



We're better than this

I was recently reminded of a time when I intervened during an argument between opposing counsel several years ago. My message to my two colleagues at the time was, "We're better than this." Before and since then, it has been heart-warming to learn of countless acts of altruism displayed by our many colleagues across the commonwealth. Their collective efforts illustrate the true spirit of our fine profession.



PRESIDENT'S VIEW
DENISE SQUILLANTE

Each and every day, thousands of lawyers throughout the commonwealth work to assist individuals in some of their most difficult times. These lawyers could be defending an individual who has been charged with a crime, assisting a family grieving the death of a loved one, helping an individual through the difficult process of a divorce, representing a child in a > 2

MBA opposes challenge to CPCS budget

BY CASSIDY MURPHY

Last month, in an escalation of a war of words that had been waged mostly behind the scenes, the state's 11 district attorneys held a press conference protesting the \$72-million discrepancy between the budgets of the prosecutors and the state's public defenders, represented by the Committee for Public Counsel Services (CPCS).



ANTHONY J. BENEDETTI

The Massachusetts District Attorneys Association (MDAA) declared in a press release that "the state's budget should reflect public safety priorities" and advocated for a solution that reallocates existing funds based on caseloads.

The district attorneys argued that in fiscal 2010, they handled approximately 300,000 cases on a total budget of \$92 million, while CPCS handled approximately 200,000 cases and received \$168 million in funding. > 5

• EXCLUSIVE •

Clients' Security Board awards \$2.4 mil. in claims

BY BILL ARCHAMBEAULT

The Clients' Security Board of the Supreme Judicial Court awarded \$2,397,678 for 92 claims this year, the fourth-highest amount since the board began distributing money in 1975 to members of the public whose lawyers stole their money.

The single largest award was for \$655,914.60, for a single case involving John D. Roberts Jr. of Dennis, who pleaded guilty to felony theft and was disbarred for taking money from his client of 25 years, according to the CSB's case summary.

The lawyers with the second-

RECENT CSB AWARD AMOUNTS:

2008	\$2,654,436.60
2009	\$1,328,039.01
2010	\$2,397,677.77

and third-highest defalcation were O. Roland Orlandi, of Boston, for \$348,526.34, and Stephen J. Mason, of Lowell, for \$316,887.98. Together, those three lawyers accounted for a little more than 55 percent of the total claims awarded this year.

Monies paid out to clients come from a portion of the annual fees paid by every

member of the bar in Massachusetts. In all, 46 lawyers, or .08 percent of the state's 54,326, were responsible for the awarding of 92 claims.

The largest number of claims awarded were for unearned retainers, which are categorized as client money accepted by an attorney who failed to perform the agreed upon legal service. They do not include fee disputes or malpractice claims in which an attorney negligently performs legal services that led to a client's financial loss. Though the 57 unearned retainers claims made up the largest share of claims awarded, the total awards of \$279,543.76 in that category accounted for just 11.66 percent of the total money paid. > 5



WE the PEOPLE:

SJC Chief Justice Margaret H. Marshall's legacy

BY CHRISTINA P. O'NEILL

Attorney Joan Lukey had just returned to her office last July 21 from the John Adams Courthouse when she got a call from Supreme Judicial Court Chief Justice Margaret H. Marshall, a longtime friend and colleague. Marshall was calling a press conference at the courthouse and wanted Lukey to be present.

Lukey recalls being perplexed, but she obliged and returned to the courthouse. The biggest legal news at the time was the discussion of budget constraints on the state courts. Crucial, yes, but hardly the material for a spot press conference. Lukey entered a room full of jurists and journalists. Marshall announced her retirement, effective at

INSIDE



Hon. Roderick L. Ireland
nominated for chief justice

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"We feel her loss deeply in our circles and our organizations. [Marshall] was instrumental in elevating state courts on the national level."

CHRISTINE DURHAM,
Utah Supreme Court chief justice and past president of the Conference of Chief Justices and chair of the National Center for State Courts

the end of October, to care for her husband, author and Pulitzer Prize-winning journalist Anthony Lewis, who has Parkinson's disease. "There was an audible gasp," Lukey recalls. "It was as if all the air was drawn out of the room." > 6

PHOTO BY CHRISTINE PETERSON

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LOOK FOR OUR SPECIAL
CENTENNIAL ISSUE IN JAN. 2011

THIS MONTH'S SECTION, PAGE 16

Patrick nominates Ireland as SJC chief justice

On Nov. 4, Gov. Deval L. Patrick nominated Roderick L. Ireland, an associate justice on the Supreme Judicial Court since 1997, to become chief justice. If approved by the Governor's Council, he will be the SJC's first African-American chief justice.

SJC Chief Justice Margaret H. Marshall announced her retirement in July.

Nominated to the SJC in 1997, Ireland is the only African-American to serve on the Court. He previously served on the Boston Juvenile Court and Massachusetts Appeals Court.

"Associate Justice Roderick Ireland's exemplary intellect, poise and commitment

to the rule of law make him a remarkable nomination to succeed the Hon. Margaret Marshall as the leader of the state's judiciary," MBA President Denise Squillante said. "The bar, bench and most importantly, the citizens of the commonwealth, will be well served should Gov. Patrick's nomination be confirmed."



HON. RODERICK L. IRELAND

Ireland, 65, has served as presiding

judge of the MBA's annual Mock Trial Championship and been a longtime advocate of the Worcester and Boston Judicial Youth Corps program. In 2008, he received the Great Friend of Justice Award from the Massachusetts Bar Foundation, the philanthropic partner of the MBA.

"In addition to his valued collaboration on access to justice initiatives, the Massachusetts Bar Association has long enjoyed Justice Ireland's partnership in its community programs aimed to educate youth and inspire the next generation of legal professionals," Squillante said. ■

PRESIDENT'S MESSAGE

Continued from page 1

custodial conflict, trying to find justice for an injured individual, or engaging in other countless situations that require legal assistance. For the people who need the help, the day-in, day-out duties that Massachusetts lawyers perform make a difference in their lives.

Many lawyers are doing significant pro bono work and community service, and devoting their time to serve on non-profit boards throughout the state. In addition, with the Trial Court staffing crisis and budget problems, lawyers continue to assist in courthouses across the commonwealth. They participate in volunteer conciliation programs, Lawyer for the Day or other public service programs that are needed to help the court in its daily functioning. Many lawyers are also working to assist individuals in the foreclosure crisis, veterans who call the MBA's Dial-A-Lawyer service, or intervene in other crises that become prevalent in times of economic turmoil.

One challenge for these hardworking lawyers is to find work-life balance. This is particularly challenging in an underfunded court system, as the lawyers who are integral to the functioning of the court

on the other side of the bench step up to the plate to assist and to advocate for the courts. Throughout the commonwealth, there are many programs and initiatives in which lawyers are reaching out to assist the courts during the deep staff reductions, at a time when they are managing their practices and their own staff in difficult times.

Individuals in the four corners of the Bay State who have made a difference will be recognized this year as part of the MBA's 100th anniversary commemorations. Our celebrations will honor the MBA's century of service to the public, to the legal profession and to the rule of law. This rich tradition of service has been and will continue to be sustained by the members of our fine profession.

The MBA announces the MBA Centennial Award, which will be given by the president or another officer throughout the centennial celebration to a person of extraordinary achievement (who may be a lawyer, law professor, judge, court administrator, legislator or other person with significant involvement with the legal system and/or the rights and responsibilities of individuals, corporations, partnerships, trusts and other civic bodies) who materially advanced the rule of law, enhanced the integrity of lawyers, judges or the legal profession, engaged or is engaging in

important legal scholarship, or protected the democratic principles upon which our country was founded.

At this time, there have been two recipients of the MBA Centennial Award. Bristol Bar Association President Nancy Stanton, who has given 20 years of volunteer bar association service, was the first. In addition to her bar work, she has assisted in the development of an approved conciliation program in the Second District Court, one of the many important pro bono programs through which lawyers assist the court in helping to move cases along (See story, page 16).

The second recipient was Robert Marchand, who is very active with the Massachusetts Bar Foundation, the philanthropic arm of the MBA. He was recognized with this award for his decades of work with Lawyers Concerned for Lawyers.

Throughout the commonwealth, there are many other lawyers who are deserving of this award. I will be reaching out with the MBA throughout the state to identify those individuals who represent the best in our profession, working deep in the trenches in the four corners of the commonwealth. As we celebrate their service, we celebrate our profession and the reason that we all took this life path, to help the public. ■



A publication of the Massachusetts Bar Association

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LEGAL NEWS

News from the Courts

FEDERAL

U.S. District Court Magistrate Judge Neiman reappointed

The judges of the U.S. District Court for the District of Massachusetts have re-appointed Magistrate Judge Kenneth P. Neiman, whose current term expires on Jan. 4, 2011. He has been approved for reappointment to a new eight-year term.



KENNETH P. NEIMAN

First appointed to the court in 1995, Neiman served as chief magistrate judge from 2006 to 2009. Prior to his service with the court, he was a partner at Fierst and Neiman in Northampton from 1981 to 1994.

Before that, he worked at Western Massachusetts Legal Services and the Center on Social Welfare Policy and Law in New York. In 1978, he was a non-resident research fellow with the

To review Massachusetts court guidelines and reports, go to www.mass.gov/courts.

Legal Services Corporation Research Institute.

Neiman graduated from Tufts University in 1967 and earned his *juris doctor* from Harvard Law School in 1971. He teaches as adjunct faculty at Western New England College School of Law and has taught at the University of Massachusetts (Amherst) and the Smith College School for Social Work. He was on the editorial board of the *Federal Courts Law Review* from 1999 to 2006.

STATE

SJC seeks Norfolk County Trial Court judge evaluations

The Supreme Judicial Court is asking attorneys to respond to questionnaires evaluating the performance of Norfolk County Trial Court judges.

The evaluation of Norfolk County judges in the district, juvenile, superior and probate and family courts by attorneys, court employees and jurors began Oct. 18.

Attorneys who receive a questionnaire are asked to complete it, as the more responses received, the more accurate the evaluations will be. The Supreme Judicial Court's evaluation program is the best opportunity for attorneys to voice their opinions of the members of the judiciary.

Attorneys who have appeared re-

peatedly in these courts in the last two years, according to computerized court records, will receive questionnaires.

Most attorneys will receive an e-mail instructing them to log in to a secure Web site to complete the evaluation online. Paper evaluations will be distributed to attorneys with no e-mail on record. As required by statute, the evaluations are confidential and anonymous.

Results will be sent to the judge, the chief justice of Superior Court, the chief justice of the Supreme Judicial Court and the chief justice of administration and management.

Housing Court to offer limited assistance representation

Chief Justice for Administration & Management Robert A. Mulligan has approved a standing order requested by the Housing Court to introduce limited assistance representation (LAR), which became effective Nov. 1.

"Expansion of limited assistance representation into a new court department reflects the value of launching a focused Trial Court initiative on access to justice," said Mulligan. "I commend the Housing Court and I anticipate ongoing productive collaboration and coordination between the Access to Justice Commission and the Trial Court's

Access to Justice Initiative."

Housing Court Chief Justice Steven Pierce said, "The Housing Court is pleased to offer this important resource to the large number of self-represented litigants appearing in our various courts. LAR allows litigants and lawyers the opportunity for selected representation, which controls costs and specifies the limits of the lawyer-client relationship."

In May 2009, based on the success of the LAR pilot project in the Probate and Family Court Department, the Supreme Judicial Court issued an order approving the use of LAR in other court departments. The Probate and Family Court department introduced LAR across the state and the Boston Municipal Court introduced LAR last spring. The District Court plans to conduct a pilot program for civil cases in 2011.

Limited assistance representation is one of the four priority projects identified in the Interim Report on Access to Justice Initiatives in the Trial Court, which was issued in January. LAR permits an attorney, either for payment or pro bono, to assist a litigant on a limited basis without undertaking full representation of the client on all issues and events related to the client's case. Protocols and procedures for the use of LAR are established by each court department.

Visit www.mass.gov/courts to read the order. ■

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LEGAL NEWS

CSB awards: Addressing trusts and estates claims

CSB

Continued from page 1

Only one claim related to bankruptcy law was addressed by the board this year (an award of \$1,000), but that practice area could see an uptick as the effects of the recession persist.

"I think it might be a little too early," CSB Chair Charles W. Goddard said. "There may be some lag time. We might see a spike down the road in that practice area."

TRUSTS AND ESTATES A PERSISTENT CONCERN

For the first time since 2005, trusts and estates claims did not represent the practice area accounting for the largest share of the awards. Fiduciary claims totaled \$1.05 million for six claims. Trusts and estates claims, however, continue to be a concern, accounting for the second-highest payout, with \$545,397 — or 22.75 percent of total monies awarded — going to six claims.

"Preventing losses in this practice area remains a challenge and a goal for our profession," Goddard wrote in the cover letter to the report, which covers the CSB's fiscal year of Sept. 1, 2009, to Aug. 31, 2010.

Prior efforts to reduce attorney theft in the trusts and estates practice area have been unsuccessful, but a provision in the Uniform Probate Code is showing signs of minimizing the problem, said Probate and Family Court Chief Justice Paula M. Carey. The portion of the UPC that went into effect on July 1, 2009, includes a requirement that conservators of incapacitated adults and minors file annual spending reports that make it easier to spot problems.

Carey said she was aware of the problem when she was appointed chief justice in 2007.

"I knew this was an issue, I knew something had to be done," she said. "There's greater oversight on the part of the court. This is not the first year that Clients' Security Board complaints (involving trusts and estates cases) have been relatively high. It's something that we, as a court, want to get our hands around."

In addition to the yearly spending plan, lawyers must also file care plan reports, which could raise red flags. Though the court does not have the staffing to review those itself, Senior Partners for Justice has

agreed to review the care plan reports on a monthly basis and report any warning signs to the court. Carey said that while she could not quantify the effect the UPC requirement is having, she said it is definitely helping.

"I think the judges are feeling much better about this," she said. "I'd like to tell you that we'd never have any of these



HON. PAULA M. CAREY

cases again. We're doing the best we can to make sure there's oversight by the court. There's a shift. ... We do have more control of these cases. When there's oversight, we can catch the problems before they get larger, and I think we have."



CHARLES W. GODDARD

FUNDING AND LONG-TERM PLANNING

Funding for CSB payments comes from a portion of the fees attorneys pay each year; about \$40 of the \$300 fee paid by most attorneys each year goes to CSB. There is no other funding source, and because no money comes from state appropriations, claims awards are not subject to the budget stresses afflicting the



KAREN D. O'TOOLE

Trial Court Department.

For the last three years, the board has received \$2.1 million from the fund, or roughly what it pays out each year. Since 2,000, CSB has paid out as little as \$1.055 million, in 2003, and as much as \$2.745 million, in 2000.

About 20 years ago, the SJC instructed the CSB to pay 100 percent of a client's losses if it deemed the claim worthy, and 15 years ago, the board started putting money aside in a reserve account in case there is a spike in claims awarded in any one year. There's now about \$5 million set aside, roughly enough to cover two years of claims.

CSB Assistant Board Counsel Karen D. O'Toole and the CSB staff works with the Office of Bar Counsel to track investigations of attorney theft involving potentially large claims. That way, when an attorney is finally disbarred, CSB has an idea of how much they stole from their clients to expect will be filed as claims.

Some states, like California, have seen dramatic increases in claim amounts, O'Toole said, in the aftermath of refinancing of troubled mortgages. Massachusetts has not been hit hard, at least not yet.

"I don't know why we haven't seen the claims yet. We've always seen a lag in time between a weak economic period and the filing of claims. It takes a long time for the loss to become apparent," O'Toole said.

FOR ONE SUSPENDED LAWYER, "A MORAL OBLIGATION"

Over the last three years, nearly \$1 million has been paid in restitution to the CSB. Of that, \$456,614.56 came from court-ordered restitution and \$509,742.27 came as a result of suits brought by the CSB. It also received \$15,469.93 in voluntary payments from lawyers, most of whom are interested in being reinstated, O'Toole said.

But in one unusual case, John Durkee, whose license was suspended in 1993 — and who said he does not plan to seek reinstatement — has been making payments to the CSB over the last several years.

"It is a bit unusual," O'Toole said, who added that she is not aware of any other attorneys who are voluntarily paying restitution with no plans for being reinstated.

The CSB awarded \$38,683 in claims to Durkee's former clients, all victims of unearned retainers.

Durkee, who is currently living in another state, said he had an alcohol problem and had been in denial.

"The bottom line was that it's an obligation that I had (to pay). Not a legal obligation, but a moral obligation. I'm doing the best I can under the circumstances," he said, noting that it's "very important" to him that he pay the money back as best he can.

"I went through a very difficult time with the alcohol-related problems," he said, crediting Alcoholics Anonymous

with helping him. "I don't have any excuses. I accept my responsibility."

IMPROVED EFFICIENCY DISPENSING CLAIMS

In all, 106 claims were decided this year, one of the largest amounts in the last 10 years. Goddard credited a new approach to vetting cases for working through the claims more efficiently.

Normally, CSB's Assistant Board Counsel O'Toole and Adam M. Lutynski would vet and document each claim before making a recommendation to the board. This year, board members handled a few claims on their own, and the result was successful, Goddard said, by lessening the staff's load.

"We're working hard to streamline it even more than it is," he said.

There are 82 claims seeking a total of \$3.07 million still pending, with trusts and estates claims accounting for \$1.9 million alone. A total of 14 claims seeking \$926,000 were dismissed for insufficient data, third-party settlement, no defalcation, no attorney-client relationship, restitution or negligence.

The seven members of the board, who are appointed to five-year terms by the SJC and meet monthly, are not compensated.

SOME CASES "TAKE YOUR BREATH AWAY"

Cases can be discouraging, Goddard said, relating the story of a young brother and sister whose parents had died, and their court-appointed attorney was taking money from the family and not filing any papers.

S. Peter Ziomek Jr., of Ziomek & Ziomek in Amherst, helped the family recover most of its money through an insurance claim, then filed a claim with the CSB. For his efforts on behalf of the clients, Ziomek was honored with one of the CSB's two William J. LeDoux Awards. Russell S. Channen, of Phillips, Gersein & Channen in Haverhill, was also honored.

"There are some cases that take your breath away, that you can't believe," Goddard said. But the ability to cover clients' financial losses and possibly renew their faith in the legal profession is a rewarding responsibility.

"We like to think our job is to restore to the public some confidence in the profession," Goddard said. ■

MBA opposes DAs challenge to CPCS budget

CPCS

Continued from page 1

The comparison is "apples to oranges," according to Anthony J. Benedetti, chief counsel for CPCS. The DAs are being "disingenuous," he said, because the budget for prosecutors does not include many of the line items that are included in CPCS' budget.

"They don't take into consideration all of the different resources the prosecutors have at their disposal," he said, including the state's medical examiner, the state crime lab and resources provided in partnership with the Office of the Attorney General and the FBI.

CPCS' budget "includes many line items that do not appear in the prosecutors' budget, that are provided by other sources of funding," he said. "Interpreters, expert witnesses,

things like that, we pay for out of our budget."

For example, nearly \$1.4 billion was spent on local police forces last year. If 30 percent of a local police force's budget is allocated to the prosecution of cases, that's \$420 million that the district attorneys have failed to acknowledge, Benedetti said.



MARTIN W. HEALY

The district attorneys also enjoy free municipal office space, receive far more in federal grants and benefit from the profits of drug forfeitures, he said.

Martin W. Healy, chief operating officer and chief legal counsel of the Massachusetts Bar Association, said the MBA is sympathetic to the district attorneys'

plight, but that the solution is to increase their budget, not reduce CPCS'.

"The criticism of CPCS is misplaced," the MBA said in a statement. "The district attorneys should not attack defense counsel because of a lack of funding for prosecutors."

The MBA has a long-standing history of urging for more funding for both prosecutors and defense attorneys. A blue ribbon commission formed in 1994, the MBA's Callahan Commission, found that both prosecutors and defense attorneys are woefully underfunded.

Bar advocates are paid a low hourly wage that must account for all of their own expenses, while the district attorneys have separate line items to cover the costs of their offices, experts and other expenses, Healy said, a sentiment echoed by Benedetti.

"We pay a flat rate of \$50 per hour to

private attorneys," Benedetti said. "That does not include pensions, health insurance, the cost of malpractice insurance or any of the other ancillary benefits of being a state employee. The last time we had a major wage increase was in 2005 — and the prosecutors voted in favor of it."

Benedetti said CPCS has reached out to the district attorneys "for years, trying to work together for higher salaries for both staffs, and we still want to work with them on that particular piece," but that the organization will "continue to get the message out to policy and lawmakers that the DAs are being disingenuous when they suggest this is an apples-to-apples comparison."

"We support an increase in the DA's budget, but not at the expense of providing representation to the indigent," he said.

The MDAA did not return calls seeking comment by press time. ■

Legal community bids farewell to Marshall

WE THE PEOPLE

Continued from page 1

BREAKING THE CROCKERY

A quote attributed to Desmond Tutu goes like this: *When a pile of cups is tottering on the edge of the table and you warn that they will crash to the ground, in South Africa, you are blamed when that happens.*

Individual rights have been the keystone of Margaret Hilary Marshall's legal career. As a middle-class white person born in South Africa, she came of age opposing the apartheid system then in place.

In June of 1966, Sen. Robert Kennedy was invited to speak in South Africa, where protests were mounting against apartheid, with dissidents being arrested, and with little support from the outside world. As recounted in the book *Robert Kennedy: His Life* (2000), he accepted the invitation from the anti-apartheid National Union of South African Students, but expressed intense concern that doing so would further endanger the dissidents. His guide for his five-day visit was Marshall, then a college student who had been elevated to the position of vice president (subsequently, president) of the NUSAS because so many of the organization's more senior male officers, including whites, had already been jailed. Kennedy went on to give a speech there that is considered by many to be the best of his life, in which he emphasized that denying equal rights to some impoverishes all.

In an interview she later gave to the book's author, biographer Evan Thomas, Marshall recalled, "I was 20 years old, thinking of the threat of no work, no passport and no university." Lukey notes, "The theory was that the South African government didn't dare arrest a beautiful blonde woman and put her in jail. ... she knew she was being followed, and she always wondered whether they would reach the point where they wouldn't care and they would arrest her."

Today, 45 years later, Marshall's diplomatic tenacity and consistency in the legal interpretation of individual rights has become the hallmark of her career.

She was appointed an associate justice of the Supreme Judicial Court in 1996, and became chief justice in 1999. In her adopted homeland, she has educated people across the state and the nation about John Adams and the Massachusetts Constitution, created in 1783, which established the first constitutional form of democracy with a written charter of rights, enforced by an independent branch of government that is not accountable to the majority.

"You, as one of 'we the people,' can come to court and say, 'I think that law, that government action, is inconsistent with respect to my fundamental constitutional rights,'" Marshall says. "You could not do that in England because it's not a constitutional democracy." Despite the sweeping social changes — often driven by the rule of law — that have occurred in her lifetime, she says the Massachusetts Constitution today functions essentially the same way it did when it was written.

BEYOND GENDER AND RACE

In 1996, Marshall's appointment to the SJC had its critics. She was, at the time, only the second woman to serve on the Court in its entire three-century-plus history. No person of color had yet been confirmed. "I have been a great supporter



Margaret Marshall, shown in her judicial chambers at the John Adams Courthouse in mid-October before her retirement.

PHOTO BY CHRISTINE PETERSON

"She has an obvious capacity to inspire people on matters of high ideals, but just as important, she is a person who always finds a way to get things done on the ground."

ATTORNEY LISA GOODHEART

of having a diverse judiciary, and I think that I understood well the concerns that were being expressed," she says now. "And certainly, those concerns resonated with me. Racial equality is something that I have fought for, in South Africa, and I am very committed to it, and so I never felt that I was being personally attacked. ... Thoughtful people were making the point that there had been no person of color serving on the Court."

According to many of her colleagues, Marshall's judicial career has demonstrated not only a sense of fairness, but also a dogged attention to detail and an elemental pragmatism that has led to sweeping improvements in the way the state court system functions. So, when she announced her retirement in July, the biggest irony was the ultimate praise contained within the lamentation that her departure would be a big loss to the Court.

While she will likely always be associated with the historic 2003 *Goodridge vs. Department of Public Health* ruling that made Massachusetts the first state to legalize same-sex marriage, she says fairness under the rule of law and social change are two different concepts. Judges must be concerned with equal treatment of all people who come to the court, and decide cases based on the conflicts between individuals or entities and institutions, either against the government or against each other. "It's important to the litigants and from the judge's point of view, [that] one doesn't distinguish among cases that would have far-reaching consequences,

as opposed to the cases that have consequences only to the immediate parties. That makes no difference."

Attorney Lisa Goodheart has known Marshall since 1990, when Marshall was a partner at Choate, Hall & Stewart LLP and Goodheart was a litigation associate at Hill & Barlow. "I don't think I have ever known a person who is at the same time such a true idealist and such a completely clear-eyed realist. She is totally committed to the principles of constitutional democracy, to equal justice for all, and to the rule of law, but this is combined with an intense pragmatism. She has an obvious capacity to inspire people on matters of high ideals, but just as important, she is a person who always finds a way to get things done on the ground."

ORDER IN THE COURTS

One of the accomplishments Marshall is proudest of is also, as she puts it, the least glamorous — an inside-out, top-to-bottom reform of the operations of the state court system to make it function better. In 2002, the SJC justices appointed the Visiting Committee on the Management of the Courts, a group of management experts, business leaders and lawyers, headed by Boston College Chancellor J. Donald Monan, who served as its chair, to assess the courts' policies and make recommendations for improvement. In her first years as chief justice, Marshall traveled across the state to meet with members of the bar, judges and their judicial staff to determine how well the judicial branch delivered justice to the residents of the commonwealth. The verdict: while substantive justice was in good stead, there were many complaints about how it was administered.

Some courthouses had a disproportionate number of employees as compared to the number and the type of cases they handled, leading to disparities such as the ease of obtaining a divorce in one county rather than another. For crime victims, it could take far longer to get a case resolved in one court than another. In child abuse cases, adjudications of termination of parental rights that take years are the equivalent of a lifetime. For impartial administration of justice, everyone should be treated the same, and that wasn't happening.

She appointed a committee to evaluate the situation, "which took a lot of courage to put a group together to critique the performance of the courts," said then-Superior Court Judge Robert A. Mulligan, who was appointed chief justice for administration and management of the Trial Court in 2003.

One step was to create a staffing model to analyze how many staffers it takes to process a particular kind of case. "It sounds incredibly boring, but that's the only way you can ascertain how much money you will need to administer the court system," she says.

She also noted — and reacted to — legislators' comments that they couldn't get a "straight answer" from the judicial branch on actual funding needs. "I have made transparency one of the key aspects of my tenure," she says. Performance goals are publicly published quarterly, and lawmakers can review the data for their respective districts on the number of cases filed, and how quickly they are processed.

Getting a straight answer from staffers wasn't easy either, says Mulligan. Two previous efforts to set criteria for staffing levels had failed. The survey process "was fraught with concern," he says. "People were afraid their jobs would be eliminated or that they would be sent to an understaffed court." To get staff cooperation, the work groups for each court got the word out to the unions that the survey would not be used for the purposes of trimming or transferring staff.

More than 40,000 people come into Massachusetts courts every day, excluding judges, staff and jurors — people whose lives are being disrupted in one way or another. "What I try to do is to make sure that those 42,000 people, every single day, receive justice as efficiently and at the lowest cost possible," she says.

STATE COURT CONFERENCES

Perhaps an area where Marshall's influence will be most missed is in her service on the boards of the National Center for State Courts and the national Conference of Chief Justices.

"Her retirement will represent a great loss not only to the Massachusetts judi-

LEGAL NEWS PROFILE: SJC CHIEF JUSTICE MARGARET H. MARSHALL

ciary, but to the national judiciary as well, and in particular to the Conference of Chief Justices,” says retiring California Chief Justice Ronald M. George, who has presided over court system reform in his state. He and Marshall both served as CCJ presidents, which brings with it the chairmanship of the board of the National Center for State Courts. “I think her presidency was characterized by inclusiveness. She would make special efforts to bring chief justices into the fold ... who perhaps had been more on the sidelines, and [fostered] increased communication between the organization’s leadership and general membership as well.”

“We feel her loss deeply in our circles and our organizations,” says Christine Durham, chief justice of the Utah Supreme Court since 2002, who succeeded Marshall in the president’s post at the CCJ and as chair of the NCSC. Every congressional ruling on civil or criminal justice “impacts state courts, but they do not have a voice in policymaking,” she notes. Marshall “was instrumental in elevating state courts on the national level.”

The CCJ includes 56 chief justices in states and territories. While every justice has a different background and every court has different governance, the common goal is to improve access to justice. Marshall, Durham says, always connected with staff running the conferences to make sure they had what they needed.

Her consideration of others’ needs runs from the practical to the philosophical. Goodheart recalls Marshall attending the first meeting of the newly-assembled Judicial Nominating Commission in the spring of 2007. “She brought for each of the 21 commissioners a copy of a little book by former SJC Chief Justice Hennessey, called *Excellent Judges*, and she spoke to the commissioners very thoughtfully about the work we were about to undertake,” Goodheart says. Since then, she says, she and her fellow commissioners have sought Marshall’s views many times. “She has been extremely generous with her time and her insights. It is clear that she is dedicated in a very deep way to the highest standards of excellence within our state judiciary, and to the importance of maintaining an independent judiciary.”

Mary McQueen, president of the NCSC, credits Marshall with raising federal awareness of the role of state courts. Ninety-five percent of litigation takes place in state courts; Marshall supported the creation of an Annual State of the State Courts address to the American Bar Association and was the first chief justice to deliver it. “Just through her dedication, personality and incredible insight, she has re-ignited among chief justices a renewal of commitment to the goal of insuring that individuals’ as well as government rights are protected,” McQueen says. “Coming from an immigrant background to the United States, she, in a way that some of us who are born natural citizens don’t really appreciate, [recognizes] what she calls a jewel of democracy. She sees importance in the almost-miracle of the American judicial system and the courts here.”

THE WORD THAT WASN’T USED

It was a word that Anthony Lewis *didn’t* use in his columns on South Africa that impressed Marshall. She had been reading his columns in *The New York Times* before she met him.

“The way some journalists write about South Africa has sometimes struck me as odd,” she says. When the new gov-

Who’s next: Questions of diversity on the SJC

BY BILL ARCHAMBEAULT

Chief Justice Margaret H. Marshall’s retirement from the Supreme Judicial Court — and Associate Justice Roderick L. Ireland’s nomination as chief justice — has opened a vacancy on the Court. But the departure of one of the Court’s three women, and its only justice to come directly from private practice, raises questions about what type of justice will be named to the open seat.

The SJC has had as many as four women serving on the seven-member court. But Ireland is the only minority on the court. And the legal background of the remaining judges is also fairly uniform, with all of them having been nominated from prior judgeships.

Will the next justice be a woman? An Asian? A judge or lawyer with probate and family court experience? All of the above?

In the SJC’s nearly 300-year history, its diversification has come in the last two decades, starting with the appointment of its first woman justice, Ruth Abrams, in 1977, and Ireland, its first African-American judge, in 1997.

“When you think of diversity, there are many, many dimensions,” Marshall said. “We’ve made great progress in the last 20 years.”

Marshall points out that the SJC has never had an Asian or Hispanic judge. But even for a woman who grew up fighting the apartheid system in her native South Africa, race should not be the only consideration in selecting the next justice, she said. Nor should maintaining or increasing the SJC’s number of women.

“For me, the important point is that you appoint the very, very best, especially to the Supreme Judicial Court,” she said.

Finding qualified minority candidates is no longer the challenge, she said. The real challenge is finding a lawyer willing to take a pay cut by leaving behind a lucrative private practice for a



Chief Justice Margaret H. Marshall

judgeship.

“I think the challenge is no longer considering people from all kinds of diverse backgrounds,” said Marshall, who has championed the need to elevate judicial salaries. “It’s not a pipeline problem, it’s a financial issue.”

And while she’d like to see more private attorneys willing to consider an appointment, she says there’s another, more glaring shortfall among practice fields.

“If I have a slight bias, I think it would be helpful to have an academic on the Court,” she said. “For the first time in a long time, there’s no academic on the Supreme Judicial Court, and they bring a wonderful perspective, a diversity of knowledge. When you teach a subject, you learn the subject as well. When I look across state courts as a whole, there’s a lack of academics, and I think that’s a loss.”

In addition to gender and ethnic diversity, it would be ideal to have a mix of prosecutors and defense attorneys, practicing attorneys and sitting judges from various courts; geographic diversity would also be welcome. Marshall feels her experience as Harvard University’s general counsel gave her familiarity with issues as diverse as employment,

environmental and securities law, and enriched her value on the SJC.

“Would I feel disappointed if the Supreme Judicial Court eventually had no women? Yes. Is there a magic number? No,” said Marshall, who was part of an SJC that included four women. “I cannot say that it made a difference that there were four, three or two.”

Gov. Deval Patrick’s chief legal counsel, William “Mo” Cowan, said diversity, including a candidate’s practice area, is an important consideration. “We certainly look at the career and experience of those who present themselves as candidates,” he said. “We do look at diversity, but in a very broad sense.”

Patrick’s judicial appointments, Cowan said, reflect gender, racial, practice area and even geographic diversity.

“This governor has done an exceptional job of helping build a judiciary that continues to be one of the finest in the nation,” he said before Ireland’s nomination was announced. “When it comes to considering candidates for the SJC, whether it’s the chief justice or an associate justice, the governor looks to folks who can continue the rich and strong tradition of the Court. It is important that the Court continue to be strong, and even stronger, and be representative of the diversity of the commonwealth. There is no litmus test. It’s most important that you find the best and brightest. You take all those factors into considerations.”

Judicial diversity usually focuses on a candidate’s gender and ethnicity, but there are other categories that escape notice. For example, Marshall pointed out, there are no judges who are blind or physically challenged on the SJC.

The important thing, she said, is that society, especially young people, not think the judiciary is unattainable for someone like them.

“You don’t want to have a judiciary that excludes large groups of people,” she said. “You want to have a system that welcomes that kind of diversity on the court.” ■

ernment was formed after Nelson Mandela’s release from prison, most news reports described the new government as ‘black majority rule.’ “I never understood the concept ‘black majority rule,’” she says. “It was, after all, changed to majority rule. We don’t describe our country as ‘white majority rule.’ ... and I don’t think Tony ever wrote a column about black majority rule.”

Lewis, she says, “understood that the fundamental issue in South Africa was power, and exclusion of the majority of the population from exercise of democratic power. It happened to have a race connotation, but the fundamental issue was justice and freedom and equality rather than ‘racial’ equality.”

Marshall and Lewis share a love for the law, and a profound respect for each other’s chosen professions’ role in society. “Of course, I couldn’t talk to him about the cases as they were being decided [in the SJC]. But we have attended many judicial conferences and bar associations together, and have had the opportunity to hear wonderful speakers together, and because we have such close, overlapping interests, he is more likely to want to come

to a judicial conference than, perhaps, some spouses.”

“DEVOID OF SMALLNESS”

Those who know Marshall personally as well as professionally all have stories about her — the hand-written notes in lieu of e-mails, the simple but meaningful social gestures, the curiosity and engagement with whomever she is with at the moment. She is an extensive world traveler who has not lost sight of the importance of home and family. Colleagues note her willingness to mentor people, and to travel thousands of miles to speak at conferences.

Jessica Block, now with the law firm of Block & Roos, met Marshall in 1981, the year before she graduated from law school at Northeastern University. Marshall was then an associate at Csapler & Boch. “Even then, you knew,” Block says. “I remember when I was an associate and she would take me to a marketing event. She was a magnet. Everybody came up to her. I think that’s going to continue. I’m looking forward with interest to the next chapter.”

Goodheart observes, “She has always

been very generous in offering encouragement and wise counsel to a great many people. She remembers people, and she always asks how the family is doing and wants to see pictures. She enjoys hearing stories. She loves introducing people to each other and telling them what they have in common. She is incredibly skilled at engaging a group in conversation in such a way that everyone feels recognized and included and drawn right into the thick of it. She asks a lot of questions, and she listens, and lets you know you have been heard. These things make a powerful impression, and they matter.”

When gatherings are more adversarial and less collegial, Marshall also shines. Mulligan notes, “She’s very, very cool under fire. She’s a great leader in that respect; she has an innate optimism that things will work out. That’s not to be confused with being satisfied with things that need to be improved. I think she has an innate outlook to find the best in people.” He pauses. “From my personal perspective, she has been a great pleasure to work with, a wonderful person to engage with. ... She is a person who is devoid of smallness. That’s genuine.” ■



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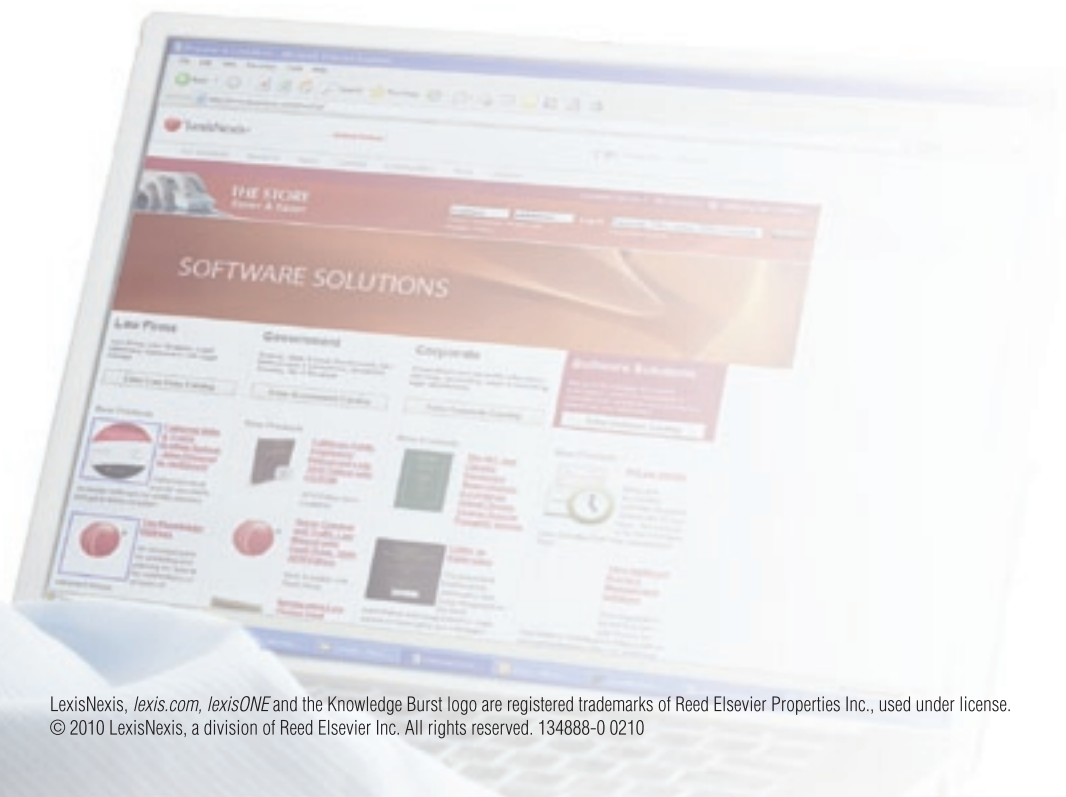
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LEGAL NEWS

Fall River celebrates opening of new justice center

BY TRICIA M. OLIVER

The ceremonial opening of the new Fall River Justice Center took place Sept. 30 and was attended by state officials and dignitaries from the Fall River area. Community members, judges, attorneys, court staff and others from Bristol County and beyond took part in the afternoon celebration.

“Fall River has a rich history of culture and Congress,” said Chief Justice for Administration and Management Robert A. Mulligan, who served as the master of ceremonies and described the new justice center as a “magnificent structure.”

The program’s featured speakers included Gov. Deval Patrick, Supreme Judicial Court Associate Justice Robert J. Cordy, Sen. Joan M. Menard, Rep. Patricia Haddad, MBA President Denise Squillante, Fall River Mayor William A. Flanagan, Bristol County Superior Court Clerk Magistrate Marc J. Santos and commissioner of the state’s Division of Capital Asset Management, David Perini.

Patrick thanked Perini for his “marvelous job of leading quietly” the planning and construction project. He stressed the \$85 million courthouse’s role in rebuilding a sense of community, describing the event as an opportunity not “just to celebrate an extraordinary building,” but to appreciate the “spirit of what it represents.”

After breaking ground in October 2007, the Fall River Justice Center opened its doors three months ago. The new struc-



PHOTO COURTESY OF MASSACHUSETTS TRIAL COURT DEPT.

ture is situated in the heart of downtown Fall River, overlooking historic Battleship Cove. “Today we reinforce the Massachusetts Trial Court’s commitment to its urban centers,” said Mulligan.

Cordy spoke of the new structure as belonging to the people. He also emphasized the importance of preserving and maintaining the new building now that it has been erected — an obligation that “falls on us as guardians of justice.”

The Bristol County Superior Court and the Fall River District Court began operations in the new five-story building in July.

The courthouse features nine courtrooms, modern information technology and digital recording capability, handicapped accessibility, secure detention areas, a jury pool and the District Attorney’s Office. The courthouse also houses a law library.

The Justice Center is the first courthouse constructed by the commonwealth to incorporate LEED (Leadership in Energy and Environmental Design) certification standards into all phases of the project — site development, design, material utilization, practices and equipment.

“Now that the dust is settled and of-

fices are occupied, it is only fitting that we celebrate its opening,” said Menard, who represents the First Bristol and Plymouth District and lives in Fall River.

Squillante, a Fall River native, reminisced about the area in which the courthouse was constructed. “As a child, I walked along South Main Street, as many of you did, to the shops, the library down the street and to get lime rickey sodas,” she said.

“This court will play a vital role to the rejuvenation of this center of the community,” added Squillante. ■

BAR NEWS



PHOTOS BY SUSANNAH THOMAS

From left to right: MBF Fellows Mikal Weiss and David Bloomberg of Burrows, Weiss & Bloomberg of Northampton, Gail Burrows, MBF President Joseph Vrabel and David Burrows.

MBF holds grantee receptions

The Massachusetts Bar Foundation held two receptions to honor grant recipients and volunteers. The Boston Grantee Reception was held at Burns & Levinson on Sept. 30 and the Springfield Grantee Reception was held at Bulkley, Richardson & Gelinas on Oct. 14.

Attorney Lewis Eisenberg was honored with a 2010 MBF President’s Award in Boston, and Meade Burrows was honored posthumously with the award in Springfield. The award is given each year in recognition of outstanding contributions to the legal community through volunteerism and support of the foundation’s mission. ■



MBF President Joseph Vrabel, left, and 2010 MBF President’s Award recipient Lewis Eisenberg of Cosgrove, Eisenberg & Kiley, right.

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BAR NEWS JOINT FORECLOSURE LEGISLATION TASK FORCE

New foreclosure task force aims to improve laws, train attorneys

From left to right, task force members at the Oct. 13 meeting: George Megaloudis, Roach, Ioannidis & Megaloudis LLC; Kevin Cuff, Massachusetts Mortgage Bankers Association; David Grossman, Harvard Legal Aid Bureau; Francis Morris, Western Massachusetts Legal Aid Bureau; Kevin F. Kiley, Massachusetts Bankers Association; Jayne Tyrrell, MBA Access to Justice Section Council chair, Massachusetts IOLTA Committee; Esther Schlorholtz, Boston Private Bank; Laurel H. Siegel, task force vice chair, MBA Property Law Section Council, Law Offices of Laurel H. Siegel LLC; Beth J. Barton, task force chair, MBA Property Law Section Council, CATIC; John Skarin, Massachusetts Bankers Association; Erica Paquette Bigelow, REBA, Rich May PC; and Francis J. Nolan, Harmon Law Offices PC.



PHOTO BY JENNIFER ROSINSKI

BY JENNIFER ROSINSKI

The Massachusetts Bar Association has created the Joint Foreclosure Legislation Task Force, which strives to improve both the state's foreclosure law and borrowers' access to assistance in the foreclosure process.

A collaboration among bar associations, legal services, real estate attorneys

and bankers' associations, the task force plans to draft a legislative proposal to modernize foreclosure law in Massachusetts and ensure a fair and efficient foreclosure process.

"The development of this task force comes at a critical time, when many Massachusetts residents are struggling to stay in their homes," MBA President Denise Squillante said. "The MBA hopes this new effort will result in a more stream-

lined foreclosure process in Massachusetts — making it easier for both homeowners and their attorneys to navigate the system."

The task force includes representatives from the MBA's Property Law and Access to Justice sections, as well as the Real Estate Bar Association of Massachusetts, the Massachusetts Bankers Association, the Massachusetts Mortgage Bankers Association, Western **▶ 15**

CHAIR ELIZABETH J. BARTON

Vice chair of the MBA Property Law Section Council, Barton is a title insurance underwriter with CATIC in its Eastern Massachusetts office.



She is also a member of: the Real Estate Bar Association of Massachusetts, serving on its Title Standards Committee and Commercial Real Estate Finance Committee; the Women's Bar Association of Massachusetts, serving on its Membership Committee; and the Merrimack Valley Bar Association.

Barton lectures for Massachusetts Continuing Legal Education, the MBA and REBA.


VICE CHAIR LAUREL H. SIEGEL

Chair of the MBA Property Law Section Council, Siegel has practiced commercial and residential real estate law for 15 years. Prior to starting her solo practice in 2008, she was a principal at Siegel, Wagner & Swartz LLC in Boston, where she was the managing member of the real estate department.



Previously, Siegel practiced at Kotin, Crabtree & Strong LLC. She was one of the real estate "Rising Stars" in *Law & Politics Magazine's* Super Lawyers listings in 2006 and 2007.

Siegel is a member of the Real Estate Bar Association and serves on its legislative committee. She is also on the board of directors of the Medford Square Market and a member of the Medford Chamber of Commerce.




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David A. Parke, Esq., program chair, Bulkley, Richardson and Gelinis LLP, Springfield; Jonathan C. Guest, Esq., McCarter & English LLP, Boston; Lauren Puglia, Esq., Sassoon & Cymrot LLP, Boston; John J. Weeden, Esq., CPA, Abrams, Little-Gill, Loberfeld PC, Chestnut Hill



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Lisa Terrizzi, Esq., program chair and moderator, career coach and outplacement consultant and chair, MBA Lawyers in Transition Committee, Boston; Diane Curtis, Esq., Director of Pre-law Advising, University of Massachusetts Amherst, Amherst; Karen De Meola, Esq., Assistant Dean for Admissions and Student Finance, University of Connecticut School of Law, Hartford, Conn.; Alice Hearst, JD, Ph.D., Professor of Government, Smith College, Northampton; Michael A. Johnson, Assistant Dean of Student Affairs and Director of Academic Support, WNEC School of Law, Springfield



LISA TERRIZZI

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CLE FACULTY SPOTLIGHT

Michael I. Flores, Esq.

Vice Chair, Family Law Section Council

Flores, an Orleans resident, is the principal at the Law Offices of Michael I. Flores in Orleans where he devotes his practice to representing clients in a broad array of domestic relations matters, including litigation and alternative dispute resolution. A Board of Bar Overseers Hearing Committee member, he is also vice president and family law committee chairman of the Barnstable County Bar Association. Flores has spoken and written for several bar associations and penned a reference guide on the Probate and Family Court for mental health professionals. In addition, he frequently lectures on business ethics and leadership for the Curry College MBA Program.



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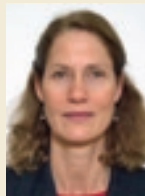
Defenses to Removal: Representing Clients in Immigration Court

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Wednesday, Nov. 17, 4-7 p.m.
MBA, Boston

Faculty:

Amy M. Grunder, Esq., program chair/moderator, Amy M. Grunder, Attorney at Law, Cambridge; Michael D. Greenberg, Esq., Law Offices of Michael D. Greenberg, Boston



AMY M. GRUNDER

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Friday, Nov. 12-Saturday, Nov. 13
Cranwell Resort, Spa & Golf Club, Lenox

Faculty:

Thomas J. Barbar, Esq., conference co-chair, Deutsch, Williams, Brooks, DeRensis & Holland PC, Boston; Veronica J. Fenton, Esq., conference co-chair, Law Office of Veronica J. Fenton, Lenox; Marc E. Fitzgerald, Esq., conference co-chair, Casner & Edwards LLP, Boston; Hon. Joan P. Armstrong, Suffolk Probate and Family Court; Hon. Paula M. Carey, Chief Justice, Probate and Family Court; Hon. Linda S. Fidnick, Hampshire Probate and Family Court; Hon. Anne Geoffrion, First Justice, Hampden Probate and Family Court; Hon. Anthony R. Nesi, Bristol Probate and Family Court; Megan H. Christopher, Esq., MetroWest Legal Services, Framingham; Jennifer Clapp, Esq., Grindle, Robinson, Goodhue & Frolin, Wellesley; Marisa A. DeFranco, Esq., Law Office of Marisa DeFranco, Salem; Diane M. DeGiacomo, Esq., Cain, Hibbard & Myers PC, Pittsfield; James R. DeGiacomo, Esq., Murtha Cullina, Boston; Mark G. DeGiacomo, Esq., Murtha Cullina, Boston; Michael I. Flores, Esq., The Law Offices of Michael I. Flores, Orleans; Geri Fuhrman, PsyD, UMass Memorial Child and Family Forensic Center, Worcester; Jack E. Houghton Jr., Esq., President, Berkshire County Bar Association; Charles P. Kindregan Jr., Esq., Professor, Suffolk University Law School, Boston; Robert Kinscherff, PhD, Esq., Massachusetts School of Professional Psychology, Boston; Maureen C. McBrien, Esq., Todd & Weld LLP, Boston; Susan M. Miller, MA, CPA, CFP, CDFA, Principal, Aurora Financial Advisors LLC, Wellesley; Katherine Nemens, Esq., Clubhouse Family Legal Support Project, Mental Health Legal Advisors, Boston; Eneida M. Roman, Esq., Roman Law Offices, Boston; Denise Squillante, Esq., President, Massachusetts Bar Association



THOMAS J. BARBAR



VERONICA J. FENTON



MARC E. FITZGERALD

Post-Nuptial Agreements After the Ansin Decision:

What Does an Enforceable, Durable Agreement Look Like Now?

*Sponsored by the Family Law Section Council

Tuesday, Nov. 30, 4-7 p.m.
MBA, Boston



Faculty:

Michael I. Flores, Esq., program chair and moderator, The Law Offices of Michael I. Flores, Orleans; David H. Lee, Esq., Lee & Levine LLP, Boston

*Additional faculty to be announced.

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MBA adds Facebook page to its social media platform

The Massachusetts Bar Association has launched its official Facebook fan page. To "like" our new Facebook page, visit www.facebook.com/MassBarAssociation, and suggest your "friends" like our page as well.



The addition of Facebook means the MBA has a presence on three social networking platforms, including LinkedIn (www.massbar.org/linkedin), launched in January 2010, and Twitter (<http://twitter.com/massbar>), launched in July 2009. All three social media platforms feature information about the MBA, including CLE programs, events and news.

As an MBA member, we encourage you to both post items of interest to you, and the greater legal community, on these pages and comment on items already posted.

Interested in how to use social networking to improve your practice? The MBA plans to provide online tutorials in November. Look for programming information in e-Journals. ■

EXPERTS&RESOURCES

CONTINUED FROM PAGE 12

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Member Spotlight

HODGE ELECTED CHAIR OF ABF FELLOWS

Kay H. Hodge, a partner in the Boston law firm of Stoneman, Chandler and Miller LLP, was elected chair of The Fellows of the American Bar Foundation. A past president of the Massachusetts Bar Association, she began her term Sept. 1.

Hodge is the Massachusetts state delegate to the ABA House of Delegates and chair-elect of the ABA Individual Rights and Responsibilities Section. She is a past member of the ABA Board of Governors and immediate past chair of the ABA Commission on Racial and Ethnic Diversity. She is also a past president of the National Conference of Bar Presidents.

In her practice, Hodge represents management in labor, employment and employee relations matters. She is a Fellow of the College of Labor and Employment Lawyers.

Hodge serves on the board of directors of several nonprofit organizations, includ-

ing Newbury College in Boston, the Boys and Girls Club of Metrowest Inc., Starr King School for Ministry in Berkeley, Calif., Advocates Inc. and Greater Boston Legal Services.

She received the MBA's Gold Medal for outstanding legal services benefiting the public, the legal profession and the association (1999).



KAY H. HODGE

Hodge received her *juris doctor* and Master of Laws in taxation from B.U. School of Law.

The Fellows of the American Bar Foundation is an honorary organization of lawyers, judges and legal scholars whose public and private careers have demonstrated outstanding dedication to the welfare of their communities and to the highest principles of the legal profession. Fellows are nominated by their peers, and membership is limited to one-third of 1 percent of the lawyers in America.

The ABF, an independent, nonprofit organization, is the nation's leading research institute for the empirical study of law. ■

Young Lawyers Division announces 2010-11 board

The Young Lawyers Division, which provides professional tools for attorneys in practice for 10 years or less, has announced its 2010-11 board.

This year, Young Lawyers plans to help new lawyers and those already practicing by providing social activities with networking components, such as speed networking; diverse On Demand and live educational programming (including career panels, partnership track advice and basic and intermediate programs detailing the foundations and procedure of specific practice topics); and providing concrete resources for law students.

In addition, YLD plans to undertake civic outreach, including an anti-bullying campaign that will include lawyers, experts and community leaders.

To learn more about YLD, contribute to activities or programs, or propose an idea or project, members and non-members can attend meetings by going to www.massbar.org. ■

YLD Chair Kyle R. Guelcher encourages people to contact him at attorneyguelcher@yahoo.com with any questions or comments.

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JOINT FORECLOSURE LEGISLATION TASK FORCE

Continued from page 11

Massachusetts Legal Services, and other real estate practitioners.

"Piecemeal changes to the state's mortgage foreclosure laws over the years have created a foreclosure process that is incomprehensible to borrowers and disruptive to lenders trying to comply with the law," said Elizabeth J. Barton, task force chair and vice chair of the MBA's Property Law Section. "The task force strives to build a clear, open and understandable foreclosure process, from the ground up, which will benefit both homeowners and lenders."

In conjunction with the task force, the MBA has formed the Foreclosure Education Committee to teach attorneys how to counsel and advocate for individuals facing foreclosure. The free education program kicked off with an Oct. 28 seminar covering changes in foreclosure laws.

The program is available via MBA On Demand, which allows users to watch programming from the comfort of their home or office. Seminars to follow will cover topics that include HAMP Loan Modifications, Alternatives to Foreclosure and others. Look for upcoming free MBA On Demand programs as part of the "Education for Attorneys Who Represent Individuals Facing Foreclosure" series. ■

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BAR NEWS

Calendar of Events

Friday, Nov. 12– Saturday,
Nov. 13

**20th Annual Family Law Conference:
Ask the Experts: Raise the Bar!** 
Friday, Nov 12, 6 p.m.–Saturday, Nov. 13, 4 p.m.
Cranwell Resort, Spa & Golf Club, 55 Lee Road, Lenox

Tuesday, Nov. 16

**Ninth Annual Western Massachusetts
Bankruptcy Conference**
4–7 p.m.
Western New England College School of Law, 1215
Wilbraham Road, Springfield

Wednesday, Nov. 17


Veterans Dial-A-Lawyer Program
5:30–7:30 p.m.
Toll-free: (877) 686-0711
Statewide dial-in #: (617) 338-0610

**Alternative Careers: Opportunities in
Higher Education Administration**
12:30–2 p.m.
MBA, 73 State St., Springfield

**Defenses to Removal — Representing
Clients in Immigration Court** 
4–7 p.m.
MBA, 20 West St., Boston

Thursday, Nov. 18


MBA Western Mass. holiday party
4:30–7 p.m.
Sheraton Springfield Monarch Place, One Monarch
Place, Springfield

 Indicates recorded session available for purchase (after live program) through MBA On Demand at www.massbar.org/cle/mba-on-demand.

Friday, Nov. 19

**Legal Chat @ Noon: Social Media's
Impact on Law Firms, Revenue and
Brand** 
Noon–1 p.m.
Real-time webcast at www.massbar.org/ondemand


Tuesday, Nov. 30

**Post-Nuptial Agreements after
the Ansin Decision: What Does an
Enforceable, Durable Agreement
Look Like Now** 
4–7 p.m.
MBA, 20 West St., Boston

Wednesday, Dec. 1

**MBA Monthly Dial-A-Lawyer
Program**
5:30–7:30 p.m.
Statewide dial-in #: (617) 338-0610

Thursday, Dec. 9

**Eighth Annual In-House Counsel
Conference: Doing Business in the
Electronic Age** 
9 a.m.–1 p.m.
MBA, 20 West St., Boston
Real-time webcast at www.massbar.org/ondemand

Thursday, Dec. 16

MBA Boston holiday party
5–7 p.m.
MBA, 20 West St., Boston

 Real-time webcast available for purchase through MBA On Demand at www.massbar.org/ondemand.

For more information, go to www.massbar.org/events/calendar.



For updated information on events and complete CLE course information, visit www.MassBar.org/CLE.

Great Depression stymies MBA

In the 1930s, as the nation struggled through the Great Depression, membership and representation were major challenges for the Massachusetts Bar Association.

Membership had been “static” since the 1920s, and then the Depression took its toll. In 1938, MBA President Henry R. Mayo lamented that there were an estimated 8,000 to 9,000 lawyers in the state, but only 700 MBA members, having dropped from 1,250 before the Depression.

The MBA, which was formed, in part, to represent lawyers statewide and include the input of regional and specialized bar associations, had not garnered much participation from those groups.

The MBA’s bylaws, which said that each county, city or local bar association “may” appoint a delegate, were changed in December 1932 so that every affiliated bar association president (or their designee) was automatically made a delegate to the MBA’s Executive Committee. ■



The Massachusetts Bar Association, which was formed in 1910 and incorporated in 1911, celebrates its centennial anniversary with a number of events this year. As part of that observance, Lawyers Journal and e-Journal will highlight past presidents and MBA trivia. Material from Fiat Justitia, A History of the Massachusetts Bar Association 1910-1985, by Robert J. Brink, was used for this story.

CENTENNIAL TIMELINE

1930: At the annual meeting, a member notes that several other industries, including bankers, new government agencies and accountants, are “gradually encroaching on the legal profession.” The comment opens discussions that would continue throughout the decade, attempting to define the boundaries of a relatively new phrase — “the unauthorized practice of law.”

April 1932: Opinion of the Justices declares that the judicial department has inherent exclusive power to determine the qualifications of applicants for the admission to the bar.

December 1932: New bylaws are adopted, providing a plan for the automatic affiliation of local bar associations under the aegis of the MBA. Presidents of local associations automatically become delegates to the Executive Committee. The gradual implementation of this plan helps address allegations that the MBA does not stand for lawyers throughout the whole of the state.

1932: After the gains of the 1920s, the Great Depression staggers the advancement of women within the profession. Despite this, Sybil H. Holmes is elected the first female member of the Executive Committee.

1936: The American Bar Association restructures and allows state bar associations to participate through a body called the House of Delegates.

1937: The conservative MBA polls its members, and finds an overwhelming 93 percent against President Roosevelt’s “court-packing” plan to increase the membership of the Supreme Court in an effort to secure a progressive majority. The plan was defeated. ■

Compiled by Cassidy Murphy from *Fiat Justitia: A History of the Massachusetts Bar Association*, by Robert J. Brink



Historical nuggets from the Massachusetts Bar Association’s 100-year-old history as told in Fiat Justitia, A History of the Massachusetts Bar Association 1910-1985, by Robert J. Brink. Compiled by Megan Griffith.

The MBA began publishing its annual legislative report in 1913 to help lawyers cope with that year’s busy legislative session, when more than 2,000 proposals were considered. The detailed report included commentary, which also helped non-lawyer legislators understand possible consequences of proposed legislation.

The MBA started offering legal aid as a public service during World War I. Its members helped disseminate legal information and provide legal assistance to soldiers and sailors. One member in particular, Reginald Heber Smith, recognized that better legal aid would improve access to justice for the poor — and might prevent class uprisings.

As the MBA grew and matured, its presidents began to broaden its focus, taking aim at general trends in society instead of just at issues specifically relevant to lawyers. In 1960, MBA President Harold Horvitz founded the Committee on Juvenile Delinquency to examine a societal problem. ■



From left to right: MBA Centennial Award honoree Nancy Stanton, MBA Vice President Douglas K. Sheff, MBA President Denise Squillante, MBA Centennial Award honoree Robert Marchand and MBA Secretary Marsha V. Kazarosian.

PHOTO BY JACK DARMODY

Squillante bestows first MBA Centennial Awards, is honored by Fall River mayor

BY TRICIA M. OLIVER

Massachusetts Bar Association President Denise Squillante presented the first two MBA Centennial Awards at a Sept. 30 Bristol County Bar Association reception in Swansea, an event at which Squillante was also honored by her hometown.

“It is quite humbling to be at this podium, in this moment, in this centennial year of the MBA,” said Squillante, who announced the creation of the MBA Centennial Award after receiving the key to her native city from Fall River Mayor William A. Flanagan.

Following remarks outlining her focus for the MBA’s association year, Squillante shifted the evening’s spotlight to Nancy Stanton and Robert Marchand, the first recipients of the award, which will be bestowed across the state in the coming months.

Awardees are recognized for their “extraordinary achievement” in advancing the rule of law and the integrity of the profession, and in preserving the democratic principles of the nation.

Squillante noted Stanton’s efforts in putting together a volunteer conciliation proposal to be considered by the Supreme Judicial Court for use in the small claims session of the District Court, among many accolades.

Likewise, Squillante pointed to Marchand’s dedicated service to Lawyers Concerned for Lawyers in assisting colleagues who are often going through their most difficult professional moments. Both were on hand to receive the honor.

“For their service, we thank them,” said Squillante. “They will be examples for lawyers who follow them in the next centennial as to what service does mean to the profession and to the community as a whole.” ■



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FOR YOUR PRACTICE MIND YOUR OWN BUSINESS

Lawyers are from Mars, marketing professionals are from Venus

(Or, how to think like an entrepreneur)

BY STEPHEN E. SECKLER

In his 1992 bestselling book, *Men Are From Mars, Women Are From Venus*, John Gray wrote about the fundamental differences between males and females. Gray suggested that if men and women could learn to appreciate some of these differences, they would improve their relationships.

Gray's analysis is useful for couples who are trying to improve their relationships; but in business, understanding differences can broaden our thinking, improve our communication and make us more effective.



STEPHEN E. SECKLER

In a law firm, look at how different constituencies think about marketing and you quickly get the picture. A typical lawyer in private practice sees marketing as a necessary evil. Many do not like to be perceived as a salesman, and many are afraid that they will sully their reputation by self promoting.

In contrast, talk to a marketing director and you get a very different take. To a marketing director, speaking, writing, volunteering and meeting prospects for lunch are all worthwhile investments of time. While no single activity is likely to generate work by itself, the cumulative effect is to help an attorney build his reputation and strengthen his business relationships. Over time, these activities enable the lawyer to attract more business.

These two mindsets can be summed up in the following way: marketing professionals think like entrepreneurs. They focus on "what might be." Lawyers, on the

other hand, tend to "think like lawyers" and focus on "what might go wrong."

Of course, anticipating what might go wrong is the essence of good lawyering. While a good lawyer factors in what the client wants, managing the downside risk is what lawyers do. But there is a lot that lawyers can learn from marketing and sales professionals. Law has become a highly competitive business, and just doing good work is no longer enough to ensure that your pipeline will remain filled.

So what are some examples of how to shift your "risk avoidance" mindset to a more entrepreneurial mindset? The following list illustrates some common activities and the differences in how attorneys and marketing professionals approach them. They are illustrations of how shifting your own thinking can keep you focused on making a long-term investment in your success.

1. Attending a networking function — *Attorney mindset:* I never know what I am supposed to do at these events. How do I avoid wasting my time with people who are just looking for a job or want to sell me something? I never get any business from attending. *Marketing mindset:* I have no expectations. I'll try to get a sense of who might attend and maybe even show up early to look over the list of attendees; but I'm simply going to try and meet people and learn what they do. Maybe I'll meet someone who shares my interests. If it feels comfortable and appropriate, I'll get permission to contact a few people I meet and invite them to coffee or lunch. I will be open to the serendipity of what comes my way.

2. Speaking at a client seminar or CLE program — *AM:* I didn't get any work from doing this. It was a waste of time. I'm just giving away all of my good tips to my clients and competitors for free. *MM:* I've put together a solid presentation that I can turn into an article. I can repeat this presentation for other clients with minimal effort. I have enhanced my reputation for being an expert in my practice

area and I can add this to my bio. I can use the presentation as an excuse to write to my contacts.

3. Following up with a networking contact — *AM:* He never responded to my e-mail. I've been rejected. If I contact him again, he'll think I'm a pushy salesman. *MM:* Maybe he never got my e-mail. I'll keep trying until I hear one way or the other. But I'll be a little creative about it. If I sent an e-mail first, next time I'll call or maybe I'll send an actual letter.

4. Calling inactive clients just to say "hi" — *AM:* She knows I'm just calling because I want her business. *MM:* Maybe she likes hearing from me because we share common interests outside of work. Maybe there is some way I can be helpful to her that doesn't involve getting her business (maybe she needs a referral to another service provider — or maybe I can introduce her business to potential investors).

CONCLUSION

Thirty years ago, there was far less pressure on lawyers to market. In today's business climate, however, lawyers ignore marketing at their own peril. Relationship-building and reputation-building may not come naturally to many attorneys; but avoiding these activities because they seem risky is no longer an option. So start thinking like an entrepreneur and take some chances. Be open to the serendipity that comes with getting out of your office. There will be plenty of time to think like a lawyer once you have the work, but only if you change your mindset and get the work in the door. ■

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Stephen E. Seckler is president of Seckler Legal Coaching. He coaches attorneys on a broad mix of marketing and career issues. He writes the blog CounseltoCounsel (www.seckler.com/blog) which was included in the American Bar Association Journal's Blawg100 in 2007 and 2008. He is a member of the MBA's Law Practice Management Section Council. He can be contacted at legal@seckler.com.

LAW PRACTICE MANAGEMENT TIP:

Change the default open and save folder

By default, Microsoft Word tries to save new documents in your "My Documents" folder on your C drive. Using the same logic, when you click on "open" to open an existing document, it assumes the document is saved in the "My Documents" folder. Many people (if not the majority) want to save documents somewhere other than the "My Documents" folder on their C drive.

For example, if you save your documents to client folders in a drive other than C, here's how you can change the default location for documents to something such as G:\clients\documents. That way, the next time you click on "save as," the location will default to G:\clients\documents and all you have to choose is the individual client folder (depending upon how you've structured your directory.)

Here's how to do that in both Word 2003 and Word 2007:

IN WORD 2003:

- Open a new Word document;
- Choose Tools and then Options from the toolbar;
- Click on the File Locations tab;
- Click on Documents under File Types;
- Click on the Modify button;
- Use the Look in: box to browse to the folder you want to use from now on;
- Click on the folder name, then click on OK to select that location; and
- Click on OK again, and that's it.

IN WORD 2007:

- Click on the Microsoft Office button (the graphic on the top far left);
- Click Word Options (near the bottom of the box);
- Click Save (on the left);
- Under Save Documents, next to the Default File Location box, click Browse; and
- Select the new default folder and click OK, and you're done. ■

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Read LPM Tips every week in e-Journal. This tip is courtesy of Reba Nance at the Colorado Bar Association.

LAWYERS CONCERNED FOR LAWYERS

Health care hurdles frustrate lawyer hoping to keep therapist

Q. *My anxiety spiked when recently I got my first job (in a small firm) after passing the bar, which meant having to face not only the challenges of "real life" practice — about which there is so much I have yet to learn — but also the need to make loan payments, pay the rent, begin planning a family, etc. I didn't want to become accustomed to the tranquilizers that my primary care doctor prescribed, so I got into therapy (or counseling, I'm not sure which), and it has helped.*

I've been getting health insurance through my wife's half-time job, and they just changed to another HMO that doesn't cover my therapist. Because my income at this point remains quite limited, I may also qualify for Massachusetts' "Commonwealth Care," but I don't see the therapist's name on that list either. I'd rather not have to start with someone new — is there a way around this?

A. Efforts at universal health coverage are far from perfected, and you have come across an all-too-familiar obstacle. While most primary care physicians and hospitals are covered by the majority of managed care plans, that is not the case for most behavioral health provid-

ers (for a variety of reasons that need not be detailed here).

In many cases, the new HMO will allow for a few months of "transitional" coverage for your "out-of-network" therapist. (By the way, for practical purposes, you can consider "therapy" and "counseling" to be synonyms.) In addition, if you have the

option of switching to a PPO or POS plan, they will cover providers outside their network, but generally at greater cost to you.

After that transitional period, you will need to wrap up with your current therapist or negotiate a manageable self-pay fee, if possible. If your law firm offers a "flexible spending account" (sometimes called a "cafeteria plan"), these costs can be effectively reduced by paying them out of pre-tax income. Otherwise, either your current therapist or an LCL clinician can review the new HMO's provider list with you with an eye toward choosing a good successor therapist.

Commonwealth Care — though an excellent alternative to no insurance at all — is built upon the existing Mass Health (Medicaid) system and uses that provider list. The great majority of behavioral health providers on that list, you will find, are clinics (either freestanding or hospital) or large incorporated practices. In such systems, you can expect an initial intake evaluation and subsequent referral to the clinician who will see you for further sessions, which may or may not be the same person.

LCL would generally not be able to refer you to a particular individual, and we have found that there is often a months-long wait before the initial visit.

The inscrutable world of managed care never ceases to baffle, and we cannot possibly provide a guide through its labyrinthine twists and turns in this column, but if you arrange an appointment with one of our clinicians (at no cost), we can help you navigate. LCL offers evaluation, consultation, referral and more, but does not provide ongoing therapy/counseling. To protect you from any conflict of interest, our clinicians also may not refer you to their private practices. ■

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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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