

November 18, 1994

Testimony by:

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Warren County

Case No. 459 of 1985 - Civil  
Warren County  
No. 167 of 1988  
Superior Court of PA  
Pittsburgh, PA

House Judiciary Committee  
On Judicial Reform Issues

Pittsburgh, PA

Warren County 459 76 1985

Superior Ct. 167-1988

My husband and I are victims of fraud, conspiracy and collusion. The perpetrators had the cooperation of Warren County Common Pleas Judge Robert L. Wolfe. Had our hearing been conducted in an unbiased and legal manner, and the jury properly instructed, this illegal decision against us could not have been rendered.

The non-resident plaintiffs in this case were awarded 56 acres of remote woodland for which we have a deed through the application of the adverse possession law, without having met a single requirement of that law. Through the judge's instructions, the jury also awarded compensation for standing trees (raw material) we removed from the disputed property in an amount equal to our receipts for the finished product produced from those trees. Judge Wolfe adamantly refused to allow testimony concerning our production costs as, in his words, "that would allow the wrongdoers a profit". In addition, \$70,000 in punitive damages was awarded the plaintiffs and upheld by Judge Wolfe.

Over our attorney's objection, the attached deposition taken from a hospital bound 85 year old woman, admittedly on medication, was read into the testimony. This confused, pathetic, contradictory, distorted, and apparently sometimes hallucinatory testimony is the main basis used by both Common Pleas and Superior Court for the adverse verdict.

On appeal, the superior court added more weight to the evidence by its own finding that a hunting cabin had been built on the disputed premises, though it was not founded in evidence or testimony and, in fact, there has never been a cabin thereon. Another of its creations was a finding of "successive occupancy" upon the premises. Nowhere in the evidence or testimony does this exist. The entire premises, even the buildings, which are a great distance from the disputed area, had not been occupied for decades before we moved into the Spring Creek area. The entire former farm appeared deserted and uninhabitable for many years. The courts also found subsequent to farming on the premises (which ceased in 1927) by the plaintiff's predecessors, a private fishing club used it and a dike was created there. The fishing club existed for a few years only and used only a very small section of the disputed area. Testimony concerning the dike (some mounds of dirt) was purely speculative and no one knew how it was built, by whom, or for what purpose. No amount of overreaching established any continuous use of the disputed property whatsoever.

Without testimony or evidence, the superior court found privity among their imaginary successive occupants overlooking the title search of the premises which showed many transfers of title, even a sheriff's sale, before it came back into ownership of the daughter who gave the deposition. A copy of her obituary is attached which clearly

shows she did not reside upon the Spring Creek property. In wonderment at the misconceptions, I called the prothonotary of the superior court for a transcript of the arguments presented at the appeals hearing, and was shocked to learn the hearing was not recorded.

I recommend all hearings in Pennsylvania Courts should be videotaped in their entireties. In the Warren County Court opening statements and summations are not recorded. One attorney for plaintiffs seized the "off the record" opportunity to make false and damaging statements against us (again, not supported by testimony or evidence) and even compared us with Adolph Hitler "marching into Poland". The disciplinary board upheld his right to lie.

A strongly biased mapboard was placed before the jury allegedly comprised of the two surveys of the respective properties of the plaintiffs and ourselves. The plaintiff's surveyor had extreme difficulty getting the survey structured as the plaintiff desired, so he actually made four certified surveys of the same property--each different. Even so, when the mapboard was constructed I later discovered further alterations had been made and lines changed from the original surveys to deceive the jury. Our attorney entered into evidence a survey which the surveyor alleged to have used in the mapboard's construction and it was marked "exhibit D". However, "D" was deleted and never made it to the superior court (alphabetically, the lists of exhibits went from A to J without a D) and all exhibits of the case were removed when it came back to our prothonotary's office. Our overseers of justice did not disapprove.

Judge Wolfe gave binding instructions to the jury alleging to base those instructions in law. He placed great emphasis on a "law" regarding surveys which, if adhered to, made it impossible for the jury to find in our favor. There is no basis in law whatsoever for the instruction he gave the jury, and, in fact, the law is in complete reversal of his instruction. The superior court found no problem with his instruction.

I filed a complaint with documentation against Judge Wolfe with the Judicial Review Board, and, as you can see by the post-it note, it wasn't even logged. All the material was returned to me in its original form.

None of the monumental effort I've expended has rendered a shred of help in finding answers I have been seeking. I've had my life excessively burdened by courts which have no obligation to base opinions on law, evidence, or testimony, and, indeed, can fabricate whatever is needed to substantiate their biased opinions. The superior court in our case added insult to injury by sweeping its

*Warren County 459 - 1985*  
*Superior Court 117 1988*

unprecedented opinion under the rug with a "memorandum decision" classification. My senator's office tells me such decisions can never be published. Isn't this suspicious?

The majority of the Bar Association of Warren County opposed the last retention of Judge Wolfe and several of the trial lawyers openly and publicly declared Judge Wolfe is incompetent. He has been known to write decrees before briefs are filed. I've been told numerous complaints have been filed against him. Yet he boasts no one has ever filed a single complaint. (Is this because, like mine, they are never "logged"?) Throughout Warren County it is commonly said Judge Wolfe has police officers provide taxi service for him when he becomes intoxicated away from home.

It is a gross injustice to ~~the~~ citizens of Warren County to allow Judge Robert Wolfe to remain on the bench as a senior judge. He, like other Pennsylvania judges, are barely accountable to anyone.

Judicial Reform is a must. Judges are not Gods and should be held accountable for arbitrary and illegal decisions.

As a child growing up in South Carolina, I pledged allegiance to the flag almost daily, innocently reciting the phrase, "with freedom and justice for all", while a large segment of our population went to the back of the bus and lynchings of members of that segment were common occurrences, without benefit of trial and with impunity.

As an adult I no longer recite that phrase of hypocrisy. Money, not justice, is too often the motivating factor behind the decree nisi in Pennsylvania.

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Warren County 459-1985  
Superior Court 167-1988

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Deposition  
of Marion Clough  
Kinkead 85-2084

1 MR. CROSBY: Mr. Morgan before we begin, Attorney Elackman wanted me to  
2 object to the relevancy of this deposition for the record.

3 MARION C. KINKEAD, being duly sworn according to law and examined,  
4 testified as follows:

5 EXAMINATION BY MR. MORGAN:

6 Q. Would you state your name please?

7 A. Marlon C. Kinkead.

8 Q. And your address:

9 A. 376 Buchanan Street, Warren, Pennsylvania.

10 MR. MORGAN: I would like to state this is being taken in a hospital  
11 room at the Warren General Hospital.

12 Q. Are you at this time unable to get out to go to a trial?

13 A. I am unable at this point.

14 Q. Are you taking any medications at this time that would affect your  
15 thinking? See p 17 line 11

16 A. No.

17 Q. I would like to ask you if you are familiar with the Clough farm  
18 in Spring Creek Township.

19 A. I should be.

20 Q. Why should you be?

21 A. Well, I was on that farm from about the time I was two years old  
22 until I sold it - off and on.

23 Q. The name Clough, what is that to you?

24 A. My maiden name.

25 Q. Who is the Clough that purchased the farm?

REPRODUCING: MUNCIE, IN 47302  
SF-2084

1 A. My father.

2 Q. What was his name?

3 A. L. S. Clough.

4 Q. Do you know approximately what year he purchased it?

5 A. In the neighborhood of 1900, but that would show on the records I'm  
6 sure.

7 Q. Was it connected with your family from then on until the time you  
8 sold it?

9 A. The original piece that he got from Nichols was in the family and  
10 he kept adding to that piece of farm that was originally Nichols  
11 until he had all of the Spring Creek bordered.

12 Q. And at the time he had that all bordered, did he include in that  
13 purchase a parcel that is along the Broken Straw? In other words  
14 did he purchase over to the Broken Straw Creek?

15 A. Yes.

16 Q. What did you call the area over that far by the Broken Straw Creek?

17 A. The Irvine Farm.

18 Q. What was the reason for it having that name?

19 A. Originally that belonged - was a part of the Irvine Grant of the  
20 Irvine family in Irvine, Pa.

21 Q. How do you know who your father purchased it from?

22 A. No, I do not.

23 Q. But it is the one that is commonly called the Irvine Farm?

24 A. The Irvine Farm, yes.

25 Q. When that was purchased, can you remember if your father did anything

M

1 to the land after he purchased it?  
 2 A: I was too young to realize about what was going on then really.  
 3 Q: I mean can you remember any activity? Was the land timbered or  
 4 ploughed or was it cleared?

*testimony of Irvine  
 on both sides of  
 stream - not on  
 property lines.*

... cleared first by sheep. He bought sheep and fenced the  
 ... ty in and turned them loose in there to clear the land. This  
 ... a good bit around on both sides of the stream.  
 ... he brought in the sheep to clear the land, what was his purpose?  
 ... t did he want to use it for?  
 ... was trying to build up the trout stream which eventually he did  
 ... d as you know it became quite a well known trout stream in our  
 ... ction of the country.

14 ... did he intend to use any of that area down there on the Irvine Farm  
 in relation to his farming operations?

15 A: That I wouldn't know.

16 Q: Did he eventually use it in his farming operations?

17 A: Yes it was used in his farming operations. His fields were  
 18 cultivated and grains were raised down there and all sorts of fodder  
 19 for the livestock.

20 Q: Where were the livestock kept?

21 A: Usually in the pasture above there - above the Irvine really. There  
 22 were pastures all over - the back of the barns, night pastures,  
 23 day pastures, part of the woods along the stream were open to  
 24 pastures.

25 Q: Were there pastures in the area which you call the Irvine Farm close

SP-20254  
 FEDERAL BUREAU OF INVESTIGATION  
 WASHINGTON, D. C. 20535

1 to the Broken Straw creek?

2 A. Gee, I really don't remember. Fairly close I think, fairly close.

3 Q. Now I am going to show you first of all an aerial photo. This is  
4 a 1950 aerial photo - 8/22/50 - and it is numbered APK 1G77. I  
5 would like to have that marked as Exhibit #1 for the Kinkead  
6 deposition. (Exhibit is marked). Now if I show you Exhibit 1 and  
7 I point out to you first of all to get the proper bearing where the  
8 road is from Spring Creek to Garland and I'll run my pen along that.  
9 That's the road that goes past the cemetery and out over to the  
10 actual barns and house on the farm. You can see both of those.

11 Now in the area called the Irvine Farm, do you see cleared fields?

12 A. Well, this would be the area wouldn't it? This is the Garland road.  
13 This would be a cleared field would it not? I don't know. I am not  
14 a very good map reader. That looks to me like a cleared field.

15 Q. Now when you were familiar with this farm and that is until you sold  
16 it in what year?

17 A. 1968.

18 Q. Can you tell me if the border of the property - southern border on  
19 the Irvine Farm went through the grain field that you see as an  
20 open field up here on the map?

21 A. It never went through the grain field. It was included in the farm  
22 and there would be no border going through it.

23 Q. Now when you go south of the grain field, south meaning toward the  
24 bottom of the map, and you see another field. Did you commonly  
25 call the farm below yours the Henry Farm?



1 A. Yes, Henry Farm.

2 Q. Was there any indication of the border between the two farms?

✓ 3 A. Not that I ever knew of, no.

4 Q. Not any marker?

5 A. Any marker? Oh, I think our farm was well fenced. That would be the  
6 only marker that I would know of, but I would think there might have  
7 been markers in the ground or trees or something indicating borders.

8 Q. Do you remember a fence then that marked a border that was south  
9 of that grain field?

✓ 10 A. No, I don't remember.

11 Q. What I am discussing here is the fact that you had indicated to me  
12 earlier there was a fence as the border between the Henry Farm, is  
13 that right?

14 A. There was a fence.

15 Q. Are you sure of that?

16 A. Well, I am sure of it years ago. I don't know now, but years ago  
17 there was a fence because that was pasture for sheep and so on  
18 down there and it had to be fenced.

19 Q. And after the sheep were there any other types of animals in there?

20 A. Not pastured in that part, no where the fields were. The fields  
21 were fenced off by themselves. Hays, grains and stuff like that  
22 was raised.

23 Q. But I mean between the grain field and the Henry Farm?

24 A. I am quite sure there was a fence somewhere along in there.

25 Q. Did the Henry Farm own any land above that fence up toward the

1 grain field?

2 A. Not that I know of. Not that I ever knew of. There was never any

3 trouble with the Henry Farm.

4 Q. Did anybody ever challenge you or your father about that boundary

5 along that fence and say that they owned beyond the fence?

6 A. No, never.

7 Q. Did anybody ever -

8 A. Not until McChesney came along.

9 Q. Prior to his cutting in there did anybody ever cut any timber over

10 there into your land?

11 A. No, that's why it was so evident when we discovered that there was

12 timber cut on our land, and it was very clearly on our land.

13 Q. Now the stream that runs through there and you said your father

14 wanted to protect, did you go along that stream as a child?

15 A. Oh, yes.

16 Q. And all through until the time that you sold it?

17 A. Well, from time to time.

18 Q. Was any of that stream on the Henry Farm or what is now McChesney?

19 A. No, it flowed right from our farm into the Broken Straw.

20 Q. Was there a road along that stream?

21 A. A dirt road.

22 Q. What was that used for?

23 A. For getting to the Irvine Farm.

24 Q. From where?

25 A. From the big barns.

*father  
died before  
we were born*

*We cut  
some trees  
10 years after  
she had sold  
property to  
Plaintiff's  
which  
instigated  
this action  
Jm*

1 Q. Was any of that road outside of your farm?

2 A. No, it was all within the farm. We crossed the main road - wherever

3 it is here - on the hill - in order to get from the barns here down

4 to that road that goes through -

5 Q. You can see a little white line that runs -

6 A. Yes, and we had to cross that to get to the road that goes down

7 through the woods down to the stream. That's the only part of the

8 public road that we used.

9 Q. Could you tell us whether or not the borders of the Clough Farm -

10 the portion called the Irvine Farm - were marked or all lined with

11 fence? Was it all fenced or not?

12 A. Originally it was all fenced in.

13 Q. I am going to show you what is going to be marked Exhibit #2 which

14 is a portion of the David See survey. (Exhibit marked). Now when

15 I show you Lot 310 - this may have what looks like a title lot 310 -

16 that is - I'll tell you everyone involved in this agrees - that is

17 on what is called the Irvine Farm. This shows also a jagged line

18 which indicates the edge of the grain fields. The bottom line which

19 runs straight east and west to cross this map - I'll point out to you -

20 says "old fence line" and "blaze line." Remember the only thing

21 that says "old" is "fence line," and it also shows Spring Creek

22 and you will also see marked something called the "old road."

23 A. Yes.

24 Q. On the east side of the map you will see the Broken Straw creek and

25 then the main road from Garland to Spring Creek. Does that help to

RECORDED/NOT. MUNCIE, IN 47308  
SP-2084

1 orient you as to where you are on this thing?

2 A. Well, yes.

3 Q. If I tell you that the main house and barns would be off to your  
4 left on the map -

5 A. They are not on the map.

6 Q. No, they aren't on the map. Looking at that map I will tell you the  
7 line that is the straight line across the map, the bottom one, is  
8 the line that Mr. Carlisle who now owns the Clough Farm is claiming  
9 is the line. This top line that is not solid but instead is dotted  
10 is the line that Mr. McChesney states is the southerly line of the  
11 Clough Farm. Now can you tell by looking at that map which is the  
12 line you considered to be the boundary of your farm?

13 A. We always considered of course that this was the boundary of the  
14 farm.

15 Q. Now which one do you mean? The one toward the bottom or toward  
16 the top?

17 A. Toward the bottom. This was the boundary of the farm so far as I  
18 can tell. I am not very good at maps.

19 Q. Okay, if you will look at Spring Creek you will see that if Mr.  
20 McChesney were correct that the main -

21 A. He takes in a lot of the Spring Creek and he never owned one drop  
22 of the Spring Creek. My father owned from almost where it rises  
23 up above our farm. He bought until he had a stream that he wanted,  
24 and he bought all of this damn property because he wanted that  
25 stream protected.

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1 Q. Did you used to travel or spend time through the area of the farm?

2 A. Yes.

3 Q. In what manner?

4 A. On a horse, a saddled horse and with my brother usually. We weren't  
5 supposed to be out there in the woods alone.

6 Q. Can you remember whether or not you rode the horse in this area?

7 A. Many times, many times.

8 Q. Now looking at this map again, was the fence that we call "old  
9 fence line" there when you rode your horse?

10 A. I think it was. You could see it across the - now we would have  
11 been on this side of the creek. This is the farm is it not?

12 Q. Yes.

13 A. We didn't cross the creek. We were not supposed to, so we didn't.  
14 We were on the north side of the creek always, but in some places  
15 you could see a fence across the creek.

See  
D-4  
attach.

16 Q. Was there growth as you saw on that aerial photo or was it cleared  
17 up to the fence at that time?

18 A. It went through periods. After the sheep for a couple of years  
19 that pastured down there, that was fairly cleared out. That was  
20 pretty good because what they left dead Dad would have taken out,  
21 carried away, and so you could see pretty well down through there.  
22 It was a pleasant drive. It wasn't just all closed in with weeds  
23 and brush - the way it is today.

24 Q. So when you were near the stream then, on both sides of the stream  
25 were the cattle roaming through there?

Could find this area was a  
prime virgin timber  
stand & it was a pasture  
- that it was a pasture

SP-2004 PENGABINDY MUNCIE IN 47308  
Cantorovits  
Wood & Crayfish

See D-4

1 A. They didn't very often cross the stream. They seemed to be happy  
2 on this upper side. Maybe they found there wasn't much over here to  
3 interest them. I don't know. That's ancient history.

4 Q. Does this big map help you in any way? It shows the cemetery road.

5 A. That's the cemetery road?

6 Q. Yes, and here is the stream running right down through here, but  
7 that one doesn't show the grain field and I think that on the ground  
8 that's how you recognize so that doesn't really help any, does it?

9 A. There is the Hire's Farm.

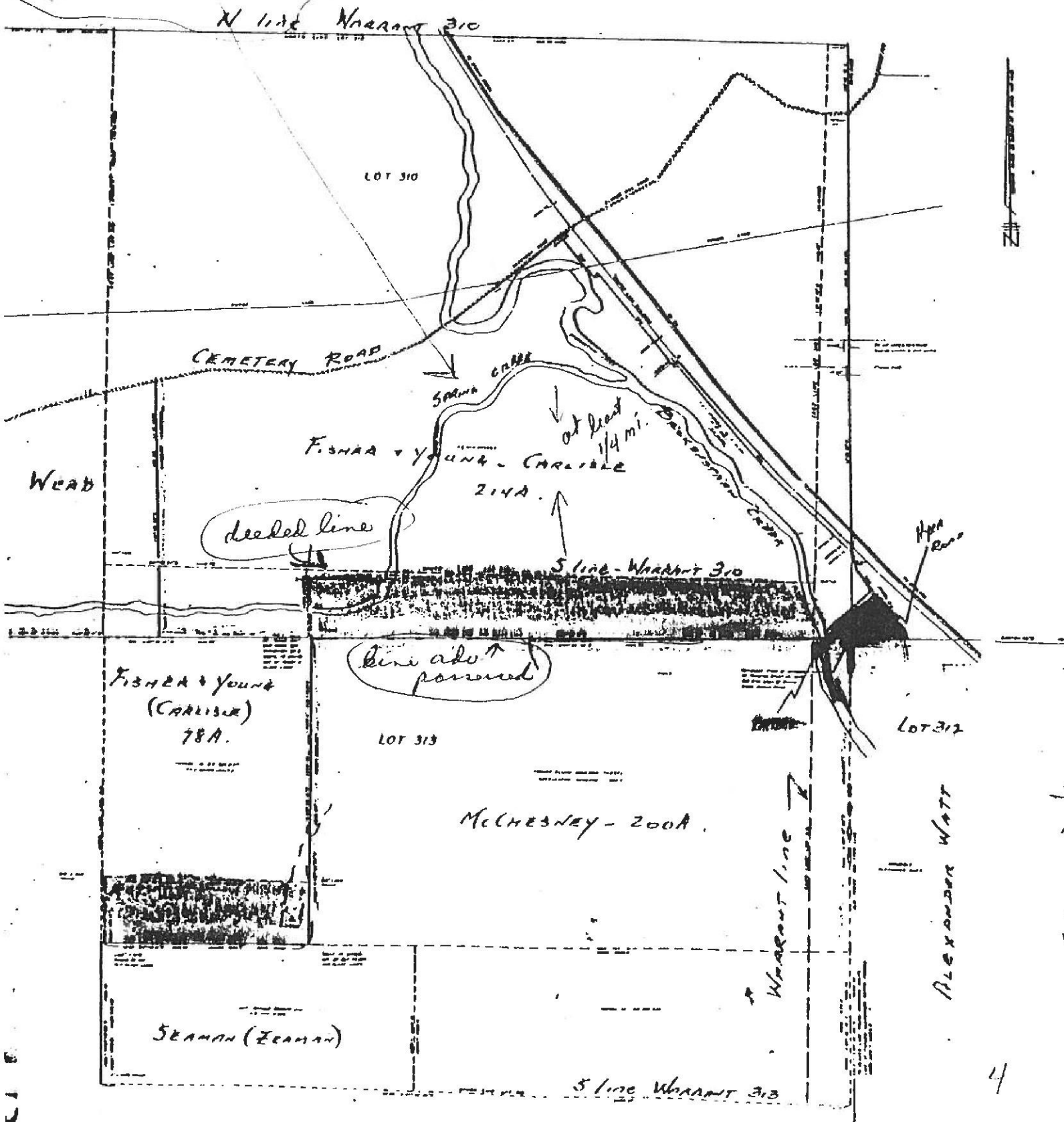
10 Q. What I am showing you is Exhibit #3. (Exhibit marked). It is the  
11 survey by David See which has been entered in evidence in his  
12 deposition and I refer to it as survey of March 7, 1987, revised  
13 in April of 1987. Again now this shows the cemetery road, Broken  
14 Straw Creek, Spring Creek, and shows what you remember as the Hire's  
15 Farm and it shows "old fence line" and "blaze line" and it shows  
16 what is called south line, lot 310. Again you are looking from the  
17 south from what you call the Henry Farm. Can you tell me there if  
18 this fence line was the border of the property or instead it was  
19 the more northerly line?

20 A. I can state very definitely that it was this line. There is no  
21 question in my mind about it, and I think if you want to go to one  
22 of the fishermen who were in that club they will tell you the same  
23 thing. No part of Spring Creek ever belonged anywhere except on  
24 the Clough Farm after Father owned it. *Very wrong - only a small  
position of creek there*

25 Q. For the record I will state the line she pointed to is the southerly

How could I have seen a fence from the N. side of the creek - at the S. of disputed area?

D-4



1 line called the "old fence line." Is that correct, the one that  
2 has the words on it?

3 A. Yes, that's the "old fence line."

4 Q. Do you know anything about a lease of the stream to any group?

5 A. Yes, to the Fishermen's Club.

6 Q. Can you tell us who that lease was from?

7 A. From Robert Kinhead.

8 Q. Your husband, correct?

9 A. My husband. Whether I was on it or not, I don't know.

10 Q. Do you know approximately when that would have been?

11 A. Oh, gee, for many years, for several years.

12 Q. Was it in the 50's, 40's or 60's?

13 A. I would have said more maybe in the 60's or starting in the 50's  
14 maybe, but you know Alan Blair could tell you exactly.

15 Q. Yes, but I just need to know from you.

16 A. Well, time has a way of getting away from you and in fact I  
17 remember very well - I would say that might have started in the early  
18 60's. I don't want to be positive about the date. I am thinking  
19 about the time that Bob and I took over the farm from my brother,  
20 Lee Clough in 1957 about and it was after that those men in Warren  
21 were interested in-fishing down there, so I would say it was in the  
22 60's.

23 Q. And when you and your husband leased that stream, were the neighbors  
24 aware of the fact that was leased?

25 A. Oh, I am sure of it.



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1 Q. How were they aware?

2 A. Well, I mean you know a country neighborhood. You don't take a drink  
3 of water that your neighbor doesn't know it.

4 Q. But was there any indication? Did they put up any signs or anything?

5 A. Oh, yes, many signs, but my father always had the property posted.  
6 That property was always posted as private property, no trespassing.

7 Q. Did anybody - specifically talking about the line that was south of  
8 the Spring Creek, did anybody ever challenge that line?

9 A. Not that I ever know of before.

10 Q. When you and your husband or at least your husband leased that  
11 stream and you know the stream was then posted, is that what you  
12 are saying?

13 A. Yes.

14 Q. Did anybody ever come and tell you that you couldn't do that because  
15 it was somebody else's land?

16 A. Certainly not, no.

17 Q. Was there any indication of any boundary dispute or question as to  
18 boundary?

*Morgan knew this was untrued, got used it.*

19 A. No, never. The first time we ever knew of any boundary discussion  
20 or dispute was when Mr. McChesney came over on us and started cutting  
21 big cherry trees.

22 Q. Now do you know anything about any change in the cemetery that was  
23 on the edge of your farm?

24 A. Well, the cemetery was originally on our farm and because of the  
25 location of it down in sort of a gully where a stream ran through

SF-2084 PENGADINOV, MUNCIE, IN 47304

(19)

*We weren't even around when they turned it.*

*jm*

1 which was very apt to run over in the spring in the floods, the  
2 natives decided that was not a good place for a cemetery and I  
3 think this happened before my father owned the place but I don't  
4 know when it was just things that I knew had gone on hearing from  
5 neighbors down there. The tombstones were all moved across the  
6 street or road on to a higher level and from then on the cemetery  
7 has always been across from our farm. I think the bones are still  
8 moldering away on our farm.

9 Q. At the time when you knew it when the cemetery markers at least  
10 were there on your farm, was that area of your farm fenced in along  
11 the road?

12 A. Oh, yes, definitely.

13 Q. I have a couple of questions to ask you about a deed that I don't  
14 need to mark as an Exhibit because it is in the pleadings. It is  
15 Exhibit A to the answer and counter claim filed by William  
16 McChesney. Can you identify what that deed is, from whom and to  
17 whom?

18 A. '83 from McChesney.

19 Q. From you?

20 A. Yes, from me.

21 Q. To William and Joyce McChesney?

22 A. Right.

23 Q. Is that a deed marked at the top by the numbers 442 and -

24 A. And 918 it says here.

25 Q. Does it give the date of the deed on there?

1 A. It says up here August 31, 1983.

2 Q. That's the date of recording, is that right?

3 A. "Filed and entered at 3:36 p.m. on August 31st," yes that would be the  
4 date.

5 Q. Now do you remember signing that deed to William McChesney?

6 A. Vaguely.

7 Q. At the time you signed the deed, can you tell us if you intended  
8 to transfer or convey any land, any additional land, to William  
9 McChesney?

10 A. No, of course not. I didn't have any land to convey to him.

11 Q. Were you aware of any intention on his part to cut timber across  
12 what had been the fence line?

13 A. I was pretty sure of it, very sure of it.

14 Q. No, I mean at the time you signed it. Did you sign it so that he  
15 could do that?

16 A. Not necessarily. I signed the deed because I wanted to get out of  
17 this mess and threats from him. That was my main idea in signing  
18 this aside from some legal advice to sign it.

19 Q. What did you think you were conveying to him when you signed that  
20 deed?

21 A. Practically nothing. I didn't know why he was so bedeviled to  
22 have it to tell the truth and actually the property didn't belong  
23 to me any more. I had already sold it and it had been resold so I  
24 couldn't understand what it was all about. - why I was involved in  
25 the first place.

1 Q. Did you know that he was going to use this deed to dispute the  
2 title to part of the Clough Farm?

3 A. It never occurred to me. I should think the fact that I sold that  
4 farm lock, stock and barrel in 1968 would have some bearing on this  
5 sort of monkey business.

6 Q. By signing that deed, did you intend in any way to join with Mr,  
7 and Mrs. McChesney in making a claim -

8 A. I did not.

9 Q. Were you intending to assist them or aid them in any boundary  
10 dispute with the current owner of the Clough Farm?

11 A. I certainly was not. I had no idea it would ever happen.

12 Q. Earlier then I think you may have misunderstood a question.  
13 I asked you if you knew about his going across that barbed wire  
14 line to cut timber and that he wanted this signature so that he  
15 could do that. Did you intend to say that you gave him the deed  
16 so that he could go and cut that timber?

17 A. No, I didn't have any idea that he was going to go in there and  
18 cut more timber.

19 Q. When you indicated that you were aware of his cutting timber,  
20 you became aware of that later, is that right?

21 A. Right.

22 Q. I have no further questions.

23 CROSS EXAMINATION BY MR. CROSBY:

24 Q. Mrs. Kinkead, I am Ken Crosby and I work for the firm of Elackman  
25 & Fraser. We are representing the McChesneys and I have just a few

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1 questions for you. This may be personal but you mentioned it in  
2 previous questioning. What is your reason for being in the  
3 hospital?

4 A. A fall.

5 Q. You fell?

6 A. I fell.

7 Q. Was there any medical reason for the fall?

8 A. I had some problems this winter and was under medication.

9 Q. What were the problems?

10 A. Diarrhea.

11 Q. Are you on any medication right now? ?

12 A. No, practically nothing, just the usual.

13 Q. Is it my understanding you are going home today?

14 A. That's what I'm told.

15 Q. You mentioned in your direct statement that you signed a deed to  
16 Mr. William McChesney and Joyce McChesney. Is that true?

*We obtained  
quitclaims  
from our  
relatives  
also*

17 A. Apparently.

18 Q. Do you remember when that was?

19 A. Not definitely.

20 Q. Do you remember signing that deed?

21 A. Yes, I vaguely remember being told to go ahead and sign it.

22 Q. Who told you to go ahead and sign that?

23 A. Bill Hill. *her attorney*

24 Q. So you were represented by an attorney?

25 A. Well, we had talked about it.

PERGADI/INDY. MUNCIE, IN 47302

SP-2084

From Robert Wolfe  
Warren County 459 of 1985

15.

→ 85 yrs. old

Finally was the deposition of Marian Kinhead. Marian Kinhead was a Clough child, and she related at length the extent of use of the property by her father and the establishment of the south boundary line as Plaintiffs' claim. She stated she was on the farm since the age of two years old, that her father put sheep in and fenced the land for farming. <sup>NOT TRUE</sup> <sup>in 20's + 30's</sup> The farm was well fenced and there was never any problem until the Defendants came. She finally concluded they always considered the south boundary line as identifying the southern point of the farm. <sup>not a fact</sup> See testimony

Defendants' arguments we erred in submitting the issue of adverse possession to the jury is founded in the argument Plaintiffs have failed to show the disputed area was continuously used and continuously fenced. Defendants rely upon DIMURA VS. WILLIAMS, 446 Pa. Superior Ct. 316, 286 A.2d 370 (1970); and INN LE'DAERDA, INC., VS. DAVIS, 241 Pa. Superior Ct. 150, 360 A.2d 209 (1976), for the proposition that to form a basis of a claim of adverse use a fence must be substantial. Defendants argue here the evidence showed an old abandoned and neglected fence. WE do not dispute the evidence, but we question Defendants' total reliance on the absence of a fence to negate Plaintiffs' adverse possession claim. The fencing was only one of the elements referred to by Plaintiffs and their witnesses. The evidence shows the disputed property was not only used for general farm purposes but was improved by Mr. Hertzl as a private fishing area. In short, people were upon and used the 40 acres in dispute. <sup>decades ago!</sup> Under these circumstances this is not, as Defendants would have it, a piece of unused property that was unfenced

not fence

in this giant redwood forest??

104/88

101 1788  
decision

in order of

When Mr. Clough purchased the farm in 1906 he placed sheep on the disputed area to clear it so that a trout stream could be established on that part of the land where a stream runs. The stream clearly meanders through the disputed land. Also, fields were cultivated, and grain was grown for livestock. In addition, part of the disputed area was fenced in for cattle grazing. This took place during Mr. Clough's lifetime from 1906 until his death in 1927. Subsequently, the disputed land was used as a private fishing club and a dike was created. A hunting cabin was also built on the property.

based solely on Marion C. Kinkead's testimony

A small section of

for a few years, then ceased

So testimony on disputed area

allowed to grow up weeds so to grow into

Marion Kinkead, the daughter of L. S. Clough, testified on deposition that the family always considered the southern boundary of their farm to be along the line that the appellees contend is the boundary line. Mrs. Kinkead and her husband were the grantors of the property to Fisher & Young Hardwoods, Inc. Mr. Carlisle purchased the land in approximately 1970 and he used some of it for conservation purposes as well as for farming. The disputed area where the trees were cut was described as having a "park-like environment".

no use of disputed area

Kinkead testimony: all brush & weeds

on disputed area

The occasional use of land for recreational pursuits, as hunting, of itself does not give rise to acquisition of title by adverse possession. Bigham v. Wenschhof, 295 Pa.Super. 146, 441 A.2d 391 (1982). "The reasoning behind [this] is that such uses do not give an aggrieved owner proper notice that such possession was in progress, and no owner of uninhabited land would be safe from the encroachment of strangers claiming his property." Norwich v. Beaver, 326 Pa.Super. 456, 460-461, 474, A.2d 329, 331

1984). Occasional hunting or timbering are of themselves inadequate to establish title by adverse possession since the activities are necessarily sporadic. Niles v. Fall Creek Hunting Club, Inc., \_\_\_ Pa. Super. \_\_\_, 545 A.2d 926 (1988). In the case before us, however, the land was not used only for occasional recreational purposes, but was used as part of a working farm which included grazing by sheep and cattle and the raising of food for livestock.<sup>3</sup> The evidence also established that at least part of the area in dispute was fenced in so that its use as part of the Clough farm was open and notorious. *no fence since we acquired property in 1960 before 1927!!*

The facts establish that the appellees, and their predecessors in title, had hostile, actual and visible possession of the land for a period in excess of twenty-one years. The appellants argue that it is improper to "tack" the prior uses of

<sup>3</sup>With respect to acquisition of title over woodlands by adverse possession, we stated in Hoover v. Jackson, 362 Pa. Super. 532, 539, 524 A.2d 1367, 1370 (1987) quoting Darrah v. Kadison, 55 Pa. Super. 335, 343 (1913), as follows:

"To maintain an actual possession to woodland as such, it is necessary that the person entering take actual possession by residence or cultivation, of a part of the tract to which the woodland belongs. Hole v. Rittenhouse, 37 Pa. 116 [(1860)]; Olewine v. Messmore, 128 Pa. 470 [18 A.495 (1889)]. Actual possession may be taken by enclosing and cultivating, without residence or by residence without cultivation, under a bona fide claim where there is a designation of the boundaries with the ordinary use of the woodland. This possession accomplishes an ouster, and is entirely different from the occasional or temporary use of the land without an intention to permanently cultivate or reside thereon or use it in some other manner consistent with the condition of the property."



107 111  
1/88  
the land as there was no privity among the owners, in that the deed between grantor and grantee did not purport to convey the property acquired through adverse possession. Appellants rely on Wittig v. Carlacci, 370 Pa.Super. 584, 537 A.2d 29 (1988) which held that the grantee may not tack the grantor's adverse possession of land when the grantor does not convey such land to him. In Wittig, the evidence clearly established that the grantors intended to convey only the land described in the deed. The court in Wittig recognized an exception where an intent to convey more land than that described in the deed may be inferred from the circumstances. In the instant case, Fisher & Young Hardwoods, Inc. acquired the land from Mrs. Kinkead and her husband. It will be recalled that Mrs. Kinkead was Farmer Clough's daughter. The deed to Fisher & Young Hardwoods, Inc. stated that they were conveying "everything whether specifically described or not." The possession of successive occupants of land may be tacked where there is privity between them, i.e., there is a succession of relationship to the same property, whether created by deed or otherwise. Castronuovo v. Sardonis, supra. We are satisfied that the evidence showed sufficient intent by Mrs. Kinkead to convey all of the property in which she and her husband had an interest, which includes the disputed property, to the grantees, and that there was adequate adverse possession of the disputed land by the appellees and their predecessors in title to grant title to the appellees by adverse possession.<sup>2</sup>

<sup>2</sup>The appellees also introduced a great deal of evidence to establish that the southern boundary of their property was based on the description set forth in their deeds. However, there was

*When we were in occupation the entire farm was made of...*

In Pine Grove Cemetery, Asheville, N.C.

### MARION KINKHEAD

Mrs. Marion Clough Kinkhead, 86, of 576 Buchanan st., died in Warren General Hospital at 2:48 p.m. Thursday, July 14, 1983, after an illness of the past several months.

She was born March 15, 1897, in Asheville, N.C., daughter of the late Levi S. and Dora Davis Clough, and lived practically all her life in Warren. She was a member of First Presbyterian Church, the Woman's Club of Warren, and was formerly involved in various community and church activities.

Surviving are one daughter, Mrs. Dora Messner Squatriti of Rome, Italy, and four grandchildren.

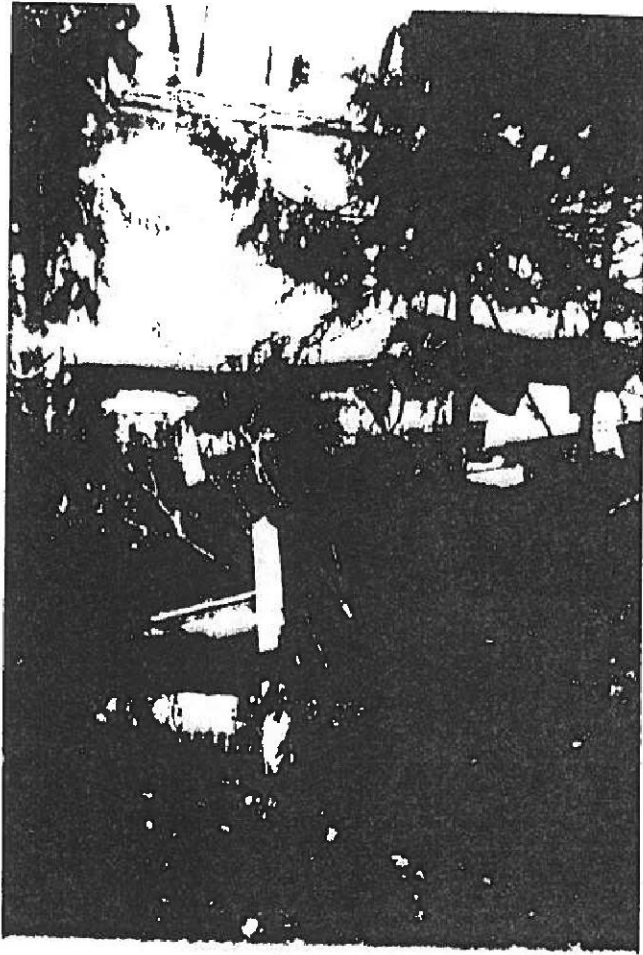
In addition to her parents, she was preceded in death by her husband, Robert M. Kinkhead, on

June 28, 1977, and by her brothers, Peterson-Blick, and

The Peterson-Blick funeral home is in charge of arrangements. No visiting hours will be observed. A funeral service will be held at 11 a.m. Saturday at the First Presbyterian Church by the Rev. Kimberly Young, associate minister. Burial will be in Oakland Cemetery. The family suggests that those wishing to place memorials do so through contributions to charity.

Warren County 459-1985

Superior Court 167-1988



Entrance to alleged "occupied"  
Clough-Carlisle house.

"Restored to a great extent"  
in Judge Wolfe's findings of fact.

*Leary Journal*

3) cily up to

before being shipped to New Kensington.

"You're looking at a modern dairy farm in 1913," said Wood.

Some of the history of Spring Valley Farms' golden era are still faintly visible on the interior walls of the milking barn. "Lady Jane 2nd — SY — 1917," can be seen near one stall.

"Spring Valley Belle — 1917" and "Spring Valley Lass — 1918" are also visible.

Wood, said economic straits that rubbed elbows with names such as Vanderbilt.

Spring Valley Farm, then, was not just a farm but a retreat. One of the primary lures was Spring Creek itself, about two miles of which runs through the middle of the former Clough property.

The property itself extends from near the barns all the way to Route 426, along the east side of Old Route 77 and Cemetery Road.

Wood said Clough was such a trout-fishing aficionado that he employed a "fish warden" whose job focused solely on raising trout for stocking purposes, constructing in-stream gabions to create fishing pools, and monitoring the stream. Clough would contact the man to determine stream conditions before making the trip out from Warren.

Clough "had timber holdings all over the U.S.," said Wood.

Historical Society spokesman, L.S. Clough in 1906 bought the site of the former Keystone Chair Works — where the Chorry Hill furniture factory now stands on South Main Street — with the intention of constructing a firm to be known as the Standard Chair Co.

For whatever reason, however, Clough sold his interest in the venture the following year.

It wasn't a long time after the aforementioned flyer was published in 1925 that Spring Valley Farms met its demise. The Depression of the 1930s — and a reported lack of business-acumen on the part of Clough's children — saw it go out of business.

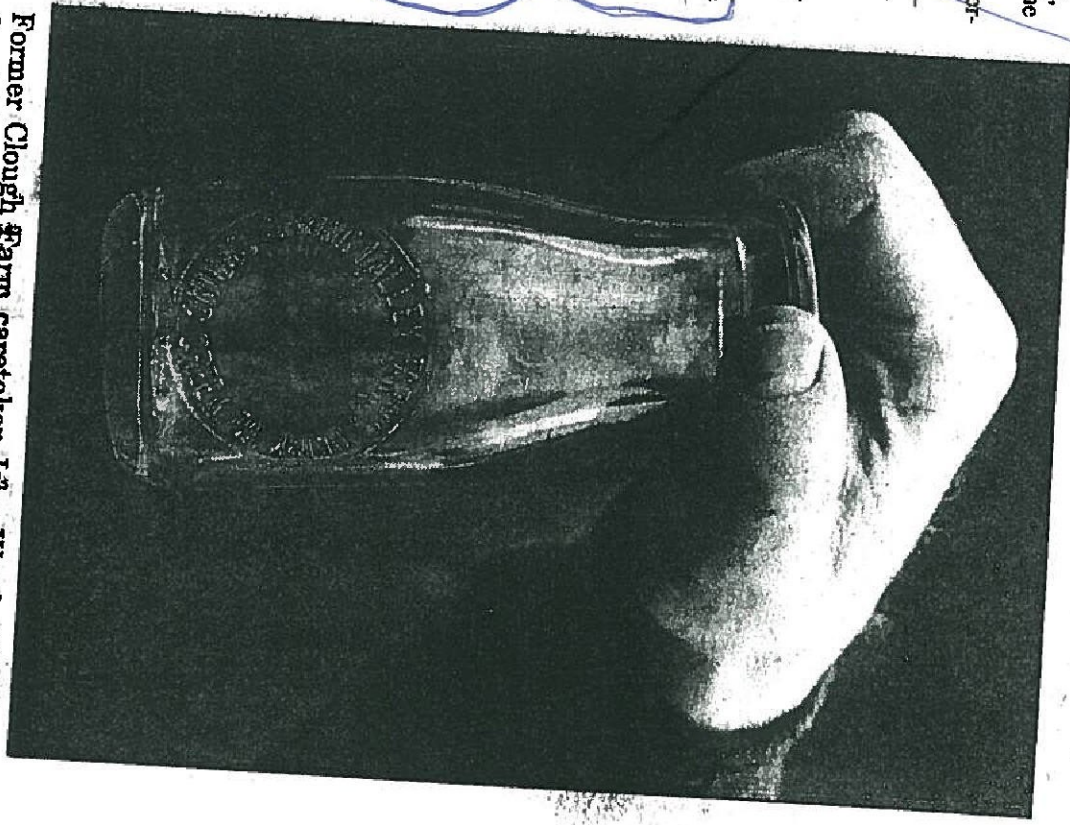
It was never seriously used as a working farm again for any length of time, and ultimately was purchased by the present owner, Albert Carlisle of Ashabula, Ohio, in 1970.

Wood worked his college summers for Carlisle — who at the time owned three Ohio farms — and came to work in Spring Creek in the summers of 1971 and 1972. His job, mainly, was to restore the barns and the large house that stands at the entry to the farm.

It was a big job. The L-shaped barn was lacking its large doors on either side, allowing snow to blow through in the winters and snowmobilers to drive right through. The roof of the milking barn took 125 gallons of blue-green paint, and the barns — including each and every

*Specified for no containers for preservation*

# gh Farm barns ahead of their time



Former Clough Farm caretaker John Wood of Spring Creek Township has found only three intact milk bottles from the farm's former dairy operation. They read "Spring Valley Farms Dairy, Spring Creek, Pa." the site. Under Woods' management, the herd ultimately few to just over 100 head.

the L-shaped barn. "This place was packed" for three nights running could

*Wanner Co. 459 71985  
Superior Ct. 167-1988*

from  
Coary Journal  
4-20-91



shows a portion of the Ayrshire herd on which Spring  
ilt. The photo was taken along the banks of Spring  
h were purposely trained to grow in that way.

...the herd of cattle was ultimately moved out in about 1985, however, and Wood moved on to buy the Hemlock Lakes Campground and go into business for himself. The Clough Farm, meanwhile, began to fall into some disrepair.

Wood said it is his understanding that Carlisle plans improvements to the property in the near future, but beyond that doesn't know what lays in store.

Wood also said that, interestingly, Carlisle utilizes the property much as Clough did some 70 years earlier. As a private retreat,

"All he wants is a place to enjoy and bring friends," said Wood.

Wood said he would like to see the farm restored to the condition he had it in some 10 or 15 years ago, with perhaps a small herd of dairy or beef cattle in place.

Recent gas well development on the property should make it more feasible for Carlisle to upgrade the property, he added.

"What the future holds, I don't know," said Wood, "but it's too great a place to just let go."

occasionally  
as he resides  
in Ashtabula

Clough  
never

lived  
on  
this  
farm

but was  
a business  
man who lived  
in Warren

# at outlaw biker magazine

man Deputy Rich Erick-  
Los Angeles County  
s Department.  
just lost two

her son is dead."  
The identities of the dead  
were withheld

composer, underwent surgery  
at West

SWANSON, BEVEVINO AND MILLIN, P. C.  
ATTORNEYS AT LAW

March 28, 1990

WARREN OFFICE  
P. O. BOX 97-311 MARKET  
WARREN, PENNSYLVANIA 16365  
(814) 723-2080

M. A. CARRINGER (1905-1973)  
DAVID W. SWANSON  
WILLIAM A. BEVEVINO  
PAUL H. MILLIN  
STEVEN J. GILFORD  
ARTHUR J. STEWART

TIONESTA OFFICE  
P. O. BOX 158-ELM STREET  
TIONESTA, PENNSYLVANIA 16353  
(814) 755-3581

PLEASE ADDRESS REPLY TO

Warren Office  
Fax No. (814) 723-6939

Mr. and Mrs. William McChesney  
Route 1, Box 84  
Spring Creek, PA 16436

Dear Folks:

Rather than write myself a file memo, I am sending you this letter so it will serve as a written record for both of us. As you know, on December 13, 1989, I wrote to the Warren County Prothonotary asking to review Exhibits 2 and 3 from the litigation in which you were recently involved. The Prothonotary then in office, Norma Mills, did not respond to my request.

After some delay I have followed up on this matter and did recently speak with the new Prothonotary, Susan Kosinski. I have a good working relationship with Susan, and in my opinion, she meets all of my requests in a reasonable and diligent fashion.

Susan informs me that she has searched for the missing exhibits on two different occasions. She has searched the evidence locker in the upstairs office of the courthouse. She has also searched the county warehouse at Starbrick. She reports that none of the exhibits from that litigation can be found. This includes the small 8½ x 11 exhibits together with the large survey-type exhibits. When she failed to find any of the exhibits, Ms. Kosinski then telephoned the Prothonotary of the Superior Court. The Superior Court reports that it does not have the exhibits and to the best of its records, it believes the exhibits were returned to Warren County.

I have some experience in this type of problem. Approximately two years ago I had occasion to search for a large map which had been admitted as an exhibit in some Warren County litigation. That litigation, too, had been appealed to the Superior Court and the exhibit had been sent to Pittsburgh. The Superior Court records show that the exhibit was returned to Warren County. When I went to look for that exhibit at the Prothonotary's Office, it was nowhere to be found. As in your case, we searched the upstairs evidence locker and the county warehouse, all to no avail.

Mr. and Mrs. William McChesney  
March 28, 1990  
Page 2

In that case in which I was involved I know how hard Susan Kosinski searched because I accompanied her to the upstairs evidence locker and to the county warehouse. I have every reason to believe that Susan searched as diligently in your case.

You therefore have what I think could be fairly characterized as a mystery. I do not have the solution. We never found the map in my earlier case. I suspect you will not find the map in yours. I will take no further action on this matter unless you direct otherwise.

Very truly yours,

SWANSON, BEVEVINO AND MILLIN, P.C.

By



AJS:acm

October 11, 1991

Mr. Dennis Danzak  
2910 Seminary Drive  
St. Joseph Hall  
Greensburg, PA 15601

Dear Mr. Danzak:

In our telephone conversation yesterday, you told me Mr. Charles Becker had contacted the State Superior Court in search of the file and exhibits of case No. 167 Pittsburgh 1988 (Warren County #459-1985).

I am enclosing a copy of a letter I received from the Deputy Prothonotary of the Superior Court. I was further informed by that office that a receipt for the material was signed by then protonotary of Warren County, Norma Mills, on February 1, 1989. The records were picked up by an attorney for the plaintiffs, William F. Morgan, and personally delivered to the Warren County Court House.

As I have explained in prior conversations, I made several stops into the prothonotary's office in Warren after the superior court's decision. I wished to review the main mapboard and overlay which had been placed before the jury by the plaintiffs for the duration of the trial. As someone of the plaintiffs' party hovered around the map even at recess, I never had an opportunity to closely scrutinize it. Later, in reviewing the testimony, it became obvious to me the mapboard contained some discrepancies and downright tampering from the original surveys of which it was allegedly comprised.

On each occasion I was told the material had not been returned from the higher court. On August 29, 1989, much to my surprise, Susan Kosinski, then assistant prothonotary told me the material had recently arrived, was placed against the wall in the outer office, but, because of its size and bulk, had been removed to the warehouse. (I now know this was eight months after Norma Mills had signed a receipt for it.) When I pressed for an appointment to view the material, Ms. Kosinski called Ms. Mills from another room. They became visibly upset, warned me that I "should be very careful" and advised me I would have to hire a lawyer in order to see the material. The result of that is the enclosed letter.

Of real concern to me is the latter portion of my attorney's letter. It appears that the disappearance of records may be a common occurrence here. That could be a critical matter which could lead to grave and unjust consequences.

Thank you for your assistance in resolving this matter. I shall await Mr. Becker's call.

Yours very truly,

*Joyce C. McChesney*

Joyce C. McChesney  
Route 1, Box 84  
Spring Creek, PA 16436  
PHONE: (814) 664-2821

No call

enci.



The Superior Court of Pennsylvania  
Sitting at Pittsburgh

DAVID A. SZEWCZAK, ESQUIRE  
PROTHONOTARY  
ELEANOR R. VALECKO  
DEPUTY PROTHONOTARY

1015 GRANT BUILDING  
PITTSBURGH, PA.  
15219  
(412) 565-7592

May 9, 1991

Ms. Joyce McChesney  
Route 1, Box 84  
Spring Creek Pa. 16436

In Re: Carlisle and Fischer & Youngwood etc.  
No. 167 Pittsburgh 1988

Dear Ms. McChesney:

In response to your recent phone call, please be advised that our records do indicate that the entire file and exhibits were returned to and received by Warren County.

Very truly yours,

*Eleanor R. Valecko*

DEPUTY PROTHONOTARY

ERV/smc

4-23-92

March 1992  
Letter to the <sup>Youngsville</sup>  
Editor Warren  
On civil rights Times-Observer

Mr. Danzak,

At least the message  
is getting out that there  
is little or no accountability  
out there. Actually, I now  
believe the departments of  
overnight are created to  
protect the legal system  
rather than the "duped"  
public who must pay for  
the whole shu-bang.

Joyce McChesney

P.S. I will never stop working  
for fairness and justice  
and will not be compromised

Dear Editor:

In a biography of Warren  
County's Robert H. Jackson,  
"America's Advocate," Justice  
Jackson made an observation to  
the effect that, without our legal  
officers our legal and civil rights  
are only paper. I recently  
learned, first hand, the reality of  
his message.

According to Article IV,  
Section 405(c) of the County  
Code of the Commonwealth of  
Pennsylvania, failure to keep  
public records is a  
misdemeanor. Yet public  
records of a civil case in which I  
was a defendant have  
disappeared.

After my case went to the  
state Superior Court, I had time  
to review and find discrepancies  
in some alleged copies of maps  
that had been presented at trial.  
Subsequently, I kept in close  
contact with the Prothonotary's  
Office in the hopes of reviewing  
the maps upon their return.  
Eventually, the exhibits were  
returned, and on Aug. 29, 1989,  
Ms. Kosinski (then an assistant  
under Norma Mills) told me all  
the exhibits had been taken to  
the warehouse. She further  
suggested I would have to retain  
a lawyer in order to see them.

I complied, but through that  
lawyer, was informed the maps  
as well as all exhibits of that  
case were missing. He further  
informed me mine was not the  
first of such missing maps.

My next step was to contact  
the Superior Court to  
substantiate that the exhibits  
had been returned to Warren  
County. I received confirmation  
that a return receipt for the  
exhibits signed by Norma Mills  
and dated Feb. 1, 1989, was on  
file. What could have happened  
to such an abundance of  
material? And, more  
importantly, why?

I contacted the Attorney  
General's office and was  
promised a criminal  
investigation into the matter. An  
investigator from Erie assured  
me the office would simply plead  
"error." The Pittsburgh  
investigator assured me it is a  
serious matter, but he is no  
longer returning my phone calls.

So in my case, Article IV,  
Section 405(c) really is "only  
paper." I find that very sad.

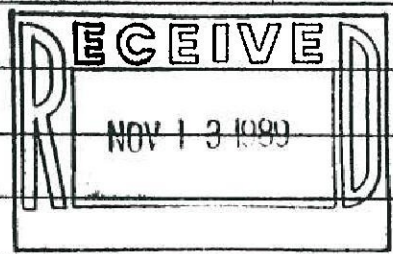
Joyce C. McChesney  
RD 1  
Spring Creel

1 - *specimens*

219542 TRIP

Nothing logged in with this name around that time. P. 9

10		AF	
SUBJECT		DATE	
Judicial Review Board		11-8-89	
JUDGE Robert Wolfe - Warren County			
On April 18, 1989, I filed a complaint regarding Judge Wolfe. The material enclosed may be helpful.			
Since I have had no response from you, I have no docket number for referral.			
Signed Joyce C. McCherny Route 1, Box 84 Spring Creek, Pa. 16436			
PLEASE REPLY TO		SIGNED	
DATE		SIGNED	



REDIFORM 48 469  
POLY PAR (50 SETS) # 469

SEND PARTS 1 AND 4 INTACT.  
PART 3 WILL BE RETURNED WITH REPLY.

# ks Temperament

...and write the opinion and file without ever reflecting on the law as we see it to be." Herman said.

"Our clients essentially are robbed if the opportunity to argue the relevant law to the judge in the case who is rendering the decision."

Wolfe said that during the course of a case or trial that many motions are made, many sidebar conferences are held and many instructions are given on the issues. He has to rule on those motions while continuing with the case.

"They're starting to say that I'm starting to make a prejudgment, when in fact I'm resolving a particular motion within the contours of the entire case," Wolfe said.

"I would never sit there and prejudge a case. There are many times when a case is so clear that there's nothing to support the other side."

He noted further, "When counsel starts reiterating and repeating, I do start reiterating on that. I often tell them, 'Well, now I've heard this three times...or I've ruled this three times now.' They perceive this to be prejudgment. That's not true."

Herman and Stewart are not the only ones attacking Wolfe.

The Warren law firm of Swanson, Bevilino & Millin has published raised similar concerns about prejudgment of cases.

Paul Millin, who also is Forec County's district attorney, said Wolfe is ill-tempered.

"Those of us who have trial practice have likewise seen the judge 'short fuse' as the scolds attorney bellies witnesses and otherwise through his temperament has a improper effect upon the outcome litigation," Millin said.

Wolfe defends himself, saying "I'm firm. I admit that I make attorneys do the work and do attorneys do the work and do attorneys do the work. I have it counsel in front of a jury. I have it counsel at sidebar and in chambers that what they are doing is wrong and if they keep it up, yes, I'm even hold them in contempt of court even have never, as they would say, harassed a witness. If they are embarrassed, all I can say is that they're sensitive."

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50

April 18, 1989

CERTIFIED MAIL  
RETURN RECEIPT  
REQUESTED

Mr. William F. Shields  
Director of Investigations  
Judicial Inquiry and Reveiw Board  
225 Market Street  
Suite 500  
Harrisburg, Pa. 17101

Re:Case A.D.#459 of 1985

Dear Mr. Shields:

I spoke with you by telephone several weeks ago and you asked me to send you, along with my judicial complaint, copies of inconsistencies in testimony presented at the above referenced hearing, which actually took place in May of 1987.

I apologize for the bulk of the material, but, in truth, it was difficult to condense it to the amount I am sending you. A great deal more is available, which I will send you upon request.

We have been told by attorneys that Judge Wolfe appears to bear a grudge against us. Therefore, it is impossible to get a fair hearing in his court, and options are not available in Warren County, making us entirely vulnerable to lawsuits of any kind whatsoever.

In this case, Judge Wolfe's bias was apparent very early on in the hearing. According to our attorney, agreements were made in chambers which he disregarded during the hearing. When his final decree was issued our attorney, Gary Eiben, remarked that it was so "absurd" he didn't even bother to read it.

It is interesting to note that, according to our local newspaper, the largest fine Judge Wolfe has ever imposed upon a criminal (the county's kingpen cocaine dealer) is \$25,000. Yet in the civil suit against us, he upheld the jury's punitive award against us of \$70,000, almost three times that amount! And the issue of punitive damages should never have been allowed to go to the jury. In his instructions to the jury, he easily engineered the trial's outcome. Please read the Court's instructions (N) and the alleged errors (O).

Please note:

You requested contradictory testimony. If you cannot help select the perjury, please advise to whom this may be sent. I am sure nothing would be done at the local level. *Joyce McChesney*



COMMONWEALTH OF PENNSYLVANIA  
JUDICIAL INQUIRY & REVIEW BOARD

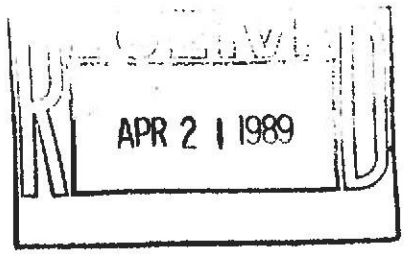
Correspondence To:  
Robert L. Keuch,  
Executive Director  
225 Market Street  
Harrisburg, PA  
17101

CONFIDENTIAL COMPLAINANT QUESTIONNAIRE

**NOTE:** This Board's jurisdiction extends only to Justices, Judges, District Justices and Magistrates.

DATE: April 18, 1989

COMPLAINANT: *Joyce C. McChesney*  
Name: *Route 1, Box 84*  
Address: *Spring Creek, Pa. 16436*



Business Phone: *(814) 664-2821* Home Phone: *(814) 664-2821*

Involvement in this incident: (check one)

Litigant  Juror  Observer  Other: (Explain)  
*defendant*

MEMBER OF JUDICIARY AGAINST WHOM THIS COMPLAINT IS DIRECTED:

*Judge Robert Wolfe*

CITY/COUNTY: *Warren*

IDENTIFICATION OF CASE:

Court Term and Number *AD 4597 1985*  
Plaintiff: *ALBERT CARLISLE + FISHER + Young HARDWOODS NOW*  
Defendant: *WILLIAM + JOYCE McCHESNEY MERGED WITH MATSON*

Plaintiff's Attorney: *William Morgan, Warren + Jack Koochay, Gettysburg*  
Defendant's Attorney: *Mary Ebers, Erie*  
*Robert Byer, Pittsburgh, for appeal*

NATURE OF COMPLAINT: (Please be as specific as possible and attach copies of any documents that will help to explain your complaint.)

*Bias - improper instructions - improperly allowed testimony and evidence - illogical decree - Also, has a history of excessive drinking. I have personally seen him drunk at a community Christmas event.*

*Errors of Appeals Court Judges appear to be based on false testimonies*

# TIME TO PASS THE BATON

The following is a copy of a letter to the editors of various local newspapers.

SWANSON, BEVEVINO AND MILLIN, P. C.  
ATTORNEYS AT LAW

October 17, 1989

WARREN OFFICE  
P. O. BOX 97 311 MARKET  
WARREN, PENNSYLVANIA 16305  
(814) 723 2090

M. A. CARRIDGER (1905-1973)  
DAVID W. SWANSON  
WILLIAM A. BEVEVINO  
PAUL H. MILLIN  
STEVEN J. GILFORD  
ARTHUR I. STEWART

TIONESTA OFFICE  
P. O. BOX 158-ELM STREET  
TIONESTA, PENNSYLVANIA 16353  
(814) 755-3581

PLEASE ADDRESS REPLY TO:  
Warren Office  
Fax No. (814) 723-6939

m. & jh-ov.

## TO THE EDITOR:

Some questions, like big troubles, resist all evasion. At first, dim and far off, the questions are barely perceived. But they draw inexorably nearer, become immediate and then, dreaded and implacable, thrust themselves upon you.

So it is with judicial retention. First colleagues, then close friends and family, and last, acquaintances ask the question, "What do you think?" And we as lawyers, those close to scene, are expected to answer - weighing our experience, and so far as we are able, considering only the interest of those whose causes are affected by the person selected as judge.

Our system of choice for a sitting judge is perversely like a lawsuit. There are only two choices - yes or no. There is no compromise. Those of us who are his friends and colleagues but think that Judge Wolfe should now retire have only a wrenching choice. We have not been privately consulted and can only choose publicly. A "yes" is against our conscience and a "nay" delivers a body blow to an old friend.

We know Judge Wolfe to be diligent and hardworking. He is prompt in disposing of matters and except on occasions of pique and irritation, tries to do what is fair.

On the other hand we have known the frustration of having a carefully prepared case not followed, of both simple and complicated fact situations misunderstood and valid legal argument dismissed. We have experienced the frustration of dealing with these matters for litigant clients. We know that appeal is a hollow, expensive and often unavailable right of redress.

We worry, we trust unduly, that finding ourselves on the wrong side the day after election will have adverse affects on us and our clients' causes. We doubt that it will occur, but fear is not lightly dismissed.

And now the day of choice is upon us. We've decided with sorrow and reluctance to vote nay. We, most of us his friends, keep our respect for his integrity and his devotion to his position. But we feel we must say "Judge, it's time to pass the baton."

Very truly yours,

*David W. Swanson*  
David W. Swanson

*William A. Bevevino*  
William A. Bevevino

*Paul H. Millin*  
Paul H. Millin

*Steven J. Gilford*  
Steven J. Gilford

Paid for by the Concerned Lawyers Committee  
Roné Hoffman, Esq., Treasurer

*Copy to Mr. C. [unclear] 4-18-89  
Complaint of Paul, P.C.  
Sperry [unclear]*

# Attorney Links Retention Issue

some six months after the accident.

Hernan said a conflict of interest could have arisen if the dead woman's estate had brought a lawsuit against Arthur Cagle, the man charged in the accident. However, said Hernan, "no civil action was ever contemplated or brought against Mr. Cagle personally by the estate." Hernan said he took the case only after his client advised that she would not seek money damages from Cagle personally.

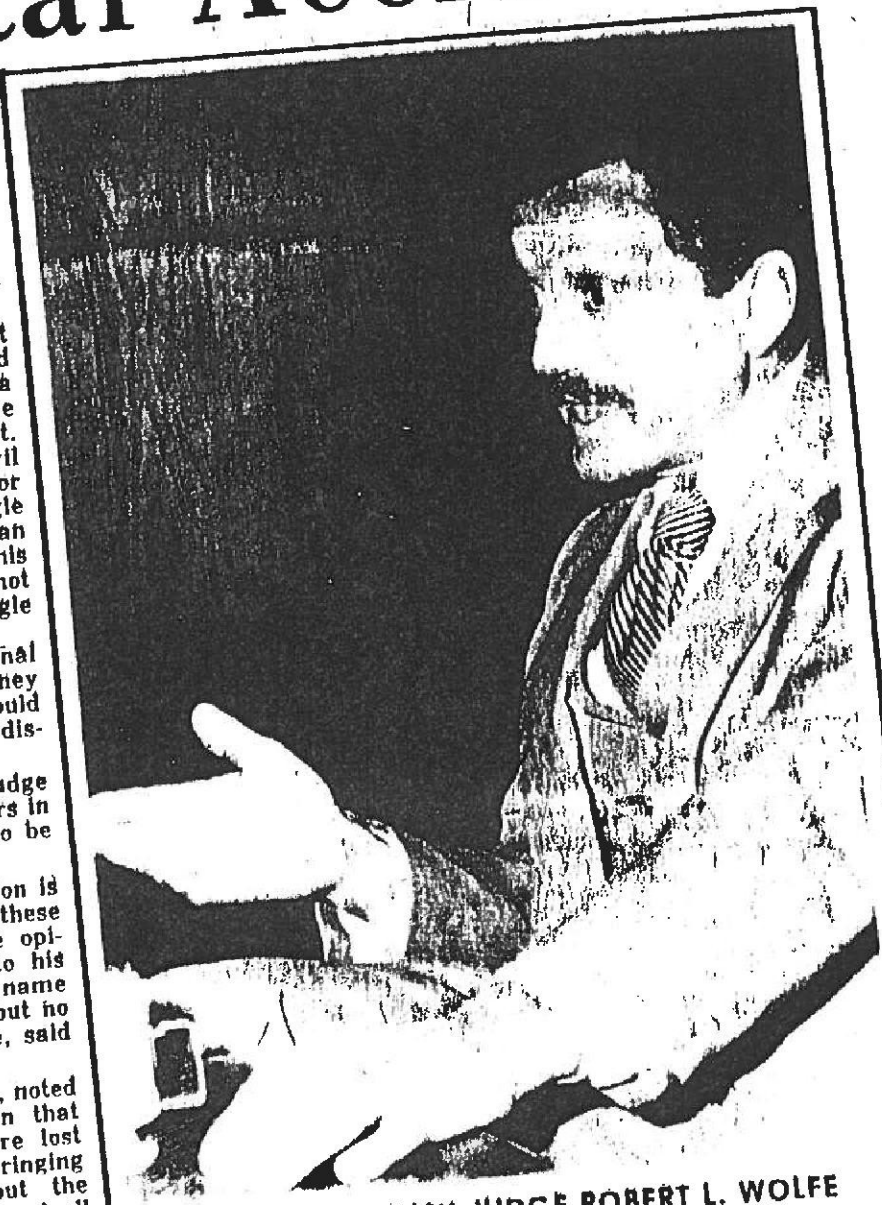
Hernan had turned the criminal case over to the state Attorney General's office, which could decide to appeal Thursday's dismissal of charges.

He said he feels that Judge Wolfe "makes too many errors in the performance of his job to be re-elected."

"And I feel that this opinion is but one more example of these errors," he said, citing the opinion's repeated reference to his client as "Mrs. Bartago," a name Hernan labeled as "close, but no cigar." The woman's name, said Hernan, is "Bartges."

The opinion, said Hernan, noted that Cagle had not shown that evidence or witnesses were lost due to the delay in bringing charges against him, but the judge nonetheless "dismissed all charges against a man accused of criminally taking a young woman's life."

... really surprise de.



WARREN COUNTY JUDGE ROBERT L. WOLFE

## Lawyers Oppose Judge's Retention

BY CHUCK HAYES  
Staff Writer

The Warren County Bar Association has taken a position against the retention of Warren County Judge Robert L. Wolfe.

Voters will be asked in the Nov. 7 election whether to retain the judge for a third ten-year term, although that term would be trimmed to about six years due to mandatory retirement.

In a brief statement issued Thursday, bar association president Joseph Massa said the association addressed the question of retention of Judge Wolfe Wednesday evening.

in favor of retention and 18 voted against.

Massa declined to elaborate on what reasons association members may have cited in voting against retention of the judge. When asked how he had personally voted, Massa also declined comment.

Asked if the association will now actively campaign against Judge Wolfe, Massa said, "This (statement) is the limit of the bar's collective action." Individual members of the group, said Massa, are free to do as they wish.

Judge Wolfe responded to the association's action Thursday, saying he was not surprised by the outcome of the vote. He said the vote would reflect upon it, a

# TIMES OBSERVER

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WARREN, PA., FRIDAY, SEPTEMBER 29, 1989

## Charges Dismissed

By CHUCK HAYES  
Staff Writer

Charges filed against the driver in a fatal motorcycle accident have been dismissed by Warren County Judge Robert L. Wolfe, who cited "conflict of interest" and unnecessary delays in bringing the case to trial on the part of the district attorney.

In March of this year, Arthur W. Cagle, 1284 Conewango Ave., was charged with homicide by vehicle and homicide by vehicle while driving under the influence. Warren-based state police charged Cagle in connection with the April 1987 motorcycle accident which claimed the life of Judy Roth, 32, 15 Terrace St. She was a passenger on a motorcycle driven by Cagle, which crashed on Rt. 62 near the Corral Inn.

But in a motion filed this May 24, Cagle's attorney, James Blackman, asked that the charges be dismissed for two reasons — one involving the almost two-year delay in filing of charges and the other involving an alleged conflict of interest on the part of Warren County District Attorney Richard A. Hernan Jr.

Blackman contended that immediately after the fatal accident, Hernan, in his capacity as a private attorney, undertook representation of the estate of the woman killed in the accident. Blackman further contended Hernan "attempted to bring pressure on state police to file charges."

Hernan countered that he had turned the Cagle case over to the state Attorney General's office to avoid any conflict of interest. In his ruling, Judge Wolfe cited including Head Start, can be critical are that there are 2.7 million

police station commander Sgt. Edwin Gorgacz on May 18, 1987 — a month after the fatal accident. In that letter, Hernan asked that time be freed for investigating officer Tpr. John Heary and his schedule arranged so he could investigate the Cagle case. Heary testified he did not receive any special time to investigate the accident, but still felt he could have brought charges against Cagle by late 1987. But in December 1987, Hernan informed the trooper of the possible conflict of interest and said he was turning the case over to the state. However, Heary said he was never pressured by Hernan to file or not file charges against Cagle.

After the Attorney General accepted the case, it was not until May 8, 1989, that the criminal complaint was filed.

Addressing the question of whether Cagle's right to a speedy trial was jeopardized by shifting the case from local jurisdiction to the state, Judge Wolfe said, "We have no hesitation in concluding the District Attorney had sufficient facts to prosecute the defendant in late 1987. We also find it patently clear the District Attorney's conflict of interest was evident one day after the fatal accident by his admitted acknowledgement a civil action would be forthcoming and possibly to his office by reason of prior representation of the deceased's mother and the encouragement of that with a sympathy card."

At an August hearing on Blackman's motion, a former assistant district attorney testified she had heard Hernan instruct his secretary to send a sympathy card to Roth's mother because it would See CHARGES, page 2

## District Attorney Case, Retention

Warren County's district attorney connected a Warren County Court opinion released Thursday with the district attorney's open opposition to the retention re-election of Judge Robert L. Wolfe, who issued the opinion.

The judge dismissed homicide-by-vehicle charges against a Warren County man after the man's attorney charged District Attorney Richard A. Hernan with a conflict of interest and prosecutorial misconduct through his representation of the estate of a victim in a 1987 auto accident.

"I do not have to speculate" as to why the judge dismissed the charges "in an opinion so critical of me," said Hernan Thursday night.

"I openly oppose Judge Wolfe's reelection as judge.... I find it more than coincidental that the opinion was handed down by the judge the next morning, after a majority of the members of the Warren County Bar Association voted to oppose his re-election as judge."

Hernan noted that his status as part-time district attorney with concurrent part-time law practice "is to walk through a conflict-of-interest minefield."

Concerning the substance of the decision, Hernan noted that the victim in the 1985 accident was the daughter of a client of his, and maintained Thursday that he didn't represent the estate of



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Route 1, Box 84  
Spring Creek, Pa. 16436

December 16, 1989

Robert N.C. Nix, Jr.  
Supreme Court Chief Justice  
3162 c/o Robert N.C. Nix, Sr.  
Federal Building  
Philadelphia, Pa. 19107

Dear Mr. Nix:

In the recent past I was exposed to the deplorable condition of Pennsylvania's Judicial System when I was in the throes of defending myself against a civil lawsuit in the Warren County Court of Common Pleas. I and my husband were sued for adverse possession of 56 acres of land which we claimed by deed; for damages for a small amount of timber my husband had removed from the disputed premises; and for punitive damages. Although adverse possession is notoriously difficult to obtain, the plaintiffs were not residents of the area, and there was no demarcation of a property line, they were enormously successful in the Warren Court, winning not only adverse possession of the property, but also a grossly inflated monetary damage award and a \$70,000 punitive damage award.

Because I, at that time, still believed in Pennsylvania's Judicial System, I had no doubt we would either get a new trial or the decision would be reversed in Appeals Court. Judge Robert Wolfe, Warren County's only Judge, had improperly instructed the jury and had allowed the plaintiffs' witnesses to testify at length on what was little more than speculation and personal opinion. Furthermore, none of the requirements for adverse possession had been met by the plaintiffs for a period of 21 years. Judge Wolfe's bias was apparent very early into the hearing. It did not take a legal mind to discern that his final decree was bizarre.

I was alarmed when the Superior Court upheld the adverse possession decision and the monetary damage award. (The punitive damage award was reversed.) The higher court based its decision mainly on a misstatement of fact in the plaintiffs' attorney's brief, not substantiated by evidence or testimony, and a misconception of its own. For instance, their decision stated, "a hunting cabin was also built on the property", when, in fact, testimony concerning the cabin stated the cabin was built north of the disputed premises and would have no effect on adverse possession. Interestingly, the decision rendered by the Appeals Court

was classified a "memorandum decision" so that it does not affect the law of adverse possession. I found this very suspicious and dared not pursue the case by appealing to the Supreme Court. Furthermore, the staggering cost of appeal had depleted my financial resources.

Though I had to accept the decision, I was unwilling to accept the injustice of it and the misrepresentations made throughout the case, so I embarked on a course to have those misrepresentations reviewed. Both attorneys for the plaintiffs attempted to deceive the jury, with apparent success, so I filed a complaint with the Disciplinary Board outlining statements they made which had no basis in testimony or evidence. The Disciplinary Board dismissed the complaints immediately.

It is my understanding that in Warren County opening statements and summations are not recorded. In our case, one of the attorneys took full advantage of that fact, and made false statements as well as slanderously comparing us to Adolph Hitler. I have recently learned of a new trial being granted to defendants in Erie County on the basis of remarks made by an attorney in his closing statements. Yet in Warren County, attorneys may make those statements without fear of having them reviewed by the higher courts. What kind of justice is this?

In addition to making complaints to the Disciplinary Board, I also made a lengthy and documented complaint to the Judicial Review Board on April 18, 1989. I sent them, as well, contradictions by witnesses and the attorneys. No response has been received.

Judge Wolfe had ruled against us in another case ten years prior to the herein referenced case, and, at great expense, we had had to appeal that decision as well. The decision was overturned, but his suspected bias against us, confirmed by opinions of some attorneys, has made us feel like targets for opportunistic litigants.

Having found no help with the bureaus of oversight, our only alternative seemed to be to campaign against Judge Wolfe's retention in the November 7 election.

On June 20 in an editorial by the Warren Times Observer, our county's only daily newspaper, the Bar Association was asked to help the public make a decision on whether or not our Judge should be retained (See attachment A). On September 20, the Bar responded with a majority voting to oppose his retention (See Item B). (Note Judge Wolfe was given the headline.) Item C, a letter to the editor, breaks down the functions of the lawyers who favored and those who opposed his retention. According to that letter, all lawyers who opposed were trial lawyers. The newspaper editor was not

content to accept that vote, and, in spite of the sensitive nature of the matter, goaded the attorneys into giving reasons for their opposition (See Item D). Items E - J are letters by attorneys outlining some very excellent reasons for their opposition.

Item K is a series of articles by the Corry Journal in Erie County. I direct your attention to the third article of the series, page 2, § 4 in which Judge Wolfe told the reporter no one had ever complained about him to the Judicial Review Board. I have been told by two other parties besides myself that they also made complaints to the Board about Judge Wolfe. One of those persons alleged he made the complaint more than two years ago and never received a response. Attorney Arthur Stewart told me in a telephone conversation that several complaints have been made to the Board. Therefore, it would appear that either Judge Wolfe did not tell the truth in his interview or the Board never followed up the complaints, either of which I find shocking.

Another contradiction which needs investigating is the report concerning a statement alleged to have been made by Judge Wolfe at a trial and sworn to in affidavits by persons who were present. According to the report, there is no record of the statement in the transcript and the prothonotary claimed the statement was not made. Does this not appear suspicious?

The Warren County Medical Association apparently presumed to be more qualified than the Bar Association on the evaluation of the Judge and, for reasons or motives for which I can only guess, endorsed Judge Wolfe's retention in an ad (Item L). A Letter to the Editor by one of its members also gave him a ringing endorsement. Demeaning the Bar Association's position, the Fraternal Order of Police, the Sheriff's Association, and other local elected officials likewise campaigned for his retention. In this bastion of Republicanism, the local committee of the Republican Party unanimously endorsed retention. In the end, the Warren Times Observer disregarded its plea to the Bar Association in its June 20 editorial, and gave Judge Wolfe's retention its endorsement (See Item M).

My own experience and the revelations by the attorneys in the enclosed articles have convinced me that our Judicial system is in serious jeopardy. I believe we have a judge who rules imperiously, often with disregard for the law. He is accountable to no one unless his behavior should become flagrantly outrageous. I am told time and again that there is little or no oversight of judges in Pennsylvania.

I would surely appreciate an explanation for the Judicial Review Board's disregard of complaints filed with them, and for the helplessness of lawyers to remove an incompetent judge from the bench.

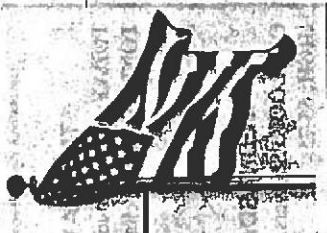
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MIXED: some sun and some clouds / A2

ARISTIDE: appeals for peace again / A5

UNDEFEATED: and no bowl game? / B1

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# TIMES OBSERVER

WARREN, PA., TUESDAY, OCTOBER 18, 1994 VOL. 29, NO. 177 35 THREE SECTIONS 20 PAGES

## Judge upholds plea agreement in fatal accident

By ELLEN KRANICK  
Staff Writer

In a sharply worded opinion, Senior Judge Robert Wolfe criticized the actions of both the district attorney and state police regarding a truck-driver involved in a 1993 fatal accident.

Wolfe upheld the enforcement of a plea agreement between Warren County District Attorney Joseph A. Massa Jr. and the attorney for trucker Harry McElroy.

And because taped interviews were erased by a state police officer, Wolfe also barred witnesses who were interviewed by the officer the day after the crash from testifying on behalf of the prosecution.

The judge accused the state police of stonewalling McElroy's attempts to obtain information they gathered. He also called "untenable and outrageous" the positions taken by the state police and district attorney regarding the taped interviews.

Wolfe ruled that the plea agreement informally made on July 9, 1994, was not dependent on the approval of anyone in the family of the late James Rehe or anyone else who was killed in the accident, despite a later objection by his family.

It is obvious the district attorney decided to renege on the plea negotiations that he entered into subsequent to the decedent's family having disagreement with the negotiations," Wolfe wrote. To permit the prosecutor to renege attacks and

deteriorates the very integrity of the judicial system and credibility of the commonwealth, which is intolerable. The judicial branch of democracy must not be brought to its knees because a prosecutor changes his mind and makes a pro-conviction initially or failed to make a proper investigation involving all of the parties to a criminal conduct," Wolfe said.

While noting that the courts is not bound by the plea negotiations, Wolfe upheld their legality.

The agreement is that McElroy, 54, Foxburg, Pa., would plea no contest to reckless endangerment in exchange for the withdrawal of four charges: failing to give way, reckless driving, driving with a suspended or revoked driver's license and a second count of reckless endangerment.

McElroy was charged following a Feb. 3, 1993, accident on Rt. 62 that took Rehe's life.

Rehe, driving south, was involved in a head-on with a car driven by Pennsylvania state trooper Kenneth L. Thornton. Thornton was in this street clothes and driving his personal car. He claimed he was attempting to stop McElroy's tractor-trailer after an object fell from it and broke the windshield of Thornton's car. Thornton was charged with vehicular homicide in connection with the fatal accident.

Wolfe subsequently ruled there was insufficient evidence against Thornton to proceed to trial. Massa appealed that ruling to the state Superior Court.

See UPHOLDS, page A8

# Upholds

which to date has made no ruling on the status of the charges against Thornton.

In the same opinion on the McElroy plea negotiations, Wolfe also granted a motion for sanctions against the district attorney's office for the erasure of taped interviews conducted by state police.

The sanctions prevent witnesses interviewed by Sgt. James McFadden on Feb. 4, 1993 - the day after Rehe was killed - from testifying for the commonwealth.

Because Thornton is a state trooper, the state police conducted an internal investigation of his conduct in the accident. Accident witnesses were tape recorded in interviews by McFadden, Harrisburg, and Cpl. Jack Patterson of the Warren barracks.

McFadden testified that he put the interviews, either verbatim or abbreviated, on his personal computer and then erased the tapes in

March 1993. An attorney for the state police had originally put the erasure at Jan. 17, 1994.

In April, after a motion by McElroy's attorney, Leonard Ambrose of Erie, Wolfe directed the district attorney's office and state police to make available all evidence gathered from witnesses by McFadden and Patterson. Ambrose later asked for court sanctions when he learned McFadden's tapes had been erased.

Wolfe agreed those witnesses personally interviewed by McFadden on Feb. 4, 1993, are barred from testifying for the prosecution. "The commonwealth has other witnesses not tape interviewed, to wit, Kenneth Thornton and others whom the police found during their investigation," Wolfe observed.

As early as September, 1993, both the district attorney and the Pennsylvania State Police had

knowledge that McElroy went through a preliminary hearing and was bound over to court to stand trial on the charges. Yet, neither the district attorney nor the state police made any effort to preserve possible inculpatory evidence to which the defendant is entitled," Wolfe wrote.

"This is justified by the district attorney as he has no authority

over the internal affairs of the state police but yet will freely and gladly use the information that was gathered by them that may be only to the benefit of the commonwealth.

"The Pennsylvania State Police have stonewalled any attempt by the defendant to obtain the information gathered by Sgt.

McFadden and Cpl. Patterson per our opinion as attached hereto.

"Something is wrong with this line of pretended reasoning. The wrongness, of course, is seasoned police officers as well as district attorneys know the rights of the accused in access to any evidence that would indicate innocence.

"The alleged eyewitnesses were interviewed one day after the

occurrence; the trial will not take place until the distant future when memories fail and witnesses disappear, and all of this is lost to the defendant. We believe the only appropriate sanction that can be imposed under this situation, whether it be deliberate or negligent, is the sanction we imposed," Wolfe wrote.

CLDY: rain-free for several days / A2

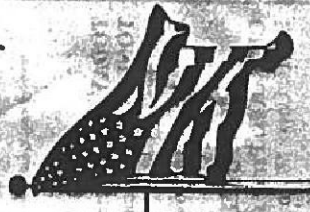
RESCHEDULED: Ludlow kidnap trial / A3

GOODBYE: Pirates tell VanSlyke / B1

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# TIMED OBSERVER

WARREN, PA., FRIDAY, OCTOBER 21, 1994

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35 THREE SECTIONS 76 PAGES

## District attorney responds to judicial criticism

By ELLEN KRANICK  
Staff Writer

Senior Judge Robert Wolfe's imposition of sanctions against the Warren County District Attorney's Office is like punishing an innocent bystander for someone else's actions, District Attorney Joseph A. Massa Jr. said Thursday.

Sanctions, if any, should be imposed against the Pennsylvania State Police in Harrisburg, its attorney and the state police internal affairs investigator who erased tapes of witnesses'

interviews, he said. Massa's comments followed a Times Observer story Tuesday of an opinion by the judge criticizing actions by Massa and state police in the case of trucker Harry McElroy, who was involved in a 1993 fatal accident.

The judge barred witnesses whose interviews were taped by a state police internal affairs investigator from testifying for the prosecution because the officer erased their interviews. Wolfe also upheld the substitution of a plea agreement between Massa and McElroy's attorney, Leonard

He said that to be unable to use the testimony of witnesses whose statements were taped by Sgt. James McElroy of the state police Bureau for Professional Responsibility is grossly unfair to the Commonwealth and its new law.

Wolfe, the court misinterpreted the facts and misapplied the law," he said. He said that to be unable to use the testimony of witnesses whose statements were taped by Sgt. James McElroy of the state police Bureau of Professional Responsibility is grossly unfair

to the Commonwealth and its new law." Wolfe subsequently ruled that there was insufficient evidence against Thornton to proceed to trial. Massa appealed that ruling to the state Superior Court, which overturned Wolfe's decision. Tuesday's story incorrectly stated that McElroy's attorney had attempted to stop McElroy after an object fell from

McElroy was charged with reckless endangerment and other violations following a Feb. 3, 1993 head-on collision on Rt. 62 in which James Rehe, Tidouct, was killed. Off-duty and in his own personal car, Pennsylvania state trooper Kenneth Thornton was northbound when his car collided with Rehe's just before the accident. Thornton had been chasing McElroy's tractor-trailer. He claimed he was attempting to stop McElroy after an object fell from

homicide and careless driving. Wolfe subsequently ruled that there was insufficient evidence against Thornton to proceed to trial. Massa appealed that ruling to the state Superior Court, which overturned Wolfe's decision. Tuesday's story incorrectly stated that McElroy's attorney had attempted to stop McElroy after an object fell from

See RESPONSES, page A10

# Responds

The Superior Court had not yet ruled on the appeal. Massa said Thornton's attorney, Ralph Montana of Clanton, has appealed the reversal to the state Supreme Court. However that appeal is at the discretion of the state's highest court, which has not acted in the matter.

Rather than working as a team, as the judge's opinion implies, Sgt. McFadden and Cpl. Jack Patterson of the Warren barracks took testimony from witnesses the day after the crash "for two totally distinct purposes and reasons," Massa said.

McFadden's purpose was to investigate Thornton's conduct for the state Police Bureau of Professional Responsibility. Patterson's task was to determine if criminal charges should be filed. Massa said the "only reason Patterson and McFadden were together was because McFadden was from Hattisburg and didn't know the area.

He said Patterson interviewed

accident eyewitnesses and McFadden tape recorded the interviews. Patterson took written notes and did not confer with McFadden. Patterson's investigation led to criminal charges being filed against Thornton and McElroy.

McFadden took the tapes with him to Hattisburg, put the interviews on his personal computer and later erased the tapes. When Ambrose learned of the erasure, he filed the motion for sanctions.

Massa stressed that his office had no dealings with McFadden and had no access to the state police tapes or the report of its internal investigation on Thornton. When Ambrose requested the district attorney's office make available all evidence gathered from witnesses by Patterson and McFadden, Massa said his office and Patterson complied fully.

Problems arose, Massa said, with the state police in Hattisburg, whose attorney filed preliminary objections and failed to

appear for two hearings. Massa agreed with Wolfe that the state police in Hattisburg "stonewalled" court directives to comply with defense motions.

Massa said he appreciated the court's frustration in dealing with the state police in Hattisburg but he had no control over the internal investigation. He said the sanctions punish the wrong party.

"Sanctions, if any, should be imposed against the Pennsylvania State Police (in Hattisburg), its attorney and Sgt. McFadden, not against this office," he said.

Massa also observed that at McElroy's preliminary hearing in September 1993, the same witnesses testified who were interviewed by Patterson and tapped by McFadden. Massa said Ambrose had the opportunity to interview the witnesses and that their testimony from the preliminary hearing was now part of the court record.