls for an increase in the guidelines sentence range where a deadly weapon has been used... [Section] 303.4 does not conflict with the prohibi-

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<sup>13</sup> *Supra* notes 5 and 7.

tion against double jeopardy. [footnote omitted]. The double jeopardy clause ...“protects against multiple punishments for the same offense.” [citations omitted]. An increase in the guideline sentencing range does not constitute multiple punishment for the same offense.

Commonwealth v. Brown, 415 Pa. Super. at 543-44, 609 A.2d at 1357(1992)(quoting Commonwealth v. Dotzman, 403 Pa. Super. 325, 330-31, 588 A.2d 1312, 1315-16 (1991) (citations omitted)).

The situation is similar in the case of Megan’s Law which provides an enhancement in the sentencing range for those found guilty of a predicate offense who have aggravating circumstances; in this case a determination that the offender is a “sexually violent predator.” Thus, the enhanced sentencing set forth in Megan’s Law does not violate the Double Jeopardy Clause. See, Commonwealth v. Morris, No. 0597 Crim. 1997; Commonwealth v. Eldridge, No. 949 Crim. 1996; Commonwealth v. Koller, No. 474 Crim. 1996.

### CRUEL AND UNUSUAL PUNISHMENT

Defendant argues his right against cruel and unusual punishment established in the Eighth and Fourteenth Amendments of the United States Constitution, and against cruel punishment established in Article I, Section 13 of the Pennsylvania Constitution, is violated by Megan’s Law.<sup>14</sup> Specifically, Defendant contends that if a maximum life sentence is imposed upon him pursuant to Section 9799.4(a) that he is being punished for his mental health status rather than for his criminal conduct. Such punishment, argues Defendant, is violative of the aforementioned constitutional prohibitions.

Initially, we will examine the federal law on cruel and unusual punishment because “the rights secured by the Pennsylvania prohibition against ‘cruel punishments’ are co-extensive with those secured by the Eighth and Fourteenth Amendments.” Commonwealth v. Cottam, 420 Pa. Super. 311, 341, 616 A.2d 988, 1003 (1992); Commonwealth v. Zettlemyer, 500 Pa. 16, 73, 454 A.2d 937, 967 (1982); reh’g den., 463 U.S. 1236.

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<sup>14</sup> *Supra* note 5. The Eighth Amendment of the United States Constitution states: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U.S. Const. amend. VIII.

Article I, Section 13 of the Pennsylvania Constitution provides:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted.

Pa. Const., art. I, § 13.

The most recent pronouncement of the United States Supreme Court on the standard for determining whether a state sentencing provision violates the Eighth Amendment is found in *Harmelin v. Michigan*, 501 U.S. 957, 111 S. Ct. 2680, 115 L. Ed. 2d 836 (1991). There the defendant was sentenced under Michigan law to a mandatory sentence of life imprisonment without parole, despite having no prior record, for possessing in excess of 650 grams of cocaine. Harmelin claimed his sentence was unconstitutionally cruel and unusual because: (1) it was significantly disproportionate to the crime committed, and (2) the mandatory sentence did not allow the sentencing judge to consider mitigating factors. In a 5-4 decision the Court ruled that the sentence did not violate the Eighth Amendment. However, the reasoning regarding the first issue raised by Harmelin must be carefully scrutinized.

Justice Scalia wrote the lead opinion which was joined in by Chief Justice Rehnquist. That opinion rejected the concept that the Eighth Amendment included a concept of proportionality and would overrule *Solem v. Helm*, 463 U.S. 277, 103 S. Ct. 3001, 77 L. Ed. 2d 637 (1983). Reviewing historical precedent these justices believed that the intent of the framers of the Bill of Rights was to prohibit "the legislature from authorizing particular forms or 'modes' of punishment—specifically, cruel methods of punishment that are not regularly or customarily employed." 501 U.S. at 976, 115 L. Ed. 2d at 853. They also concluded that any attempt to apply a proportionality standard of review would fail objective analysis. The only exception countenanced to the rejection of proportionality would occur in death penalty cases.

These justices found nothing unusual about imposing a life sentence for a serious criminal offense. They noted, "[s]evere, mandatory penalties may be cruel, but they are not unusual in the constitutional sense, having been employed in various forms throughout our Nation's history." 501 U.S. at 994-5, 115 L. Ed. 2d at 864. This opinion, however, appeared to embrace the minority view.

A concurring opinion which was authored by Justice Kennedy and joined by Justices O'Connor and Souter found no Eighth Amendment violation, but was based upon completely different reasoning. This opinion ignored the historical argument offered by Justice Scalia and focused on the value of *stare decisis*, citing, *inter alia*, *Solem v. Helm*, 463 U.S. 277, 103 S. Ct. 3001, 77 L. Ed. 2d 637, *Hutto v. Davis*, 454 U.S. 370, 102 S. Ct. 703, 70 L. Ed. 2d 556 (1982), and *Rummel v. Estelle*, 445 U.S. 263, 100 S. Ct. 703, 63 L. Ed. 2d 382 (1980), as precedent for the existence of a proportionality principle in the Eighth Amendment.

Justice Kennedy observed that the precise contours of the proportionality principle were unclear but nevertheless he found several

principles flowing from the earlier opinions. These principles included: (1) "the fixing of prison terms for specific crimes involves a substantive penological judgment that, as a general matter, is 'properly within the province of legislatures, not courts'," therefore "courts ... should grant substantial deference to the broad authority that legislatures necessarily possess in determining the types and limits of punishments for crimes," (2) the Eighth Amendment does not mandate adoption of any one penological theory, (3) "marked divergences both in underlying theories of sentencing and in the length of prescribed prison terms are the inevitable ... result of the federal system," and (4) "proportionality review ... should be informed by 'objective factors to the maximum possible extent'." 501 U.S. at 998-1000, 115 L. Ed. 2d at 867-68 (citations omitted).

Respecting the fourth principle, the concurring Justices noted that since *Weems v. United States*, 217 U.S. 349, 30 S. Ct. 544, 54 L. Ed. 793 (1910), the Court had interpreted the Eighth Amendment to prohibit "greatly disproportioned" sentences, although no single criteria can identify when a sentence is so grossly disproportionate that it violates the constitutional prohibition. However, if a sentence appears to be grossly disproportionate then a further objective analysis into intrajurisdictional or interjurisdictional comparisons is required. In *Harmelin*, however, the concurring Justices determined that the crime and sentence did not pass the threshold analysis.

A dissent in *Harmelin* was written by Justice White and joined by Justices Blackmun and Stevens who also concluded that the Eighth Amendment contained an implied prohibition against grossly disproportionate sentences. These Justices found the Constitution to be a growing and changing document. They wrote,

The Court therefore has recognized that a punishment may violate the Eighth Amendment if it is contrary to the "evolving standards of decency that mark the progress of a maturing society" ... In evaluating a punishment under this test "we have looked not to our own conceptions of decency, but to those of modern American society as a whole" in determining what standards have "evolved," ... and thus have focused not on "the subjective views of individual Justices," but on "objective factors to the maximum possible extent,"...It is this type of objective factor which forms the basis for the tripartite proportionality analysis set forth in *Solem*. (citations omitted).

501 U.S. at 1015, 115 L. Ed. 2d at 878.

These dissenters embraced the Solem approach which identified three major factors to consider in determining whether an Eighth Amendment violation exists: (1) the gravity of the offense and the harshness of the penalty, (2) the sentences imposed on other criminals in the same jurisdiction, and (3) the sentences imposed for commission of the same crime in other jurisdictions. The dissent criticized Justice Kennedy's abandonment of the second and third Solem factors concluding that a court's determination whether a sentence is grossly disproportionate increases, rather than decreases, the impact of a subjective approach to what should be, as far as possible, an objective analysis of whether the Eighth Amendment has been violated.

Using the Solem approach, the dissent determined that Harmelin's sentence violated the Eighth Amendment. Justice Marshall wrote a separate dissent but agreed with Justice White's proportionality discussion.

Four of the Justices (Stevens, O'Connor, Kennedy, and Souter), finding that the Eighth Amendment embodies the principle of proportionality, remain on the Supreme Court. Whether they would find support from among Justices Thomas, Ginsburg or Breyer is unknown because the Court has not dealt with the issue since Harmelin.

We have engaged in this discussion because we believe it gives some understanding of where the Pennsylvania Courts are headed on the issue. Harmelin has been cited in three Pennsylvania appellate decisions. *Commonwealth v. Pendola*, 416 Pa. Super. 568, 611 A.2d 761 (1992), alloc. den., 629 A.2d 1378; *Commonwealth v. Spells*, 417 Pa. Super. 233, 612 A.2d 458 (1992); *Downs v. Commonwealth*, 150 Pa. Commw. 455, 616 A.2d 39 (1992), each of which acknowledge and follow Justice Kennedy's concurring opinion.

With this background in mind we must first determine whether there is an inference that a mandatory maximum sentence of life is grossly disproportionate to Defendant's conduct. We find no such inference. If Section 9799.4(a) mandated a sentence of life imprisonment we would have concluded otherwise, but that is not what the General Assembly has done. A mandatory minimum sentence has not been directed. Theoretically, Defendant could be placed on probation for life or sentenced to a minimum sentence of one day and be paroled at the end of his minimum. Granted, even that sentence would be significantly greater than sentences imposed for first degree felonies in the Commonwealth (18 Pa.C.S.A. § 1103(1)) but it falls short of being grossly disproportionate as that term is used in the cases cited herein. Furthermore, parole violations could result in what would essentially

amount to a lifetime incarceration, but that circumstance would be the result of subsequent conduct rather than the criminal conduct for which Defendant has been convicted.

Nevertheless, our Eighth Amendment analysis is not complete because we must also determine whether Defendant is being punished for a "status," that is, his mental health condition if he is determined to be a "sexually violent predator." In *Robinson v. California*, 370 U.S. 660, 82 S. Ct. 1417, 8 L. Ed. 2d 501 (1962) and *Powell v. State of Texas*, 392 U.S. 514, 88 S. Ct. 2145, 20 L. Ed. 2d 1254 (1968), the Supreme Court examined the issue of punishment for a person's status. In *Robinson*, the defendant was convicted under a California statute making it illegal to be addicted to narcotics. There the Court determined that *Robinson* was being punished for merely being found in a condition, recognized to be a disease, over which he no longer had any control. In *Powell*, an alcoholic defendant, was convicted for being found drunk in a public place. There the four dissenters and Justice White's concurring opinion seemed to hold the view that to the extent a specific act or behavior is a characteristic part of the disease and/or an actual symptom such behavior can not be criminally prosecuted under the Eighth Amendment. The Pennsylvania Supreme Court has commented that these decisions do not excuse criminal conduct unless it is characteristic or symptomatic of the disease or mental condition itself. In *Re Jones*, 432 Pa. 44, 59, 264 A.2d 356, 364 (1968).

In our opinion, Megan's Law punishes Defendant's status or mental abnormality. For example, if two separate offenders commit the same act which constitutes a predicate offense, one may receive a Crimes Code statutory maximum while the other would face a lifetime maximum if, because of his mental status, he is determined to be a "sexually violent predator." Thus, Megan's Law imposes an increased punishment based solely upon the offender's mental status in violation of the Eighth Amendment.

In fact, Megan's Law goes beyond *Powell* where Texas was punishing voluntary criminal conduct rather than a characteristic or symptomatic uncontrollable consequence of a disease. Pennsylvania's version of Megan's Law punishes one not because of his conduct which constituted the predicate offense but for anticipated criminal conduct which may occur in the future as a result of a mental disorder which "predisposes" him to such future conduct (a prediction which may not be supported by statistics). See, 42 Pa.C.S.A. § 9792 (definition of "mental abnormality").

Finally, we disagree with the argument that *Kansas v. Hendricks*, 138 L. Ed. 2d 501, effectively eviscerates Defendant's Eighth Amend-

ment argument. That case raised no Eighth Amendment issues. Instead, the Court upheld the Kansas Sexually Violent Predator Act “against a substantive due process challenge.” The Act established procedures for the civil commitment of persons who, due to a “mental abnormality” or a personality disorder, are likely to engage in predatory acts of sexual violence.

Hendricks was about to be released from prison for sexual molestation of children when Kansas petitioned for a civil commitment. The Court determined that the Act’s definition of “mental abnormality” satisfied substantive due process requirements. The Kansas definition of “mental abnormality” and “sexually violent predator” is almost identical to the definitions in Pennsylvania’s Megan’s Law. In addition, the Court in *Kansas v. Hendricks* rejected the argument that the Kansas Act violated double jeopardy and ex post facto prohibitions because the Act established civil proceedings and did not enact “punishment” in the constitutional sense. *Kansas v. Hendricks*, 138 L. Ed. 2d at 514-19.

The Kansas civil commitment statute differs significantly from our Megan’s Law. The Kansas statute is a proceeding separate from and not dependent upon the outcome of a criminal proceeding (even persons acquitted can be civilly committed in Kansas) and limits commitment to one year unless the state can prove beyond a reasonable doubt that the commitment should be extended for a like term. In Pennsylvania the commitment is part of the criminal proceeding and is dependent upon conviction. Although a person labeled as a “sexually violent predator” may seek review of that status<sup>15</sup> and the court may terminate the designation, the Act fails to indicate that the maximum lifetime sentence can be reconsidered.<sup>16</sup>

Thus, it is clear that a first time offender labeled as a “sexually violent predator” is being “punished” under Megan’s Law for his mental status in violation of the Eighth Amendment of the United States Constitution and Article I, Section 13 of the Pennsylvania Constitution.

## PRIVACY

Defendant argues the notification provisions under Megan’s Law violate his privacy rights. Defendant relies on the Fourth and Four-

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<sup>15</sup> Section 9794(f) allows a defendant to petition for review no less than one year prior to release from confinement and at five-year intervals thereafter.

<sup>16</sup> Section 9799.4(c) does allow reconsideration of a mandatory lifetime sentence for a subsequent offense by a sexually violent predator if the prior conviction is reversed. No such provision was enacted for the situation referred to above.



teenth Amendments of the United States Constitution and Article I, Sections 1, 8, and 25 of the Pennsylvania Constitution.<sup>17</sup>

It is this Court's determination that this issue is not ripe for review. Ripeness is a concept of standing which is based upon the idea that "judicial machinery should be conserved for problems which are real and present or imminent, not squandered on problems which are abstract or hypothetical or remote." *Western Pennsylvania Water Co. v. Pennsylvania Public Utility Commission*, 471 Pa. 347, 361, 370 A.2d 337, 344 (1977). In order to have standing a party must have an interest which is "direct, substantial and present...as contrasted with a remote or speculative interest." *Kauffman v. Osser*, 441 Pa. 150, 155, 271 A.2d 236, 239 (1970).

As far as the registration and notification provisions of Megan's Law, Defendant would not be subject to these requirements until after his release from prison. Upon his release, whenever that may be, these provisions may not be in effect or may no longer be applicable to Defendant. Thus, any determination concerning how Defendant's rights will be effected by the registration and notification provisions in the future is too speculative to rule on presently.

However, we do note that reputation is not a recognized privacy right under the United States Constitution. See, *E.B. v. Verniero*, 119 F.3d 1077, 1103 (3rd Cir. 1997) (holding that the Supreme Court in *Paul v. Davis*, 424 U.S. 693, 96 S. Ct. 1155, 47 L. Ed. 2d 405 (1976), "rejected the notion that Davis' interest in his reputation was suffi-

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<sup>17</sup> *Supra* note 5. The Fourth Amendment of the United States Constitution states: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and persons or things to be seized.

U.S. Const. amend. IV.

Article I, Sections 1, 8, and 25 of the Pennsylvania Constitution state as follows:

Section 1. All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and *reputation*, and of pursuing their own happiness. (emphasis added).

Pa. Const., art. I, §1.

Section 8. The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and no warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed to by the affiant.

Pa. Const., art. I, § 8.

Section 25. To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is expected out of the general powers of government and shall forever remain inviolate.

Pa. Const., art. I, § 25.

ciently fundamental to come within that constitutional right”). The Supreme Court of the United States has held:

While there is no “right of privacy” found in any specific guarantee of the Constitution, the Court has recognized that “zones of privacy” may be created by more specific constitutional guarantees and thereby impose limits upon government power. See *Roe v. Wade*, 410 U.S. 113, 152-153, 35 L. Ed. 2d 147, 93 S. Ct. 705 (1973) ... In *Roe* the Court pointed out that the personal rights found in this guarantee of personal privacy must be limited to those which are “fundamental” or “implicit in the concept of ordered liberty” as described in *Palko v. Connecticut*, 302 U.S. 319, 325, 82 L. Ed. 288, 58 S. Ct. 149 (1937). The activities detailed as being within this definition were ... matters relating to marriage, procreation, contraception, family relationships, and child rearing and education.

*Paul v. Davis*, 424 U.S. at 712-13. Thus, Defendant has no federal constitutionally protected privacy right to his reputation.

The Supreme Court went on to hold that the state’s right to “publicize a record of an official act such as an arrest” is not limited by the right to privacy. *Paul v. Davis*, 424 U.S. at 713. Thus, Defendant does not have a privacy right which precludes the dissemination of information regarding his arrest and verdict under Megan’s Law. His interest in his reputation is not a fundamental right and criminal records are not protected under the Constitution of the United States.

However, reputation is protected under the Pennsylvania Constitution. See, e.g., *Wolfe v. Beal*, 477 Pa. 477, 480, 384 A.2d 1187, 1189 (1978); *Moyer v. Phillips*, 462 Pa. 395, 400, 341 A.2d 441, 443 (1975). Nevertheless, this right does not prohibit the registration and notification provisions of Megan’s Law under Pennsylvania’s Constitution.

Initially, we note that criminal records are public information. 65 P.S. § 66.2 states:

Every public record of an agency shall, at reasonable times, be open for examination and inspection by any citizen of the Commonwealth of Pennsylvania.

65 P.S. § 66.2.

The definition of a public record is explained as follows:

Any account, voucher or contract dealing with the receipt or disbursement of funds by an agency or its acquisition, use or disposal of services or of supplies, materials, equipment or other property and any minute,

order or decision by an agency fixing the personal or property rights, privileges, immunities, duties or obligations of any person or group of persons: Provided, That the term "public records" shall not mean any report, communication or other paper, the publication of which would disclose the institution, progress or result of an investigation undertaken by an agency in the performance of its official duties, except those reports filed by agencies pertaining to safety and health in industrial plants; it shall not include any record, document, material, exhibit, pleading, report, memorandum or other paper, access to or the publication of which is prohibited, restricted or forbidden by statute law or order or decree of court, or which would operate to the prejudice or impairment of a person's reputation or personal security, or which would result in the loss by the Commonwealth or any of its political subdivisions or commissions or State or municipal authorities of Federal funds, *excepting therefrom however the record of any conviction for any criminal act.*

65 P.S. § 66.1(2) (emphasis added).

Thus, the Pennsylvania legislature has specifically made an exception to the prohibition on disclosure of information that would prejudice ones "reputation or personal security" when the record is of "any conviction for any criminal act." 65 P.S. § 66.1(2). Therefore, any information regarding Defendant's conviction for a sexual offense is public information. However, this statutory exception does not determine the entire issue as the registration and notification provisions must still pass constitutional muster.

The Pennsylvania Superior Court summarized the constitutional protection of one's reputation as follows:

The right to privacy is a well-settled part of this Commonwealth's jurisprudential tradition. *Stenger v. Lehigh Valley Hosp. Center*, 530 Pa. 426, 434, 609 A.2d 796, 800 (1992). Therefore, we avoid unjustified intrusions into the lives of our citizens. *Id.* In particular, protection of one's reputation, a fundamental right that falls under the right to privacy, is provided for in Article I, § 1 of the Pennsylvania Constitution. See *Hatchard v. Westinghouse Broadcasting*, 516 Pa. 184, 193, 532 A.2d 346, 350 (1987); *Moyer v. Phillips*, 462 Pa. 395, 400, 341 A.2d 441, 443 (1975). Nevertheless the right to privacy, including the protection of one's reputation, is not absolute and must be balanced against weighty competing private and state interests. *Stenger v. Lehigh Valley Hosp. Center*, *supra* (citing *Fabio v. Civil*

Service Commission of City of Philadelphia, 489 Pa. 309, 323, 414 A.2d 82, 89 (1980))...Under the constitutional law of this Commonwealth, only a compelling state interest will force one's privacy rights to give way. *Stenger v. Lehigh Valley Hosp. Center*, 530 Pa. at 434, 609 A.2d at 800.

*Matter of T.R.*, 445 Pa. Super. 553, 565-66, 665 A.2d 1260, 1267 (1995).

Keeping in mind the public nature of a criminal conviction, we turn to the state's interest in having public notification of information on one determined to be a "sexually violent predator."

In *Stenger v. Lehigh Valley Hosp. Center*, 530 Pa. 426, 609 A.2d 796 (1992), Donna Stenger had been in an accident and received a blood transfusion at Lehigh Valley Hospital Center which was tainted with the Acquired Deficiency Syndrome (AIDS) virus. Plaintiff asked, during discovery, for the names of the donors to question them about the screening process used by the Blood Center. Plaintiff also wanted to obtain access to the anonymous AIDS test results of any other patients who received the donors' blood. Defendant refused on the grounds that discovery of this information would violate the donors' privacy rights.

The *Stenger* Court held that the state had a compelling interest in allowing access to this information. *Stenger v. Lehigh Valley Hosp. Center*, 609 A.2d at 802. The Court said:

In this case, the state's interest in the preservation of the integrity of our volunteer blood donations is compelling... Allowing AIDS contaminated blood into the system may result in horrific, incalculable harm. Hence, the state's interest in allaying these concerns and restoring the integrity of the blood supply is a compelling one.

*Stenger v. Lehigh Vailey Hosp. Center*, 609 A.2d at 802.

Similarly, under Megan's Law, the state's interest in notifying the public of the presence of sexual offenders in their neighborhood is compelling. The need to protect children from child molesters is so critical as to need no explanation. The damage to a child victim of a sexual assault is both mentally and physically immeasurable. Thus, it is this Court's determination that Megan's Law does not violate the fundamental right to reputation protected by the Pennsylvania Constitution as the state has a compelling interest in notifying the public.

#### ORDER OF COURT

AND NOW, this 9th day of February, 1998, Defendant's Motion for Extraordinary Relief is granted as more fully set forth in the attached Opinion.

## ESTATE NOTICES

**NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.**

## FIRST PUBLICATION

## ESTATE OF BETTY JANE DICKERSON, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Jean Ann Dickerson, 117 Conewago Drive, Hanover, PA 17331; Herbert E. Dickerson, 30 Waterside Plaza, Apartment 35-E, New York, NY 10010

Attorney: Miller & Shultis, 249 York Street, Hanover, PA 17331

## ESTATE OF BURNELL A. FEESER, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executors: Anthony Thomas Feeser, 8671 San Toccoa Drive, Orlando, Florida 32825; Kathy Ann Powers, RR-1, Box 38, Belle Fourche, South Dakota 57717

Attorney: Ronald J. Hagarman, Esquire, 110 Baltimore Street, Gettysburg, PA 17325

## ESTATE OF ESTHER A. GUISE, DEC'D

Late of York Springs, Adams County, Pennsylvania

Co-Administrators: George E. Guise, 819 Yellow Hill Road, Biglerville, PA 17307; Robert E. Guise, P.O. Box 188, Gardners, PA 17324

Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

## ESTATE OF AGNES LILLIAN LINZ, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrices: Jane M. Phillips and Kathleen Loverde

Attorney: Menges, Gent & McLaughlin, 1157 Eichelberger Street, Hanover, PA 17331

## ESTATE OF GLADYS M. STERNER, DEC'D

Late of the Borough of Fairfield, Adams County, Pennsylvania

Executor: Adams County National Bank, Gettysburg, PA 17325

Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

## SECOND PUBLICATION

## ESTATE OF ELIZABETH H. BREDBENNER, DEC'D

Late of the Township of Straban, Adams County, Pennsylvania

Executrix: Elizabeth Ann Koch, 824 Latimore Creek Road, York Springs, PA 17372; Wm. D. Schrack, III, 124 West Harrisburg Street, Dillsburg, PA 17019-0310

## ESTATE OF CLYDE O. GARBER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Stephanie J. Warner; Thomas A. Garber

Attorney: Alan M. Cashman, Esquire, 141 Broadway, Suite 230, Hanover, PA 17331

## ESTATE OF WILLIAM PERSHING HALL a/k/a WILLIAM P. HALL, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executrix: Sandra Kathleen Hall a/k/a Sandra Hall Schultz, 1 Harrison Drive, East Berlin, PA 17316

Attorney: Sharon E. Myers, Esq., 29 North Duke Street, York, PA 17401

## ESTATE OF JOHN W. HARNER a/k/a REV. J. WILSON HARNER a/k/a J. W. HARNER a/k/a J. WILSON HARNER, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executors: Royall T. Harner, 4375 Jade Street, Apt. 2, Capitola, CA 95010; Catherine M. Harner, 425 W. King Street, Littlestown, PA 17340

Attorney: Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

## ESTATE OF MARIE E. MUNDIS, DEC'D

Late of Berwick Township, Adams County, Pennsylvania

Executor: Barry Mundis, 7 Eastwood Drive, Shrewsbury, PA 17361

## ESTATE OF JEAN FOHL SLAYBAUGH, DEC'D

Late of Biglerville, Adams County, Pennsylvania

Executor: Douglas C. Yohe, Latsha Davis & Yohe, P.C., P.O. Box 825, Harrisburg, PA 17108-0825

Attorney: Christopher S. Lucas, Esquire, Latsha Davis & Yohe, P.C., P.O. Box 825, Harrisburg, PA 17108-0825

## THIRD PUBLICATION

## ESTATE OF CLARA M. KETTERMAN, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: Richard Lee Ketterman, 2370 York Road, Gettysburg, PA 17325  
Attorney: Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

## ESTATE OF MADELINE E. NICHOLSON, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: James M. Nicholson, 138 Twin Lakes Dr., Gettysburg, PA 17325

Attorney: John W. Phillips, Esq., 101 W. Middle Street, Gettysburg, PA 17325

## ESTATE OF MARY E. PENTZ, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executors: Kenneth B. Bream, 534 Main Street, McSherrystown, PA 17344; Cynthia Ann Bream, 534 Main Street, McSherrystown, PA 17344

Attorney: James T. Yingst, Esquire, Rudisill, Guthrie, Nonemaker, Guthrie & Yingst, 40 York Street, Hanover, PA 17331

## ESTATE OF MARTHA B. SPENCE, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Sandra K. Spence, 1071 Poplar Springs Road, Orrtanna, PA 17353

Attorney: David K. James, III, Esquire, 234 Baltimore Street, Gettysburg, PA 17325

## SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-1207 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 1st day of May, 1998, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate, lying, and being in Latimore Township, Adams County, Pennsylvania, and being more particularly described as (Lot 1471) on a plan of Lots of Lake Meade Subdivision duly entered and appearing of record in the Office of the Recorder of Deeds for Adams County, in Miscellaneous Volume 1, Page 23, and subject to all legal highways, easements, rights of way and restrictions of record.

UNDER AND SUBJECT to restrictions, conditions, and easements as more fully set forth in Deed Book 268 at Page 1038.

TAX PARCEL NUMBER: 1-16

TITLE TO SAID PREMISES IS VESTED IN Jack Cletus Orner, Jr. and Patricia K. Orner, his wife by Deed from Larry E. Stough and Judith A. Stough, husband and wife and Daniel L. Rodgers and Linda L. Rodgers, husband and wife dated 8/19/92 recorded 8/24/92 in Record Book 638 Page 1084

SEIZED and taken into execution as the property of **Jack Cletus Orner, Jr. and Patricia K. Orner** and to be sold by me

Raymond W. Newman  
Sheriff

Sheriff's Office, Gettysburg, PA  
February 26, 1998.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 25, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

3/20, 27 & 4/3

## NOTICE

NOTICE IS HEREBY GIVEN, that the Shareholder and Director of Gettysburg Fitness Center, Inc., a Pennsylvania corporation, which had as an address 1685 Fairfield Road, Gettysburg, Pennsylvania, has approved a proposal that the Corporation voluntarily dissolve, and that the Board of Directors is now engaged in winding up and settling the affairs of the Corporation under the provisions of Section 1975 of the Pennsylvania Business Corporation Law of 1988 as amended.

Robert E. Campbell  
Campbell & White  
122 Baltimore Street  
Gettysburg, PA 17325  
Attorneys for Corporation

## NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statement of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts and entering decrees of distribution on Monday, March 23, 1998, at 9:00 o'clock a.m.

**HUSSON**—Orphans' Court Action Number OC-7-98. The First and Final Account of Catherine R. Miller Dietz, Executrix of the Last Will and Testament of Mildred A. Husson, deceased, late of Oxford Township, Adams County, Pennsylvania.

**STERNER**—Orphans' Court Action Number OC-9-98. The First and Final Account of Kenneth E. Sterner, Charles R. Sterner and Marie E. Hoffman, Executors of the Last Will and Testament of Glenn L. Sterner, deceased, late of Cumberland Township, Adams County, Pennsylvania.

**CLAPSADDLE**—Orphans' Court Action Number OC-12-98. The First and Final Account of Edith M. Funt, Executrix of the Estate of Anna Clapsaddle a/k/a Anna B. Clapsaddle, deceased, late of Straban Township, Adams County, Pennsylvania.

**HOFFMAN**—Orphans' Court Action Number OC-13-98. The First and Final Account of Robert M. Gillelan, Executor of the Estate of Norman J. Hoffman, deceased, late of Straban Township, Adams County, Pennsylvania.

**SMITH**—Orphans' Court Action Number OC-14-98. The First and Final Account of Michael C. Smith, Administrator of the Estate of David F. Smith, deceased, late of Abbottstown Borough, Adams County, Pennsylvania.

**PETRY**—Orphans' Court Action Number OC-15-98. The First and Final Account of Mark Andrew Rudisill, Administrator D.B.N.C.T.A. of the Estate of Iva R. Petry, deceased, late of Oxford Township, Adams County, Pennsylvania.

**LOEFFEL**—Orphans' Court Action Number OC-24-97. The Second and Final Account of Margaret Adams Rineman, Executrix of the Estate of Margaret R. Loeffel, deceased, late of the Borough of Littlestown, Adams County, Pennsylvania.

Peggy J. Breighner  
Clerk of Courts

3/13 & 20

# *Adams County* Legal Journal

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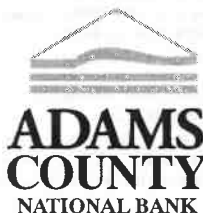
RITTER, ET AL.

VS.

WAYNESBORO HOSPITAL, ET AL.

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Strong.  
Rooted Upon Traditional Values.  
Dedicated to Quality.  
Customer Service.  
Dependable.  
Branching Into The Future.  
Our Commitment Is You.



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**SHERIFF'S SALE**

IN PURSUANCE of a Writ of Execution, Judgment No. 98-S-54 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 15th day of May, 1998, at 10:00 o'clock in the forenoon at the Court-house in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate in Conewago Township, Adams County, Pennsylvania, known as Lot No. 61 in Sherry Village, as shown on the final subdivision plan prepared by Donald E. Worley, R.S., recorded in Adams County, Pennsylvania Recorder of Deeds Office in Plat Book 20, page 10, being more particularly bounded and described as follows:

**LOT NO. 61**

BEGINNING at a point at the intersection of the Northern edge of Providence Drive and the Eastern edge of Sherry Drive as shown on said plan of Sherry Village; thence along a curve to the right on the Eastern edge of Sherry Drive the radius of which is 1130.36 feet for an arc distance of 78.28 feet and have a chord bearing in distance of North 31 degrees 7 minutes 28 seconds West. 78.26 feet to a point at the Southern corner of Lot No. 62 as shown on said plan; thence along said Lot No. 62 North 57 degrees 32 minutes 54 seconds East, 133.10 feet to a point at the Western corner of Lot No. 60 as shown on said plan; thence along said Lot No. 60 South 24 degrees 50 minutes 47 seconds East, 112.15 feet to a point on the Northern edge of Providence Drive as shown on said plan; thence along a curve to the left on the Northern edge of Providence Drive, the radius of which is 948.83 feet for an arc distance of 120 feet and having a chord bearing and distance of South 60 degrees 30 minutes 53 seconds West, 119.92 feet to a point at the intersection of the Northern edge of Providence Drive and the Eastern edge of Sherry Drive, the point and place of BEGINNING.

TAX PARCEL NUMBER: 1-145

TITLE TO SAID PREMISES IS VESTED IN Craig M. Shaffer and Brenda L. Shaffer, husband and wife by Deed from Gregory J. Orndorff and Veronica J. Orndorff, his wife and Jeffrey S. Orndorff and E. Orndorff, his wife dated 5/12/83 recorded 5/24/83 in Record Book 368 Page 284.

SEIZED and taken into execution as the property of **Craig M. Shaffer and Brenda L. Shaffer** and to be sold by me

Raymond W. Newman  
Sheriff

Sheriff's Office, Gettysburg, PA  
March 19, 1998.

**TO ALL PARTIES IN INTEREST AND CLAIMANTS:** You are notified that a schedule of distribution will be filed by the Sheriff in his office on June 8, 1998, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

3/27, 4/3, & 10

**SHERIFF'S SALE**

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-1207 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 1st day of May, 1998, at 10:00 o'clock in the forenoon at the Court-house in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate, lying, and being in Latimore Township, Adams County, Pennsylvania, and being more particularly described as (Lot 1471) on a plan of Lots of Lake Meade Subdivision duly entered and appearing of record in the Office of the Recorder of Deeds for Adams County, in Miscellaneous Volume 1, Page 23, and subject to all legal highways, easements, rights of way and restrictions of record.

UNDER AND SUBJECT to restrictions, conditions, and easements as more fully set forth in Deed Book 268 at Page 1038.

TAX PARCEL NUMBER: 1-16

TITLE TO SAID PREMISES IS VESTED IN Jack Cletus Orner, Jr. and Patricia K. Orner, his wife by Deed from Larry E. Stough and Judith A. Stough, husband and wife and Daniel L. Rodgers and Linda L. Rodgers, husband and wife dated 8/19/92 recorded 8/24/92 in Record Book 638 Page 1084.

SEIZED and taken into execution as the property of **Jack Cletus Orner, Jr. and Patricia K. Orner** and to be sold by me

Raymond W. Newman  
Sheriff

Sheriff's Office, Gettysburg, PA  
February 26, 1998.

**TO ALL PARTIES IN INTEREST AND CLAIMANTS:** You are notified that a schedule of distribution will be filed by the Sheriff

in his office on May 25, 1998, and distribution will be made in accordance with schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

3/20, 27 & 4/3

**INCORPORATION NOTICE**

NOTICE IS HEREBY GIVEN that Articles of Incorporation for **MASON DIXON BUSINESS FORMS, INC.** were filed with the Department of State of the Commonwealth of Pennsylvania on February 12, 1998, under the provisions of the Business Corporation Law of the Commonwealth of Pennsylvania, Act of December 21, 1988, P.L. 1444.

Rudisill, Guthrie, Nonemaker  
Guthrie & Ying  
Solicitor

3/27

**INCORPORATION NOTICE**

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for the purposes of obtaining a Certificate of Incorporation of a proposed business corporation to be organized under the provisions of the Pennsylvania Business Corporation Law of 1988, approved December 21, 1988, P.L. 1444, No. 177, as amended.

The name of the corporation is **SUN-SET PRODUCTIONS, INC.**

Swope, Heiser & McQuaide  
104 Baltimore Street  
Gettysburg, PA 17325

3/27



## RITTER, ET AL. VS. WAYNESBORO HOSPITAL, ET AL.

1. Timely objection to evidence must be made or the issue is waived.
2. Specific exceptions must be taken to a jury charge or omission.
3. Although malpractice cases are often thought of as unique cases to which socialized principles of law apply, such malpractice cases are actually governed by the ordinary rules of evidence.
4. The preclusion of evidence because of violation of a rule or order is a drastic remedy and is only appropriate where there is a serious prejudice to the opposing party.
5. To warrant a new trial, evidence must not only have been wrongly admitted but must have been harmful; a ruling which does not affect the verdict will not justify a new trial.
6. A new trial is properly ordered only when a verdict is so contrary to the evidence as to shock one's sense of justice and making the award of a new trial imperative so that right may be given another opportunity to prevail.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 94-S-455, CARL RITTER AND MARY JEAN RITTER, PARENTS AND NATURAL GUARDIANS OF LINDSAY RITTER, A MINOR, AND CARL RITTER AND MARY JEAN RITTER, INDIVIDUALLY VS. WAYNESBORO HOSPITAL, LAWRENCE E. ROGINA, M.D., ELENA KEHOE, POTOMAC OB/GYN ASSOC.

Thomas W. Hall, Esq., for Plaintiffs

Thomas J. Williams, Esq., for Waynesboro Hospital

Michael M. Badowski, Esq., for Rogina, Kehoe and Potomac

### OPINION ON POST VERDICT MOTIONS

Spicer, P.J. April 29, 1997.

For purposes of convenience, we will generally refer to the parties by their last names. Waynesboro Hospital will be referred to as either Waynesboro Hospital or Hospital. We will abbreviate Potomac OB/Gyn Associates to Potomac. Carl Ritter will be called Mr. Ritter, and Mary Jean Ritter, Ms. Ritter. Lindsay Ritter will be identified as Lindsay; Dr. Lawrence E. Rogina: Dr. Rogina; Elene Kehoe: Ms. Kehoe.

This medical malpractice case was brought because Lindsay was born with neurological deficiencies (cerebral palsy) at Waynesboro Hospital at 11:04 a.m., May 17, 1992. Dr. Rogina delivered Lindsay by cesarean section. Until her arrival at the hospital, the child's mother, Ms. Ritter, was under the care of a nurse midwife, Ms. Kehoe.

On Thursday, May 2, 1996, following almost two weeks of trial, a jury absolved all defendants of negligence. Post trial motions were timely filed and have been argued. Plaintiffs assign the following trial errors, which are described as the judge:

1. refusing to instruct the jury to disregard the results of a non-stress test and “choices” by parents prior to Lindsay’s birth;

2. permitting testimony by Dr. Richard Naeye, as to the presence and significance of meconium, which is a fetal bowel product, on pathology slides of mother’s placenta;

3. permitting Dr. Naeye to testify that meconium acts as a vasoconstrictor and to express his conclusion that meconium accounted for fetal injury or insult prior to mother’s arrival at the hospital;

4. ruling that the jury could not decide negligence on the basis of what has been referred to as the thirty minute rule.

Lastly, plaintiffs argue that the verdict is against the weight of evidence.

Although many comments will be relevant to several of plaintiffs’ issues, we will attempt to address these arguments ad seriatim.

1. Evidentiary rulings concerning a prior non-stress test and background preceding Lindsay’s birth.

Plaintiffs filed an in limine motion to exclude evidence describing Ms. Ritter as a person intensely interested in alternative birthing and one who disliked and distrusted institutionalized health care. It was plaintiffs’ fear that defendants would present Ms. Ritter as an uncooperative patient who was responsible for much of her own problems.

This court refused to rule definitively, saying “[r]ulings in limine, in area such as this, may provide guidance, but final resolution must await trial,” (slip opinion 4/9/96 page 3). We observed “[w]hile its true that doing an act on one occasion is generally not relevant to prove that the person did a similar act on another, habits, attitudes and state of mind may be probative to explain what occurred on May 17, 1992. See *Commonwealth v. Jones*, 391 Pa. Super 292, 570 A.2d 1338 (1990)” *id.*

The court repeated its position at trial by saying:

Prior occasions are not relevant to show what happened here. Attitude, habit, maybe. It’s hard to say about what can be and I’m just going to have to rule on the questions as they’re asked. (Transcript 197)

In her direct testimony at trial, Ms. Ritter provided background and circumstances leading up to the delivery of May 17, 1992, including her preference for home birth. She described herself as having been married 18 years and the mother of 6 children. With the exception of a son, Nathan, all children prior to Lindsay were delivered at home. She said that she enjoys familiar surroundings and felt it important that her

babies stayed with her after delivery. She also testified that she educated her children at home.

In her previous two pregnancies, Ms. Ritter was in labor 9 and 8 hours respectively. The three children previous to Lindsay weighed 9 pounds 8 ounces, 8 pounds 4 ounces and 10 pounds 6 ounces, with terms of 40, 40, and 42 weeks.

Ms. Ritter was required to find another nurse midwife for Lindsay because her prior provider, Marcena Howard was unavailable because of missionary work. She rejected a York County substitute, who would not deliver at home, and engaged the services of Ms. Kehoe and Potomac.

Although there were conflicts between the testimony of Ms. Kehoe and that offered by Ms. Ritter, it is obvious labor contractions began some time during the early morning hours of May 17, 1992. Ms. Kohoe was summoned around 3:00 a.m. and water broke after her arrival, around 5:00 a.m. Ms. Kohoe recommended that her patient go to a hospital shortly before 7:00 a.m. At first, Ms. Ritter said she was too exhausted to contemplate getting up, but agreed around ten minutes later. Although the Ritter home is ten minutes away from Hanover Hospital, and the route to Waynesboro passed through Gettysburg and its hospital, the parties traveled some 45 minutes to Waynesboro, where Potomac had privileges. They arrived around 8:15 a.m. Oxygen and an I.V. were shortly provided. Lindsay was placed on a fetal monitoring device.

There was a dispute in testimony concerning when Ms. Ritter consented to a C-section. She said she heard Dr. Rogina ask someone "Are we for cutting, or are we totally against that?" She said nobody had discussed that possibility with her prior to the statement, and thought it was a terrible way for a doctor to talk to a patient. She said she asked Ms. Kehoe about the procedure, but that the midwife said "not now." Twenty minutes later, she said Dr. Rogina recommended the procedure because of fetal distress, and told the Ritters to discuss it.

She said she was puzzled, because there was nothing to discuss.

Dr. Rogina, on the other hand, testified that after he approached the patient, Mr. Ritter asked him to step outside so that the Ritters could discuss the matter. Mr. Ritter did not appear at nor participant in the trial. Nonetheless, reference was made to his prior deposition testimony and Ms. Ritter agreed that it supported Dr. Rogina's version. Consent was formally given around 10:00 a.m. Reasons specified were

fetal distress and failure to descend. Ms. Ritter was placed on a gurney for transportation to the operating room around 10:13 a.m. and fetal monitoring was discontinued. Lindsay was delivered surgically at 11:04 a.m.

Ms. Ritter's testimony was interrupted by a luncheon recess. Plaintiff's counsel took the opportunity to address the court:

Mr. Hall: Judge, while we're in recess it might be prudent for me to make the following request. I'm just about finished with my questioning of Mrs. Ritter. I want to be careful in terms of Your Honor's pretrial ruling on these issues of opening doors for this, that and the other thing, other pregnancies, what not and specifically things that were or weren't done in other pregnancies. I've been careful with my questioning of Mrs. Ritter to ask her only about lengths of labor in other pregnancies. I've been careful to ask her only about certain things as far as the oxygen and IV. Her testimony is now as it was in her deposition that she was never presented with these options. Indeed people came in and did their things as it were.

We are going to get into cross-examination and we ran into the same thing with Doctor Majsce this morning with getting into home schooling and every other thing that the defense wants to paint Mrs. Ritter as some sort of nut with and I'm in that position again with Doctor Majsce, If I stand up, it looks like I'm trying to hide something and I have to go back and do damage repair.

With Mrs. Ritter on the stand this is the apex of the defense's opportunity to come in and start throwing segments of other records from other pregnancies, etc., etc. at Mrs. Ritter. Your Honor's ruling was that May 17th is the time to look at and I surely don't mind them cross-examining her on what she did, what she didn't do on the 17th. That's obviously what we're here about in this trial but I wanted to get a clarification. I was going to ask for a side bar after I finished, if indeed I got finished before lunch time. I wanted to try to get a clarification and guidelines so when we go into cross-examination I don't have to be jumping up and sitting down. That's indeed why we went to all the trouble in filing the pretrial motion in limine.

Mr. Badowski: Your Honor, it would be nice if attorneys and their parties can just be able to put on the evidence they want to hear and that's what Mr. Hall is trying to do here. He got into the background. He got into the prior pregnancies. I'm not going to get into specifics in terms of what types of tests she refused in prior pregnancies but general discussions about the pregnancies and how they impacted upon her decision to become a home birth and more importantly she's talked on direct-examination in terms of how she developed the interest in home birth. I would like to explore that with her and I'm also going to explore what transpired in terms of the decision to go to Potomac OB/GYN which Mr. Hall touched upon in direct and also in terms of the prenatal care. Mr. Hall did not touch about May 12th and May 15th and what transpired in that period of time and I'm going to get into that with her. That all is involving Lindsay's Pregnancy.

The Court: Mr. Williams, anything you want to say?

Mr. Williams: Nothing to add, Your Honor.

The Court: You can certainly cross-examine on everything that was brought on direct but there is going to be a limit. We're not here to litigate what happened on her 17 year old.

Mr. Badowski: That's correct, Your Honor.

The Court: You can certainly talk about prenatal care of Lindsay or the lack of it. That's all part and parcel of this particular lawsuit but I think we have gotten into about as much as we need of her philosophy. She's given an explanation. You have the right to ask her about that in terms of her philosophy but I just don't want to get into prior incidents of what she did or didn't do in the other five children.

N.T. 192-195

After the luncheon recess, Ms. Ritter described a non-stress test performed May 12, 1992:

Q: Can you tell us basically what happened that day?

A: I went that day for a regular prenatal checkup and after she was done listening to the heart rate and checking

the urine and stuff, she told me I would need to do a non-stress test and I was not really expecting that that day, although I may have been told that earlier in the pregnancy, just kind of I wasn't expecting to come and take a test. It took about a half hour and we had the five children with us but I took the test and then she told me that the test was not good. She had some concerns about it.

N.T. 202-203

Ms. Ritter said that she went to Waynesboro Hospital and completed the test, as requested. Later, on the 15th, she was given another non-stress test. A third, scheduled for the 18th was cancelled because of labor. Nothing in the subsequent tests indicated any problems.

The May 12th test and its results was discussed on other occasions Dr. Regina was asked, on cross-examination:

Q. Before 9:50<sup>1</sup> Doctor, did you suspect there might be compromise of Lindsay?

A: I was concerned about Lindsay from the 12th. I had a patient who had advanced maternal age which no one believes that 38 is old, especially with me being 37, I had a patient who was overdue by a week and a half and I had a tracing that showed spontaneous drops in heart rate. Although the rest of the testing looked fairly reassuring, I still had those spontaneous drops that I couldn't explain.

Q: I'm sorry, maybe my question was inartfully asked...

N.T. 860

Dr. Marshall Klavan, standard of care expert called by plaintiffs, testified that there were high false positives in non-stress tests.

Q. There's high false positives in all electronic fetal monitoring; is there not?

A: Depends on how you look at it. Like most laboratory tests in medicine, if it is normal, it's probably 99 percent correct. If it is abnormal, then you're probably looking at I consider 50 percent possibility of it being falsely wrong. Sure, I agree. It's not an exact science.

N.T. 373

Some of what we say at this point is relevant to issue number four, discussed infra. During a charge conference, the court discussed its

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<sup>1</sup>Plaintiffs maintained that consent was actually given all this time, and not the time recorded on the written consent form.

view that Dr. Klavan's testimony<sup>2</sup> had undermined the "thirty minute rule" and expressed its view that the critical time interval occurred between 10:13 and 11:04 a.m. Not surprisingly, every attorney wanted everything and was willing to forego nothing. Although Mr. Hall requested that the jury be instructed to disregard delays in decisions, and to concentrate on the period after monitoring was discontinued, he also indicated (the following day) that he also was unwilling to confine the jury's consideration to the time limit mention. His initial statement led to the following comment:

The Court: I was afraid you were going to get around to doing that. The problem is this. After I indicated fairly I think unequivocally that that's the way I looked at this case, everybody just kept bringing this kind of testimony in. You did it. They did it. Everybody has done it. So I just think it would be unwise of me right now after, in light of what the trial experience has been, to make that ruling. So your request is refused. Your request is refused.

Mr. Hall: I'm not trying to talk you in or out of anything. I want to clarify so I know...

N.T. 912

A review of the trial proceedings clearly indicated that plaintiffs participated in introducing the evidence about which they complain. There were no objections, no motions to strike made in a timely manner. We had only vaguely phrased requests that the jury be told to disregard what had been placed upon the record in profusion.

Although the first issue is worded in terms of jury instructions, we need to consider how the evidence came into being. Plaintiffs cannot complain about the evidence having been introduced. Once Ms. Ritter testified, she became subject to cross-examination as to the matters

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<sup>2</sup> Dr. Klavan was asked a hypothetical question concerning the urgency of performing a cesarean section. One of the assumed facts was the fetal distress had occurred. According to the doctor, it did no good to schedule the operation. In his opinion, it had to have been done within thirty minutes from the time consent was given. The rule, then, was an expression of reasonableness defined in the time lapse between decision and incision. One of the problems in the case involved terminology the meaning of which varied with the user. Dr. Rogina and Waynesboro Hospital used "emergency" to mean anything that wasn't scheduled and "fetal distress" to more or less describe any situation raising concerns. On the other hand, Dr. Klavan said this last phrase indicated that the fetus belonged in a nursery, not her mother's womb. Although hospital records expressed a need for cesarean based upon fetal distress, Dr. Klavan opined that there was none indicated by the records up until Lindsay was disconnected from monitoring at 10:13.

raised on direct. *Havasy v. Resnick*, 415 Pa. Super 480, 609 A.2d 1326 (1992); appeal dismissed as improvidently granted, 537 Pa. 114, 641 A.2d 580 (1994). It is of no moment that trial strategy, no matter how difficult, dictated counsel's choice in asking questions on direct. *Factor v. Bicycle Technology, Inc.* 452 Pa. Super 26, 680 A.2d 1178 (1996). Timely objection to evidence must be made or the issue is waived. *Ludmer v. Nernberg*, 433 Pa. Super 316, 640 A.2d 939 (1994), allocatur denied 541 Pa. 652, 664 A.2d 542; *Brown v. Philadelphia Tribune Co.* 447 Pa. Super. 52, 668 A.2d 159 (1995), allocatur denied 544 Pa 621, 675 A.2d 1241.

Brown also stands for the proposition that specific exceptions must be taken to a jury charge or omission. Plaintiffs have not called to our attention where that was done. Even assuming that it was, plaintiffs' argument really is an attempt to overcome waiver as to evidence admitted without objection. They have not been able to explain how failure to make timely objections may be excused by requesting an instruction to disregard. As the record will indicate, the court made it clear that specific objections would be required at trial, and that the subject raised in limine could not be decided before trial.

Nobody has cited specific authority on whether background evidence is or is not admissible in a medical malpractice case. Except for the fact that medical care providers are involved, this case differs little from any other action sounding in negligence. It has been said, "[a]lthough] malpractice cases are often thought of as unique cases to which specialized principles of law apply, such malpractice cases are actually governed by the ordinary rules of evidence." *Feldman*, *Pennsylvania Trial Guide* §34.29, (2nd revised edition, George T. Bisel Co. 1991). Juries are not required to determine negligence in a vacuum. As in other cases, in general, we determine that proof of background, origin and history were admissible. See, e.g. *Estate of Hoffman v. Hoffman*, 321 Pa. Super 506, 468 A.2d 1103 (1983); *Horton v. Appleby* 333 Pa. Super 375, 482 A.2d 615 (1984). ¶2. Admissibility of Dr. Naeye's testimony, based upon Pa. R.C.P. 4003.6.

Ms. Ritter signed a release which authorized Waynesboro Hospital to use placenta as it did. Therefore, objection to the results of pathology examination had to have been and was based upon a violation of the above cited rule. It provides:

#### DISCOVERY OF TREATING PHYSICIAN

Information may be obtained from the treating physician of a party only upon written consent of that party or through a method of discovery authorized by this chapter.



This rule shall not prevent an attorney from obtaining information from (1) the attorney's client, (2) an employee of the attorney's client, or (3) an ostensible employee of the attorney's client.

Plaintiffs requested preclusion of Dr. Naeye's testimony in limine (4-9-96). Faced with insufficient information as to how Dr. Naeye was called upon to examine tissue, we could not determine that he was a treating physician, but observed that the relationship of a physician with a patient might be derivative.

Testimony at trial indicated that almost immediately after her birth, Lindsay was placed in the care of a pediatrician, Dr. Dennis Mjysce. Dr. Mjysce was involved only briefly with Lindsay, as she was transferred to Hershey Medical Center shortly after being placed in his care. Dr. Mjysce, among other things, requested an examination of Ms. Ritter's placenta, which was ultimately done by Dr. Naeye. The pediatrician testified that pathology slides are not normally used in treatment of an infant, and were not in Lindsay's case. In fact, Dr. Naeye's initial examination resulted in a finding of no pathology. It was not until later, after a request by defendants, that the pathologist re-examined slides taken of the tissue and discovered evidence of damage, which he ascribed as meconium.

Although we can appreciate sensitive issues of privacy which may be involved in cases of this nature, we affirm the holding that Dr. Naeye's testimony should not have been precluded by the rule, *supra*.

The phrase "treating physician," is not defined in the rules. Applied literally, the rule would preclude the sharing of information between Waynesboro Hospital and Dr. Rogina. Applied in the usual sense, the definition of *treating* would not apply to Dr. Naeye. He provided no information that was used in Lindsay's treatment. There is no indication that the lack of information (negative results as to pathology) impacted upon or influenced treatment decisions made by others, or was even considered by them.

The preclusion of evidence because of violation of a rule or order is a drastic remedy and is only appropriate where there is serious prejudice to the opposing party. *Lampenfeld v. Seitz*, 450 Pa. Super 527, 676 A.2d 684 (1996). There certainly was no surprise, nor lack of opportunity to prepare and respond to Dr. Naeye's testimony. Prejudice, in the circumstances of this case, cannot be construed to mean that the evidence was detrimental to plaintiff's case. Rather, prejudice would have to have involved a tendency to suggest a decision rendered on an improper basis. *Leonard by Myers v. Nichols Homeshield, Inc.*,

348 Pa. Super. 1, 557 A.2d 743 (1989), allocatur denied 525 Pa. 584, 575 A.2d 415.

On the one hand, we have a release executed in favor of Waynesboro Hospital. On the other, we have some concerns about the privacy of a patient. In the context of this case, defendants' rights of access to critical information is more important. The very nature of the proceedings involved repeated references to Ms. Ritter's pregnancy, treatment and delivery. She commented, during a demonstration involving a model pelvic bone that she had no secrets. We cannot judge a malpractice case by the same standards as those applying to polite discussions at evening socials.

3. Dr. Naeye's testimony regarding vasoconstrictive properties of meconium.

Plaintiffs did not seek an in limine ruling with respect to the effects of meconium. Rather, the focus of pretrial motions were narrowed to efforts to preclude the doctor from describing Dr. Naeye's research as to chronological predictability as to the causative incident leading to cerebral palsy. Plaintiffs were successful in obtaining the relief they sought.

However, citing *Commonwealth v. Crews*, 536 Pa. 508, 640 A.2d 395 (1994), this judge said that the doctor might be permitted to render opinions meeting the requirements of *Frye v. United States* 54 App. D.C. 46, 293 F. 1013 (1923). We also stated that "[m]econium is a cause of hypoxia, because it constricts blood vessels." (slip opinion 4/9/96 p. 5).

Plaintiffs suggest that the court was somehow wrongly influenced by extra judicial information. This is not true. Every decision that the undersigned has made has been based upon the record. All substantive issues were determined by the jury, and we have attempted to explain our rulings.

A statement appeared in the slip opinion issued in limine which might appear to adjudicate an issue which was not before the court for decision. It was not immediately apparent there was a dispute about meconium's vasoconstrictive properties. Since plaintiffs did not pursue the issue in limine, this writer merely repeated what Dr. Naeye said concerning the subject. He was, of course, cross-examined, both during depositions and at trial, but there was no countervailing evidence. Dr. Naeye is an expert in this field, respected world-wide. He testified that the medical profession generally accepts in the fact that meconium causes constriction in utero, that he had described that effect in his text book, published in 1992. He dismissed an experiment, brought up during cross, in which veins and arteries taken from

umbilical cords were dipped into a meconium solution, as unsound. He repeated that the fact was well established, although conceding that different opinions might exist, depending upon how much the physician had read. His testimony certainly indicated that techniques or experiments were available to produce reliable results.

Plaintiffs' own expert, Dr. Marshall Klavan, may have mildly disagreed with Dr. Naeye, saying an additional stage was required. During his testimony, (N.T. 382), he said that meconium caused respiratory acidosis, which caused vasoconstriction and metabolic acidosis. That was hardly sufficient to refute either the acceptability of underlying principals upon which Dr. Naeye's opinion was based, or the opinion itself.<sup>3</sup>

To warrant a new trial, evidence must not only have been wrongly admitted but must have been harmful. A ruling which does not affect the verdict will not justify a new trial. *Dougherty v. Edward J. Meloney, Inc.* 443 Pa. Super 201, 661 A.2d 375 (1995), allocatur denied 544 Pa. 608, 674 A.2d 1072. As defendants properly point out, Dr. Naeye was a causation witness. Plaintiffs argue that issue of negligence and causation were so inter-related that improperly admitted causation testimony may have affected the jury's determination that defendants were not liable. We cannot agree. Issues were clearly defined and listed on the verdict form. Once the jury determined that defendants were not negligent, there can be no justice even assuming that Dr. Naeye's testimony was improper. *Valentine v. Acme Markets, Inc.* \_\_\_ Pa. Super \_\_\_, 687 A.2d 1157 (1997).

#### 4. The Thirty Minute Rule.

Plaintiffs suggest that the court removed the thirty minute rule from the jury's consideration.

Dr. Klavan described a "rule," which is contained in guidelines published by the American College of Obstetrics and Gynecology. No more than thirty minutes should elapse between decision and incision, when there is fetal compromise. The doctor testified that the cesarean should have begun no later than 30 minutes after Ms. Ritter consented to the procedure, and that failure to do so was negligence.

However, the only condition constituting fetal compromise specifically addressed, was fetal distress. The doctor said the baby was not in fetal distress at the time monitoring was discontinued.

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<sup>3</sup>Only as a comment, we observe that Dr. Naeye's testimony may not have been subject to the same standards that of witnesses presented by plaintiffs, who had the burden of proof. Defendants had no burden of proving they were non-negligent. *Spino v. John S. Tilley Ladder Co.* 448 Pa. Super 327, 671 A.2d 726 (1996), allocatur granted on an unrelated issue only, 545 Pa. 418, 681 A.2d 745.

The standard is not a rule of law, violation of which means negligence per se.

The undersigned, perhaps in a misguided attempt to simplify issues in the case, suggested that the jury be instructed to focus on the period occurring between the removal of the fetal monitoring strip (10:13 a.m.) and the actual delivery of the child (11:04 a.m.). Plaintiffs specifically opted for a more general approach.

Dr. Rogina acknowledged that "crash" cesareans could be performed when conditions warranted. When Dr. Klavan opined that fetal distress was absent, it appeared to the undersigned that the critical time was narrowed to the period after discontinuance of monitoring.

Be all this as it may, the court refrained from either ruling or commenting on specific periods of time or theories of negligence. (see N.T. 964-965). Plaintiffs' counsel's argument to the contrary not only lacks support in the record, but is specifically contradicted by it.

The court instructed the jury as to general principals of professional malpractice, leaving to counsel the task of tailoring facts to fit such principals. The rule, or guideline, was not a principle of negligence, but only an argued application of such.

#### 5. Weight of evidence.

The undersigned remarked, on several occasions during trial, that the case was extremely well tried by all counsel involved. Witnesses came forward with impressive credentials and ringing resumes. It is not surprising, in light of the caliber of experts on each side, that the jury could not find that plaintiffs carried their burden of proof.

A new trial should not be granted merely because there has been a conflict in testimony. Credibility was an issue to be determined by the jury. A new trial is properly ordered only when a verdict is so contrary to the evidence as to shock one's sense of justice and making the award of a new trial imperative so that right may be given another opportunity to prevail. *Randt v. Abex Corp.* 448 Pa. Super 224, 671 A.2d 228 (1996). *Factor v. Bicycle Technology, Inc.* supra.

Anyone experiencing this trial would have felt sympathetic to Lindsay and her family. The tragedy does not make the verdict wrong, however. This jurist's sense of justice is not shocked by the verdicts.

#### ORDER OF COURT

AND NOW, 29th day of April 1997, plaintiffs' post verdict motions are denied.

## ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

## FIRST PUBLICATION

ESTATE OF HARRY G. LAMBERT, a/k/a HARRY GRANT LAMBERT, III, DEC'D  
Late of the Borough of McSherrystown, Adams County, Pennsylvania  
Executrix: Rita L. Pohlman  
Attorney: David C. Smith, Esquire, 334 Main Street, McSherrystown, PA 17334

ESTATE OF MILDRED E. MILLER, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania  
Executor: Paul A. Miller, 598 Fuhrman Mill Road, Hanover, PA 17331  
Attorney: Harold A. Eastman, Jr., Puhl & Eastman, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF REGINA C. SANDERS a/k/a REGINA B. SANDERS, DEC'D

Late of the Borough of Carroll Valley, Adams County, Pennsylvania  
Executrices: Janet Currens, 2890 Fairfield Road, Gettysburg, PA 17325; Florence Metz, 175 Old Mill Road, Gettysburg, PA 17325  
Attorney: John R. White, Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF GOLDIE E. STEVENS, DEC'D

Late of Huntington Township, Adams County, Pennsylvania  
Executor: Kenneth E. Stevens, 90 Wiermans Mill Road, York Springs, PA 17372  
Attorney: Ronald J. Hagarman, Esquire, 110 Baltimore Street, Gettysburg, PA 17325

## SECOND PUBLICATION

ESTATE OF BETTY JANE DICKERSON, DEC'D

Late of Oxford Township, Adams County, Pennsylvania  
Executors: Jean Ann Dickerson, 117 Conewago Drive, Hanover, PA 17331; Herbert E. Dickerson, 30 Waterside Plaza, Apartment 35-E, New York, NY 10010  
Attorney: Miller & Shuttis, 249 York Street, Hanover, PA 17331

ESTATE OF BURNELL A. FEESER, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania  
Executors: Anthony Thomas Feeser, 8671 San Toccoa Drive, Orlando, Florida 32825; Kathy Ann Powers, RR-1, Box 38, Belle Fourche, South Dakota 57717  
Attorney: Ronald J. Hagarman, Esquire, 110 Baltimore Street, Gettysburg, PA 17325

ESTATE OF ESTHER A. GUISE, DEC'D

Late of York Springs, Adams County, Pennsylvania  
Co-Administrators: George E. Guise, 819 Yellow Hill Road, Biglerville, PA 17307; Robert E. Guise, P.O. Box 188, Gardeners, PA 17324  
Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF AGNES LILLIAN LINZ, DEC'D

Late of Oxford Township, Adams County, Pennsylvania  
Executrices: Jane M. Phillips and Kathleen Loverde  
Attorney: Menges, Gent & McLaughlin, 1157 Eichelberger Street, Hanover, PA 17331

ESTATE OF GLADYS M. STERNER, DEC'D

Late of the Borough of Fairfield, Adams County, Pennsylvania  
Executor: Adams County National Bank, Gettysburg, PA 17325  
Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

## THIRD PUBLICATION

ESTATE OF ELIZABETH H. BREDBENNER, DEC'D

Late of the Township of Straban, Adams County, Pennsylvania  
Executrix: Elizabeth Ann Koch, 824 Latimore Creek Road, York Springs, PA 17372; Wm. D. Schrack, III, 124 West Harrisburg Street, Dillsburg, PA 17019-0310

ESTATE OF CLYDE O. GARBER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania  
Executors: Stephanie J. Warner; Thomas A. Garber  
Attorney: Alan M. Cashman, Esquire, 141 Broadway, Suite 230, Hanover, PA 17331

ESTATE OF WILLIAM PERSHING HALL a/k/a WILLIAM P. HALL, DEC'D

Late of Reading Township, Adams County, Pennsylvania  
Executrix: Sandra Kathleen Hall a/k/a Sandra Hall Schultz, 1 Harrison Drive, East Berlin, PA 17316  
Attorney: Sharon E. Myers, Esq., 29 North Duke Street, York, PA 17401

ESTATE OF JOHN W. HARNER a/k/a REV. J. WILSON HARNER a/k/a J. W. HARNER a/k/a J. WILSON HARNER, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania  
Executors: Royall T. Harner, 4375 Jade Street, Apt. 2, Capitola, CA 95010; Catherine M. Harner, 425 W. King Street, Littlestown, PA 17340  
Attorney: Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF MARIE E. MUNDIS, DEC'D

Late of Berwick Township, Adams County, Pennsylvania  
Executor: Barry Mundis, 7 Eastwood Drive, Shrewsbury, PA 17361

ESTATE OF JEAN FOHL SLAYBAUGH, DEC'D

Late of Biglerville, Adams County, Pennsylvania  
Executor: Douglas C. Yohe, Latsha Davis & Yohe, P.C., P.O. Box 825, Harrisburg, PA 17108-0825  
Attorney: Christopher S. Lucas, Esquire, Latsha Davis & Yohe, P.C., P.O. Box 825, Harrisburg, PA 17108-0825

## Legal Malpractice...

### IT DOES HAPPEN



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