Improving the public trust

In February, I wrote proudly about the comprehensive efforts undertaken by the MBA Task Force on Lawyer Discipline in reviewing and proposing revisions for the rules for the Board of Bar Overseers and the Office of Bar Counsel. The report of the task force, “Protecting the Public: Reforming the Disciplinary Process,” was approved by the House of Delegates in May 2005. The ABA, pursuant to a request of the justices of the SJC, issued a report which was released to the public in January 2006 with a request from the justices for comment by the bar. The task force reconvened and formulated a response to the SJC’s request. The MBA report and our comments on the ABA report are currently under consideration by the justices.

The MBA report was the result of intense and thorough investigation and deliberation by a group of the most knowledgeable and respected members of the bar. The task force reviewed the entire bar discipline process and conducted extensive research. Its report was 55 pages in length and supported by hundreds of pages of appendices. The House of Delegates’ endorsement of the report was accordingly based upon a reasoned and judicious review of the issues and proposals which it contained.

We now have before us another opportunity to improve the self-regulation of our profession, so vital to maintaining the trust of the public. In March, the Client Security Board presented a proposal to our House of Delegates designed to reduce the misappropriation of settlement proceeds by attorneys, the resulting damage to public trust in the profession is a serious concern. The payee notification, the “payee notification rule,” which would require insurance companies to notify claimants when checks in certain settlements are issued to their lawyers. Although the problem of stolen settlement proceeds involves only a handful of the commonwealth’s 48,000 attorneys, the resulting damage to public trust in the profession is a serious concern. The payee notification, the CSB argued, would deter attorney theft. But some delegates worried that the change only addressed a small segment of the profession, would be costly to the public and result in other problems. The issue was raised at the HOD meeting held on the first day of the Annual Conference, but questions about the proposal ended up postponing a vote. In response to the debate, MBA President Warren Fitzgerald is appointing a task force to examine ways in which ethical and other rules governing legal practice may be improved to deter misappropriation of client funds.

A spirited debate at the March 23 meeting centered around a proposal by the Massachusetts Clients’ Security Board to create a “payee notification rule,” which would require insurance companies to notify claimants when checks in certain settlements are issued to their lawyers. Although the problem of stolen settlement proceeds involves only a handful of the commonwealth’s 48,000 attorneys, the resulting damage to public trust in the profession is a serious concern. The payee notification, the CSB argued, would deter attorney theft. But some delegates worried that the change only addressed a small segment of the profession, would be costly to the public and result in other problems. The issue was raised at the HOD meeting held on the first day of the Annual Conference, but questions about the proposal ended up postponing a vote. In response to the debate, MBA President Warren Fitzgerald is appointing a task force to examine ways in which ethical and other rules governing legal practice may be improved to deter misappropriation of client funds.

Hundreds of lawyers and judges took part in the annual conference, with three days of noteworthy speeches, awards, CLE seminars and topical debates at the Marriott Copley Place Hotel in Boston March 23-25.

The conference kicked off Thursday as the House of Delegates debated several issues, including whether a proposal submitted by the Clients’ Security Board would protect clients from renegade attorneys or further damage the profession’s image.

Friday included an amusing and moving speech by NECN’s Jim Braude, who gave the keynote address at the Access to Justice Awards Luncheon, which was attended by nearly 400 people. And 700 people attended the Annual Dinner, which recognized Massachusetts Senate President Robert E. Travaglini as the MBA’s Legislator of the Year and featured U.S. Senator Joseph R. Biden Jr.’s impassioned keynote address on national security.

SJC Chief Justice Margaret H. Marshall closed out the conference on Saturday by delivering her annual address, repeating her call for a “fair” increase in judicial salaries and announcing plans to explain how the state’s courts work to assist the growing number of litigants who represent themselves.

For complete coverage of AC06, see pages 14-17.

Fitzgerald announces task force after HOD debate

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At the March 23 meeting, Peter G. DeGelleke, vice-chairman of the Clients’ Security Board, introduced the proposal, saying, “It’s a very positive thing for the profession to do. I really believe this is a positive thing.”

Steven L. Wollman, the Region Six delegate, agreed that the initiative could only help the profession safeguard clients.

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Continued on page 21
Member Spotlight

Attorney Robert W. Lavoie, a shareholder and chairman of the Real Estate Practice Group at the law firm of Devine, Millimet & Branch PA in Andover, has been elected chairman of the Merrimack Valley Planning Commission (MVPC).

As chairman, Lavoie will head the MVPC’s efforts to provide professional planning services to promote the sound and coordinated growth and development of the Merrimack Valley region. He has served as the Amesbury Commissioner to the Merrimack Valley Planning Commission since 2000 and previously served as co-chair of the Amesbury Master Plan Steering Committee.

Active for years in the community, Lavoie was recently elected as a municipal councilor for the Town of Amesbury. In 2005, he was appointed by the Supreme Judicial Court to serve as the Merrimack Valley Economic Development Council, which provides continuity to the many organizations involved in assuring access to civil justice for low-income families and individuals within the state.

In addition, he serves on the board of directors of the Merrimack Valley Chamber of Commerce and of the Merrimack Valley Economic Development Council. He is a past president of the Yankee Clipper Council Inc. Boy Scouts of America and currently serves on the boards of directors of Boy Scouts of America-Area 1, the Andover Chamber of Commerce and Merrimack Valley Legal Services. He is also a corporator of Danvers Savings Bank.

Lavoie represents commercial real estate developers, owners and buyers in land development and land use permitting matters. He also represents a variety of businesses, including national and regional telecommunications companies, before local zoning and planning boards.

Lavoie is a member of the Massachusetts and New Hampshire Bar Associations, the Massachusetts Real Estate Bar Association and the Massachusetts Conservation Commissions Association. He holds a B.A. from Harvard and a J.D. from Boston University School of Law.

Bulkley, Richardson and Gelinas LLP, the largest law firm in western Massachusetts, has named two new partners. J. Patrick Kennedy and Elizabeth H. Sillin.

Kennedy, formerly counsel, is a member of the firm’s Litigation/ADR Department and practices primarily in the Boston office. His commercial litigation practice focuses on representing banks, mortgage lenders and other financial institutions in lender liability, U.C.C., check fraud, bankruptcy, real estate and bank operations disputes. He also has experience representing in commercial matters a wide range of high tech clients. He also represents companies and individuals in employment disputes.

Kennedy earned his undergraduate degree from Cornell University, then worked as a commercial banker in the Boston area before attending law school. After receiving his juris doctor degree, summa cum laude, from Vermont Law School, where he was an editor of the Vermont Law Review, he served as a law clerk to the Hon. Robert E. Cowen at the U.S. Court of Appeals for the Third Circuit for the 1993-94 term.

Elizabeth Sillin, formerly an associate, is a member of the firm’s Estate Planning and Administration Department and the Health Law Practice Group. She

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MBA welcomes new members

Stephen A. Barry of Quincy District Court
Jeong H. An
Jacqueline R. Arwater
Donna J. Bentley
Robert K. Blaisdell of Donohue, Barrett & Singal PC
Alison L. Booth Maio of Bingham McCutchen LLP
Alan E. Brown
Amy B. Cain of Amy B. Cain, Attorney at Law
Matthew E. Callis
Diane J. Capozzoli of the Law Office of Diane J. Capozzoli
William M. Casey of the Boston Police Department
Brian L. Champion of Verrill & Dana LLP
Sara E. Clothier
Elizabeth L. Comproni of Elizabeth L. Comproni, Attorney at Law
Elizabeth M. Connelly
Carmel A. Craig of Carmel A. Craig, Attorney at Law
Victoria A. Crawshaw of Morrison & Mahoney LLP
Sarah Elizabeth Curit of the Massachusetts Medical Society
Christopher D. Deorocki of the Law Office of Christopher D. Deorocki
Paul M. DePalo of Campbell, Campbell, Edwards & Conroy PC
Christine Ann DiSia
Matthew L. Fabisch
Ann-Margaret Ferrante
Ellyn I. Fleshkin
Paul A. Fleck
John A. Froio of Community Legal Services & Counseling Center
Michael W. Gallagher of Gallagher & Cavanaugh LLP
Eitan Y. Goldberg of the Essex County District Attorney’s Office
Kenneth I. Gordon of Gordon Law Office
Jonathan Goulding of Schmitt, Dillon & Smilie
Lisa M. Green
Michelle L. Grossfield
David R. Hagemer of David R. Hagemer, Attorney at Law
Edmund Minsoo Han of Kirkpatrick & Lockhart, Nicholson, Graham LLP
Joseph P. Harrington of the Law Office of Joseph P. Harrington PC
Stephen P. Harten of Ratcliffe, Burke, Harten & Elias LLP
Lane E. Hermann of the Law Office of Michael Sacco
Jennifer Lee Holden of Bingham McCutchen LLP
Donald H. Jackson Jr. of the Law Office of Donald H. Jackson Jr., PC
Phillip George Jordan of Bingham McCutchen LLP
Gary S. Katzmann of Appeals Court
Hannah K. Kiernan of Todd & Weld LLP
Renee E. LeBlanc of Esser & Kingston
Lila Mei Lee of Nixon & Peabody LLP
Kurt W. Lockwood of Boston Scientific Corporation
Melanie L. Lorenzo of Bingham McCutchen LLP
Stephen C. Maloney
Julie M. Markal of Rubin & Rudman LLP
Ruth A. Margetts
Peter S. Marinelli of Peter S. Marinelli, Attorney at Law
A free evening of Shakespeare, law and politics at Shubert Theatre on May 31

The Federalist Society, Commonwealth Shakespeare Company and Massachusetts Bar Association invite you to a thought-provoking and fun evening of Shakespeare, law and politics at Boston’s premiere theater, the Shubert Theatre at 265 Tremont St. in Boston.

On Wednesday, May 31, the Federalist Society and Commonwealth Shakespeare Company will host their seventh annual Shakespeare and the Law program, featuring a one-hour staged reading of “Julius Caesar,” followed by a discussion of Caesar, Bush and the limits of executive power.

The event, hosted by former U.S. Attorney Dick Thornburgh and moderated by FOX News’ Megyn Kendall, features Boston’s best and brightest in the legal world performing key scenes from Shakespeare’s classic depiction of the abuse of executive power, political assassination and intrigue.

Participants include federal judge Douglas Woodlock as Brutus, former U.S. Attorney Wayne Budd as Caesar, Supreme Judicial Court Justice Judy Cowin as Calpurnia, federal judge Rya Zobel as Marc Antony, the Federalist Society’s Boston Chair Dan Kelly as Cassius, and Lawyers Weekly 2005 Lawyers of the Year Barry Pollack and Gloria Larson as Octavius and Portia. The staged reading will be directed by Steven Maler, founding artistic director of Commonwealth Shakespeare Company and resident director at the Wang Center.

Other participants include federal judges Dennis Saylor, George O’Toole, Nathaniel Gorton and Patti Saris, Wilmer Hale managing partner Bill Lee, Ropes & Gray managing partner John Montgomery, Massachusetts Lawyers Weekly Publisher David Yas, First Amendment lawyer Harvey Silverglade and U.S. Civil Rights Commissioner Jennifer Braceras.

The discussion following the play will be led by Harvard University’s Dr. Harvey Mansfield, the noted professor of government and recent author of “Manliness,” and Juliette Kayyem of Harvard’s John F. Kennedy School of Government and national security analyst for NBC News.

The event begins at 5 p.m., is free and open to the public. It is co-sponsored by the Massachusetts Bar Association.
I do much of my legal work in a home office, giving me plenty of opportunity to see and interact with my 22-year-old daughter, who has been back at home since finishing college. I know that she’s discontented, not having lined up, as yet, the kind of job she hopes for. But lately I’ve also noticed a kind of secretive behavior that reminds me of my own, pre-recovery, alcoholic behavior of many years ago. I’m pretty sure she’s not drinking, but given her nightly bathroom routine and sudden trips to the convenience store, I am actually wondering (despite her normal weight) whether she may have developed an eating disorder. If it is an eating disorder, what kinds of treatment can I direct her to?

You’re right that this may or may not be an eating disorder. If it is, it might be bulimia, which might well appear alongside a depressed mood. Bulimics typically “discover” various ways to “undo” their binge eating (often of sweet, caloric foods) by means such as self-induced vomiting, abuse of laxatives or fasting. They typically don’t become emaciated like anorexics (though many have had both disorders), but it is also true that these “undoing” behaviors are rarely effective in the long run, and can cause medical complications, including dehydration and heart abnormalities.

The typical bulimic is a female who first showed symptoms as an adolescent or young adult. The vomiting and the way it is induced may result in erosion of tooth enamel and/or scarring on the hands, and some bulimics develop “chipmunk”-like swollen salivary glands. We have heard bulimic individuals describe their behavior as addictive, like alcoholism, including that familiar pattern of swearing, “That was the last time,” and then finding themselves repeating the pattern. Also, like addictions, the causation seems to be a complex combination of biological and environmental factors, along with a process of conditioned learning.

It is far from easy to put a halt to a bulimic pattern of behavior, but treatment is available. Since bulimia is much less immediately life threatening than anorexia, hospitalization is rarely needed, though for some, it is useful to get away for a while to the supervised setting of a residential program (where support is close by and one is not exposed to the triggering stimuli of home). The intensity of treatment depends on the individual’s needs, and, as for chemical addictions, varies greatly in amount of time per week. Scientific studies show that bulimic symptoms often decrease with the use of antidepressant medication, especially the newer ones that target serotonin levels.

Among psychotherapeutic approaches, most studies point to the effectiveness of a cognitive-behavioral approach that focuses on monitoring of bingeing/purging behaviors, as well as related thought patterns, such as perfectionism and preoccupation with one’s body. Group therapies are useful for validation, support and strategies, whether professionally led groups (some available, for example, through MEDA Inc., also known as the Massachusetts Eating Disorders Association), or peer support groups like Overeaters Anonymous (OA) or Food Addicts in Recovery Anonymous (FA). A particularly useful adjunct to any of these treatments is consultation with an appropriately experienced nutritional counselor.

As a family member of a lawyer, your daughter is welcome to meet with us, to assess whatever the problem may be and get help in selecting and locating suitable resources. We have noticed that it’s hard to find an eating disorder specialist who deals with managed care. You are also welcome to come in yourself, with or without her, to discuss your own reactions to her behavior and your wish to help.

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’s licensed clinicians will respond in confidence. Visit LCL online at www.lclma.org.
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The Massachusetts Bar Association is seeking submissions for its quarterly publication, the Massachusetts Law Review, the longest continually run law review in the country.

A scholarly journal of the MBA, the Massachusetts Law Review is circulated around the world and contains comprehensive analyses of Massachusetts law and commentary on groundbreaking cases and legislation.

To submit articles or proposals for articles, mail to The Massachusetts Law Review, 20 West Street, Boston, MA 02111, attention Geoff Pahl; call (617) 338-0679; or e-mail pahl@massbar.org.
Casemaker — Major library improvements for 2006

Enhanced for 2006, the Casemaker Online Law library has planned several major library improvements in direct response to feedback from members using the product. They include:

SuperCODE — The SuperCODE feature has been activated in the U.S. and Massachusetts Code. This handy tool automatically displays a listing of all session laws that have been enacted since the Legislature’s last unification of the code.

Because amendments, repeals and new statutory laws are not codified by the government for some time, the SuperCODE system allows users to see statutes as they were last codified on the large screen on the left. Enacted session laws that affect the last codified versions are listed in the smaller screen on the right.

Casemaker Version 2.0. — Casemaker is working on a complete site redesign that will go live this fall. When members enter Casemaker through www.MassBar.org, the Massachusetts library will automatically load, allowing quick access directly to state materials. Members will be able to access other state libraries and resources through addition pull-down menus located along the navigation bar. A new multiple book search option will also be available.

Additional functionality that will go live before the launch of the new site includes:

- Pull-down menu allowing members to search by circuit in the Federal Library;
- Ability to search by federal citation;
- Decision summaries on the results screen;
- Updated currency pages; and
- Links to a variety of state specific and federal forms.

Additional state statues — Casemaker is adding statutes from states that currently do not participate in the Casemaker Consortium of Bar Associations. Delaware, Florida and Virginia codes are now online.

Access to ABA printed materials — Bryan Kay, director of ABA Publishing, appeared at the NABE mid-winter meeting to announce its newly formed partnership with Casemaker Print Publishing. All ABA print (non-CLE) books will soon be available on the Casemaker Web site. The books may be purchased in their entirety or on a chapter-by-chapter basis.

Hein Online Library — The Hein Online Ohio library is up and running on Casemaker. Access is available to all Casemaker members on a free trial basis until May 1, 2006. In addition to the Ohio-specific law reviews, the library contains some of the most-cited law reviews in the country and the top 30 law journals from schools such as Harvard, Columbia, Yale and Duke. The Federal Library includes the Federal Register from its inception in 1936 as well as a weekly compilation of presidential documents and more. Access to Hein Online is available through the Ohio library.

The Casemaker Consortium now includes 24 states serving more than 438,000 American lawyers.

Member feedback — In response to member requests, these new library features and functionality have been added to Casemaker. Active users are encouraged to contact membership@massbar.org with any comments, suggestions and additions useful to you in your daily research.

“As a new attorney without access to a commercial legal research account, Casemaker is an indispensable resource. With its wealth of federal and state databases and simple search methods, it is easy to perform comprehensive research from the convenience of my home office. I can spend as much time as needed, any time of day or night, and it costs nothing. It is a high-value membership benefit that alone is well worth the MBA’s yearly membership fee.”

— MBA member Penelope L. Fehr
New lawyer, new law: Rookie Rougeau takes on Melanie’s Law

by Andrea R. Barter, Esq.

By now, most practitioners are aware that Melanie’s Law, the tough new Massachusetts OUI law, faces several legal battles. But what most don’t know is that Julie Rougeau, the Franklin attorney who filed the first challenge to the drunk-driving law, is a solo practitioner only a year and a half out of law school.

Rougeau’s client, Joseph Gordon, is a two-time OUI offender, once in 1989 and again in 2003. After the second offense, his license was suspended for two years. He petitioned for, and was granted, a hardship license. Although he was eligible for his full license on Dec. 17, 2005, Gordon did not go to the Registry of Motor Vehicles until Jan. 3, 2006, to request his full license be reinstated. Melanie’s Law became effective Jan. 1, 2006.

It requires, in part, that all individuals with two or more OUI convictions must install an ignition interlock device on all vehicles they own, lease and operate. Gordon was informed that he would not be able to receive a full reinstatement until he demonstrated he had installed an ignition interlock device. He was also informed that his hardship license status would be revoked unless he installed the device by March 4. His license was revoked March 5.

“I took the case because Mr. Gordon explained what the Registry was trying to do,” Rougeau said. “My gut said something is wrong with this. I had heard about the legislation but didn’t know what it meant. I dug into it more after speaking with Mr. Gordon.”

Rougeau and her colleague, William Hickey, believed the new law, as applied to Gordon, subjected him to ex post facto laws, double jeopardy and a violation of his due process rights.

“The more we looked into it, the more we thought the law was something that should be challenged,” said Hickey. “We thought it would be a great case to file a civil action in to get the law struck down or tailored a little better than it is.”

“This is kind of what you dream of doing when you leave law school,” said Rougeau.

“We are using our law degrees to do something good. It’s not just exciting, but it will also have some real meaning and effect on people,” added Hickey. “It’s what most people go to law school for. You’re lucky if it materializes once in a career; it just so happens it happened to us at the beginning.”

“It doesn’t matter if she looks like the Don Quixote of the practice at the moment,” said Rougeau’s father, attorney Richard Rougeau of Hyannis. “If she believes in it, she’ll go forward with it. If you’re going to be good at this business, you can’t be afraid.”

Apprehensive is hardly the word to describe Rougeau. After working at Fidelity Investments for five years, she decided to go to law school. She said she didn’t think twice about opening her own office immediately after graduation. “The
only downside would be that if I didn’t like it, I would have to get a job elsewhere. The biggest risk for me was not to look into it. So I put the office furniture on a credit card, signed up with the MBA and BBA referral services, and also volunteered to be lawyer of the day at different courthouses,” said Rougeau.

“She’s always had major leadership qualities,” said her father. “You can’t push her away from something she wants to do. She knows the obstacles, but they’re not going to matter to her. She is tenacious.”

The fact that Rougeau is new to the practice doesn’t seem to harm her, and in fact, it may be a positive factor in the long run. “I think it’s akin to law school for me in many ways. In most of my classes, a new legal issue came up, you researched it and came back to class to talk about it. As a new attorney, every issue is new. You listen to the issue, what people are asking, research it and get back to them. It’s almost an extension of law school in many ways.”

“I’ve been pleasantly surprised at the amount of attorneys who have called me to chat about the case and talk about different ideas. I have had nothing but good feedback and support from fellow attorneys, some I don’t know and some I do,” said Rougeau.

One of those attorneys is former MBA President Ed Ryan, O’Connor and Ryan, Fitchburg, who represents individuals in a wide range of cases, including drunk driving and other criminal defense matters. In Ryan’s opinion, “For a brand new lawyer, she’s handled the case so far with a great deal of skill. The issue had to be raised, and there are a number of other questions that will be raised regarding Melanie’s Law. I take my hat off to her for spotting the issue, going in and making the arguments.”

William Hickey

Member Spotlight

Continued from page 2

practices primarily in the Springfield office, and focuses on estate planning, estate administration and regulatory compliance by not-for-profit clients, including health care providers and educational institutions.

Sillin received an undergraduate degree, cum laude, from Wesleyan University and a master’s degree from Cornell University, and graduated, summa cum laude, from Western New England College School of Law, where she was senior note editor of the law review. She then clerked for the Hon. John M. Greaney, associate justice of the Massachusetts Supreme Judicial Court.
MBA’s 27th Annual Labor and Employment Law Conference is set for June 15 in Boston

Save the date for the Massachusetts Bar Association’s 27th Annual Labor & Employment Law Spring Conference. This sell-out conference, which attracts more than 200 practitioners yearly, will take place on Thursday, June 15, 9 a.m.-5 p.m. at the Colonnade Hotel, Boston.

This year’s featured keynote speaker is Hon. Sandra Lynch, the first woman appointed to the U.S. Court of Appeals for the First Circuit. Lynch earned her J.D., cum laude, from Boston University School of Law in 1971. Following a clerkship with the United States District Court for the District of Rhode Island, she was an assistant attorney general for Massachusetts and in 1974 was named general counsel to the Massachusetts Department of Education. Lynch entered private practice with the Boston law firm of Foley, Hoag & Eliot in 1978, where she headed the firm’s litigation department for several years. A specialist in complex civil litigation, among her most notable cases are the Boston school desegregation case (the subject of the book Common Ground) and the Woburn toxic tort case (the subject of the book and feature film “A Civil Action”).

During the conference, distinguished judges and experienced labor and employment practitioners will review the year’s most significant court and legislative developments on both the state and federal level, including employee pension benefit issues, hot topics in wage and hour law, and a mock argument on the use and abuse of medical records in employment cases.

See page 27 for more information.

“Workers’ Compensation” faculty

The faculty for the March 21 MBA seminar, “Current Issues in Workers’ Compensation” at Western New England College School of Law in Springfield, were Earlon LaForest Seeley III, Esq. of Pellegrini, Seeley, Ryan and Blakeslee PC, Springfield; James E. Ramsey, Esq. of Moriarty & Associates in Worcester; program chairman Charles R. Casartello Jr., Esq. of Pellegrini, Seeley, Ryan and Blakeslee in Springfield; the Hon. Catherine Watson-Koziol of the Mass. Dept. of Industrial Accidents in Worcester; the Hon. Seven D. Rose of the Mass. Dept. of Industrial Accidents in Springfield; Kimberly A. Davis-Crear, Esq. of Boyd, Crear & Chadwell PC in Springfield; and Peter J. Moran, Esq. of Pellegrini, Seeley, Ryan and Blakeslee PC in Springfield. James D. Chadwell, Esq. of Boyd, Crear & Chadwell PC in Springfield, is not pictured.

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The MBA’s newly formed Task Force on Diversity is sending out teams of attorneys to speak to high school and college students over the next several weeks, the first step in a long-term effort to diversify the legal profession in Massachusetts.

The task force, which formed in January, is sending the teams out throughout May to talk about the benefits of a diverse legal profession. This spring’s efforts will be loosely tied into Law Day activities, but the plan is for the teams to make regular visits to area schools.

“We thought it would be a great idea to talk to inner-city high school kids and talk about the ways the Massachusetts courts have been at the forefront of societal change,” said Valerie A. Yarashus, an MBA vice president and the co-chair of the task force.

The other co-chair is Robert W. Harnais, a Quincy attorney and president of the Massachusetts Association of Hispanic Attorneys. In February, independent of the task force, Harnais spoke to students at Northern Essex Community College with Judge Angela M. Ordonez, Nantucket Probate and Family Court, and Judge Jose Sanchez, Essex County Juvenile Court Department, in a format similar to the one the task force’s teams will use. Harnais and the judges were scheduled to speak to students for 45 minutes about how to pursue legal careers, but ended up staying two hours answering students’ questions.

“They were eager to know, and they didn’t know the first step about how to go in the direction of law school,” Harnais said. “The Diversity Task Force is going to see that there’s an eagerness to become lawyers, but the knowledge about how to do that may not be there.”

Twelve teams of two people each — a minority attorney paired with an MBA officer or member — have been meeting individually on a monthly basis to get familiar with each other before heading into the schools, including the University of Massachusetts at Dartmouth and Cambridge Rindge and Latin High School.

Specifically, the task force wants minority students to consider pursuing legal careers. More broadly, the goal is to instill teenagers with an appreciation for the ways the legal profession affects their lives — even if they don’t want to be a lawyer or judge.

“We want to highlight the stories of individuals and highlight how so much progress has been achieved over the years with people working together,” Yarashus said. She noted, for example, that Massachusetts was the first state to rule that slavery violated its state Constitution.

The task force is reaching out to minority bar associations in the state to collaborate on the effort, and ideally, minority judges will join the teams speaking in the schools.

“We’re going to reach out all across the state and reach a variety of schools,” she said, including colleges, where the task force hopes to form relationships with minority student associations on a number of campuses. “The long-term goal is that we’ll get some continuity and go back to the same schools and build some familiarity and build a presence.”

Harnais said it is crucial that the MBA commit itself to the diversity effort over the long term if any real headway is to be made.

“We can’t think this is going to have a noticeable impact right away. It won’t. But it’s an important step in making a noticeable impact. It will make an impact down the road as long as it’s consistently done,” said Harnais. He noted that in recent meetings with MBA President Warren Fitzgerald, Yarashus and others, he’s been convinced that the MBA leadership is committed to a long-term effort.

“The MBAs made it clear in my meetings with them that there’s a long-term need,” Harnais said. “They all show sincerity in what they’re doing. It’s refreshing to see people like Warren and people like Valerie taking the steps to do it.”

In June, the task force plans to form an advisory group made up of minority judges and attorneys. The task force is part of a larger MBA effort to promote and support diversity within the profession, including the membership and leadership of the MBA.

Yarashus, who will serve as vice president again in 2006-07, pointed to the Asian American Lawyers Association of Massachusetts annual banquet on April 6 as an example of the MBA’s growing commitment to minority bar associations. The MBA was a sponsor and had a strong showing of representatives at the dinner, Yarashus said.

“We’re actively working with minority bar associations on how to cooperate and increase participation,” she said.

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Marshall urges hike in judicial salaries; announces pro se guide

by Bill Archambeault

Massachusetts Supreme Judicial Court Chief Justice Margaret H. Marshall told attendees at the closing luncheon of the MBA’s Annual Conference 2006 that tremendous progress has been made, but singled out access to justice and court salaries as two areas of concern.

Marshall told the 250 people in the audience that the Massachusetts court system has made a number of significant improvements in the last several years, but that the salaries of judges and court personnel, whose salaries are linked to judges’ pay, still lagged far behind what is “fair.”

“The movement forward is palpable in countless ways, and in countless areas,” she said. “But there is one topic I had hoped I would not have to raise again this year: judicial salaries. We cannot continue to attract the best and brightest lawyers to serve as judges unless the compensation they receive keeps pace, at a minimum, with the rising financial demands that confront us all.”

She added that mortgages, college tuition and other everyday expenses have risen while judicial salaries have remained flat.

“Today, members of the Legislature likely do not see themselves as ‘guardians’ of judges’ families,” she said. “But our hard-working, talented judges do deserve fair compensation for the important work they do every day. I ask you to continue to assist us toward that end.”

While the Legislature is working on a plan that would spend $42 million more on pay raises for judges and court clerks, there is opposition. Lt. Gov. Kerry Healey blasted the proposal as “reckless,” denouncing it last month as people were meeting the deadline for filing their taxes. Healey said it would be more appropriate to return the money to taxpayers instead.

Marshall also announced a new effort that should make it easier for litigants who represent themselves to maneuver through the courts. She announced the formation of a steering committee on self-represented litigants, which will be chaired by Appeals Court Justice Cynthia Cohen. Also, judicial guidelines will be made available to every judge in the state to help them work with non-lawyers unfamiliar with court procedure.

“One continuing area of deep concern to all of us, judges and lawyers alike, is access to justice,” Marshall said. “Our commonwealth grows increasingly diverse, ethnically, economically, linguistically. Every area of the law grows more complex, making the question of legal representation particularly important. The legions of self-represented litigants continue to grow.”

To help self-represented litigants, a court handbook is being produced that will help people involved in civil cases better understand basic courtroom procedures, rules, terminology and demeanor.

She also announced an initiative dealing with "limited scope representation,” or “unbundling,” that permits attorneys to represent clients for specific legal needs instead of the entire case. A pilot program will begin in the Suffolk and Hampden Probate and Family Courts either late this year or early next year. The goal is to help people with specific legal needs, thus speeding up the process.

“The affordability crisis poses dangers to our core values. Justice is not a commodity. It is the heartbeat of a civil society,” she said.

NECN’s Braude lauds Access to Justice attorneys at awards luncheon

by Bill Archambeault

MBA President Warren Fitzgerald opened the annual Access to Justice Awards Luncheon on Friday, March 24 by praising the exceptional efforts that lawyers make in helping those less fortunate.

“Much of the Massachusetts Bar’s efforts are directed to helping give a voice to those who have none,” he said.

Jim Braude, the keynote speaker, hosts New England Cable News Network’s “NewsNight” and co-hosts a talk radio show on WTKK-FM 96.9 with the Boston Herald’s Margery Eagan. He described in amusing detail his first day as a legal services lawyer in the South Bronx in New York.

He recalled meeting his first client — shortly into his first day — who promptly told him, “I don’t want no legal aid lawyer, I want a real lawyer,” to laughs from the audience. Then he explained his client’s legal problem: she had the audacity of expecting to raise her daughter in a rat-free apartment.

Braude said the seven years he worked for legal services shaped his entire career.

“Every single thing I’ve done that’s been good has been inspired by the work I did in the South Bronx decades ago trying to give a voice to those who have none,” he said.

Access to Justice Section Council chair Jacquelyne Bowman introduced the Legal Services Award recipients, Susan F. Cole, a senior project director at Massachusetts Advocates for Children, and James R. Pingeon, litigation director of the Massachusetts Correctional Legal Services.

Cole urged the audience to work on advancing the cause of children whose lives have been disrupted by domestic violence.

“Our bar can play a key role in these issues,” she said. “We must work to ensure that children who are traumatized can be helped to overcome their experience. I thank you for the recognition of our work.”

Pingeon, an authority on litigating prison cases, noted that the United States accounts for 25 percent of the world’s prison population, with 300,000 prisoners with schizophrenia or other serious mental illnesses and 100,000 who are mentally retarded.

He described the deplorable conditions many of his clients live in at places like M.C.I.-Walpole. “It’s no exaggeration to say that it feels like you’re walking into hell,” he said. “If any rehabilitation takes place in the prison system, it’s in spite of the Department of Corrections, not because of it.”

In introducing Defender Award recipient Nona E. Walker, a supervising attorney in the appeals unit of the Massachusetts Committee for Public Counsel Services, MBA President-elect Mark Mason said, “Nona embodies the very spirit of the MBA’s Defender Award.”

Lawrence E. Cohen was presented the Pro Bono Publico Award. He is a long-standing member of the Worcester County Bar Association’s Committee on Services to the Poor and Homeless.

Mark Tan Lee was presented the Prosecutor Award. Lee is the chief of the senior trial unit in the Suffolk County District Attorney’s Office.

Wilmer, Cutler, Pickering, Hale and Dorr LLP was presented with the Pro Bono Award for Law Firms based on its generous and long-term support for pro bono programs, its employees representation of indigent clients and its commitment to the plaintiff children and their families in Rosie D. v. Swift.
D
using this year's Annual Conference, attendees had a remarkable opportunity to hear icons of the legal profession and media luminaries question each other's role in the public's perception of the legal system.

“The Media Today”

Bill Kovach, founding director of the Committee of Concerned Journalists and former chief of The New York Times’ Washington bureau, concentrated on the diminished exclusivity of the press as an information source during his keynote speech.

Regardless of the emergence of cyber-space and the economic challenges faced by the industry, Kovach stressed the endurance of print journalism. He shared the sentiments of economist David Warsh, who said, “Newspapers are likely to remain on the top of the chain that creates provisional truth and sets the agenda. Because paper and ink are tangible and endure, newspapers are archived, in libraries, on microfilm and in servers; they cannot be changed with a few keystrokes.”

Through his work with the Committee of Concerned Journalists, Kovach challenged journalists to join a national conversation to rediscover the values that set their work apart from others. Through this work and research, Kovach found a “crisis of confidence” among journalists — the fear that journalism was disappearing into a world of unlimited interactive communication and that people had no way of distinguishing news sources and self-serving proprietary communication. Kovach questioned the motivation and ability of citizens to decipher truth among the volumes of available information in a 24/7 news era.

The sources available to dominate and direct public thought are plentiful. “When slogans and anecdotes are sufficient, the entire system is challenged,” said Kovach.

“Public Understanding of the Role of Judges”

Judge Gordon L. Doerfer of the Massachusetts Appeals Court served as the moderator for the opening panel, comprising: David L. Yas, Esq., publisher of Massachusetts Lawyers Weekly; Judge Janet L. Sanders of Massachusetts Superior Court; William B. Ketter, editor-in-chief of The Eagle-Tribune; and Edward P. Ryan Jr., Esq., of O’Connor and Ryan PC and MBA president from 2000-01.

On the topics of bail and sentencing, Sanders explained that because of the wide range of discretion for decisions, it is “very easy for decisions to be perceived as arbitrary.” For that reason, Sanders explained that she is “a big proponent of explaining the decisions I make,” to educate the public with her reasons. “Public opinion is skeptical,” she said.

“No doubt about it, the judge will be attacked” by the press, added Ryan, who is also chair of the MBA’s Judicial Independence Committee.

Yas, Ketter and Kovach all brought the media viewpoint to the discussion, offering insight to how a reporter approaches an article and the components that his or her editor wants the articles to include.

Sanders suggested proactive materials or information on the court process in the event that judges are not able or willing to speak to the press. Ketter said that there was some value in that, and where certain judges issue a statement, the reporters are inclined to use that information when up against deadlines and other parameters. However, Ketter explained that ultimately, reporters and editors would “rather hear from the judge” when possible.

“Public Understanding of the Role of Lawyers”

With the second panel, the morning’s discussion turned to the public’s understanding of the role of lawyers and how stereotypes like “frivolous lawsuits” and “runaway jury” have become lodged in the public’s perception.

Joanne Doroshow, Esq., president and executive director of the Center for Justice & Democracy, New York, attributed this in large part to a coordinated public relations campaign by the American Tort Reform Association and big businesses. She said the effort is an attempt to pollute juries and the public’s perception of the legal system in the hopes of ousting judges the business community disapproves of.

“The money devoted to the PR campaign to breed fear, alarm and contempt is succeeding largely by capitalizing on the public’s poor perception of attorneys — ‘trial lawyers represent entitlement seeking victims.’”

She explained that there is a disparity between “the real world and what gets portrayed to the public about verdicts.

Left to right, The Eagle-Tribune’s William Ketter; Massachusetts Lawyers Weekly’s David Yas and Massachusetts Superior Court Judge Janet Sanders participated in the first of three panels as part of the AC06 Bench Bar Forum.

Boston Globe columnist Eileen McNamara attributed the shift to promoting high profile cases without checking for balance or proportionality to the fact that the media outlets are increasingly no longer local, family-owned operations. As corporate entities, “there is not the same sense of responsibility and commitment to the community.”

She also placed some of the responsibility squarely on the legal profession, advising attorneys to counter those who poison the public about the legal system. “If you as judges and lawyers let people hold the floor who distort the justice system, shame on you! You can push back every time a case is in your court or your firm that is being distorted. Don’t let the haters distort that which people all over the world hunger for, our kind of justice system. Push back!”

“Improving Public Understanding of the Legal System”

During the final panel of the forum, discussion centered on measures to improve the public’s understanding of the legal system, several commentators suggested that lawyers and judges seize opportunities to instruct the public.

Boston Herald Editorial Page Editor Rachelle Cohen, recognizing that judges cannot reply or comment when off the bench, recommended explaining from the bench the basis for a controversial decision. The rationale has a much better chance of being incorporated into the story, she said, because “no one will read a sidebar on the purposes of the bail system.”

Edward Lazarus, Lazarus Strategic Services, Chevy Chase, MD, suggested the profession needs agreement about what message it wants to deliver to promote the legal system, and once that is determined, keep repeating it. As an example, he suggested changing the jury summons from one that intimidates the public by its “you’ve got to come” message to one that makes people feel good about participating in the process.

Similarly, judges should always articulate the bases for their decisions from the bench, reminding people what the basic legal principles are. “Why assume that by saying something once, we will remember it forever? You must be repetitive, and as a profession, you are not,” said Lazarus.

Note criminal defense attorney J.W. Carney Jr., Carney & Basil, Boston, admitted that he’s “become discouraged and cynical because in some cases, it’s just impossible to get across what we are doing to the media when they have other interests. We can’t hope to educate when their goal is to entertain.”

Although he has chosen not to play the role of entertainer, Carney has figured out how to work within this system. He advised attorneys to remember they are representing their clients’ interests, which may require dealing with the media in some fashion to make the clients look good. But “maintain the dignity of the proceedings,” he said. Among Carney’s rules are never say “no comment” and never use boilerplate quotes, such as “my client is presumed innocent.” However, he often repeats the one sound bite he’d like to appear on the evening news, even if that means he has to repeat it in response to every question. When dealing with print media, he goes on and off the record, offering just two sentences that support his client when on the record.

Carney strongly believes lawyers have a responsibility to educate the public when given the opportunity. He recommended each attorney take advantage of that opportunity when presented. Finally, he called upon judges, lawyers and bar associations to work together to reach out to the media to educate them on legal principles and the public comment restrictions imposed on judges and lawyers.
Sen. Biden delivers passionate Annual Dinner keynote speech

by Bill Archambeault

U.S. Sen. Joseph R. Biden Jr. delivered an impassioned speech on national security at the 2006 MBA Annual Conference’s Annual Dinner on March 25, arguing for a dramatic change in the country’s policies.

MBA President Warren Fitzgerald introduced Biden as “one of the Senate’s most respected voices on foreign policy, civil rights and crime issues. Simply stated, he is and has been where the action is.”

Biden began on a lighthearted note, explaining how, as he was first entering public service, there were suggestions he seek a judgeship. His response, he said, was, “I have much too much respect for public service, there were suggestions he seek a judgeship. His response, he said, was, “I have much too much respect for public service.”

His speech quickly turned to national and international policy, a speech brimming with disgust and scorn, yet optimistic that things could be put right.

“The first duty of government is to provide for public security,” he said, arguing that it supersedes every other issue, because little can be accomplished without security. Recent events like Hurricane Katrina and Iraq, he said, show that the government is not keeping America safe.

“Washington is not only tone deaf,” he said. “Washington has become dangerously incompetent.”

“We must change our priorities as a nation,” he said, arguing that money spent each year on the “Star Wars” anti-missile system or the president’s tax cuts could fund comprehensive port security. “Our priorities are wrong, and dangerously wrong.”

Biden argued that previous presidents, Democrat and Republican alike, most likely would have asked U.S. citizens to do something to help the country. To illustrate that point, Biden said that one of his strongest images from Sept. 11 was of New Yorkers lining up, block after block, to donate blood, even after they’d been told that no more donations were needed.

“It was a silent scream to help,” he said. “Folks, the American people are way ahead of us in Washington. They’re ready to act if we ask them.”

“I believe, with every fiber of my being, that we’ve absolutely being given the opportunity to make hope and history rhyme,” he said. “We will be judged harshly… if we do not take advantage of the opportunity that’s been given to us. I believe it can be done.”

Earlier in the evening, MBA President-elect Mark Mason praised State Senate President Robert E. Travaglini, presenting him the Legislator of the Year award.

“President Travaglini has proven to be a true leader,” Mason said, noting that he was instrumental in last year’s fight to increase bar advocate pay.

“President Travaglini has played an important role in every piece of legislation affecting the judiciary for many, many years,” Mason said.

Travaglini, in brief remarks, quipped, “Since I have $25 billion to spread around… pay attention.” But he said he takes the concerns of the profession very seriously, even though he’s not a lawyer.

“If there’s a cause or a case that warrants my attention, it gets it. It doesn’t get bumped,” he said, promising that he wouldn’t forget the legal profession during budget negotiations. “We will not disappoint you in the next six weeks.”

E-discovery demands attention from attorneys and clients

by Ann Karpenski, Esq.

Ready or not, electronic discovery is here to stay, and attorneys have to be ready for it, according to a panel at AC06. Attorney John J. Coughlin of Duane Morris LLP in Hamilton, N.J., said that by December 2006, the Federal Rules of Civil Procedure will be amended to take into account e-discovery, and state courts won’t be far behind.

Coughlin explained that it’s time for attorneys to educate their clients, as well as themselves, on the inner workings of e-discovery because the nature of evidence is changing.

Citing the core cases of Zubulake v. UBS Warburg, Coleman Holdings v. Morgan Stanley and U.S. v. Philip Morris, where failure to properly handle electronic discovery led to billion dollar verdicts, he explained that there are valuable lessons to be learned and shared with clients. Of utmost importance is sitting down with clients and developing, or reviewing, a document retention policy. Know about “metadata” (data about data) and explain it to clients, because adversaries can potentially have access to all of it, he said.

Tips for the associate seeking to make partner

Jeffrey Catalano, a partner at Todd and Weld since 2005, spoke candidly about what it takes for an associate to make partner as part of “Managing Your Practice and Career” for the New Lawyers track.

Catalano, who started as an associate at Todd and Weld in 1999 and currently handles medical malpractice and personal injury cases at the firm, said he wished he had known a few of these things when he started his career.

First and foremost, Catalano said, an associate needs to do excellent work efficiently because that is what the partners are looking for. Similarly, an associate needs to know what his or her value to the firm is.

“Making partner isn’t an entitlement. You’re an investment that the partners take a risk on. You’re paid a salary and carry overhead that will exceed your risk for about five years,” he said. And, as a result, an associate needs to show that the partners that he or she is worth the risk.

Catalano offered several ways for associates to do just that, suggesting that an associate start by showing, albeit subtly, an interest in making partner. Ask the partners how the firm is run and how the firm is getting business. Similarly, he said that associates shouldn’t just complain about things that aren’t working in the firm, but offer concrete solutions to fix them.

Catalano said that by doing so, an associate will show an interest and involvement in the firm.

Along those lines, Catalano said an associate should attend firm functions, particularly those held outside of the office so that the partners can get a sense of who he or she really is. Also, assist — or at least offer to assist — the junior associates because it will alleviate pressure on the partners and “the partners will notice.” Joking that as an associate, “you have a lot of time on your hands,” Catalano suggested that, if possible, associates should get outside the firm and join organizations, write for publications and network. “Show that you are committed to developing your firm’s business,” he said.

— Ann Karpenski, Esq.
“Lawyers in Transition” track attracts niche group

Networking was the key word for lawyers making career changes and those following non-traditional career paths throughout the March 23 “Lawyers in Transition” track.

David Yas, publisher and editor-in-chief of Massachusetts Lawyers Weekly, and Lisa Terrizzi, formerly with Harvard University, encouraged those attending the “Non-traditional Legal Path” seminar to use their law degrees to find an enjoyable career.

“Any job will benefit from the talent, training and professional discipline a law degree provides,” said Terrizzi.

Yas suggested other non-traditional careers: marketing, public relations, mediation and arbitration, law librarian, writing for the media and court administration. But he stressed that “networking is key. You can never have enough lunches or meetings. And don’t be shy to ask your contacts for more information or other contacts.”

During the “Lawyers in Transition Forum,” attendees heard from professionals who had moved in and out of their fields, and learned more about the MBA committee examining transition issues.

According to Carol Fishman Cohen, author of “From Playdough to Real Dough: Relaunching Your Career after Taking Time Out to Raise Children,” networks are more important that resumes when “relaunching.”

Brian Leary, who has transitioned in and out of broadcast media work and traditional legal practice, cautioned that making any changes can be filled with trepidation, but “follow your instincts.”

The MBA Lawyers in Transition working group will focus not only on men and women re-entering the workforce after taking time off; it also includes those just beginning their professional careers and those who are transitioning out of the field.

Gathering and protecting intellectual property

In the ever-changing world of intellectual property, an AC06 panel said, it is critical that businesses realize that their own intellectual property is a corporate asset, and therefore, must be protected.

Peter D. McDermott, Banner & Witcoff Ltd., focused on two prevalent branches of IP, patents and trade secrets. He described the absolute importance of getting the upper echelons of management, as well as the research and development departments, on board with the IP program. He said instituting an IP program should involve three components: record keeping by company personnel, management reviews and decisions, and securing effective IP protection.

James C. Donnelly Jr., Mirick O’Connell, DeMallie & Lougee LLP, addressed the subject of trade secrets and what to do to protect them in day-to-day business. He also spoke about the importance of actually enforcing an IP program.

“An unfulfilled IP protection plan is almost as bad as no plan at all.”

Stephen Y. Chow, Perkins, Smith & Cohen LLP, discussed the significance of contracts interrelating with intellectual property. He explained how contracts are used to define or protect IP and create “IP-like” rights. Using examples from everyday life, such as opening a new software package or a new CD, he showed how important the use of licensing has become.

Environmental justice moves past its infancy

The first suit challenging the proposed site of a waste facility on the basis of civil rights discrimination was filed in 1979, and the first national study linking race and toxic-waste site location wasn’t published until 1987. But state environmental justice advocates are hoping this year that Senate Bill 471, still facing House opposition, becomes another landmark in an uphill push to actually enforce an IP program.

“IP becomes another landmark in an uphill push for equal protection.”

Individual Rights and Responsibilities Council co-chair Kevin G. Powers astounded audience members as they delivered a “good-news-bad-news” review of provisions of the re-authorized Patriot Act, as well as recent revelations about President Bush’s use of a “signing statement” laying out his interpretation of the law when he signed it.

“The Constitution assumes each branch of the government will assert itself and we don’t have that happening right now,” cautioned Rose. “Separation of powers is so fundamental to our system of law that the president saying he doesn’t have to play by the rules governing our country for 200 years is really quite extraordinary.”

Rainmaking and marketing yourself

Beth Cuzzone, director of business development at Goulston & Storrs, explained the networking essentials for “Rainmaking and Marketing Yourself.”

“Rainmakers” build and maintain their client base, Cuzzone explained.

“There are a lot of good lawyers in Massachusetts. You need to distinguish yourself. Do something about your professional service that will speak to your clients. It’s easier to keep your existing clients than to go out and find new ones,” she said.

Cuzzone mapped out ways to go out, meet people and build a book of business. She stated that the single most important quality she’s found in successful rainmakers is their ability to listen to their clients. An attorney should get to know their client and take the time to look at the case from their perspective.

“Don’t look at your client as a file, but as a relationship. Relationships beget relationships. Take some time off the clock and help your client in other areas. Go above and beyond your legal obligations,” she said.

She stressed the importance of responsiveness to clients as key to maintaining the relationship. Cuzzone also offered ways to stay connected with clients once the case is over, including contacting everyone in a database at least four times a year.

“Maintaining the relationship is important so your client returns, or refers you to friends and family,” she said.

Forum explores path to firm and fair trial dates

A forum moderated by Superior Court Chief Justice Barbara J. Rouse aimed at reviewing the court’s 15-month-old firm, fair trial initiative generated a frank dialogue with an overflow audience.

Superior Court judges Stephen E. Neel, the initiative’s chair, and Nonnie S. Burnes, regional administrative justice for civil business in Middlesex County, assisted in the panel discussion.

The briefing focused on three critical areas of improving the administration of justice in civil courts: more proactive, judge-conducted final pre-trial conferences; emerging techniques in “smart calendaring” trial dates based upon those conferences; and Standing Order No. 1-96, a new procedure governing continuance requests in all counties.

Since the Monan Committee Report delineated widespread deficiencies in the commonwealth’s court-management system in early 2003, the Trial Court Department has aggressively worked toward what Rouse calls a “more informed trial calendar.”

Annual Conference notes
Improving the public trust

Continued from page 1

counsel. Known as the “Payee Notification Rule,” it would require insurers paying settlement proceeds in most tort or “third party” cases to notify clients directly when settlement checks are issued to their counsel. The rule is designed to reduce the opportunity for an unethical lawyer to receive a settlement check, negotiate it without the client’s knowledge or consent and steal some or all of the proceeds due the client.

We know this happens, and each time it does, the public is well informed of it by the media. Fortunately, it happens only a handful of times each year. Usually by a lawyer led to violate his or her oath by financial or personal desperation. But one thief amongst us, for whatever reasons, is one too many for this profession. Upon that there is unanimous agreement.

When the proposal was presented to the House of Delegates, some members embraced it as a “no-brainer.” The objective of the rule is unassailable. The rule appears simple and unburdensome to lawyers. And our ethical rules already require full disclosure and transparency of the handling of client funds, fees and expenses. These features of the proposal make it strongly appealing. I must admit that’s the way it initially struck me.

Perhaps this is why the proposal was made without some of the details necessary to implement the rule and without the investigation or supporting analysis upon which we customarily rely. This is why some of the other delegates at the House meeting raised some questions and voiced some concerns about the proposed rule.

First, does it go far enough? Although, fortunately, the total number of attorneys who defalcate, misappropriate or steal is very, very small, this rule would deter only a very few of them. Most claims handled by the CSB and the vast majority of the reimbursement payments which it makes result from other types of misappropriation occurring in other types of legal practice. Should we take a comprehensive look at all attorney misappropriation before taking action on a small portion of the problem?

Should the insurance commissioner and the insurance industry be involved in the enforcement of rules regulating our profession? The proposed rule would require insurance companies to communicate directly to our clients, with whom they have had an adversarial relationship. The procedure, manner, timing, content and form of the notification would be mandated by regulation promulgated by the insurance commissioner.

What is the actual cost of the rule to the public? We should assume that the transactional cost of this notification procedure will be passed by the insurance companies to the consumers of the commonwealth. What will be the cost of sending some hundreds of thousands of notices to clients each year? More significantly, what will be the cost of the insurance companies maintaining and updating a database of the names and addresses of settlement payees? The cost of handling notices “returned to sender” and other complications? We know that the client reimbursements made by the CSB for the type of theft at which this rule is aimed have totaled about $130,000 dollars for the past two-year period. We know that this has been borne entirely by a portion of our annual attorney license fees, which funds the CSB. Will this rule shift that burden to the public at an annual cost of millions of dollars?

Although we know 11 states have a similar rule in place, what have other states done to reduce the number of client fund misappropriations in this discrete area and in general? Have there been practical problems with the operation of the rule in those states which have adopted it? Will the rule really prevent theft by an attorney driven by desperation or psychological distress to steal? Although the rule appears directed to the traditional situation in which a firm has a single client, what logistical problems would be created for class action or mass tort cases in which settlements are made for hundreds or thousands of clients at once?

We all agree that preventing the theft of client funds is an objective of the highest priority and necessary for the very existence of our profession. What we need to do now is determine the best way to achieve that objective. I propose that we proceed in the manner which has served us well in the past: Do our research, conduct our review and base any decision about improving the rules by reviewing the means of deterring the theft of client funds. We are seeking an attorney with two to five years of experience to join our Business Law Group. The successful candidate will have experience in structuring, negotiating and drafting acquisition agreements, commercial and private equity financing agreements, technology licensing and other sophisticated business transactions. We have an immediate opportunity in our Manchester MIllyard office. We offer a competitive salary and excellent benefits package.

Annual Past Presidents Dinner

MBA President Warren Fitzgerald hosted the Annual Past Presidents Dinner on April 4 at the Capital Grille in Boston.


Classifieds

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Western Mass. Dial-a-Lawyer volunteers sought for May 18 program

On Thursday, May 18, the MBA will offer the citizens of Western Massachusetts its semi-annual Dial-a-Lawyer program. The program is co-sponsored by Western New England College School of Law, The Republican, El Pueblo Latino and the Massachusetts Association of Hispanic Attorneys. On that day, MBA member volunteers from Berkshire, Franklin, Hampshire and Hampden counties will staff a telephone bank generously provided by WNEC to answer legal questions from the public.

For several days prior to the May 18 event, television and radio stations and newspapers will publicize the event to encourage their audiences to call in with legal questions.

The MBA is seeking lawyers to volunteer for a two-hour shift on the May 18 between 3:30 and 7:30 p.m. If you have any questions, please call either Christine Baronas at (413) 731-5134 in the MBA’s Springfield office or Elizabeth O’Neil at (617) 338-0560 in the MBA’s Boston office.

“Conversations on the Constitution” program — A celebration of Law Day

Since 1961, communities across the United States have marked May 1 as “Law Day,” a national celebration that focuses attention on our heritage of liberty under law. This year, the Massachusetts Bar Association is demonstrating its continued support of Law Day through its Conversations program.

In the wake of Sept. 11, the American Bar Association developed Conversations on Law & Liberty in Times of Crisis, a program designed to encourage public discussion of complex legal and civic issues facing our nation. By considering the role of law and legal issues in our society, Americans gained perspective on how we might respond to changing conditions and circumstances, appreciate the significance of our liberties and engage in civil discourse about our nation’s future.

Since Sept. 11, the MBA utilized this approach in developing other law-related programming. In 2004, in celebration of the 50th anniversary of the U.S. Supreme Court’s landmark decision in Brown v. Board of Education of Topeka, Kansas, the MBA sent attorneys out to schools to discuss this decision, which brought an end to the legal doctrine of “separate but equal.”

This year, the MBA is offering a program on Conversations on the Constitution to middle schools throughout the commonwealth. We are organizing volunteers to facilitate 45-90 minute programs to be held throughout the month of May at middle schools in their community. This year’s program will focus on important constitutional issues, such as separation of powers, advice and consent of the senate and unreasonable search and seizures.

For more information about this year’s Conversations program, please contact the Community Services Department at (617) 338-0695 or via e-mail at communityservices@massbar.org.

Elder law volunteers sought for May

This 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 communitieservice@massbar.org.
MBA welcomes
new members

Continued from page 2

Mendel L. Mashburn Jr. of Johnson & Johnson
Geoffrey M. Mason of Ropes & Gray LLP
Patricia A. Mazur of Patricia A. Mazur, Attorney at
Law
John J. McCann Jr. of the Law Offices of John J.
McCann Jr.
John R. McCarthy of Bingham McCutchen LLP
Elizabeth F. McCusker-Concannon of Bingham
McCutchen LLP
Joanne McLaughlin of Wilmer, Cutler, Pickering,
Hale & Dorr LLP
Emily S. Mechem
Julia Meconiates of Seyfarth & Shaw LLP
Dinesh K. Melwani of Bingham McCutchen LLP
Francesca L. Miceli of Bingham McCutchen LLP
Karen Mullen of Jetblue Airways
Daniel P. Murphy of the Law Office of Daniel P.
Murphy
Edward J. Musco of Edward J. Musco, Attorney at
Law
Dana Ng of Raytheon Co.
James P. O’Brien of D’elia & Cavanaugh
Elizabeth B. Oliveira of Davis, Kilmarx, Swan &
Bowling
Michael John Pacinda of Murphy, Hesse, Toomey
& Lehane LLP
James Paikos of Gallagher & Cavanaugh LLP
Frank G. Petrillo of Frank G. Petrillo, Attorney at
Law
Gerald A. Phelps of the Law Office of Gerald A.
Phelps
Suzanne T. Pollinger of Suzanne T. Pollinger, R.N.,
Esq.
Michael J. Quinn of Quinn & Williams
Sheila M. Renner of the Dept. of
Telecommunications and Energy
Jessica C. Renze of the Law Office of Jessica C.
Renze PC
Alicia E. Rinaldi of Curtis & Sindeband LLP
Nicole A. Rizzo of Bingham McCutchen LLP
James P. Robinson Jr.
Patricia Rocco of the American Arbitration
Association
Neely M. Shah of Bingham McCutchen LLP
Joseph I. Sheftel
Jennifer L. Snyder
Shawnee W. Strasko of Cushman & Bloom PC
Sundar Subramanyam of Goodwin & Procter LLP
Joseph L. Sulman of Dechert LLP
Cathleen H. Summers of Summers, Summers &
Associates PC
Kevin T. Teng
Elizabeth A. Treden
Stacy K. Verde of Rudolph Friedmann LLP
Elizabeth A. Vining of Bletzer & Bletzer PC
William A. Walley
Thomas J. Walsh Jr. of the Law Office of Thomas
J. Walsh Jr., PC
Katherine M. Whittemore of Taylor, Ganson &
Perrin LLP
Fitzgerald announces task force after House of Delegates debate

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“It does no harm to lawyers and can only help,” he said.

MBA past President Kathleen M. O’Donnell (2004-05) disagreed, however.

She argued that it would not offer much deterrence to attorney theft, but would besmirch the legal profession by calling more attention to a handful of dishonest attorneys.

“I do think this sends a bad message. Paint it however you want, but this is basically suggesting you can’t trust your lawyer,” she said. “I’m not comfortable with the Bar Association supporting this.”

O’Donnell made a motion to postpone the vote, send the proposal to the section councils for review and research why some states have rejected similar proposals.

Delegates were sharply divided. Law Practice Management Section Council chair Denise M. Guerin said when she read the proposal, it struck her as a no-brainer.

“This is a terrific consumer protection move,” she said, adding that she once represented an educated business executive who was “fleeced” by a lawyer.

“If the bank had been sending him notification (of the payments), this would not have happened,” she said.

MBA Vice President Valerie A. Yarashus suggested delaying a vote until the May HOD meeting so members could consider the issue more fully. The motion to postpone was approved, though a number of people voted against it.

It now appears the issue will be settled at a later date, after the task force has had the time to review reforms which might be made to deter attorney theft, including the Clients Security Board proposal on payee notification.

Fitzgerald said because there is unanimous agreement that attorney misappropriation of client funds cannot be tolerated, that the proposal appeared initially appealing.

However, the serious questions about the proposal raised at the March meeting need to be answered. The best way to do that, he said, would be a thorough review by a committee of experienced and respected attorneys.

The task force will be charged with evaluating what would have the most significant impact, what other states have done and what has worked best.

Fitzgerald said he also wants the task force to look at the cost to the public of introducing and operating a payee notification system and whether those passed-on costs make sense compared with the amounts of compensation which are presently paid by the CSB and borne by the profession.

The hour-long debate dominated the meeting, but there was also substantive discussion about endorsing principles related to Criminal Offender Record Information (C.O.R.I.) system reform and a vote opposing prepaid legal service legislation.

Criminal Justice Section Council chair and Region Seven delegate Lee J. Gartenberg won near unanimous support for general guidelines relating to C.O.R.I. system reforms despite objections by Judicial Administration Section Council chair and past president Marilyn A. Beck. HOD voted overwhelmingly to support the guidelines.

HOD then voted unanimously to oppose pending legislation that would change jurisdiction over prepaid legal services from the state’s insurance division to consumer affairs.

The March 23 meeting also featured a comprehensive presentation from Chief Justice for Administration and Management of the Trial Court Robert A. Mulligan on the state of court reform and construction.

Mulligan requested the MBA’s support in convincing the Legislature to give him the authority to transfer funds between court departments, which he said is essential to creating a fair and reasonably staffed court.

For example, he is seeking $4.2 million this year for 130 positions to bring all trial courts into compliance with an 85 percent staffing requirement.

He explained goals that have been set in the Trial Court to reduce case backlogs, time to case disposition and trial date certainty. “I look forward to, next year, reporting to you on each of these goals,” he said.

Mulligan also asked the MBA to take the lead in forming a commission to recommend how the state should name courthouses to avoid arbitrary decisions from Beacon Hill.

“I think it should be a more deliberative, thorough process in naming courthouses,” he said.
For guests in the audience, it was hard to believe they were watching high school students simulate a courtroom scenario. The performances of two teams from Boston Latin School and Pioneer Valley Performing Arts High School came across as an actual case being tried by practicing attorneys at the 2006 Mock Trial Championship on March 29.

Boston Latin School and Pioneer Valley were decided as the finalists less than 24 hours prior to the championship trial. As Supreme Judicial Court Justice Roderick L. Ireland called the court to order, the official tenor of the event made it easy for spectators and participants to forget this was a high school competition. Students donned dress shoes, carefully manicured hairstyles and business suits. Their professional appearances set the tone for impressive performances on behalf of the fictitious plaintiff and defendant.

As a large audience of classmates, teachers, family members and MBA leaders and members looked on, Boston Latin School began with their opening statements, arguing that the plaintiff was the victim of a preventable accident ultimately caused by the manufacturer of a faulty Global Positioning System product. Pioneer Valley was quick to counter their claim, insisting that the tragic accident that left the plaintiff’s husband in a coma was the fault of the plaintiff’s careless driving.

The subsequent evidence sharing, witness questioning and cross-examination were filled with appropriate objections and explanations. The rapid pace of the proceedings made the two-hour final round of competition go by quickly. Closing arguments were equally weighted, making the judgment by Ireland a difficult one.

As Ireland called for a brief recess to make his decision, students anxiously rehashed the proceedings with their teammates, appearing visibly nervous about the outcome. After what turned out to be a rather lengthy deliberation, Ireland returned to commend both teams, explaining how their stellar performances made for a tough decision on his part.

“I have honestly not seen such a fine job. If I didn’t know you were high school students, I would have assumed you were polished attorneys,” said Ireland, whose comment was met with agreement from the audience with thunderous applause.

“I wish every high school in Massachusetts could participate in this program because students can learn so much,” said Ireland, who went on to underscore the value of this experience on students’ lives and the importance of life skills gained as a result. “This experience will make you better citizens, students and people.”

After delivering his ruling on the liability claims against the defendant by the plaintiff, he assessed the students’ performances before sharing with the crowd his decision on the champion. “By a small margin, Boston Latin School is our winner today,” he said.

He then addressed both teams with final comments: “You are tomorrow’s leaders and you provide high hopes for our state and our country.”

After the trial, Massachusetts Bar Foundation President Francis A. Ford, Esq. presented Boston Latin School with a $2,500 travel grant to defray the costs of the team’s trip to Oklahoma City, where they will represent Massachusetts in the National Mock Trial Competition in May.

The 2006 Mock Trial Tournament began in January with more than 2,000 students competing, representing 115 schools from across Massachusetts. In all, 262 trials were held at 50 trial venues. A total of 118 volunteers, all of them attorneys or judges, presided over this year’s trials. This year’s program was sponsored for the seventh consecutive year by Brown, Rudnick, Berlack, Israels LLP in Boston.

For more information on the MBA Mock Trial program, visit www.massbar.org, call (617) 338-0570 or e-mail mocktrial@massbar.org.
Mock Trial Tournament success owed to behind-the-scenes toil

by Chad Konecky

If this year’s Mock Trial Tournament state champions from Boston Latin School had backstage access to glimpse the sweat equity involved in creating the competition, they might well have handed their trophy to the tournament’s planning committee.

Boston Latin School’s win over Pioneer Valley Performing Arts High at Faneuil Hall Spring this was the last of 260 statewide trials. The competition celebrated its 21st anniversary in 2006 and drew more than 2,000 participating students. But who, exactly, makes this thing go?

“Quite honestly, the process is nothing short of wacky,” says Mock Trial Committee attorney-member Arthur Carakatsane, who just completed his seventh year as a committee volunteer. “It’s a hardcore group of attorneys, educators and MBA staff. Because of their efforts, Mock Trial has become cool in schools.”

Beginning every August, more than a dozen lawyers, educators and MBA Community Services staff convene to launch eight months of planning. It is a progression that is part mirth, part mad-dash and mostly, well, marshaled law.

“Any time you get a dozen or so lawyers and some other smart people in a room to create something, you’re going to have some strong opinions,” concedes Mock Trial Committee chair and attorney Eric Schutzbank, himself a former Mock Trial competitor at New York’s John Dewey High. “What makes it work is that we’re all pushing toward the same goal. And we’re under a deadline.”

That’s where the “wacky” comes in. Starting with a blank slate each year, the committee crafts a relevant, legally grounded case scenario that is accessible to high school students and can be tried in a couple of hours. The case must be delivered in eight weeks via one or two meetings a week.

According to Schutzbank, the first few weeks are spent whittling down suggestions. Case scenarios and issues that are too complicated, too simple, too dated, too irrelevant to teens or lacking an educational message are pitched.

“We tend to throw a bunch of ideas against the wall and see what sticks,” says Schutzbank. “Once we get two or three viable ideas, we sketch out a statement of facts, the witness list and the purpose of given testimony.”

In an ideal world, the committee builds a case packet by mid-October, in time for printing and its unveiling at five orientation sessions across the state during the first week of November. A judge’s orientation follows shortly thereafter.

Rarely, mind you, is the process ideal.

“Every year, we think we’re in really good shape and suddenly, we run into something we didn’t anticipate,” says committee technician member Denise Coffey, a former social studies teacher at Belmont High, who coached the school’s Mock Trial team to the 2003 state title.

“The last five years, we’ve scrapped a case with three weeks to go and decided to construct a better one,” recalls Carakatsane, a Melrose native practicing in Middleton. “I thought we were going to give some people a heart attack, but we did end up with a better case.”

For his part, Carakatsane tends to be the legal realist during the committee’s strategy and case-building sessions. He obsesses over the technical and practical aspects of the case scenario and focuses on constructing guiding mechanisms that teachers, students and judges can easily relate to.

“Carakatsane leaves the creative elements to others. ‘I was a math club and chess club geek in high school,’” he explains.

The committee devotes the bulk of its energy to ensuring that each year’s case scenario is balanced on the merits for both the plaintiffs and the defendants. The group makes its best effort to design cases in which the burdens of proof and the richness of the witness characterizations are equitable and allow students equivalent opportunities to score points.

U.S. District Judge Nathaniel M. Gorton spoke to the 2006 Mock Trial teams on April 5 at the John Joseph Moakley United States Courthouse in Boston.

Mock Trial committee members Arthur Carakatsane, Denise Coffey and committee chair Eric Schutzbank volunteered with the 2006 Mock Trial Tournament.

Each year, the group carefully selects the surnames of witness as well as the names of fictional towns, companies, businesses and schools with an eye toward humor. Folded into the fact pattern are references from movies, television and other segments of pop culture. This year, a key eyewitness and hot dog vendor in the case scenario was the namesake of a member of the MBA executive board.

The legal community remains highly supportive of the tournament. Boston’s Brown, Rudnick, Berlack & Israels LLP donated $25,000 to the competition in October, bringing the firm’s total contributions since 1998 to $200,000.

The remainder of the 2005-06 committee that generously donated their time includes attorneys: Mary Bassett-Stanford, Anthony J. Benedetti, Elizabeth A. Broderick, Jerry Howland, Sharon V. Jones, Elliot M. Loew, William B. McDermid, David M. McGlone, Joshua Allen McGuire and Deborah L. Schreiber; Non-attorney members: Richard Coffey and Tanya Perkins; and MBA Community Services staffers: Elizabeth O’Neill, Seth Boyd and Chantal Souffrances.

Now in his second year as committee chair, Schutzbank has learned to count on one constant above all others as each year’s competition plays out: Expect the unexpected.

“Invariably, things will happen as the result of a student’s portrayal of a witness or a coach’s interpretation of the facts that we never thought of,” he says. “That’s the beauty of it. Each year’s case truly comes alive.”
The technology coupled with analysis by our psychological and medical experts and SPBET (Scientific Proof of Brain or Emotional Trauma) scans provide compelling graphic evidence of traumatic or diffuse axonal injury caused by accidents or falls. SPBET scans detect emotional distress such as depression and anxiety. Most cases are settled quickly. Our services are based on proven technology called Quantitative Electroencephalograms. This technology coupled with analysis by our psychological and medical professionals delivers a suite of products ranging from validity of injury claims to full Court services including documentation and expert witnesses.

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To list your business listed in the Resource Guide, contact Sales Representative Joe Caci at (617) 338-0516 or caci@masbar.org.
Paternity Basics  
**Tuesday, May 2, 4-7 p.m.**  
MBA, 20 West St., Boston  
**Course #: FLE06**

The number of paternity cases filed in the Probate & Family Court now equals or exceeds the number of divorce filings in some counties. A working knowledge of the law relating to paternity acknowledgement, legitimacy of children, res judicata principles, equitable relief and the intricacies of Chapter 209C is essential for effective representation of your clients.

At this seminar, a Probate & Family Court judge and a panel of experienced attorneys will provide a practical overview of the law relating to unmarried parents and their children. This seminar will cover the basics as well as current controversies, trends, leading case law and practice tips.


Chapters 93A & 176D Update  
**Thursday, May 11, 4-7 p.m.**  
MBA, 20 West St., Boston  
**Course #: CLM06**

Massachusetts General Laws Chapter 93A, the Massachusetts Consumer Protection Act, has grown to be one of the most important adjuncts to the litigation of personal injury and other insurance-related claims in Massachusetts. The provisions of General Laws Chapter 176D, the Unfair Methods of Competition and Unfair and Deceptive Acts and Practices in the Business of Insurance Act, strengthened the protection to Massachusetts consumers, be they third-party claimants seeking damages or the insureds themselves seeking indemnification or other contractual benefits.

The law affecting the relationship between these two statutes, however, is complicated and constantly evolving. Be sure to join us and keep current on how to use these powerful litigation tools effectively. Our panel will focus primarily on the evolving standards of recovery and defenses under Chapter 93A for improper conduct of insurance companies under Chapter 176D, as well as the recent developments in both Sections 9 and 11 of Chapter 93A.

Faculty: David W. White-Lief, Arthur Kirakos, Anne Robbins.  
*Additional faculty to be announced.

Melanie’s Law: The New OUI Law  
**Monday, May 15, 4-7 p.m.**  
Western New England College School of Law, Springfield  
**Course #: CJF06**

The Legislature has just passed the so-called "Melanie’s Law" that makes dramatic new changes in the sentencing of OUI cases. There are numerous new penalties and conditions, such as the forfeiture of automobiles, ignition interlock devices (where the driver must blow into the unit for the vehicle to operate) and increased license loss and lengthier incarceration. Previous convictions may now be proved at trial with just a certified copy. 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 new 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. Knowledge of the new law is an absolute must for any criminal law practitioner.

Faculty: Peter Elikam, Joseph D. Bernard, William J. Lyons Jr., William Melkonian, Andrew M. Padellaro.

Reverse Mortgages and Your Senior Client  
**Tuesday, May 16, noon-2 p.m.**  
MBA, 20 West St., Boston  
**Course #: PRE06 Luncheon roundtable (lunch provided)**

The combination of climbing Massachusetts real estate values and increased costs of living is causing more seniors to consider reverse mortgages for preserving or improving their quality of life. Many turn to attorneys and professional advisors who are unfamiliar with the nationwide reverse programs available. This luncheon roundtable will provide a comprehensive explanation of the three nationwide reverse mortgage programs available in Massachusetts, dispel prevalent myths about reverse mortgages and show how practitioners in many areas can utilize them to their clients’ advantage.

Faculty: Stephen R. Pepe, Christopher Cline, Joseph DeMarco.

Juvenile Court: A View from the Bench  
**Wednesday, May 17, noon-2 p.m.**  
Hampden Hall of Justice, 50 State St., Springfield  
**Course #: FLH06 Luncheon roundtable (lunch provided)**

The Juvenile Court has broad jurisdiction on a number of issues impacting children and families in Western Massachusetts. The court interacts on a daily basis with multiple social service agencies, school officials and criminal justice professionals.

Chief Justice of the Juvenile Court Martha P. Grace will speak about recent developments in the law, case scheduling and will seek input from the bar on policies and procedures which could be utilized to improve the fair and efficient administration of justice in Western Massachusetts. Obtain a better understanding of the law and court procedures.

Faculty: Hon. Martha P. Grace.  
Co-sponsors: The Berkshire, Franklin, Hampshire and Hampden county bar associations.

Key Issues Involved with Employee-Shareholders in the Closely Held Corporation  
**Thursday, May 18, noon-2 p.m.**  
MBA, 20 West St., Boston  
**Course #: LEK06 Luncheon roundtable (lunch provided)**

This luncheon will explore the legal framework, from both the employment and corporate viewpoint, relative to parties’ duties and obligations involving employees who own shares in closely held corporations.

Hosted by both the employment and business bar, this lively dialogue will...
The RX Files: Medicine for Lawyers — Part II: Neurology and Neuroradiology

Tuesday, May 23, 4:30-7:30 p.m.
MBA, 20 West St., Boston
Course #: HLC06
This is part two of a series planned and taught by physicians for members of the legal community. This seminar will assist those who practice law care, personal injury, workers’ compensation or disability law to fully understand the medicine they are working with in order to prevent malpractice.

Part two focuses on neurological and neuroradiological issues, including brain injuries, central nervous system and peripheral nerve injuries, pediatric neurology and the latest neuroradiological imaging techniques.

Faculty: Dr. Barry Lang, Dr. William Singer, Dr. Jonathan Kleefield.

Special Education Law: Practical Implications of IDEA 2004

Wednesday, May 24, 1-4 p.m.
MBA, 20 West St., Boston
Course #: FLI06
This seminar will focus on the statutory changes to the Individuals with Disabilities Education Act (IDEA) as of July 1, 2005, and the anticipated promulgation of new regulations to the statutory changes.

Using a fact pattern, attorneys who represent school districts and parents and students will discuss the impact of IDEA 2004 and anticipated new regulations on the issues of IEP development, student discipline and due process proceedings.

Specific topics will include:

• Changes in IDEA 2004 regarding the ability of school districts to seek attorneys’ fees for the initiation of frivolous complaints by parents and/or parents’ attorneys
• Practical implications of the changes to IDEA 2004 from the perspective of attorneys who represent both school districts and parents.

Faculty: Gary Monserud, Maureen A. MacFarlane, Rebecca Bryant, Eileen M. Hagerty, Constance Hilton, Richard F. Howard, Mary Ellen Sowyrda. *Additional faculty to be announced.

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

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Refunds will be provided if cancellations are received at least three business days in advance of the program.

Changes in date, time or place

Due to unforeseeable circumstances, changes in the dates, times or places for some seminars may occur after this catalog has gone to press. If you have registered in advance for a seminar, you will be informed of any changes by letter or by phone, and you may receive a refund or credit if the new scheduling is not convenient for you. If you have not pre-registered for a program, please call the MBA Education Office to verify whether it is still being held as originally scheduled.

Unable to attend?

★ If you have registered for a program and are subsequently unable to attend, the MBA will send all materials that were distributed at the seminar to the address on your registration form.
★ If you have not pre-registered but would like to obtain the materials, please call Member Services after the seminar for price and ordering info: (617) 338-0530.

MBI Program Fees

1 to 1 ½ hour luncheon roundtables and section forums

| Sponsoring section MBA members | $15 |
| Other MBA members | $25 |
| Nonmembers | $50 |

2 to 4 hour seminars

| Sponsoring section members | $80 |
| Other MBA members | $115 |
| Nonmembers | $160 |
| Law student/new lawyer members | $40 |
**Traumatic Brain Injury: What You Need to Know to Prove Your Case**

**Wednesday, May 31, 4-7 p.m.**

**MBA, 20 West St., Boston**

**Course #: CLJ06**

One out of every 500 Americans suffers from traumatic brain injury (TBI) every year. Any attorney evaluating these types of cases is regularly faced with major problems of proof. Unlike a broken bone or a herniated disc, most brain damage is invisible. This seminar will address the invisible nature of TBIs. Lawyers working in this field will learn how to identify authentic brain injury and interpret results from neurological and neuropsychological testing. They will learn about new technologies that can provide actual objective evidence of injury. They will even learn how to use negative test results to their advantage. Attorneys can anticipate and overcome the daunting challenges presented by these cases.

**Current developments; and recent developments in landlord/tenant law.**

To properly represent your client, you must begin to understand the ideology of TBI and the means by which it can be illustrated in a manner that is both admissible and persuasive. Hear from experts in the field and get a view from the bench. Don’t miss this unique opportunity to establish and maximize damages in a traumatic brain injury case.

**Faculty:** Douglas K. Shiff. *Additional faculty to be announced.*

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**How to Handle a Residential Real Estate Closing**

**Thursday, June 8, 4-7 p.m.**

**MBA, 20 West St., Boston**

**Course #: PLIO6**

This seminar presents a comprehensive step-by-step explanation of the law and practice of conducting a residential real estate closing. Our expert panel will guide you from the offer and “P&S” through the actual closing, offering practical advice at every step along the way. Our panelists, speaking from the perspective of buyers, sellers, banks’ representatives and title insurers will demystify the process and point out common pitfalls to avoid. Don’t miss this opportunity to get your real estate practice off to a solid start!

**Faculty:** Joseph D. Feaster Jr., Yitz Magence.

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**Landlord/Tenant Law Basics**

**Tuesday, June 13, 4-7 p.m.**

**MBA, 20 West St., Boston**

**Course #: PRFO6**

Landlord/tenant law is more complicated than many people believe. Knowing the proper procedures to follow and strategies to pursue before court and in court can greatly improve your chances of achieving a favorable result for your client, and help you avoid many common pitfalls. Attendees will also learn about the recent developments in this area. If you are a lawyer with little experience with landlord/tenant law, or just need a refresher, you won’t want to miss this seminar!

**Specific topics include:**

- Eviction procedures from notice to quit to execution (with forms);
- The tenant’s perspective in eviction cases;
- How to handle security deposits and lead paint; mold issues;
- Fair housing and reasonableness; and compliance with state and federal laws.

**Faculty:** Kenneth A. Krems, David R. Jackowitz, Ellen J. Shachter.

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**27th Annual Labor & Employment Law Spring Conference**

**Thursday, June 15, 9 a.m.-5 p.m.**

**The Colonnade Hotel, 120 Huntington Ave., Boston**

**Course #: LELO6**

The MBA’s Labor and Employment Law section invites you to its 27th Annual Labor & Employment Law Spring Conference featuring the Hon. Sandra L. Lynch, U.S. Court of Appeals for the First Circuit, as the keynote speaker. Distinguished judges and experienced labor and employment practitioners will review the year’s most significant court and legislative developments on both the state and federal level, including Employee pension benefits, tort topics in wage and hour law, survey of employment law developments; and use and abuse of medical records in employment cases.


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