The threat of terrorism cannot be greater than the curse of tyranny

In December, we watched as congressional brinkmanship played itself out over the reauthorization of the Patriot Act. While the Senate, led by a bi-partisan group, refused to continue some of the most unpatriotic provisions of the act, the House advanced a version that did little to deal with the law’s excesses. The stalemate was temporarily resolved by a limited extension of the act.

I am proud that, while carefully analyzing the act after its hasty passage in 2001, the Massachusetts Bar Association did not succumb to public fear and overreaction to a perceived threat. We found many deficiencies in the act that compromised the individual rights of citizens and we called for revisions. Although some measures authorized by the Patriot Act provided our country and we called for revisions. Although some measures authorized by the Patriot Act provided our country

New Executive Director Wellington brings depth of experience to MBA

by Bill Archambeault

Marilyn J. Wellington, the Massachusetts Bar Association’s new executive director, has been an adjunct professor, legal counsel for a state office and chief of staff for the Trial Court Department. She even taught music to students in grades kindergarten through eight before embarking on her legal career.

But it was her last job, evaluating courts nationwide as a management consultant in Denver, that put the finishing touch on the skill set she thinks will help her run the MBA. As a management consultant for the National Center for State Courts, she traveled across the country evaluating courts and recommending changes.

“I was able to see a variety of management structures and styles. I think that will help me look at the different opportunities available to us (at the MBA),” she said.

Being a consultant “allows you to think things through a little less personally. You can see things a little more thoroughly because you don’t have a personal stake in it. That job was really the icing on the cake and makes me a very strong administrator, a very strong leader. I think that really helped solidify it all. It’s very exciting to bring all of those perspectives back to Massachusetts.”

Wellington, who came to Boston for college in 1979 and had worked here her entire career, said she loved her job in Colorado and wasn’t searching for a reason to return.

“I love being back in Massachusetts, but I came back because of this particular job and can’t think of another job I’d come back for,” she explained.

The practical realities of Melanie’s Law

by Andrea R. Barter, Esq.

Legislation to increase public safety in the wake of tragedy is not new. Transportation safety laws were enacted after 9/11; worker and fire safety laws were enacted after the Triangle Shirtwaist factory fire; over-the-counter medicines were repackaged to include safety seals after the Tylenol poisonings.

In the wake of a 13-year-old Marshfield girl’s death after being struck by a repeat OUI offender, Massachusetts legislators recently targeted the public dangers of drunk driving; they
MBA welcomes new members

Kathryn M. Anbinder of Mintz Levin Cohn Ferris Glovsky & Popeo PC
Corina Applegate of Lubin and Meyer
Matthew P. Arakelian of Rogaris Law Office
Melissa M. Bradley
Melanie L. Breen of Sheppard Mullen Richter Hampton LLP
Michael L. Brown of Brown & Brown LLP
Patrick K. Burke
Stephanie A. Buscaglia
Jennifer C. Capone of Law Office of Jennifer C. Capone
Kristina M. Cherewatti of Goldweber Lauriello and Epstein
David L. Cusano of Foley Hoag LLP
Linda S. Del Castilho of Linda S. Del Castilho, Attorney
Kristina M. Cherewatti of Goldweber Lauriello and Epstein
Linda S. Del Castilho of Linda S. Del Castilho, Attorney
Holly R. Dyar
Burr M. Fealing of Verizon
Patrick M. Flynn
John P. Gallagher of Law Offices of John P. Gallagher PC
F. Joseph Geogan II of Geogan & Geogan PC
Gayle S. Ghitelman of Law Office of Gayle S. Ghitelman
Andrew Goloboy
Howard N. Gorney of Nixon Peabody LLP
Pamela R. Green
Henry L. Hall Jr. of Ropes & Gray
Joseph Harry of Law Office of Joseph Harry

Continued on page 12

The justices of the Supreme Judicial Court recently announced the appointment of Geoffrey R. Bok of Boston to the Board of Bar Examiners for a five-year term, ending on Sept. 30, 2010, in accordance with G.L. c. 221, §35.

The Board of Bar Examiners, consisting of five members appointed by the Supreme Judicial Court, makes rules with reference to examinations for admission to the Massachusetts bar and the qualifications of applicants, in accordance with SJC Rule 3:01. The Board prepares, administers and grades the bar examinations, evaluates applicants’ requirements and issues reports to the Supreme Judicial Court.

Bok is a partner in the Boston law firm of Stoneman, Chandler & Miller LLP, where he focuses on labor and employment law and on school litigation matters. Prior to joining the firm in 1995, he worked for four years at the Boston-based firm of Lane & Altman. He began his legal career in 1987 at Ropes and Gray in Boston. Bok has been a reader for the Massachusetts Bar Examinations since 1989 and has assisted in drafting bar examination questions and designing the current grading procedure for the examinations. He received a J.D. degree, cum laude, from Harvard Law School and a B.A. degree, magna cum laude, from Harvard University. He also studied at St. Stephen’s College in Delhi, India. He is a member of the Massachusetts Bar Association and the American Bar Association.

Judge Steven D. Pierce

Judge Steven D. Pierce has been appointed the new chief justice of the Housing Court Department of the Trial Court for a five-year term.

Pierce, who was appointed by Chief Justice for Administration and Management Robert A. Mulligan, succeeds Chief Justice Manuel Kyriakakis, who will retire on Jan. 1, 2006, upon reaching the mandatory retirement age of 70 for judges. Kyriakakis has served as chief justice of the Housing Court since June 17, 2002.

The Housing Court consists of five divisions, in: Boston, Worcester, Northeast, Southeast and Western.

“I am very pleased to announce the selection of Judge Pierce to succeed Chief Justice Manuel

Kyriakakis as the next chief justice of the Housing Court Department,” Mulligan said. “Judge Pierce brings a breadth of managerial experience which renders him uniquely qualified to lead the Housing Court and to contribute significantly to the management initiatives presently underway in the Massachusetts Trial Court. He is very bright, highly respected and will bring a wealth of managerial experience which will benefit not only the Housing Court Department but the Trial Court as a whole. I look forward to having Judge Pierce join my management team.”

Mulligan, who said that he was presented with an excellent group of candidates, praised Kyriakakis, stating that he was a superb chief justice and that he would miss his wise counsel and collegial presence.

Pierce has been a Housing Court judge since his appointment to the bench in January 2003. Mulligan said Pierce brings extensive leadership, legal and management experience in the public and private sectors to the position. He served as chief legal counsel to Gov. Jane Swift from August 2001 to October 2002, and as a senior advisor to Gov. William Weld. For nearly seven years, he was the executive director of the Massachusetts Housing Finance Agency, where he was recognized for strategic leadership and sound management practices. He was also cabinet secretary of Communities and Development in 1991.

Prior to that, Pierce was a state representative for 12 years and a candidate for governor of Massachusetts in 1990 and the U.S. Congress in 1991. He was a partner in the Boston office of Eckert, Seaman, Cherin & Mellott for two years and previously worked at Berndt, Antonelli & Larsen in Westfield.

A resident of Westfield and Boston, Pierce graduated with honors from Duke University School of Law and from Union College, summa cum laude.

Pierce said, “I am honored to be appointed by Chief Justice Mulligan and look forward to working with him on management initiatives underway to improve the Trial Court and also with my colleagues and staff on the important issues in the Housing Court Department. Chief Justice Kyriakakis has accomplished much in his relatively short tenure as Chief Justice of the Housing Court and has been an inspirational leader. I am grateful to have served with him, and I will miss him.”

The Jewish Alliance for Law and Social Action is honoring Judge Rudolph Kass, an associate justice on the Massachusetts Appeals Court for more than 20 years.

JALSA will honor Kass at its fourth annual meeting on Sunday, Jan. 8 at the Brookline Holiday Inn at 1200 Beacon St. in Brookline. Formed in 2001, JALSA has established itself as a progressive voice, based on Jewish values, for social and economic justice, civil rights and constitutional liberties.

Kass is being recognized as a champion for social justice over his career. Before he became a judge, Kass was a partner at Brown, Rudnick, Freed & Germer, specializing in real estate, with a concentration in urban affairs. Kass has held numerous volunteer leadership positions in the Jewish, legal and health care communities, including serving as president of Jewish Community Housing for the Elderly, the Cambridge Center for Adult Education and the Ford Hall Forum.

At the annual meeting, Kass will deliver remarks on “Threats to the Independence of the Judiciary.”

Incoming President Ronny Sydney will be welcomed at the annual meeting.
Timeline set for 2006-07 officer nomination process

By mid-January, MBA President Warren Fitzgerald and newly hired Executive Director Marilyn Wellington will appoint the seven-member Nominating Committee charged with nominating the six officers and the roster of regional delegates to serve a one-year term beginning Sept. 1, 2006. The 2006-07 Nominating Committee must be approved by the current House of Delegates at its Jan. 19 meeting in Weston. The 13-member committee will present its official nominations in the form of a report to be filed with MBA Secretary Denise Squillante by March 10. MBA members eligible to vote will receive the committee’s report by March 25. Membership has the opportunity to challenge the report by submitting petitions for other nominations. Other nominations for officers have to be filed as petitions signed by 100 members. Likewise, regional delegate nomination petitions are filed in the same manner and require 50 signatures. All petitions should then be filed with Squillante by April 10. Look for more information on the election process in future issues of Lawyers Journal.

MBA seeks nominations for officers, delegates

The Massachusetts Bar Association is currently accepting nominations for officer and delegate positions for the 2006-2007 membership year. Nominees must submit a letter of intent and a current resume to the MBA secretary by 5 p.m. on Friday, Jan. 27, 2006 to be eligible. To submit a nomination, mail or hand deliver the information to: Massachusetts Bar Association, Attn.: MBA Secretary, 20 West St., Boston, MA 02111; or fax to (617) 338-0697.

If you have any questions about the nomination process, please call MBA Executive Director Marilyn Wellington at (617) 338-0640.

Attention all MBF Fellows, Grantees and Friends:

Please join us for the Massachusetts Bar Foundation’s 2006 Annual Meeting on Thursday, Jan. 26, 2006, from 5 to 7:30 p.m. The event will be at the Social Law Library at the John Adams Courthouse in Boston. A reception will follow. To RSVP, call (617) 338-0648 or e-mail foundation@massbar.org.

For more information about the MBF, visit www.MassBarFoundation.org.

Massachusetts Bar Association Guide to Member Services

Member Service Center:
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Toll-free: (877) 676-6500
MBA main number:
(617) 338-0500
E-mail: membership@massbar.org
MBA Web site: www.MassBar.org

Professional Services
Committee on Professional Ethics: Advises attorneys, at no charge, on ethical problems encountered in practice. Call: (617) 338-0641 or e-mail: jstevens@massbar.org.
Fee Arbitration Board: Provides resolution of disputes involving lawyers’ fees. The board resolves both lawyer-client disputes and lawyer-lawyer disputes. Forms and documents for fee arbitration are available online at: www.massbar.org/resources/FAB/. Call: (617) 338-0646 or e-mail: dantonio@massbar.org or fab@massbar.org.
Lawyer Referral Service: One of the largest referral services of its kind in the U.S. Sign up annually for $100 ($75 if admitted to bar in last five years). Call: (617) 338-0556 or e-mail: lrs@massbar.org.
Mentor Program: MBA members who have been in practice more than seven years may volunteer to help other lawyers by offering advice in new or unfamiliar areas of law. Service is free to MBA members. Call: (617) 338-0691 or e-mail: mentor@massbar.org.
Model Fee Agreements: Developed by the Fee Arbitration Board to facilitate committing fee agreements to writing. Hourly rate agreements are available for criminal representation and domestic relations cases. Call: (617) 338-0646 or e-mail: dantonio@massbar.org.

Casemaker Online Law Library

The Casemaker Online Law Library is a fully searchable, continually updated online law library that is accessible for free only through the MBA’s Web site (www.MassBar.org/casemaker). There are no monthly or hourly usage fees, and access is unlimited, 24 hours a day for MBA members only.

Casemaker offers an extensive array of Massachusetts and federal case law, opinions, statutes, regulations and other materials used daily in a law practice. All material is quickly and easily searchable in a variety of modes, including keyword, Boolean and Thesaurus. In addition, the libraries of many other states, including all New England states, are available for free.

For more information, go online to: www.MassBar.org/casemaker.

Continuing Legal Education

The MBA is committed to enhancing members’ professionalism and expertise by providing high-quality continuing legal education (CLE) programs and publications, sponsored by the Massachusetts Bar Institute. Members receive discounts on tuition for most programs. Call: (617) 338-0530 or e-mail: education@massbar.org.

Insurance Programs

MBA Insurance Agency: Members may purchase professional liability insurance through this subsidiary of the MBA. Members in Worcester and east should call the Boston office at (617) 338-0581; members west of Worcester should call the MBA Springfield office at (413) 788-7878, or e-mail: insurance@massbar.org.

401K and Pension Plans: To establish 401K and pension plans for law firms of any size or for a no-cost review of your current plans, please call our specialists at (800) 749-2118. This is a unique opportunity for members to get the advice they need for these critical benefit plans.

MBA-endorsed Insurance Plans: Members can take advantage of the following insurance programs: Group health, group and individual life, disability, long-term care, dental and business-overhead expense. Call: (800) 925-2198 or e-mail: membership@massbar.org.

Personal Auto Insurance Program: Members can receive an automatic 5 percent discount on their auto-insurance policies, written by Safety Insurance Co. C.J. McCarthy Insurance Agency Inc., the MBA Insurance Agency’s partner, offers a quick-quote service with the highest level of customer service. Call toll-free: (877) 236-3700 or e-mail: info@cjmcarthy.com.

New Benefit — Client Profiles

The MBA has formed a new member benefit partnership with Client Profiles that offers law firms of all sizes an ideal solution to their need for electronic case and financial management. Client Profiles delivers innovation customized for law firm needs, offering the most adaptable, easy-to-use, revolutionary case and financial management system available in the marketplace today. Learn about what a new case management system can do for you and your practice. Visit the MBA Web site and click on www.massbar.org/membership/mba_benefits/clientprofiles.

Publications

CLE publications and audiotapes: Massachusetts Bar Institute offers publications on a wide array of substantive legal topics. Available at a discount to MBA members. Call: (617) 338-0530 or e-mail: membership@massbar.org.

Benefits and Discounts

MBA members are eligible for discounts on car rentals, engraving and printing, credit card rates and overnight delivery from companies such as DHL (formerly Airborne), Artcraft, Avis, Budget Rent-A-Car, Hertz and MBNA.

The MBA’s Legal Tech Toolbox offers law-office technology solutions and services, including online CLE, legal research, computer training, section list-serves and more, at special members’ pricing.

The Legal Career Center lets jobseekers post their resumes, search for jobs locally or nationwide, get career advice and more. And for employers, the Career Center offers low pricing on job listings, resume search services and more.

For complete details, visit: www.MassBar.org/membership, call (617) 338-0530 or e-mail: membership@massbar.org.
Q: As I write this, it’s 1 a.m. and our 17-year-old daughter is at her computer, still working on tonight’s homework and fuming that my wife asked how she’s coming along on the college application essays. I feel angry that she’s up so late (and then often late for school the next day), but I can’t really blame her, since she spends most of the afternoon and evening at lacrosse, orchestra and working on a literary magazine. My wife has been on a mission to get her into a top-notch college, even hired a college application “coach,” and this leads to much conflict because my daughter feels so much pressure. I thought my wife was pushing too hard when she urged my daughter to take four or five Advanced Placement courses this year, but we’ve now attended two information sessions at college admissions offices, and, sure enough, they said that successful applicants will take as many AP courses as possible – and get A’s! My own (rather distant) memories of applying to college, and law school, were nothing like this. I question whether it’s worth it.

A: Anyone who stands back to gain some perspective would ask the same question. The reality is that most young people who want to go to college can have an excellent learning and social experience at any number of colleges, and that enjoying and thriving on that process probably contributes more toward ultimate success than getting into an Ivy League school. But, perhaps especially in pockets of high-achievement, academia-oriented Massachusetts, not to mention the hard-driven world of lawyers, it is nearly impossible not to be sucked into the competitive, pre-college maelstrom. In some towns, parents who don’t pay for SAT prep courses might even be seen as virtually neglectful.

By the time this is printed, your daughter will probably have submitted her applications, but your experience may help guide the parents of this year’s high school juniors. While college admissions offices recoil from the pushy, over-involved, frenzied parents of many of their applicants, they also contribute to the problem. Their aggressive marketing to high school kids is often followed with the message that they will favor students who get straight A’s in advanced courses, excel in sports and other extra-curricular activities, score in top SAT percentiles and show memorable uniqueness in their all-important application essays. The situation becomes overwhelming for teens. Understandably, parents tend to get very involved, leading to even more anxiety.

Some colleges are trying to reduce the pressure a bit. MIT Admissions Dean Marilee Jones, for example, decreased the number of lines on the application for listing extracurricular activities and deleted the section for listing special distinctions in such activities. She laments the loss of time that high school kids once had for some degree of relaxation, happiness-seeking and “daydreaming.”

Parents may do well to help their 11th and 12th graders organize the (unfortunately lengthy) sequence of college application steps, breaking them down into manageable chunks with target dates for completion. (Even that can be overwhelming, and easier for parents the second time around.) They might ask constructive questions in helping their kids arrive at ideas for essays, and try to create a climate of enjoyable exploration in the college selection process. But, to the extent possible, the application process should be the student’s project, with the parents as a source of encouragement and balance. This is much easier said than done (and we haven’t even talked about the financial concerns that bring even more stress), but it’s a worthy goal to keep our kids from burning out before they even arrive on campus.

Questions quoted are either actual letters/e-mails or paraphrased and disguised concerns expressed by individuals seeking assistance from Lawyers Concerned for Lawyers.

Questions for LCL may be mailed to LCL, 31 Milk St., Suite 810, Boston MA 02109; e-mailed to email@lclma.org or called in to (617) 482-9600. LCL licensed clinicians will respond in confidence. Visit LCL online at www.lclma.org.

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MBA’s Annual Conference is “shaping” up for March 23

This year’s theme for the 2006 Massachusetts Bar Association’s Annual Conference is “Shaping the Future of the Legal Profession.”

The three-day event will begin at Boston’s Marriott Copley Place Hotel on Thursday, March 23. The day’s focus will be on law students and new lawyers, offering guidance on networking and career strategies. Learn from our expert speakers how to steer your career, launch a practice, hone your interviewing skills, avoid traps for the unwary and more.

On Friday, conference participants will have the opportunity to attend a variety of MBA section council briefings and recent developments programs that highlight the most significant cases of the past year.

Currently, the briefing schedule will include discussions of the uniform trust code, the ethics of representing parties in out-of-state arbitrations, environmental justice, the new OUI law, protecting company intellectual property and electronic discovery.

The recent developments programs will highlight case law, legislation and developing trends affecting the following substantive areas: family law, commercial law, real estate law, employment law, probate law; federal law; tax law; juvenile law; personal injury and insurance law; probate law; appellate practice and procedure, elder law and criminal law. Featured judicial speakers include Hon. Paula M. Carey, Hon. Jay D. Blitzman and Hon. William G. Young.

In addition, hands-on Casemaker training sessions will be offered throughout the day.

This year, in addition to the annual Bench/Bar Forums, Saturday’s programming will include a law practice management track, featuring programs on boosting profitability, setting fees, client retention and how to work smarter, not harder.

The highlight of the conference will be the annual Bench/Bar session. Leo Boyle and Judge Cynthia Cohen, co-chairs of the planning committee for Saturday’s Bench Bar session, are exploring a program addressing two related issues: the media’s relationship with the courts and judicial independence.

We will continue to update you on program events as they develop. The MBA’s officers and staff are looking forward to seeing and serving our members at this year’s annual conference, helping them to shape the future of the legal profession.

Notice to members: Make sure you receive MBA e-mails

Some members have not been receiving e-mails sent by the Massachusetts Bar Association. Please read the following to find out how to ensure you receive your weekly e-Journal and other MBA e-mails.

Increasingly, ISPs are using filtering systems to try to keep spam out of customers’ inboxes. Sometimes, they accidentally filter e-mail you want to receive. The MBA fully supports the anti-spam actions by all mail servers and ISPs, but sometimes they block messages you want.

If you search your “spam” or “bulk mail” folder and find any MBA messages, mark them as legitimate messages, usually by clicking on a “not spam” button. After doing this a few times, they should be correctly delivered to your inbox.

Major e-mail providers like AOL and ATT will most likely send a message to your inbox if the sender’s e-mail is in your address book, so please put Membership_Info@massbar.org into your address book. This can usually be done by opening an e-mail and clicking “add address.”

But many e-mail applications, including Outlook, Outlook Express, Eudora and Netscape Mail do not provide a convenient way to do this. If this is the case, contact your e-mail administrator, customer service people or the postmaster at the company that provides your e-mail or Internet connection (your ISP). Explain to them that you intentionally requested MBA e-mails and ask them to “whitelist” any MBA e-mail.

They will need to know:

1. The sending address: Membership_Info@massbar.org
2. The IP address: 65.126.227.99

If your company does not manage its own e-mail, and if messages continue to be filtered, call or e-mail your ISP’s tech support and specifically ask how to receive all e-mails from Membership_Info@massbar.org.

MBF seeks IOLTA Grants Program requests for proposals for 2006-07

The Massachusetts Bar Foundation is pleased to announce the availability of applications for the 2006/2007 IOLTA Grants Program. The MBF expects to award approximately $3 million to nonprofit organizations for law-related programs that either provide civil legal services to the state’s low-income population or improve the administration of justice in the commonwealth.

Application materials are available at www.MassBarFoundation.org. The deadline for application submission is Friday, March 10, 2006. For additional information, please contact the MBF Grants Office at (617) 338-0534 or e-mail foundation@massbar.org.

The Massachusetts Bar Foundation is the commonwealth’s premiere legal charity. Founded in 1964, the MBF is the philanthropic partner of the Massachusetts Bar Association, and is one of three charitable entities in Massachusetts that distributes funds through the Massachusetts Supreme Judicial Court’s Interest on Lawyers’ Trust Accounts (IOLTA) Program. The Foundation represents the commitment of the lawyers of Massachusetts to improve the administration of justice, to promote understanding of the law and to ensure equal access to the legal system for all residents of the commonwealth, particularly those most vulnerable.
Massachusetts Bar Association
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Job Seeker Services
We are proud to offer the area's leading online Legal Career Center - the centralized location where employers, lawyers, and support staff meet. We currently have thousands of legal positions available for your review. No job posting is more than 30 days old. Search by position, years of experience, areas of law, location and more!

We have worked hard to provide our members with the most powerful and effective Legal Career Center available.

Post Your Resume Online. Legal professionals desiring a change can now post their resume online and choose to remain completely anonymous to prospective employers. You choose when to release your full resume. We give total control to the job seeker.

The Massachusetts Bar Association's Career Center gives you the tools to confidentially market your skills and abilities to prospective employers.

Want the hot jobs to come to you? Create an online Career Agent and be e-mailed automatically when new jobs matching your criteria are posted.

Need a little help on your resume? Log into our Resource Center and get the latest tips on creating effective resumes, plus interviewing tips and techniques.

Employers and Recruiters
No placement fees, no contracts, no gimmicks - just targeted results.
Recruit the area's top legal professionals - Attorneys, Paralegals and Support Staff - at a much lower cost than an ad in your local paper. Law firms and corporate legal departments that are looking to hire can post their jobs online for a nominal fee.

These job postings will be visible at the Massachusetts Bar Association's Legal Career Center and distributed nationwide to a network of more than 100 legal career and portal sites.

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HOD passes Guantanamo resolution, debates Family Law changes

The Massachusetts Bar Association 2005-06 House of Delegates convened for the second time on Nov. 17 in Western Massachusetts, a short distance from the nation’s Basketball Hall of Fame in Springfield. The full agenda highlighted important updates, distinguished guest speakers and fruitful debates related to motions brought to the floor by the Family Law and Criminal Law Section Councils.

MBA President Warren Fitzgerald brought the meeting to order in the main ballroom of the Springfield Marriott by introducing Chief Judge William G. Young. Young delivered a brief but poignant address, including a report on the U.S. District Court for the District of Massachusetts. Young, who is retiring Jan. 1, 2006, spoke highly of his successor, Judge Mark L. Wolf, describing him as an “unexcelled leader for our court.” Aside from providing the status of the case composition of the court, he spoke to the heavy caseload for each judge as it reaches 1,000 cases per judge, a particularly high number when compared to districts across the nation.

“The U.S. District Court in Massachusetts is exceptional,” said Young. “I believe we would all be hard-pressed to find a more collegial, professional and independent group as we enjoy here.”

Young then explained that the average bench hours reported by active Massachusetts District Court judges in 2004 was 610, a total ranking “first or second” in the nation among judges in courts with six or more judges presiding. “We are simply breaking the traditional mindset of what a trial court is.”

Young followed his remarks by fielding questions from the delegates. Topics addressed include the value of eDiscovery, the pacer system and other measures intended to improve efficiency of the trial court system.

Officers provide timely reports

Following Young’s well-received remarks, Fitzgerald presented the president’s report. Fitzgerald announced three new committees established since he took office in September. Established to respond to criticisms of Supreme Court judges and other public attacks on the judiciary, the Judicial Independence Committee has been formed with Ed P. Ryan Jr. serving as its chair. The Lawyers in Transition Committee, led by MBA Secretary Denise Squillante, is assessing ways in which to keep attorneys involved and active in the profession despite a hiatus from practice due to lifestyle changes, such as starting a family. Finally, an ad hoc committee has been established and MBA President Elect Mark Mason will be leading its charge to explore how the MBA can be more supportive to the Young Lawyers division of the association.

As part of his president-elect’s report, Mason welcomed the group to his home city of Springfield and shared his enthusiasm for the initiation of the ad hoc committee. David W. White-Lief and Squillante followed Mason’s report to deliver the treasurer and secretary reports.

General counsel delivers legislative debrief

Martin Healy, MBA general counsel, kept the group abreast of recent legislation in which he and other members of the MBA have been aggressively involved. Healy first clarified the reality of “end of the session.” He informed the group that the Legislature is near completing only the first of its two-year session and continues to meet on an informal basis. Healy explained that existing bills will carry over to the second year of the Legislature’s session when formal meetings officially resume on Jan. 4, 2006.

Healy then debriefed colleagues on the move of the Legislature to defeat a proposal by Gov. Mitt Romney for a “fool-proof” death penalty. “The MBA remains extremely active in the fight against reinstatement of the death penalty in Massachusetts,” said Healy, who mentioned that MBA past President Kathleen M. O’Donnell testified before the Joint Committee on the Judiciary on the governor’s bill last spring.

Also, on the topic of sentencing guidelines, Healy reported that the Joint Committee on the Judiciary was to hold a hearing on Tuesday, Nov. 22. MBA Criminal Law Section Council Chair Lee Gartenberg was to testify on the legislation as drafted by the Massachusetts Sentencing Commission with the addition of a post-incarceration supervision proposal. “As you may remember, this body voted to support the post-incarceration supervision proposal drafted by our Task Force on Sentencing Guidelines. The MBA’s proposal was subsequently included in the sentencing guidelines legislation passed by the House of Representatives in 2001,” added Healy.

Healy’s final legislative update was that the Senate passed a supplemental budget on Nov. 15 that included a pay increase for Massachusetts judges. The salary of an associate justice in the trial court will increase from $112,000 to about $130,000.

In addition, as part of his interim role as executive director, Healy proudly reported that the MBA has recently appointed two new members to its senior staff. Mark Doherty, director of Finance and Administration, and Tricia Oliver, director of media and communications, recently began their posts at the Boston office. (The MBA also hired Executive Director Marilyn J. Wellington on Dec. 1. See story on page one.)

Motion passed to protect detainees’ rights

Following Healy’s legislative update, the delegates heard from Region Four delegate Mark Berson, who presented the MBA resolution in response to a recent ruling from the Supreme Court. The legislation, by the viewpoint of the association, poses a “threat to the rule of law” as imposed to the rights of detainees in Guantanamo Bay. In short, the resolution proposed for the U.S. Attorney General to support the Rule of Law to provide for judicial review mandated by the U.S. Supreme Court and that Congress pass no laws to restrict such access. Gartenberg then insisted the group consider adopting a friendly amendment to the resolution. The amended resolution passed. As a result, Fitzgerald will share the terms of the resolution with the appropriate government officials.

For more on the resolution, contact MBA Bar Liaison Patricia Plasse at (617) 338-0596.

A colorful prelude to adjournment

The House of Delegates then engaged in a lengthy debate over two resolutions related to the Family Law Section Council. The resolutions were championed by Pauline Quirion, Family Law Section Council chair, but were presented by Squillante with strong input on the floor by Veronica Fenton of the Family Law Section Council. As a way to provide context for the need for modifications to the court system’s handling of family law cases, Judge David G. Sacks, Probate and Family Court Hampden Division, was on hand to address the group.

The first resolution provided recommendations to the probate and family court child support guidelines and the second addressed revisions to the probate and family court time standards.

The first resolution was met with opposition from a handful of delegates, including Hampshire County Bar Association President Beth Crawford. Crawford advocated to delay passing the resolution until the group had settled on the particular guidelines. However, the resolution ultimately passed with strong testimony from Squillante and Fenton. The second related resolution also passed. Both family law resolutions aim to move cases more efficiently through the judicial system while maintaining careful consideration to the needs of children and their families. For more information on the resolution, members may contact Plasse at (617) 338-0596.

The next MBA House of Delegates meeting will take place on Jan. 19 at Regis College in Weston.

The threat of terrorism cannot be greater than the curse of tyranny

Continued from page 1

The threat of terrorism cannot be greater than the curse of tyranny. Parliamentarians cannot afford to be ignorant of the risk of terrorism to their communities, particularly to their children. Terrorists use the threat of terrorism as a weapon to gain power and control. They do this by manipulating the fear of death and destruction.

The threat of terrorism cannot be greater than the curse of tyranny. It is a weapon that can be used by any government to justify the violation of human rights. The threat of terrorism is a weapon that can be used to control the population. It is a weapon that can be used to suppress the voice of dissent. It is a weapon that can be used to suppress the rights of the people.

The threat of terrorism cannot be greater than the curse of tyranny. It is a weapon that can be used to silence the voice of the people. It is a weapon that can be used to suppress the rights of the people. It is a weapon that can be used to suppress the rights of the people. It is a weapon that can be used to suppress the rights of the people. It is a weapon that can be used to suppress the rights of the people.

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New Executive Director Wellington brings depth of experience

Continued from page 1

said. "This job has been a goal of mine. It was just too good to pass up. I feel very lucky to be here. It made it really easy to decide to come back from Colorado.”

Evaluating and setting priorities

Wellington, who started Dec. 1, said she is still evaluating the MBA’s needs and setting her priorities, though she does have some familiarity with the organization and recognizes some immediate goals. She has been a member of the MBA since being admitted to the bar in 1991.

"The strengths of the Massachusetts Bar are the services it provides and its representation as the only statewide voice for the bar. The experience and dedication of the staff is unbelievable. I think the Massachusetts Bar has all of the groundwork set. The MBA is at an exciting point, where it’s ready to expand and move forward. We’re providing great services, but there is so much more that can be done. My most immediate goal is to look at membership and what we’re providing,” she said. "Many Massachusetts attorneys remain nonmembers and we need to find out why.”

Wellington also cited one of MBA President Warren Fitzgerald’s priorities, which is improving the MBA's visibility. "The MBA is the statewide representative of the bar,” she said. "Anytime anything happens that affects the legal community, we should be the first source of information.”

Fitzgerald had high praise for Wellington’s ability to achieve the MBA’s goals.

"We are extremely pleased to have Marilyn join us,” Fitzgerald said. "She is the consummate professional and will be the perfect leader for the extraordinarily talented MBA staff. Likewise, our membership will benefit from Marilyn's energy and vision as we maintain a statewide, regional and national position on legal affairs.”

MBA General Counsel Martin W. Healy said he was encouraged by Wellington’s hire.

"The MBA is very fortunate to have landed such a skilled professional. Marilyn's breadth of senior management experience in both the public and private sectors will greatly enhance the efforts underway by staff and members,” said Healy.

Healy, who served as interim executive director for 15 months in 2004 and 2005 and for 18 months in 2000 and 2001, said he is excited about focusing on his role as general counsel with Wellington on board.

"I am looking forward to assisting our members and our leadership team on the panoply of public and legal policy issues that confront us,” Healy said. "Having an executive director in place will allow me to quickly delve into and respond to those issues. The members are best served with a fully operational staff that works together under a team oriented approach — we now have a great team in place and it's really exciting.”

Managing staff in good times and bad

Building membership and promoting the MBA's efforts will depend largely on making sure the staff has the resources needed to get the job done, she said.

"Warren and the search committee made it clear that the most significant goal for me was to make sure the staff had what it needed,” she said. "I think one of the reasons I was selected was because they were confident I could do that. I think I understand what it takes to support an organization like this.”

Indeed, one of Wellington’s most challenging jobs was serving as chief of staff from 2001 to 2003 for Judge Barbara Dortch-Obara when she was chief justice for administration and management of the Massachusetts Trial Courts in a time of severe budgetary pressure.

Dorch-Obara, currently a Superior Court justice, said Wellington handled a difficult job efficiently and creatively.

"We were under stress for quite a lengthy period of time,” Dorch-Obara said. "Oftentimes, we would have to respond very quickly to a question from a member of the Legislature about our budget, without any warning. Marilyn's very good with that. All in all, we were in a time of stress, and she was very strong, very energetic and a pleasure to work with.”

Dorch-Obara said Wellington stepped right in when she was named chief of staff.

"I admire Marilyn greatly,” she said. "She's a take-charge person who can get along with anyone. She can also be the heavy when there's a time for strong, decisive action. She can be creative, particularly in times of stress. Marilyn seems to thrive when there's a need to create something out of nothing. She was very, very helpful to me and the Trial Court. She's an extremely capable manager.”

Dorch-Obara said she expects Wellington will have a smooth transition into her new role.

"There won't be any learning curve because of her experience as a manager, but also because she knows quite a few of the leaders from her dealings with the courts,” Dorch-Obara said. "I can't say enough about her.”

Changing her tune

Wellington’s interest in the law came about a bit haphazardly. A graduate of Emmanuel College in 1983 with a B.A. degree in music education, she taught music to grades kindergarten through eight at the Dorchester House Multi-Service Center, a community health center that also offers educational and recreation programs.

Despite her interest in music, Wellington was looking for something different. When someone suggested she try law school, she took a chance.

Wellington started working for the Massachusetts Department of Mental Health in 1991, first as a paralegal and then as an attorney. After initially focusing primarily on case work, Wellington eventually moved into handling policy issues and legislative matters, and was eventually appointed the DMH’s liaison with the courts.

She served as director of the Trial Courts Judicial Institute from 1997 to 2001, was named chief of staff for Dorch-Obara from 2001 to 2003, and was the court administrator for the Boston Municipal Court Department from 2003 to 2004 under Chief Justice for the Boston Municipal Court Department Charles R. Johnson.

"The Boston Municipal Court Department was greatly enhanced by Marilyn's leadership. She had a wonderful relationship with both the justices and the personnel of the department,” Johnson said. "I'm sure Marilyn will bring the same vivacious leadership to the Massachusetts Bar Association. We are optimistic that Marilyn's leadership of the Mass. Bar will facilitate an ongoing, collaborative relationship with the Boston Municipal Court Department.”

An early mentor

Retired Judge Maurice H. Richardson recalled that Wellington was an articulate student when she took his mental health law class at the New England School of Law. In addition to being her professor, Richardson dealt with Wellington professionally when she was a paralegal working at the Department of Mental Health. At the time, he was chairman of the District Court Committee on Mental Health and Retardation.

Richardson said he convinced the DMH commissioner to let him use Wellington part of the time to help out his staff, and he was impressed with the work she did.

"Over the years, I’ve seen her progress in more and more responsible positions,” Richardson said. "I was delighted to find out that the Mass. Bar was interested in taking her on. You really got a 10 strike in getting someone of her caliber.”

Wellington’s experience in dealing with the legislative, judicial and executive branches of government will serve the MBA well, he said.

"She brings to the MBA a real broad knowledge. I think she’s got a very good overall perspective. It’s a rare set of talents that come into play here.”
’Tis the season

Leading up the holidays, MBA members, officers and staff had good reason to celebrate. Parties and receptions were held throughout December to mark the season, a year of accomplishments and new staff. In early December, the MBA Springfield office hosted a holiday celebration (middle row) attended by staff, members and friends of the MBA, who reside in Western Massachusetts. A special holiday luncheon was held in the Boston offices on Monday, Dec. 12 to honor staff (bottom row). Later that evening, the MBA welcomed staff, officers, members and other friends for a special reception in honor of its new Executive Director Marilyn Wellington (top row).


General Counsel Martin Healy (standing) spreads some holiday cheer at the staff luncheon.

MBA staffer Karen Guy takes her pick from the grab bag selection.

John Hennessey, a member of MBA’s Lawyer Referral Service team, takes home the prize from one of the many contests at the luncheon.
Massachusetts Bar Association officers helped swear in 1,340 new attorneys at Faneuil Hall’s Great Hall over four days in late November and early December.

Maura S. Doyle, clerk of the Supreme Judicial Court for Suffolk County, presided over the ceremony with a mixture of formality and humor while standing underneath George Peter Alexander Healy’s famous mural, “Webster’s Reply to Hayne.”

“This is the most appropriate place for you to take your first breath as lawyers,” she said, referring to Faneuil Hall, nicknamed the “Cradle of Liberty.”

“It is not something you will do for a living,” she said. “It is something you will do for the rest of your lives. This is the most noble of professions. It will hopefully be a historic moment in your lives.”

Speaking at the Friday, Dec. 2 afternoon ceremony, MBA Treasurer David W. White-Lief explained to the new attorneys the importance of getting involved in both the MBA and their local bar associations because they serve different purposes. As the only statewide bar association, he said, the MBA is in a unique position to reflect and affect the legal profession in Massachusetts.

“Get involved and stay involved,” White-Lief said. “Congratulations, and welcome to a great community. Please do good, and do it well.”

MBA President Warren Fitzgerald, Vice President Edward W. McIntyre and Vice President Valerie A. Yarashus spoke at swearing-in ceremonies earlier in the week, and MBA President-Elect Mark Mason spoke at a ceremony in Springfield on Dec. 12. The swearing-in ceremony for new lawyers is held twice a year in both Boston and Springfield.

At the Dec. 2 afternoon session, SJC Associate Justice Robert J. Cordy told the new lawyers, “Today, you join an outstanding legion of practitioners of the law.” But, he cautioned, “The status of being a lawyer in itself does not earn you honor. Your respect must be earned. Never forget that your reputation, which takes years to build, can be ruined in an instant.”

Doyle ended the ceremony with several pieces of advice, reminding the newly sworn-in lawyers, “Don’t ever think you got here on your own.”

However, her last bit of advice was less solemn. “Life is not just about the front page,” she told them. “It’s about the comics, too.”
MBA Lawyers Journal  January 2006

Attention New/Young Lawyers

Trial Court Orientation Forum Feb. 1; includes special offer for nonmembers

The MBA is proud to unveil its first “Trial Court Orientation” forum. Geared toward newly admitted attorneys and those attorneys practicing for less than five years, this forum will be held on Wed., Feb. 1, 2006 from 12 to 7 p.m. at the John Adams Courthouse in Boston.

Distinguished judges and experienced court personnel will share their practical expertise on a host of issues, including jurisdiction, tips for working with the clerk’s office to get matters heard, the role and resources of probation and more. This particular session will feature speakers from the Boston Municipal Court, District Court, Juvenile Court and Probate & Family Court. A second session featuring speakers from the Land Court, Superior Court and Housing Court is being planned for spring 2006.

This half-day forum is specially priced at $15 for law students, $25 for members and $35 for nonmembers and includes lunch and an evening reception. Nonmembers who join now will attend for free. Space is limited. To register, call (617) 338-0530 or visit www.massbar.org.

MBA Trial Court Orientation
Wednesday, Feb. 1, 2006
John Adams Courthouse

Tentative Agenda
12-12:45 p.m. Lunch
12:45 p.m. Welcome and overview
1-2 p.m. District Court
• The role of the clerk’s office, with particular attention paid to magisterial functions (e.g., search and arrest warrants; show cause, small claim and CMVI hearings, among others)
• The role of probation
• Jurisdiction
2:15-3:15 p.m. Juvenile Court
• Jurisdiction — areas of overlap
• Probation — role & resources
• Tips from a clerk
3:30-4:30 p.m. Probate & Family Court
• Jurisdiction
• Tips from an assistant register
• The role of probation
4:45-5:45 p.m. Boston Municipal Court
• Jurisdiction
• Tips from a clerk
• The role of probation
5:45 p.m. Closing remarks
6-7 p.m. Reception

MBF celebrates grantees in Western Mass.

The Massachusetts Bar Foundation hosted an encore grantee reception on November 9, 2005, at the MBA Office in Springfield, MA. Over fifty MBF grantees and fellows attended to celebrate this year’s grant recipients. This year, through its IOLTA Grants Program, the MBF awarded almost $500,000 to organizations in Western Mass. for programs that either provide civil legal services to low-income clients, or improve the administration of justice in the commonwealth.

MBA President Warren Fitzgerald (right) took part in the Massachusetts Judges Conference/University of Massachusetts Boston Delegation visit to Russia Dec. 2-11.

The delegation ran continuing education programs for judges that focused on intellectual property rights protection, ADR and judicial independence. The program is sponsored by the U.S. State Department with the partnership of the Russian Academy of Justice and the Supreme Commercial Court.

Group photo: Left to right: Hon. Christopher J. Muse, associate justice, Superior Court; attorney Jerry Cohen, Perkins, Smith & Cohen, JAMS; Joseph McDonough, executive director, Massachusetts Judges Conference; Oleg Svirdenko, chair, Moscow Commercial Court; attorney James McGuire, JAMS; Maria Eliseeva, Houston Eliseeva LLP; attorney Warren Fitzgerald, Meehan, Boyle, Black & Fitzgerald and president, Massachusetts Bar Association and Dr. Edmund Beard, Dean, McCormack Graduate School of Policy Studies at the University of Massachusetts Boston.

Lawrence Farber, Archer Battista, Francis Ford, Alan Ells

Lillian Marcentel, Keye Hollister

Alan Musgrave, Wendy Sibbison
Massachusetts Bar Association welcomes new members

On Nov. 30, 2005, the Supreme Judicial Court decided the case of Saggese v. Kelley, SJC-09484, which involved a dispute between lawyers over a referral fee. In the case, the court set a new ethical standard which is of critical importance to all practitioners who share fees on case referrals.

In short, the client must acknowledge, in writing, awareness of the fee sharing arrangement. The court has placed the primary burden for obtaining this acknowledgement on the referring lawyer, but the lawyer to whom the case is referred is expected to have the written acknowledgement as well.

In order to avoid possible disciplinary sanction, all attorneys should adopt the practice of obtaining written client acknowledgment of fee sharing arrangements. All counsel should receive and maintain copies of the acknowledgment.

For more information, visit www.massreports.com/slipops/ and select ‘opinions’ under SJC.
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A MEMBER BENEFIT OF
The practical realities of Melanie’s Law

Continued from page 1

grounded on the emotional turmoil of a child’s death takes away rational consideration of the pros and cons of the legislation and makes it into a political situation.

“I’ve watched us engage in a pattern of demagoguery up there where politicians feel compelled to beat their chests and exclaim how they’ll be tougher on criminals without recognition of the diminution of what I consider to be closely-held, constitutional protections to a fair trial,” said state Rep. James Fagan, D-Taunton.

He added, “Basic, media-fanned hysteria, combined with the frustration and anger we all feel when we see serious bodily injury, makes members of the Legislature willing to trade away constitutional protections we were sworn to uphold for the political comfort it gives them to be able to say, ‘I voted for a tougher law.’ That makes no sense.”

Criminal defense lawyer Peter Elikann believes Massachusetts OUI provisions are probably the most political of all the state’s criminal statutes. According to Elikann, Massachusetts drunk driving laws have been revised 18 times since 1991. “It’s important that we find bona fide ways to fight drunk driving and not just engage in media attempts to vilify defense lawyers or legislators for attempting to strike a balance with respect to punishments in the legislation. According to Ryan, “Everyone has a point of view, and defense lawyers are familiar with the operation of the law and have every right to be heard on the draconian sanctions [of the law].”

Melanie’s Law

The new law allows certified court records to be introduced to prove prior convictions and doubles minimum mandatory sentences for motor vehicle manslaughter to five years in drunken driving cases. Anyone convicted of driving drunk with a suspended license faces a mandatory minimum one year in jail.

The law also requires repeat offenders to have interlocking devices installed in any vehicle they drive. The devices are intended to prevent ignition if the driver is drunk.

Other provisions of the new law include:

- Increased license suspension for refusal of the Breathalyzer, a 10-year suspension for refusal where an accident results in serious bodily injury, and lifetime suspension for refusal where an accident results in death
- Elimination of the “temporary permit” immediately given to drivers currently after their licenses are suspended for refusing the Breathalyzer
- Mandatory 24-hour vehicle impoundment for drivers who refuse the Breathalyzer
- Creation of a new aggravated OUI offense to be charged when a defendant has a blood alcohol level of .2 percent or higher
- Creation of a new child endangerment by OUI offense to be charged when an alleged drunken driver is transporting a minor 14 or younger
- Creation of a jail penalty for tampering with an interlock device
- Mandatory lifetime license revocation for anyone who has previously been convicted of an OUI resulting in death and who is convicted again for driving drunk
- Mandatory alcohol assessment for anyone with a blood alcohol level of .15 percent or higher
- Increased penalties for knowingly allowing someone under a license suspension for drunken driving to use an automobile.

Ex post facto law

Richard L. Zisson, Esq., of Zisson & Veara in Dedham, finds the combination of Melanie’s Law with the previous legislative abandonment of the 10-year look back provisions troubling.

Zisson cited as an example a client who received two OUI citations in rapid succession while attending the University of Massachusetts 25 years ago. Recently, while driving home from a family celebration, she was stopped and was charged with her third OUI. “She is a prominent citizen, a nurse, living the American dream, with no alcohol problems. But she was charged with a felony,” said Zisson.

Fagan believes that the end result of the law will not be the deterrence of serial drunk drivers but will instead have the unintended result of trapping two classes of people: white men age 50 and older, and single mothers between 37 and 50 who may have had one or two prior alcohol events 15 to 20 years ago.

“People who are going to fall under the new provisions have little or no other criminal record or history, have largely been productive members of society, but with problems with alcohol. They work, pay mortgages, and their ability to do that will be seriously jeopardized by the many mandatory and completely unbending penalties we’ve instituted. We’ve stripped away the discretion of courts and judges to closely examine each case and defendant and paint all of them with the same broad brush. Our experience in 230 years of jurisprudence has taught us broad brush treatment simply doesn’t work,” said Fagan.

“Many aspects of the bill are terribly unfair when viewed in the context of someone who had a transgression many years ago and is not a serial offender,” said Ryan.

“Ex post facto is used to enhance penalties, even though the OUIs happened before the law took effect. I think that’s unfair. Let’s start fresh from when the law was enacted and go forward,” said Zisson.

Elikann added, “It’s hard to make the connection if you got arrested 35 years ago and now get arrested again. I don’t think that’s necessarily proof that they have an alcohol problem and may just be unnecessary overkill at that point.”

Loss of license

Defense attorney Lee Garrison finds it problematic that the Legislature removed the 15-day temporary license provision.

“There is a due process problem with that because the officer who forms an opinion as to the driver’s sobriety becomes the same government entity that summarily suspends or revokes the license without a hearing,” said Garrison.

Fagan added, “People don’t comprehend the enormous amount of power this law has now placed in the police. Even if you had nothing to drink, if you have never had anything to drink, and an officer tells you to take a Breathalyzer and you refuse, your license is gone, you don’t get a hearing. That’s a lot of power. We have taken away the power of the court to be the check and balance on the executive power of the police.”

“Politically, the Legislature was constrained to act in a hurry, and frequently rushed legislation is not the best legislation,” Garrison added.

Proof by certified document

Zisson also takes issue with the government’s new power to advance a prosecution for multiple offenses by the use of certified documents rather than by witness certification.

“Documents make mistakes,” said Zisson. “It is the government’s burden of proof, not the defendant’s, and
According to Fagan, “We made and continue to make highly punitive changes in Chapter 96, sec. 24, all of them directed at easing the government’s burden of prosecution rather than protecting the defendant’s right to a fair trial.”

“Doing away with discretion in judges’ sentencing and Melanie’s Law are making it easier for the government. By abandoning the requirement of proof the defendant was same party, the judge’s hands are tied,” he said. Fagan considers this an abandonment of the principles of justice. “Proof beyond a reasonable doubt; it should be difficult rather than easy to convict.”

However, District Court Judge W. James O’Neill doesn’t foresee the use of certified documents to establish a prior record as being a significant problem. “It seemed to take a lot of energy of proponents and critics of the bill, but in the real world, I don’t think it’s going to have much of an impact at all,” said O’Neill.

**Issues to be played out**

Questions remain about various aspects of the law and its practical application.

Ryan raised the issue of the cost of the ignition-locking device. “How much is it going to cost and who is going to pay for it? To get a hardship license, you may have to have this ignition-locking device. It seemed to take a lot of energy of proponents and critics of the bill, but in the real world, I don’t think it’s going to have much of an impact at all,” said O’Neill.

Elikann wondered about the seizing of drunk drivers’ cars. “Are you going to take the family car, the car that is also used by the wife to take a child to school? Are certain scofflaws going to try to elude that law by making sure the car is in a spouse’s name? I’m concerned about the impact on a family if the family car is lost.”

**Zero tolerance and other proposals**

Whether as a political appeasement to Mothers Against Drunk Driving or as a comprehensive solution, the topic of zero tolerance may be the next evolution in the fight against drunk driving.

According to Fagan, “We have acted in the Legislature in what has been the simplest and most guttural reaction, which is simply punish and punish and punish without any thought to prevention… If the Legislature wants to be serious about prevention, at some point it will address zero tolerance, .02 BAC rather than .08.”

Fagan explained that .08 was “a completely arbitrary figure” that creates a comfort zone; people believe they can drink a little, just so long as they don’t drink enough to put them over the .08 limit.

“They engage in what I consider to be completely hypocritical analysis, whereas if we reduce BAC levels to .02 (to compensate for medications and the like) and send the message that the state will not tolerate anyone drinking and driving a car, that would be a significant way to do that,” said Fagan. “[Melanie’s Law] is just a capitulation to the media that we are going to act tougher,” he added.

Ryan suggested, “It’s time to realize that purveyors and providers of alcohol have some responsibility. To continue to increase penalties for drunk driving is not the solution.”

He pointed out that within days of passage of Melanie’s Law, there were a number of arrests, “people completely unfazed by the new penalties,” and that homeowners can escape any responsibility by telling a guest to bring their own alcohol.

In a Nov. 9, 2005 Boston Globe editorial, Ryan proposed, “We should write legislation that makes those who either serve alcohol or allow persons to drink alcohol on their premises liable to victims who are injured or killed by persons drinking to the point of intoxication at these locations. Legislation could require license holders, distributors and manufacturers to air public service announcements warning of the dangers of excessive consumption, the potential criminal penalties and the availability of substantial civil remedies. Make the purchase of liability insurance mandatory.”

“If we are really going to look fairly at the problem of drunk driving, we have to look at all aspects, not just the drunk driver. Facilities that are making a profit from this need to be accountable to some degree for their actions,” said Ryan.

Zisson believes the liquor industry and purveyors should anticipate reforms. He has seen a change in the case law, describing a case where an underage drinker hurt himself. Under that case, “the purveyor was liable based on the drinker’s age, even though he caused his own negligence. So it’s going that way. The liquor industry is taking this seriously because they see this coming.”

Elikann added, “If we are really concerned — truly, legitimately concerned — about lowering the number of dangerous drivers and therefore lowering the number of victims, we should be doing a lot more about drunk driving and not only coming up with new sanctions against drunk drivers each year. That seems one area politicians are focused on almost solely. We could be fighting the problem on many fronts rather than on the narrow focus politicians seem to have.”

Peter Elikann's article on OUI practice in the wake of Melanie's Law will appear in the MBA's next Section Review.
In “Shaping the Future,” a look at U.S. chief justices: Part I

by Christopher R. Vaccaro, Esq.

This is the first of a three-part series the MBA will run discussing the contributions of the chief justices to this nation, summarizing their impact on the court and American history. As we look to learn from the “Shaping the Future of the Legal Profession” Annual Conference in March, some context for the rich history of the Supreme Court will provide a further appreciation of the past.

Since the establishment of the Supreme Court, 17 individuals have served as chief justice. All have contributed to the development of this nation and its laws. During the years immediately after ratification of the Constitution, three different men served as chief justice, all of whom were Federalists appointed by George Washington. The early court was not the robust institution that it has become today. That changed with John Adams's lame duck appointment in 1801 of John Marshall, a Federalist. Chief Justice Marshall issued decisions that elevated the court to a status more equal to the legislative and executive branches, starting with his famous opinion in Marbury v. Madison, which set the precedent for judicial review of federal law. He presided over the court for 34 years, until his death in 1835.

Roger B. Taney, Marshall's successor and an Andrew Jackson appointee, also profoundly influenced U.S. history with his infamous Dred Scott decision that may have hastened the nation's plunge into Civil War. The court more vigorously acted to curb executive and legislative authority under Melville W. Fuller at the turn of the 20th century, and later under Charles Evans Hughes during Franklin D. Roosevelt's presidency and the New Deal.

Perhaps the court's high tide in overturning state and federal legislation occurred during Earl Warren's tenure as chief justice in the 1950s and 1960s. That era saw the expansion of the court's involvement in civil rights cases and efforts to limit governmental power over individuals, often at the expense of federal and state legislatures. President Richard Nixon's appointments to the court, including Chief Justice Warren E. Burger and Associate Justice William H. Rehnquist, slowed this trend. It remains to be seen how the recently appointed chief justice, John G. Roberts, will influence American history, but his impact will likely be substantial.

John Jay, first chief justice

After ratification of the Constitution, President George Washington selected John Jay as the first chief justice of the Supreme Court in 1789, to preside over five associate justices. The early court heard relatively few cases and decided, soon after its formation, that it would not issue advisory opinions for the other branches of government. The most significant case decided by the Jay Court was Chisholm v. Georgia, 2 U.S. 419 (1793), which upheld a South Carolina citizen's right to sue the state of Georgia. At this time, the United States was a loose confederation of sovereign states, and the court's decision troubled many Americans because it challenged state sovereignty. Chisholm was quickly overturned by the ratification of the Eleventh Amendment, which removed from the federal courts' jurisdiction suits brought against a state by a citizen of another state.

While serving as chief justice, Jay was dispatched to London as a diplomat to negotiate a treaty with the British. Jay's efforts resulted in a treaty entitled “A Treaty of Amity, Commerce and Navigation, Between His Britannic Majesty and the United States of America,” but popularly known as Jay's Treaty. The treaty was intended to improve the young nation's difficult relations with its former ruler by forming trade agreements and reaffirming the British commitment to remove troops from the Northwest Territories that Britain had ceded to the United States at the end of the Revolutionary War. However, the treaty also required the United States to honor debts to British creditors incurred before the conclusion of the Revolutionary War. At the time, many Americans were sharply divided over U.S. foreign policy. The Federalist Party, which controlled the Senate, preferred improving relationships with Great Britain, while the Republicans, led by Thomas Jefferson and James Madison, favored revolutionary France.

The Republicans assailed Jay's Treaty as a capitulation to the British and a snub to the French, who had stood by the United States during the Revolution. Angry mobs burned Jay in effigy throughout the nation. The treaty was barely ratified by two-thirds of the Senate, and only because of Washington's lobbying.

Jay resigned from the court in 1795. The animosity generated against him by the French, who had stood by the United States during the Revolutionary War. At the time, many Americans were sharply divided over U.S. foreign policy. The Federalist Party, which controlled the Senate, preferred improving relationships with Great Britain, while the Republicans, led by Thomas Jefferson and James Madison, favored revolutionary France.

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Jay resigned from the court in 1795. The animosity generated against him by his Treaty did not prevent him from serving two terms as governor of New York, a position that he held from 1795 until 1801. President John Adams offered to reappoint Jay as chief justice in 1800, but Jay declined, maintaining that the court lacked the energy needed to support the national government. Jay's doubts about the court's vitality would prove to be ironic, given the role that John Marshall, Adam's subsequent choice for chief justice, would play in developing the powers of the federal judiciary.

Jay retired from public life after the end of his term as governor of New York in 1801. He died in 1829.

John Rutledge, rejected by Senate

Washington appointed Rutledge as an associate justice of the Supreme Court in 1790, but Rutledge served in that position for only about a year before resigning to accept the position of chief justice of the South Carolina Supreme Court in 1791. Rutledge returned to the United States Supreme Court in 1795, this time as chief justice, following Jay's resignation. He held this office for a mere four months. His tenure as chief justice is not remembered for any important decisions, but it was noteworthy for two reasons; namely, how he came to be chief justice, and how his term came to an end.

Article II, Section 2 of the Constitution authorizes the president to make recess appointments to fill vacant judicial positions while the Senate is in recess. However, these so-called “recess” appointments expire automatically when the Senate's next session expires. Washington appointed Rutledge to chief justice as a recess appointment. After this appointment, Rutledge joined the chorus that attacked Jay's Treaty, which had been supported by Washington and many members of the Federalist Party to reduce ongoing conflicts with the British. Although the Constitution authorizes the president to nominate Supreme Court justices, such executive power is subject to the advice and consent of the Senate. The Federalist-controlled Senate resented Rutledge's criticism of Jay's Treaty. There were also questions about Rutledge's mental health, due in part to his reaction to his wife's death in 1792. The Senate rejected Rutledge's nomination 14 to 10. This rejection has been cited as an early precedent for the Senate using its constitutional power to deny a president's appointment to the court because of the nominee's political positions.

Rutledge died on July 18, 1800 in Charleston, South Carolina.

Oliver Ellsworth, promoter of the Constitution

After John Rutledge's brief term, Washington nominated Oliver Ellsworth as chief justice. The Senate approved this nomination.

Ellsworth was a major participant in the drafting and ratification of the U.S. Constitution. Perhaps the most divisive problem facing the drafters in 1787 was representa-

Chief Justices and years of service in the position

<table>
<thead>
<tr>
<th>Name</th>
<th>Born</th>
<th>Term as Chief Justice</th>
<th>Reason for Leaving</th>
<th>Died</th>
</tr>
</thead>
<tbody>
<tr>
<td>John Jay</td>
<td>12/12/1745</td>
<td>1789 - 1795 (resigned)</td>
<td>5/17/1829</td>
<td></td>
</tr>
<tr>
<td>John Rutledge</td>
<td>9/17/1739</td>
<td>7/1795 - 12/1795 (rejected)</td>
<td>7/18/1800</td>
<td></td>
</tr>
<tr>
<td>Oliver Ellsworth</td>
<td>4/29/1745</td>
<td>1796 - 1800 (resigned)</td>
<td>11/26/1807</td>
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</tr>
<tr>
<td>John Marshall</td>
<td>9/24/1755</td>
<td>1801 - 1835 (died)</td>
<td>7/6/1835</td>
<td></td>
</tr>
<tr>
<td>Roger B. Taney</td>
<td>3/17/1777</td>
<td>1836 - 1864 (died)</td>
<td>10/12/1864</td>
<td></td>
</tr>
<tr>
<td>Salmon P. Chase</td>
<td>1/13/1808</td>
<td>1864 - 1873 (died)</td>
<td>5/7/1873</td>
<td></td>
</tr>
<tr>
<td>Melville W. Fuller</td>
<td>2/11/1833</td>
<td>1888 - 1910 (died)</td>
<td>7/4/1910</td>
<td></td>
</tr>
<tr>
<td>Edward D. White</td>
<td>11/3/1845</td>
<td>1910 - 1921 (died)</td>
<td>5/19/1921</td>
<td></td>
</tr>
<tr>
<td>Charles E. Hughes</td>
<td>4/11/1862</td>
<td>1930 - 1941 (retired)</td>
<td>8/27/1948</td>
<td></td>
</tr>
<tr>
<td>Harlan F. Stone</td>
<td>10/11/1872</td>
<td>1941 - 1946 (died)</td>
<td>4/22/1946</td>
<td></td>
</tr>
<tr>
<td>Fred M. Vinson</td>
<td>1/22/1890</td>
<td>1946 - 1953 (died)</td>
<td>9/8/1953</td>
<td></td>
</tr>
<tr>
<td>John G. Roberts Jr.</td>
<td>1/27/1955</td>
<td>2005 -</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
tion of small states and large states in the national legislature. Some drafters advocated that representation should be based on the number of persons (both free and slave) residing in each state. Others proposed that representation should be equal for all states, regardless of the sizes of their populations.

This proved to be a nettlesome problem until Ellsworth, together with fellow Connecticut delegate Roger Sherman, proposed what would come to be known as the Great Compromise. Under his plan, the national legislature was divided into two separate houses, the House of Representatives, which provides for representation weighted in favor of states with larger populations, and the Senate, which provides for equal representation of all states. Proposed legislation must be accepted by majorities in both houses before it can be passed along to the president. The Great Compromise laid the foundation for the national legislature and provided the blueprint for our national legislature to this day.

Unfortunately, the Great Compromise, by itself, did not completely solve the problem of allocating representation among the several states. The southern states, with their large slave populations, wanted their slave populations to be considered for purposes of determining representation in the House of Representatives. The northern states saw this as a disadvantage. Ellsworth favored the notorious Three-Fifths Compromise to address the disagreement. The Three-Fifths Compromise was added to the Constitution to allow southern states to include three-fifths of their slave populations for purposes of allocating representation in the House of Representatives.

Between 1789 and 1796, Ellsworth served as chief justice from 1796 until his retirement in 1800. While chief justice, Ellsworth also served as a commissioner to France. The court's activities during this period were unremarkable, especially compared with the constitutional law decisions that followed. One case of some interest was Calder v. Bull, 3 U.S. 368 (1798), which refused to extend the Constitution's prohibition against ex post facto laws beyond criminal statutes.

After his retirement from the court, Ellsworth returned to the Connecticut governor's council, where he served from 1801 to 1807. He died on Nov. 26, 1807 in Windsor, Conn.

**John Marshall, father of American constitutional law**

Thomas Jefferson's election as president in 1800 was a rejection of President John Adams and his troubled Federalist party. Shortly before Jefferson's inauguration, the defeated Adams appointed John Marshall as chief justice. This appointment riled Jefferson, not only because it denied Jefferson the opportunity to make his own selection, but also because Marshall had been a Federalist adversary of Jefferson in Virginia. Nevertheless, the lame-duck Federalist Senate confirmed Marshall's appointment, and Marshall began his tenure as chief justice in February of 1801, mere weeks before Jefferson's inauguration. Marshall actually served as secretary of state and chief justice simultaneously for about a month. His tenure as chief justice would last into 1835.

In February of 1803, Chief Justice Marshall handed down the court's decision in *Marbury v. Madison*. The facts of the case were mundane. In the waning days of his administration, Adams had appointed several of his political allies to federal judgeships, including William Marbury. Marshall, as secretary of state, had neglected to deliver Marbury's commission, and Marshall's successor, James Madison, acting on Jefferson's instructions, refused to deliver it. Madison's refusal prevented Marbury from taking his seat on the court. Marbury filed suit with the Supreme Court, seeking a mandamus requiring the delivery of the commission.

The court's decision began with a conclusion that the Jefferson administration had no right to withhold the commission, but then proceeded to hold that the Judiciary Act of 1789, to the extent that it conferred original jurisdiction over Marbury's case upon the Supreme Court, was unconstitutional. In arriving at this decision, Chief Justice Marshall expounded two principles that have become the cornerstones of American constitutional law. First, where an ordinary act of the legislature conflicts with the Constitution, the Constitution will govern; and second, it is the duty of the judiciary to recognize such conflicts and to resolve them in favor of the Constitution. The genius of the court's opinion is that it expanded the judiciary's role in the federal government, while denying the court's own jurisdiction over Marbury's suit. The court also cleverly

The southern states, with their large slave populations, wanted their slave populations to be considered for purposes of determining representation in the House of Representatives.

Continued on page 19
Job Shadow Day seeking volunteers for Feb. 2

The MBA is seeking volunteers for its annual Job Shadow Day to provide students with an up-close view of the legal system at work.

The MBA needs attorneys who are interested in having a student shadow them and will be in Boston, Springfield or Worcester on Thursday, Feb. 2, 2006.

Last year, 29 teenagers from area Boys and Girls Clubs participated in the program.

Mock Trial needs coaches and judges

In preparation for the 21st Annual Statewide Mock Trial Program, the MBA is seeking volunteers to be coaches or judges.

Open to all public and private high school students in Massachusetts, the Mock Trial Program is a rich curriculum that promotes the development of fundamental knowledge, sound judgment and critical thinking skills.

In Mock Trial, students are placed in a simulated courtroom situation where they assume the roles of lawyers and witnesses in a hypothetical case.

Members are needed to coach a team in their community or to serve as judges in the trials that take place throughout the state. To volunteer, call (617) 338-0570 or e-mail mocktrial@massbar.org.

Volunteers sought for Elder Law program

Next May, in celebration of Law Day, the MBA and the Massachusetts chapter of the National Academy of Elder Law Attorneys will once again present the Elder Law Education Program.

During the month, MBA members throughout the state will volunteer their time to speak at their local senior center or council on aging. Last year, more than 140 centers participated in the program, providing attorneys with many opportunities to connect to their communities while providing seniors with valuable information on legal issues affecting their lives.

We are currently seeking elder law attorneys to volunteer to make presentations in their communities. As a presenter, you will be matched with a center in your geographical area and provided with presentation materials on an assigned topic. If you are interested in volunteering, please call (617) 338-0695 or e-mail communityservices@massbar.org.

A Girl Scouts troop leader (left) makes a presentation with attorneys (left to right) Lucy Reyes of the National Labor Relations Board, Boston; Springfield attorney Sarah E. Ricard; Lowell attorney Elizabeth Ann Broderick; Claudia T. Centomini of Foley Hoag LLP, Boston, and Mansfield attorney Beth R. Levenson (not pictured); during the morning session the Girl Scouts, Patriots’ Trail Council’s “Innocent or Guilty? Arrested for Trespassing Gold E. Locks” program, held at the Northeastern University School of Law on Saturday, Dec. 3. Attorneys Susan Anderson of the Executive Office of Elder Affairs, Boston, and Deidre Heatwole of the University of Massachusetts, Boston, also participated in an afternoon session of the program.
In “Shaping the Future,” a look at U.S. chief justices: Part I

Continued from page 17

avoided an immediate standoff with the executive branch, which the court probably could not have won at the time. More than 50 years would pass before the court would again find a federal law to be unconstitutional.

The Marshall Court issued landmark decisions defining governmental powers under the Constitution. In Martin v. Hunter’s Lessee, 14 U.S. 304 (1816), and Cohens v. Virginia, 19 U.S. 264 (1821), the Supreme Court established that federal law is supreme over state law. The court held in Dartmouth College v. Woodward, 17 U.S. (4 Wheaton) 518 (1819) that the contract clause of the Constitution prevented a state from usurping the powers to govern a private college established by a corporate charter. McCulloch v. Maryland, 17 U.S. 327 (1819) involved an early interpretation of Congress’s powers under the Constitution. Congress had established a national bank, even though the Constitution does not specifically authorize Congress to do so. The court upheld this act of Congress, because the Constitution empowers Congress “to make all laws that shall be necessary and proper for carrying into execution” the specific powers of the federal government. Further, the court ruled that a state could not tax local branches of the national bank, noting “that the power to tax involves the power to destroy.” McCulloch set the stage for the expansion of federal power that is today taken for granted.

The Marshall Court held in Gibbons v. Ogden, 22 U.S. 1 (1824) that the Constitution’s commerce clause gave the federal government, at the expense of the states, exclusive power to regulate interstate commerce. Future court decisions would cite Ogden to further expand the powers of the national legislature under the commerce clause, until today it is assumed that Congress can regulate virtually all activity that may potentially affect interstate commerce.

The United States underwent major changes in the early 1830’s, following the election of Andrew Jackson, a Democrat, as president. Jackson disliked Chief Justice Marshall, who was beginning his fourth decade as head of the Supreme Court. This antagonism was most evident in a pair of cases involving the Cherokee tribe. The state of Georgia had sanctioned settlement in Native American lands held by the Cherokee tribe. In a pair of decisions, Cherokee Nation v. Georgia, 30 U.S. 1 (1831), and Worcester v. Georgia, 31 U.S. 515 (1832), the Supreme Court made two significant rulings: first, that the Native American tribes were not sovereign nations, but were subject to federal law; and second, that the Georgia laws involving the Cherokee tribe were unconstitutional.

In a disgraceful chapter of American history, Jackson refused to support the court’s decision. Nearly 46,000 Native Americans were eventually compelled to migrate to the western territories. This forced relocation, which would come to be known as the “Trail of Tears,” resulted in thousands of unnecessary Cherokee deaths. The famous newspaper editor Horace Greeley would later report that after Marshall’s decisions in the Cherokee Nation cases, Jackson had responded, “Well, John Marshall has made his decision, now let him enforce it!” It is debatable whether Jackson actually uttered these words. However, his response to Marshall’s decisions was consistent with that statement.

Marshall died on July 6, 1835 in Philadelphia, after 34 years on the court. No chief justice has ever served for a longer term. He was among the last of a generation that fought for American independence from British colonialism, developed a federal Constitution unifying the newly independent states while assuring individual rights, and established a vigorous federal government for the young nation.

Chief Justice Marshall was among the last of a generation that fought for American independence from British colonialism, developed a federal Constitution unifying the newly independent states while assuring individual rights, and established a vigorous federal government for the young nation.

Roger B. Taney and the descent into Civil War

After Marshall’s death in 1835, Jackson appointed one of his loyalists, Roger B. Taney, as Marshall’s replacement. Chief Justice Taney would lead the court until his death in 1864 during the Civil War.

Jackson chose Taney as an associate justice to the Supreme Court, but the Senate punished Taney for his complicity with Jackson’s efforts to dismantle the national bank while Taney was temporarily appointed to be secretary of the treasury. The Senate blocked the appointment with delays until the session of Congress was nearly over. Taney ultimately prevailed in 1836, when a new Senate with a Democrat majority confirmed him as Marshall’s replacement.

One of the Taney Court’s early decisions, Charles River Bridge v. Warren Bridge, 36 U.S. (11 Peters) 419 (1837), limited the holding of the Dartmouth College case, and is of particular interest to Bay Staters. The Massachusetts Legislature had granted the Charles River Bridge Company the right to construct and maintain a toll bridge over the Charles River in 1785. The company’s charter was extended in 1792 for an additional 70 years. In 1828, the Massachusetts Legislature granted the Warren Bridge Company the right to build a competing bridge a few hundred yards from the older bridge. The new bridge was available to the public at no charge and, predictably, it ruined the older bridge’s income stream. The Charles River Bridge Company sued the Warren Bridge Company, alleging an impairment of its contract rights in violation of the Constitution. In a thoughtful opinion, Taney ruled in favor of the Warren Bridge Company, because the grant to the Charles River Bridge Company did not specifically state that it was exclusive.

The Taney Court’s legacy arises primarily from its decisions upholding the rights of slave owners and ensuring the continued bondage of slaves in the years leading up to the Civil War. The court ruled in Prigg v. Commonwealth of Pennsylvania, 41 U.S. 539 (1842), that Pennsylvania could not prosecute someone who had entered the state from Maryland to kidnap and recover a former slave and her child without first seeking judicial process. The court went further in Moore v. Illinois, 55 U.S. 13 (1852), declaring that any state law impeding the slaveholder’s right to immediate possession of his slave was unconstitutional. Given these prior decisions, the court’s ruling in Dred Scott v. Sandford, 60 U.S. (19 Howard) 393 (1857), might not have been shocking. However, Taney’s opinion in that case would go far beyond what was sufficient to dispose of the issue before the court, and would serve as an early example of judicial activism run amok.

Dred Scott was a slave who had been removed from Missouri, and continued in servitude in Illinois and Wisconsin territory, where slavery was illegal. Scott and his master later returned to Missouri, where Scott filed suit, arguing that his transportation into a free state and territory resulted in his freedom. A majority of the court disagreed. Taney rendered an opinion against Scott, citing clauses in the Constitution affording specific protections to slavery. Taney could have stopped there, but his opinion lurched forward, ruling that slaves and their descendants could not be citizens of the United States and could not seek redress in the federal courts, and that the Missouri Compromise enacted by Congress decades earlier was unconstitutional. This was only the second court decision declaring a federal law unconstitutional, the first being Marbury v. Madison. The court’s decision was later overruled by the Thirteenth, Fourteenth and Fifteenth Amendments shortly after the Civil War.

The Dred Scott decision caused an uproar in the northern states. The recently established Republican Party, which included Abraham Lincoln, harshly criticized the ruling. After the election in 1860 and into the Civil War, Lincoln and the chief justice remained antagonists. At the Civil War’s outset, the president authorized General Winfield Scott to secretly suspend the writ of habeas corpus. By May of 1861, numerous Maryland legislators had been quietly arrested and held without charges. In Ex parte Merryman, 17 F. Cas. 144 (1861), Taney, sitting as a circuit judge in the federal court in Maryland, ruled that the Constitution granted to Congress alone the power to suspend the writ of habeas corpus, and that the General Scott’s actions were unconstitutional. Lincoln ignored the chief justice’s decision, and continued the practice. The issue became moot when Congress ratified suspension of the writ in 1863.

Taney died on Oct. 12, 1864. His many years on the court have been remembered primarily for his opinion in the Dred Scott case and its part in the chain of events leading to the Civil War.

Look for Parts II and III of this special series in the February and March issues of Lawyers Journal.

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The New OUI Law

Tuesday, Jan. 10, 4-7 p.m.  
MBA, 20 West St., Boston  
Course #: CJCO6

The Legislature has just passed the so-called “Melanie’s Law” that makes dramatic changes in the sentencing of OUI cases. There are numerous new penalties and conditions. Additionally, new crimes have been created, such as manslaughter by motor vehicle, child endangerment while operating a motor vehicle and operation of a motor vehicle in violation of the interlock device restriction. There are so many nuances and technicalities that this course is a must for anyone involved in criminal law who wishes to avoid a whole new group of pitfalls. This is a nuts-and-bolts course where attorneys will learn every aspect of the new drunk driving law. They will be introduced to a slew of new penalties and conditions and some new trial procedures.

Faculty: Peter Elikann, Randy S. Chapman, Stephen L. Jones, Andrew M. Padellaro, Edward P. Ryan Jr.

Big Brother, Hidden Cameras & Other Surveillance in the Workplace

Wednesday, Jan. 11, 12-2 p.m.  
MBA, 20 West St., Boston  
Course #: LEE06 Luncheon roundtable (lunch provided)

This program will discuss legal and practical issues related to the employer as “big brother”—when, how and at what risk can you probe into seemingly personal, private aspects of employees’ lives, both inside and outside the workplace. Specific topics will include where you should defend clients in wrongful death and numerous other premises liability matters. He writes and lectures frequently concerning construction law matters as well as developments in state law affecting property damage claims and how to investigate and present such claims.

Sams has tried matters before the Massachusetts Superior and District Courts, the U.S. Department of Labor and argued before the Massachusetts Appeals Court. Sams received his B.A., cum laude, from the University of Rhode Island in 1990 and his J.D. from Northeastern University School of Law in 1994. He has served on the Massachusetts Continuing Legal Education deposition workshop faculty since 1999, co-chairs the annual MBA program on effective writing practices and co-chairs the Boston Bar Association Law Day in the Schools program. He also serves on the Mansfield Finance Committee. Sams is admitted to practice in Massachusetts and before the U.S. District Court here.

Faculty Profile

Michael P. Sams is a partner in the Litigation Department of Sherin and Lodgen LLP. His practice is concentrated in the areas of construction law, commercial disputes and property damage claims. Sams has also defended clients in wrongful death and numerous other premises liability matters. He writes and lectures frequently concerning construction law matters as well as developments in state law affecting property damage claims and how to investigate and present such claims.

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Evidence for the Civil Litigator

Thursday, Jan. 12, 4-7 p.m.  
Sheraton Springfield Monarch Place Hotel, Springfield  
Course #: CLF06

This seminar is designed to provide practitioners with a survey of how to deal effectively with the myriad of commonly recurring evidentiary problems. The course will focus on how to introduce and block the admission of proffered evidentiary material. Consideration will be given to business record exception to the hearsay rule, medical record/bills pursuant to M.G.L. c.231, §79G, common law and statutory privileges, including husband/wife disqualification, chalks, diagrams, photographs and related issues with real and demonstrative evidence, offers of proof and opinion and expert evidence. Adequate time will be allowed for interaction between faculty and attendees.

Faculty: Thomas A. Kenefick III. Additional faculty to be announced.

How to Probate an Estate, Part I

Tuesday, Jan. 17, 4-7 p.m.  
MBA, 20 West St., Boston  
Course #: PLE06

Probating an estate is an essential element of a trusts and estates practice. These two courses (see Jan. 26) will help you build your practice on a solid foundation. Our panelists will focus on the nuts and bolts of estate administration and estate taxation, including collecting the information you need to administer the estate, guiding your clients through the process, preparing an accounting, complying with time limits, procuring licenses to sell and finalizing the estate administration.

*Attendance at both sessions (Jan. 17 and 26) is encouraged, but not required. Join us and start building your career as a trusts and estates practitioner!

Faculty: Peter E. Bernardin, Carol D. Kimball.

Bulletproofing Your Non-Competition Agreements

Wednesday, Jan. 18, 4-6 p.m.  
Dedham Hilton, 25 Allied Drive, Dedham  
Course #: BLG06

This program will identify ways in which an employer can strengthen its non-competition policies to make it more likely that it will effectively (1) prevent former employees from competing against the employer; (2) protect its proprietary business information and trade secrets; and (3) insulate its goodwill and customer, employee or vendor relationships from former employees. Attendees will learn what weaknesses to look for in the non-competition policies they employ and how to strengthen those policies, specifically, in the drafting of agreements, the enforcement of
Ethical Tips for the Busy Practitioner

Thursday, Jan. 19, 12:30-2 p.m.
MBA, 20 West St., Boston
Course #: YLA06 Luncheon roundtable

Join us for this important and informative luncheon roundtable on the top 10 ethics rules every busy practitioner should be aware of. This program, featuring a speaker from the Board of Bar Overseers, will give you tips on the following legal fees, supervising non-attorneys, prohibition on signing affidavits and sworn statements for clients, IOLTA accounts, neglect/failure to communicate, confidences, communications with adversaries, misconduct in your personal life, taking direction from supervising attorneys and communications with the judiciary. A question-and-answer session will follow and lunch will be provided. Don’t miss out!

Faculty: Kevin S. Murphy. Additional faculty to be announced.
Co-sponsor: Norfolk County Bar Association

Family by Contract: Update on Family Law Issues

Thursday, Jan. 19, 4-7 p.m.
MBA, 20 West St., Boston
Course #: FLA06

It may shock you to consider the extent to which we create our families out of contracts. This panel will provide drafting, planning and litigation tips and strategies to accomplish family planning for relationships and property, family planning for children, parenting agreements, sperm donor agreements and adoption, estate planning and advanced directive planning for personal, medical and financial decision-making. The seminar will discuss litigation for enforcement of contracts and agreements, litigation in the absence of agreements and instruments and legal trends and developments, as well as a practical view from the bench.


Personal Injury Basics

Tuesday, Jan. 24, 4-7 p.m.
Western New England College School of Law, Springfield
Course #: CLE06

Gain valuable experience and knowledge at this timely seminar addressing both simple and complex personal injury claims. This program examines the basic concepts of personal injury law and offers an intriguing look at the necessary and sometimes tricky tasks of preparing a personal injury claim.

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Caveat

★ Advance registration is strongly recommended in order for attendees to be guaranteed a materials book on the day of the seminar. Walk-ins will receive materials books on a first-come, first-serve basis. Otherwise, they will be mailed out the day after the seminar.

★ Payment must accompany all registrations.

Nonmembers

Get more than 25 percent off MBA seminar fees, membership in one sponsoring section and discounts on seminars offered by Massachusetts Continuing Legal Education by becoming an MBA member. Join the section that sponsors a seminar and your discount is 50 percent. To join now and qualify for member discounts right away, call (617) 338-0530.

Discounts

★ Section members receive automatic discounts on seminars sponsored by any section of which they are a member (e.g., Business Law Section members receive discounts on Business Law Section seminars).

★ Law students and newly admitted attorneys: MBA member law students and MBA member attorneys admitted to practice in 2004 or 2005 may attend all two-hour, three-hour and four-hour MBA programs for $40.

★ Multiple registrations: Individuals who register in advance using the attached registration form and a single payment for multiple seminars are eligible for bulk discounts as follows:

- Registering for three seminars, take $5 off each seminar registration or $15 off the sum total of the registration fees.
- Registering for four seminars, take $6 off each seminar registration or $24 off the sum total of the registration fees.
- Registering for five or more seminars, take $7 off each seminar registration.

CLE Accreditation

Most MBA seminars are approved for CLE credit in New Hampshire, Rhode Island and Vermont. Forms certifying attendance are available at each seminar.

Program Registration Order Form

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Payment Method

□ Check enclosed (please make payable to Massachusetts Bar Institute)
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Acct. #: ____________________________ Exp. ____________________________
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ing, insightful analysis of personal injury claims from a variety of viewpoints.

Our expert panel will address initial screening (what makes a good case?), strategies for defending cases, how to handle discovery disputes, how insurance companies evaluate cases, what jurors find persuasive, how to maximize damages without overselling and getting the insurance claims perspective. Whether you are a plaintiff or defense lawyer, claims representative or in-house counsel attorney, this seminar will give you the necessary knowledge to handle a personal injury case.

Faculty: John J. McCarthy, Nancy F. Pelletier, Michele A. Roake.
Co-sponsor: Western New England College School of Law.

**MBA Insurance Benefits for Solo and Small Firm Practitioners**

**Wednesday, Jan. 25, 1-2 p.m.**
MBA, Western Mass. office, 73 State St., Springfield
Course #: LPB06 Luncheon roundtable (lunch provided)

This luncheon will provide information about MBA Insurance benefits. The president of the MBA Insurance Agency will discuss details about professional liability insurance and give an overview of other products, such as health, life, long-term care, disability, auto insurance and retirement plans. Have your insurance questions answered and find out what MBA Insurance can offer you.

Faculty: Terence J. Welsh.

**Bulletproofing Your Non-Competition Agreements**

**Wednesday, Jan. 25, 4-6 p.m.**
Sheraton Colonial Wakefield, One Audubon Road, Wakefield
Course #: BLH06

This program will identify ways in which an employer can strengthen its non-competition policies to make it more likely that it will effectively (1) prevent former employees from competing against the employer; (2) protect its proprietary business information and trade secrets; and (3) insulate its goodwill and customer, employee or vendor relationships from former employees. Attendees will learn what weaknesses to look for in the non-competition policies they employ and how to strengthen these policies, specifically, in the drafting of agreements, the enforcement of such agreements and the application of such agreements across the employee population.

Faculty: Kevin S. Murphy. Additional faculty to be announced.
Co-sponsor: Middlesex County Bar Association.

**How to Probate an Estate, Part II**

**Thursday, Jan. 26, 4-7 p.m.**
MBA, 20 West St., Boston
Course #: PLF06

Probating an estate is an essential element of a trusts and estates practice. These two courses (see Jan. 17) will help you build your practice on a solid foundation. Our panelists will focus on the nuts and bolts of estate administration and estate taxation, including collecting the information you need to decide whether the estate is taxable, valuing the estate, procuring release of the estate tax lien, preparing estate tax returns, meeting time limits for processing tax forms and fiduciary income tax issues.

*Attendance at both sessions (Jan. 17 and 26) is encouraged, but not required. Join us and start building your career as a trusts and estates practitioner!*

Faculty: Peter E. Bernardin, Carol D. Kimball.

**Effective Legal Writing Strategies**

**Thursday, Feb. 16, 4-7 p.m.**
MBA, 20 West St., Boston
Course #: YLB06

This seminar will provide practical tips that you can apply to your daily work. Whether you are handling cases on your own or drafting documents for a partner in a law firm, a large portion of your day will be spent researching and drafting documents. Do not miss this opportunity to learn techniques and skills from our expert panel.

Faculty: Michael P. Sams, Hon. Elizabeth M. Fahey, Francis C. Morrissey.

**The Basics of Divorce Practice**

**Tuesday, Feb. 21, 4-7 p.m.**
Western New England College School of Law, Springfield
Course #: FLDO6

Divorce practice ranks among the most demanding, most complex and most challenging area of legal work. In order to be effective and to avoid costly mistakes, counsel must be prepared to address a wide array of issues — from asset valuation and division to child custody matters to taxation — often in a high-pressure, deadline-driven arena.

This course will assist you in learning how to determine the facts of your client’s case, select appropriate avenues of relief, and parry your opponent’s strategies while you become familiar with relevant statutes, rules and leading cases that will combine to help you achieve positive results for your client.

Faculty: Mary A. Socha. Additional faculty to be announced.
Co-sponsors: Western New England College School of Law and the Berkshire, Franklin, Hampshire and Hampden county bar associations.

**Handling Depositions with Confidence**

**Tuesday, Feb. 28, 4-7 p.m.**
MBA, 20 West St., Boston
Course #: YLC06

This seminar provides a unique opportunity for attorneys with little or no experience in taking depositions to learn how to handle specific issues that may arise when preparing for, taking or defending a deposition. Our expert panel will provide guidelines and practical pointers that participants can bring to their practice.

Faculty: Grace Bacon Garcia, Eric McNamara Boucher, Philip M. Hirshberg.

**The Padilla Indictment and Judicial Review in the “War on Terror”**

**Tuesday, Feb. 14, 12-2 p.m.**
MBA, Western New England College, School of Law, Springfield
Course #: CJDO6 Luncheon roundtable (lunch provided)

After holding American citizen Jose Padilla as an enemy combatant for nearly three years, the Bush administration has now dropped that designation and indicted Padilla for conspiracy to provide material support for terrorism. What does this decision reveal about the scope of presidential power and the role of the judicial branch in the “War on Terrorism”? What is the current state of the law regarding the president’s power to detain and interrogate American citizens, without charging them, on the grounds that they are enemy combatants? Is the executive branch’s power to prosecute an American citizen limited by the pre-prosecution detention of that citizen without charge?

Faculty: Bruce Miller.
Co-sponsors: ACLU of Western Massachusetts, Western New England College School of Law.

**How to Read Financial Statements**

**Tuesday, Feb. 7, 9:30 a.m. - 12:30 p.m.**
MBA, 20 West St., Boston
Course #: BLI06

This program is aimed at helping attorneys understand the fundamentals of financial statements. It’s a basic program for attorneys working with business clients and those litigating business issues involving financial statements.

Faculty: Matt C. Weilniki, Robin D. Kelley.

**Immigration Consequences of Criminal Law**

**Tuesday, Feb. 7, 4-7 p.m.**
Western New England College School of Law, Springfield
Course #: CJAO6

This seminar will focus on what practitioners need to know when representing defendants who are not U.S. citizens. Additionally, this experienced panel will address the immigration consequences of convictions of different types of crimes and particular dispositions, negotiating plea agreements to minimize adverse immigration consequences and give an understanding of the difference between deportation and exclusion.

Faculty: Frances M. South, Marie Angelides, Alan S. Musgrave.
Co-sponsors: Western New England College School of Law and the Berkshire, Franklin, Hampshire and Hampden county bar associations.

**How to Forfeit Assets**

**Tuesday, Feb. 28, 4-7 p.m.**
MBA, 20 West St., Boston
Course #: YFO06

This seminar will address the federal laws and regulations that authorize the forfeiture of assets obtained from criminal activity. Following an overview of the laws and government agencies that are involved in federal forfeiture, we will engage in a hands-on interactive problem-solving exercise.

Co-sponsors: Western New England College School of Law and the Berkshire, Franklin, Hampshire and Hampden county bar associations.

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