By Mike Vigneux

Salaries of attorneys who work in the state’s criminal justice system are both “inadequate and inequitable,” according to a May 2014 report from the Massachusetts Bar Association Blue Ribbon Commission on Criminal Justice Attorney Compensation.

The report, “Doing Right by Those Who Labor for Justice: Fair and Equitable Compensation for Attorneys Serving the Commonwealth in its Criminal Courts,” analyzes the “declining economic status” of prosecutors, public defenders and bar advocates due to low salaries. (The full report can be accessed online at: www.massbar.org/blueribbon-report.) It is the first study conducted on this topic since the MBA’s groundbreaking “Callahan Report” in 1994.

Perhaps the most striking finding in the commission’s report is that the lowest paid person in a Massachusetts courtroom is a new assistant district attorney ($37,500), whose salary ranks less than the courtroom custodian ($38,796) and the switchboard operator ($42,834).

Massachusetts also ranks last in the nation in public defenders’ salaries ($32,786.89) when cost of living is taken into account.

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Many years ago, when I shared a brown-bag luncheon at the Thorneike Library with then Superior Court Judge Ralph Gants, along with several other dedicated justices, I don’t think either of us could have envisioned that the thoughtful, humble man I was talking with would one day be named chief justice of the Supreme Judicial Court. Now that it has actually happened, I could not be more proud of him or more excited for all of us.

Since those first informal meetings, I’ve had the good fortune to work with Justice Gants on many projects and grown to know him better as a jurist and as a friend. I can say without reservation that, like us, Justice Gants is someone who is committed to making sure the underrepresented receive justice in our system.

Just look at some of Justice Gants’ laudable accomplishments on the Access to Justice Commission, especially as they relate to support for those less fortunate who are in need of legal assistance. He is responsible for the $51 opt-out attorney registration fee under SJC Rule 4:03, as well as the fee for pro hac vice appearances under SJC Rule 3:16 — fees which together generate approximately $1.5 million per year for legal services for the poor.

From left: MBA Secretary Christopher A. Kenney, MBA Chief Legal Counsel and Chief Operating Officer Martin W. Healy, Legislator of the Year Awardee Rep. Garrett J. Bradley (D-Hingham), District Court Judge Heather Bradley, MBA President-elect Marsha V. Kazarosian, Keynote speaker Chris Matthews of MSNBC’s “Hardball,” MBA Vice President-Martin Rock O’Mara, MBA Vice President Christopher P. Sullivan, MBA President Douglas K. Sheff, MBA Treasurer Robert W. Harnais.

New sections fill expanding member needs

By Jason Scally

Last month the Massachusetts Bar Association’s House of Delegates (HOD) voted to establish a new Complex Commercial Litigation Section — the second new section added during the 2013-14 membership year, along with the Workers’ Compensation Section. By adding these specialty areas, both new sections fill existing member needs and open opportunities to attract new members.

The Workers’ Compensation Section has been very active since its addition by the HOD last September. It is already holding monthly meetings under the leadership of Workers’ Compensation Section Chair Deborah G. Kohl and Vice Chair Marianne Swenson.

The number of workers’ compensation members at the MBA has tripled since the section was added, according to Kohl. “It encouraged a lot of people who weren’t MBA members to become members.”

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Adding ‘chief’ won’t change the justice

MBA report shines light on woeful criminal justice salaries

BY MIKE VIGNUEUX

BY JASON SCALLY

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Justice Gants has also established a pilot program of court service centers in Boston and Greenfield, which is expected to expand statewide. He spearheaded a legislative effort to expand the Housing Court to provide access for the 31% of Massachusetts residents who are presently denied same because of where they live.

As a member of the Supreme Judicial Court Pro Bono Committee, Justice Gants has been working on new pro bono initiatives, including a provision which allows for pro bono work here for those with invisible injuries such as Traumatic Brain Injury (TBI), to feeding the homeless and setting up legal clinics. He is the most compassionate and humble judge I know, and I am not alone in my opinions. You see, Justice Gants is not only a champion of access to justice; he is also a champion of lawyers’ access to our courts. That’s why I invited him to be the first guest speaker of the year at our House of Delegates. He honored us there and continues to do so through his participation at many other MBA events.

Justice Gants has always been a justice of superior intellect, but he has never been constrained by the walls of an ivory tower. He does not know what the meaning of arrogance is. He is the most compassionate and able judge I know, and I am not alone in my opinions.

Justice Gants will soon be Chief Justice Gants, but I have no doubt that he will remain the same brilliant, humble, accessible person he was so accessible person he was so many years ago over our first brown-bag lunch.
New website MassProBono.org to enhance pro bono delivery

We’re excited to announce that MassProBono.org — a new website that will enhance the delivery of pro bono legal services to people of limited means in Massachusetts — is live! The website creates a comprehensive pro bono “marketplace” for would-be volunteers across Massachusetts. MassProBono.org allows lawyers to focus their energy on doing pro bono work rather than looking for it.

The site was launched by the Volunteer Lawyers Project, in partnership with Pro Bono Net (a national nonprofit organization), the Massachusetts Legal Aid Website Project, and the Volunteer Lawyers Project.

Visit www.mass.gov/courts to learn more.

Hon. Amy L. Nechtem appointed Juvenile Court Chief Justice

Trial Court Chief Justice Paula M. Carey has announced the appointment of Judge Amy L. Nechtem as chief justice of the Juvenile Court for a five-year term commencing July 31, 2014. Nechtem has served on the Juvenile Court since 2001, and in 2012 was selected president of the National Association of Women Judges (NAWJ).

Nechtem serves in the Essex County Juvenile Court and has served in a variety of leadership roles to develop educational and community outreach programs. She is a member of the Trial Court’s Standing Committee on Alternative Dispute Resolution, Mentoring Program and Videoconferencing Committee. She was recently awarded an innovative grant for Essex County to provide alternative dispute resolutions and education to youth and families involved in harassment cases. She received the 2011 Massachusetts Judges Conference Judicial Excellence Award for the Juvenile Court Department.

Magistrate Judge Neiman to retire

United States Magistrate Judge Kenneth P. Neiman has advised the court that he intends to retire on Jan. 5, 2015, the 20th anniversary to the day of his swearing-in.

Neiman has served in Springfield for the last 20 years and was chief magistrate judge for the District of Massachusetts from January 2006 through December 2009. Neiman graduated from Tufts College in 1967 and Harvard Law School in 1971. He was a partner in the Northampton firm of Fierst & Neiman from 1981 through 1994. While there, he received the Massachusetts Bar Association’s Community Service Award for Outstanding Pro Bono Service. Prior to the private practice of law, Neiman served as a legal services attorney with the Center on Social Welfare Policy in New York from 1971 to 1973 and with Western Massachusetts Legal Services from 1973 to 1981. He has also been an adjunct faculty member at Western New England University School of Law and served on the editorial board of the Federal Courts Law Review from 1999 to 2006.
DelVecchio, Stevens honored at Excellence in the Law

Bar News

Achievements across the legal community were celebrated at Excellence in the Law, an event co-presented by Massachusetts Lawyers Weekly and the Massachusetts Bar Association on May 1 at the Fairmont Copley Plaza Hotel in Boston.

The MBA paid special tribute to the Hon. Suzanne V. DelVecchio (ret.) and Carl Stevens of WBZ News Radio 1030. DelVecchio was presented with the Daniel F. Toomey Excellence in the Judiciary Award and Stevens was honored with the Excellence in Legal Journalism Award.

The event also featured award presentations for excellence in Pro Bono, Marketing, Firm Administration, Paralegal and Up & Coming Lawyers. A portion of the proceeds from the event will be donated to the Massachusetts Bar Institute Public Service Fund, which helps support community services throughout the state such as the Elder Law Program, the Tiered Community Mentoring Program, the Judicial Youth Corps Program, the Law Day Initiative, pro bono programs and the popular high school Mock Trial Program.

DelVecchio, a senior mediator and arbitrator at Commonwealth Mediation & Conciliation Inc., is a former Superior Court chief justice. As chief justice, DelVecchio implemented the Superior Court’s Business Litigation Session. Her distinguished career also includes serving as the regional administrative justice in Plymouth County, as a staff attorney for the Boston Legal Aid Society and as corporate counsel for the City of Boston. DelVecchio sits on the MBA’s Blue Ribbon Commission on Criminal Justice Attorney Compensation, which examines the impact of low prosecutor and public defender salaries on the state’s criminal justice system.

“Excellence usually comes in threes,” MBA President Douglas K. Sheff told the audience. “So where is the triad of excellence in the law? The answer is Judge Suzanne DelVecchio. Without her, our legal community would be incomplete, less human and considerably less colorful.”

“This is special. This really means a lot to me coming from my colleagues,” said DelVecchio after receiving her award.

Stevens is an award-winning general assignment reporter for WBZ News Radio 1030. During his career at WBZ, Stevens received the first-ever Edward R. Murrow National Award for Writing. In 1996, Stevens and WBZ received the prestigious Murrow Award for Feature Reporting on a story entitled “Blue M&M’s.” Named “Best Radio Reporter” by Boston Magazine, Stevens also uses a video camera to report on unique and enterprising stories for RadioVision on wbz.com.

“These days it’s so easy to paint lawyers and judges alike in a negative light,” said Sheff. “But Carl Stevens is not like most reporters.”

Making light of his spot in the event’s program, Stevens noted that “following Suzanne DelVecchio is like following David Ortiz in the batting order.”

A total of 38 awards were presented including 25 to Up & Coming lawyers, those attorneys who have been members of the bar for 10 years or less but have already distinguished themselves as rising stars in the state’s legal community.

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Louis D. Brandeis Fellow Angela C. McConney Scheepers
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The Massachusetts Bar Foundation is the Commonwealth’s premier legal charity. Founded in 1964, the MBF is the philanthropic partner of the Massachusetts Bar Association. Through its grantmaking and charitable activities, the MBF works to increase access to justice for all Massachusetts citizens. There is a role for every lawyer and judge at the MBF to help safeguard the values of our justice system — to ensure that equality under the law is a reality, not just an ideal. Visit our website to learn more about our work and to get involved.
The Massachusetts Bar Association’s House of Delegates (HOD) voted to add the MBA’s newest section — Complex Commercial Litigation — and elected the slate of officers and delegates for the 2014-15 membership year at its May 8 meeting in Boston. The Complex Commercial Litigation Section is the second new section to be added this year, joining Workers Compensation, which the HOD approved last September. (See related story, page 1.)

The HOD also adopted the report of the Blue Ribbon Commission on Criminal Justice Attorney Compensation. MBA Chief Legal Counsel Martin W. Healy noted that the recommendations in the report include raising assistant prosecutor and public defender salaries, and looking at the caps on bar advocate reimbursement to give these attorneys a living wage. (See related story, page 1.)

Following a report from Ethics Committee Chair Andrew Kaufman, HOD members approved for publication six opinions, including one that allows attorneys to “friend” an unrepresented adversary on social media.

HOD members also took up several measures brought by representatives from the Juvenile Law, Access to Justice and Family Law section councils. The HOD voted to:

- Support, in principle, the Statement of Principle on Fair Sentencing of Youth Convicted of First Degree Murder (as amended);
- Support, in principle, legislation relative to the proposed expansion of the Housing Court to other areas of the commonwealth; and
- Support proposed changes to Supreme Judicial Court Rule 3:03 allowing law students to represent clients on a pro bono basis in civil court under mentor supervision.

The May HOD meeting was the last one of the 2013-14 membership year.

The commission found that entry-level salaries for assistant district attorneys in Massachusetts ($37,000) are far less than those in New Hampshire ($52,000) and Connecticut ($60,000). Salaries for entry-level assistant attorneys general in Massachusetts ($55,000) rank less than those in Rhode Island ($56,000), New Jersey ($62,000), Connecticut ($73,000) and New Hampshire ($74,000).

The report also notes that a wide salary gap exists between federal attorneys and state attorneys in Massachusetts, with prosecutors’ starting salaries significantly less than other state agency attorneys. A Counsel I attorney receives a salary in the range of $54,946 to $79,659, and a Counsel II attorney earns between $62,978 and $80,000. In comparison, a state assistant district attorney starts at $73,750.

In March, the commission convened a hearing at the John Adams Courthouse in Boston, where a panel of testimony from several district attorneys, public defenders and bar advocates about the impact of low salaries. Statements made at the hearing were incorporated in the commission’s report.

“The testimony taken from lawyers practicing on the criminal side of our justice system was incredibly heart-rending and powerful,” said MBA Past President Richard P. Campbell, who chaired the commission. “I started the proceedings believing that these lawyers were underpaid, but the enormity of their hardships and their resolute commitment to professionalism despite them was emotive and awe inspiring.”

In addition to Campbell, members of the commission included: Denise Squillante, MBA past president; Hon. William D. Delahunt, former congressman and district attorney for Norfolk County; Hon. Suzanne V. DeVecchio (ret.), former Superior Court chief justice, mediator, Commonwealth Mediation and Conciliation, Inc.; Gerard T. Leone, partner, Nixon Peabody and former district attorney, Middlesex County; Hon. Charles Johnson, former chief justice, living in a state where compensation rates have changed little in 20 years. Some of the key recommendations include:

- Immediately raise starting salaries for assistant district attorneys, assistant attorney generals and full-time public defenders (attorneys in the Public Counsel Division of CPCS) to $55,000, which must be fully funded with commensurate increases for more experienced lawyers.
- Increase budget line items applicable to compensation of lawyers employed by district attorneys offices, the Office of the Attorney General, and CPCS to allow for a 20 percent increase in salaries.

“I hope that the report reaches the commonwealth’s legislative decision-makers … I also hope that the people and institutions who drive public opinion in our state will seize on this report, adopt its conclusions and push the commonwealth to act. There is really only one fair resolution of the current problem — ending the status quo.”

— MBA Past President Richard P. Campbell, Commission Chair

Boston Municipal Court; Richard Lord, chief executive officer and president, Associated Industries of Massachusetts; Randy Chapman of Chelsea, MACDL past president (2007–2009); and Martin Kane, past president of the Middlesex County Bar Association and former Middlesex assistant district attorney. Martin W. Healy, MBA chief legal counsel and chief operating officer, served as commission counsel.

Key recommendations

The commission provided suggestions within the report on how to improve the challenges assistant district attorneys, public defenders and bar advocates face living in a state where compensation rates have changed little in 20 years. Some of the key recommendations include:

- Take steps to keep the levels of compensation of full-time criminal justice attorneys at least equal to that of other public sector attorneys.
- Eliminate rules and practices of CPCS applicable to bar advocates, which treat these lawyers differently than more inferior to full-time public defenders.
- Address bar advocate compensation to ensure: 1) compensation for bar advocate programs are fair and reasonable and meet prevailing standards in the relevant communities, 2) hourly rates for bar advocates are structured such that serious felony cases in Superior Court attract participants, and 3) hourly rates for bar advocates are reviewed whenever a substantial change in the cost of living is experienced and on an regular biennial period.

Report garners media attention

The commission’s report has already shined a light on this critical issue by garnering strong media attention on both a national and regional level after it was adopted by the MBA’s House of Delegates in May.

First appearing in print in the Boston Globe on May 9 (“Criminal justice lawyers are becoming ‘working poor,’” study says”), the issue of low criminal justice salaries has been covered in print and on television, and by two leading national online law blogs: The Wall Street Journal Law Blog and Above the Law. On May 19, commission member and former Middlesex County District Attorney Martin Kane appeared on “Broadside” on New England Cable News, along with current Middlesex County District Attorney Marian Ryan, whom they discussed ADA/defender salaries and the commission’s report with host Jim Braude.

Boston Globe columnist Yvonne Abraham examined low ADA/public defender salaries in her May 22 column, “A salary that’s hard to defend.” Abraham wrote: “When we shortchange them, we shortchange the entire justice system. And our vaunted progressive ideals are exposed as hollow.”

Other outlets that covered the report included the Lowell Sun, ABA Journal and the MetroWest Daily News. “I hope that the report reaches the commonwealth’s legislative decision-makers both physically, meaning that they receive it and actually read it, and spiritually, meaning that they are moved to do something about this travesty,” said Campbell, the commission chair. “I also hope that the people and institutions who drive public opinion in our state will seize on this report, adopt its conclusions and push the commonwealth to act. There is really only one fair resolution of the current problem — ending the status quo.”

is factored in. Public defenders are the third-lowest paid workers in a Massachusettass courtroom, and the salaries of entry-level assistant district attorneys and assistant attorneys general rank well below those in neighboring states. “Assistant district attorneys, assistant attorneys general, public defenders and bar advocates (lawyers appointed to defend indigents) are grossly underpaid, earning far less than their counterparts in comparative jurisdictions across the country,” the report notes. “Emarrassingly, other states put a higher premium on the services of their criminal justice work force than does Massachusetts.”

The commission found that entry-level salaries for district attorneys in Massachusetts ($37,000) are far less than those in New Hampshire ($52,000) and Connecticut ($60,000). Salaries for entry-level assistant attorneys general in Massachusetts ($55,000) rank less than those in Rhode Island ($56,000), New Jersey ($62,000), Connecticut ($73,000) and New Hampshire ($74,000). The report also notes that a wide salary gap exists between federal attorneys and state attorneys in Massachusetts, with prosecutors’ starting salaries significantly less than other state agency attorneys. A Counsel I attorney receives a salary in the range of $54,946 to $79,659, and a Counsel II attorney earns between $62,978 and $80,000. In comparison, a state assistant district attorney starts at $73,750.

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The MBA reminds you that the 2013-14 membership year is drawing to a close, and membership renewal notices for the 2014-15 year will be distributed soon. As in years past, the MBA offers members two renewal options:

By mail: Renew your MBA membership through the mail with a check or credit card payment. Look for your dues renewal form to come in the mail in mid-July.
Online: Look for a renewal notice via email in mid-July with instructions on how to renew your membership online. We understand how valuable your time is and are happy to offer you this time-saving, green alternative.

As always, thank you for your continued support of the MBA.
Annual Dinner celebrates contributions to the profession

BY SCOTT VAN VOORHIS

From judges to top lawmakers, a who’s who of the legal and political worlds turned out for the Massachusetts Bar Association’s Annual Dinner on May 15 to applaud an array of distinguished recipients for their dedication to the law and community service.

Chris Matthews, host of MSNBC’s “Hardball,” offered a sweeping keynote address to a packed ballroom at the Westin Boston Waterfront, reminiscing about his years as an aide to House Speaker Thomas P. “Tip” O’Neill and lamenting the hyper-partisanship of today’s Washington.

Matthews, a Holy Cross graduate, also had a confession to make in keeping with the theme of the evening — a celebration of dedication to the rule of law and service to the larger community.

“I salute you for being what I wanted to be for the last 40 or 50 years — a lawyer,” said Matthews, adding he admired “your skill set of being able to know the law, but also being able to spot the key conflicts and areas of common ground.”

“At least from what I saw on The Good Wife,” he quipped.

Rep. Garrett J. Bradley (D-Hingham) was honored with the MBA’s Legislative of the Year Award. Bradley was cited for his work fighting for funds to spur economic development projects in his district, as well as his work with the MBA on medical malpractice legislation.

Bradley also helped forge legislation in 2012 to control health care costs and has risen to a leadership position that “puts him in a direct path of every piece of legislation passed in the House,” said MBA Vice President Christopher F. Sullivan.

Boston Mayor Martin J. Walsh received the MBA’s 2014 President’s Award. Walsh, a Boston native, was cited for his years of work with the organization on workplace safety issues as well as his long record as a legislator and now mayor promoting economic development, civil rights and marriage equality, among other important causes.

Walsh brought his decades-long commitment to workplace safety when he was appointed to the MBA’s Workplace Safety Task Force.

“I can’t think of any other profession that has made service such a central part of its mission,” Walsh noted.

MBA president Douglas K. Sheff reflected on his time in office, which he said was shaped by the aftermath of the Boston Marathon bombings.

Sheff noted the Massachusetts legal community rose to the occasion, with 87 lawyers “tirelessly” putting in countless pro-bono hours representing victims and their families through the MBA’s program.

“[After the] two blasts that changed our lives, the MBA, as always, was there providing representation to victims and their families,” said Sheff.

“We made this the year of the work-er,” he said. “The MBA took pride in the representation of the underrepre-sented.”

Sheff, in turn, won praise from Martha V. Kazarosian, the MBA’s president-elect. “You are a tough act to follow,” she said.

A range of top local elected officials and judges attended the Annual Dinner, including Chief Justice Roderick L. Ireland of the Massachusetts Supreme Judicial Court and House Speaker Robert A. DeLeo, among others.

Five lawyers and one law firm were recognized with Access to Justice Awards for their dedication to working with the underrepresented and under-privileged:

• Gerald D. Wall won the Legal Services Award for his decades of work providing legal help to immigrants at Greater Boston Legal Services.

• Stephen J. Phillips won the Pro Bono Bono Award for his dedicated representation of more than 130 hospice patients at Baystate Visiting Nurse & Hospice.

• The law firm of Klein Hornig LLP received the Pro Bono Award for Law Firms for many hours spent helping with local food banks and representing low-income tenants fighting eviction or foreclosure.

• James B. Krasnoo, who won the Defender Award, began his career in the Attorney General’s Office but decided to become a bar advocate after seeing firsthand the plight of defendants without adequate legal representation.

• Lisa F. Edmonds won the Prosecutor Award for her work with juvenile offenders and domestic violence at the District Attorney’s Office for the Cape and Islands.

• Jessica Berry received the Rising Star Award for her work above and beyond the call of duty at the Children’s Law Center.

Access to Justice award honorees, including: Defender Award Honoree James B. Krasnoo; Prosecutor Award Honoree Lisa F. Edmonds; Pro Bono Publics Attorney Stephen J. Phillips; Legal Services Award Honoree Gerald D. Wall; Klein Hornig LLP’s Teresa M. Santalucia, this year’s Pro Bono Law Firm; Rising Star Award Honoree Jessica Berry.

From left: Massachusetts Trial Court Administrator Lewis H. “Harry” Spence, MBA Past President Leo V. Doyle and Chief Justice of the Trial Court Paula M. Carey.

From left: Suffolk District Attorney Daniel F. Conley and MBA Chief Operating Officer and Chief Legal Counsel Martin W. Healy.

Members of the legal community listen to MBA Annual Dinner Keynote Speaker Chris Matthews.

BY SCOTT VAN VOORHIS

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PROBATE LAW
DRAFTING AND ADMINISTERING TRUSTS FUNDED WITH RETIREMENT ASSETS
Thursday, June 26, 1–4 p.m.
MBA, 20 West St., Boston

PROGRAM CHAIR:
John G. Dugan, Esq.
Doherty, Ciechanowski, Dugan & Cannon PC, Franklin

REAL ESTATE LAW
HOW TO OPEN A REAL ESTATE PRACTICE
Wednesday, June 18, 4–6 p.m.
Western New England University School of Law Conference Room
1215 Wilbraham Road, Springfield

PROGRAM CHAIR:
Francis K. Morris, Esq.
Law Office of Francis K. Morris
Brookline Village

COMING IN JULY ...

CIVIL LITIGATION
PERMISSION TO APPROACH? A JUDGE’S TAKE ON ETIQUETTE AND ARGUMENT IN THE COURTROOM
Wednesday, July 9, 4–7 p.m.
MBA, 20 West St., Boston

PROGRAM CHAIR:
Victoria Santoro, Esq.
Meehan, Boyle, Black & Bogdanow PC, Boston

SOLE PRACTITIONER & SMALL FIRM
ANTITRUST LITIGATION: A PRIMER FOR SOLO AND SMALL FIRM PRACTITIONERS
Wednesday, June 18, 5–7 p.m
MBA, 20 West St., Boston

PROGRAM CHAIR:
Hollis Saltzman, Esq., program chair
Robins, Kaplan, Miller & Ciresi LLP
New York, NY

Kellie Lerner, Esq.
Robins, Kaplan, Miller & Ciresi LLP, New York, NY

Erin Walker
U.S. Dept. of Health and Human Services
Washington, D.C.


David Seltz is the executive director of the Massachusetts Health Policy Commission, which aims to modernize health care payment and delivery models to establish a more accountable, affordable system. He will be the keynote speaker at this year’s MBA Annual Health Law Conference on Thursday, June 19, at the MBA, 20 West St., Boston. Seltz will be speaking on the status of Chapter 224 of the Acts of 2012 and health care payment and delivery system reform in Massachusetts.

Prior to his role at the Massachusetts Health Policy Commission, Seltz was the chief health care advisor for Senate President Therese Murray and served as the special advisor on health care for Gov. Deval L. Patrick. Through these positions, Seltz helped shepherd passage of Chapter 58 of the Acts of 2006 and Chapter 224 of the Acts of 2012. Seltz is a 2003 graduate of Boston College and originally from Minnesota.

Workers’ Compensation

Section Chair
Deborah G. Kohl

Workers’ Compensation

The Workers’ Compensation Section has been active on My Bar Access, which Kohl said is the best place to visit for up to date information on the section, as well as workers’ compensation law. Members interested in learning more about the section can also reach out to Kohl directly at diklaw@aol.com.

“We’re bringing people in and we’ve made a lot of progress this year,” said Kohl. “We have a structure in place that’s working, and people are doing a substantial amount of work.”

‘Com Com’ plans active year

The MBA has always welcomed commercial litigators, many of whom already participate in the Civil Litigation or Business Law sections. But the Complex Commercial Litigation Section, colloquially dubbed “Com Com,” will provide a more specialized section for attorneys whose practices involves litigation in intellectual property, commercial contracts, business torts, bankruptcy and other areas across the commercial litigation spectrum.

White said the opportunity to have educational opportunities that are specific to this substantive practice area will be a huge plus to commercial litigators, like himself. He also said having a section where there are many commercial litigators from different levels of experience and judges will provide great opportunities to network and enhance one’s practice.

The benefits since the section was established have been tangible.

“The benefits since the section was formed have never been before.”

— Workers’ Compensation Section Chair Deborah G. Kohl

MBA members can join an unlimited amount of sections, and White said members — especially those in the Business and Civil Litigation sections — should see the Com Com Section as a complement to other sections. “It’s cross-pollination,” he said. “It enhances everybody’s skills as a lawyer to recognize how business disputes can arise and how they can best be handled.”

The Com Com Section is in the process of ramping up for what promises to be an active 2014-15. White said the section hopes to publish a quarterly newsletter and will start offering CLE programs in the fall in each of the substantive areas that the section covers. The plan is to also hold a section-wide symposium, which will become an annual event for Com Com members.

While several positions in the Com Com section council have been filled, there are still openings available. Interested experienced attorneys should contact President-elect Marsha V. Kazaroian at marsha@kcolaw.com or Paul White at white@srbc.com.
President-elect honored by Haverhill Bar

Massachusetts Bar Association President-elect Marsha V. Kazaroian was honored with the Moody Award at a Haverhill Bar Association event recognizing Law Day 2014 on April 30 at the Barking Dog Alehouse in Haverhill.

The award, named for former U.S. Supreme Court Justice William Henry Moody, is presented to an attorney who embodies Moody’s endeavors for the advancement of justice. Born in Newbury, Moody not only practiced law, but served in the legislature and in various nominated positions before eventually serving on the Supreme Court from 1906 to 1910.

The Moody Award honors an attorney who strives to push the law forward (taking on and resolving/settling matters, either resolving/settling cases in mediation or rendering fair/equitable decisions at arbitration).

Kazaroian not only practiced law, but served in the legislature and in various committees and councils, including the MBA’s Executive Management Board, House of Delegates and the Joint Bar Committee on Judicial Nominations. She will become MBA President on Sept. 1, 2014.

Kazaroian has served as MBA vice president, treasurer and secretary. She was elected as an MBA delegate to the American Bar Association and has served on numerous committees and councils, including the MBA’s Executive Management Board, House of Delegates and the Joint Bar Committee on Judicial Nominations. She will become MBA President on Sept. 1, 2014.

Kazaroian is a past president of Trial Attorneys. Long active in bar associations across the state, Kazaroian’s endeavors in civil rights litigation, family law and discrimination law.

Kazaroian is managing partner of Kazaroian Costello & O’Donnell LLP. She concentrates in civil rights litigation, family law and discrimination law. Long active in bar associations across the state, Kazaroian is a past president of the Essex County Bar Association and the Massachusetts Academy of Trial Attorneys.

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Tiered Community Mentoring Program wraps up 5th year

The Massachusetts Bar Association’s Tiered Community Mentoring Program wrapped up its fifth year with an event and reception at the John Adams Courthouse on Tuesday, April 29. A dozen mentor-mentee teams heard from several speakers before tackling one final exercise during a breakout session.

MBA President-Elect Marsha V. Kazarosian welcomed all the mentors and mentees, and conveyed her gratitude for all their dedication during this past year’s program. “To the attorneys, law students and college students, we thank you for your willingness to share your wisdom and perspective with program participants,” said Kazarosian. To the students, she added: “Even though we’re wrapping up today, you should all continue to seek out mentoring and networking opportunities. Mentoring and networking are so important as you complete your education and move into the professional world.”

Supreme Judicial Court Chief Justice Roderick L. Ireland, U.S. Attorney Carmen M. Ortiz and Massachusetts Probate and Family Court Chief Justice Angela M. Ordonez also addressed the students and mentors, each expressing their strong support for the program and the importance of mentors in one’s professional career.

The MBA’s Tiered Community Mentoring Program provides high school, undergraduate and law school students access to legal professionals, an understanding of the legal profession and an awareness of the career opportunities available. Participating schools are New Mission High School, Roxbury Community College, Northeastern University and Suffolk University Law School. This year, the program expanded to nearly 50 participants.

The MBA is looking for attorneys with a diverse practice willing to make a rewarding, year-long commitment to mentor high school, college and law students during the upcoming 2014-15 Tiered Community Mentoring Program. To request an application, contact Elizabeth O’Neil at eoneil@massbar.org.

Winsor School competes at Mock Trial Nationals

The Winsor School of Boston’s Mock Trial team.

The Winsor School of Boston competed at the National High School Mock Trial Competition on May 8-10 in Madison, WI. A portion of their trip was funded by a donation from the Massachusetts Bar Association’s philanthropic partner, the Massachusetts Bar Foundation.

This past March, Winsor defeated Pioneer Valley Performing Arts Charter Public School of South Hadley to repeat as State Champion in the 29th annual High School Mock Trial Program. The championship marked the third state title for Winsor since 2010 and earned the team a second straight trip to nationals.

The annual competition places high school teams from across the state in simulated courtroom situations where they assume the roles of lawyers, defendants and witnesses in hypothetical cases. A total of 139 teams competed in this year’s state competition, which featured 211 trials, 106 judges and more than 40 court venues across the state. The program is administered by the MBA with support from the Brown Rudnick Charitable Foundation Corp. and the Massachusetts Bar Foundation.
**Staff Profile**

**West Street office blessed by Devine’s presence**

**BY JOSHUA CRAWFORD**

When the Massachusetts Bar Association purchased its home at 20 West Street in 1994, after renting it for the previous 10 years, the MBA got more than just a great building all to its own. It also got Bill Devine.

Devine has been the building manager at 20 West Street for each of 20 years the MBA has owned its West Street headquarters, plus the five years before, when he worked directly for the management company that served as the MBA’s former landlord. What’s interesting is that a job that has lasted a quarter century initially began as something that was only expected to last about half a month.

One day, Devine remembers, he received a call in the early hours of the morning that someone had thrown a bar through the front window of the MBA. When he arrived on scene the police had a suspect in custody, but the events of the morning were only beginning. It turns out that the suspect was not a fan of lawyers and, in addition to shattering the glass, placed a young pot bellied pig inside the office. After a few hours of the pig being chased around, normalcy was restored.

This is just one story that fits into the narrative Devine describes as, “No day is a typical day for me here.” What is typical is the professional and friendly approach that he continues to bring to 20 West Street, day in and day out. “Bill Devine is an invaluable long-term member of the MBA’s team,” says MBA Chief Legal Counsel Martin W. Healy, who has known him since the MBA moved to West Street. “Bill’s considerable skills make the building and operations of the MBA appear seamless. He is always willing to pitch in to make the organization a better environment and enjoys working with our many members and great team of staff.”

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**Calendar of Events**

**WEDNESDAY, JUNE 18**

- **How to Open a Real Estate Practice** 4-6 p.m. Western New England University School of Law, 1215 Wilbraham Road, Springfield

**WEDNESDAY, JUNE 18**

Antitrust Litigation: A Primer for Solo and Small Firm Practitioners 5-7 p.m. Massachusetts Bar Association, 20 West St., Boston

**THURSDAY, JUNE 19**

2014 Annual Health Law Conference 9 a.m.-3:30 p.m. Massachusetts Bar Association, 20 West St., Boston

**THURSDAY, JUNE 19**

Summer Networking Series Session I 5:30-7 p.m. Battery Park Boston, 33 Batterymarch St., Boston

**THURSDAY, JUNE 26**

MBA Western Mass. Dial-A-Lawyer Program 4-7 p.m. Statewide dial-in #: (413) 782-1659

**WEDNESDAY, JUNE 18**

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

**THURSDAY, JULY 17**

Summer Networking Series Session II 5:30-7 p.m. The Liberty Hotel “The Yard,” 215 Charles St., Boston

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**EXPERTS&RESOURCES**

**CONTINUED FROM PAGE 12**

**EXPERT WITNESS**

**TAX ATTORNEY**

Rick Stone Law

**MEDIATION**

Over 65 Years of Trial Experience, Mediation & Arbitration

“There’s more than one way to resolve an issue; we can help you get there.”

**ADR**

SRBC
Sugarman, Rogers, Barshak & Cohen, P.C.

**CONTINUED ON PAGE 14**
The legal job market for new law school graduates has been so bad for so long that most potential employers now consider it the norm. Well, guess what? Things will be changing one year from now. The demand for legal work has not substantially increased. The number of available positions has not skyrocketed. The demand side of the equation is not likely to be significantly altered over the next year. However, due to significant declines in law school enrollment over the past few years, the supply will finally start to thin.

Let’s look at the numbers, which are readily available due to the American Bar Association’s requirement of law school reporting. Let’s first go back to 2010. We were in the thick of the national financial crisis when many Americans decided to pursue law school. They may have made wise decisions, but they were not alone. In fact, in 2010 we had the largest first-year law school enrollment ever at 52,488. From that point forward, the job market worsened while new lawyers continued to flood the market. The dismal job market for new lawyers translated to law school being less desirable and enrollment continued to plummet. In 2013, the ABA reported that first-year law school enrollment fell 24 percent from the 2010 figure, to its lowest levels since 1975.

As the story unfolded, we talked about how law schools would adapt, and what they should have done different. We talked about how law firms would have a never-before-seen selection of potential candidates. While it would be a bit too speculative of me to opine on how law schools would adapt, predicting how the latter two stories will play out is straightforward. There will be less lawyers competing for the same jobs and the employers will have fewer candidates from which to choose.

We are a year away from seeing a big drop off in new lawyers. This will be a much bigger story a year from now. We may be ahead of the curve on this issue, but we are not early. As practitioners, we sometimes move ahead by accurately predicting the future and developing a corresponding competitive advantage. For the employers, this is the last year you’ll have such an expansive selection of potential candidates. It will shrink quickly year over year. Colleagues will be remarking on how difficult it is to find a good candidate.

The laws of supply and demand are simple. When there is greater demand, you pay more money for the resource. When there is less selection, you have to make more sacrifices between the vision of your ideal candidate and the applicants with which you’re presented. If you are debating whether to take on a bright new lawyer now versus later, consider these facts in making your decision. If now is not the right time for your practice to take on someone new, consider taking action to shore up this risk.

Develop a formal internship program now and start developing your future employees. It is well established that income is not the determining factor in whether an employee stays with a firm. Set clear expectations, communicate clearly, listen and mentor, and you will have an edge on securing that intern as a promising new associate next year.

For the law student and new members of the bar, these numbers are good news. Job seeking will logically get easier in the next few years. That’s easier, not easy. You will still need to excel at all the objective criteria that sets new lawyers apart from the pack. Do your best to get great grades. Get involved in associations, like the MBA or student groups. For new lawyers, get involved and get whatever relevant experience you can. For students and new lawyers alike, go to events and build your professional network. When the numbers of new lawyers thin out, you’ll have a great edge if you stay busy and grow your knowledge and professional network in the meantime.

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Suitability challenged

The judicial creation of suitability standards for firearms licensing

BY BRANDON N. MOSS

In Massachusetts, to “carry a firearm, an instrument designed or adapted primarily for use as a weapon, or a firearms identification card” (FID card), which is issued by the appropriate licensing authority (e.g., a chief of police or their designee), unless the individual is exempt. In order to obtain and hold a Class A or B license, an individual cannot be automatically disqualified under M.G.L. c. 140, § 131 and § 132, respectively.

The Second Amendment to the United States Constitution provides that “[a] well regulated Militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.” In recent years, the United States Supreme Court has limited government regulation of firearms, thereby recognizing that the Second Amendment is “not limited and ‘presumptively lawful regulatory measures’ were permissible.”

Subsequently, in McDonald, a plurality of the United States Supreme Court held that the Second Amendment applied to the States, through the Due Process Clause of the Fourteenth Amendment. McDonald recognized that “the right to keep and bear arms [is] among those fundamental rights necessary to our system of ordered liberty,” and included the “right to possess a handgun in the home for the purposes of self-defense.” While the McDonald plurality recognized that the Second Amendment right could be reasonably regulated, it concluded that local laws that effectively prohibited handgun possession by nearly all private citizens violated the Second and Fourteenth Amendments.

The Supreme Judicial Court character-ized Simkin’s conduct as “innocuous,” even if “arguably unusual,” and then disposed of the suit on the basis of the “suitable person” standard. In Ferrill, the Superior Court held that the “suitable person” standard is undefined, the Supreme Judicial Court held that Simkin was not a “suitable person.”

Simkin’s license to carry firearms was revoked because: (1) he was “heavily armed” and the medical office staff, rather than Simkin, for being “alarmed” upon learning about his concealed firearms, which was the precise conduct Simkin engaged in when he visited the medical office. Without some regulatory parameters or other official guidance, the court found that Simkin did not violate the terms of his firearms license.

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Amendment considerations for chaud Mi- for the plaintiff’s conduct. nor any other justification existed recognized that neither self-defense Massachusetts Appeals Court rec-

enter the license holder’s resi-

Continued from page 15

Continued from page 15
ty exists that can resurrect in-
sage or picture from a social media site may

It is true that privacy and wiretapping laws

Another increasingly common issue in

Privacy concerns

Another increasingly common issue in family law cases concerns one spouse sur-

reptitiously monitoring or spying on the

One spouse may feel justified

Spyware is software which may be used to monitor a spouse’s web

cell phone activity illegally obtained

Very often information obtained by a

Spyware online or at a retail store, that does

These laws. It is imperative that clients real-

What every client should know

Family law practice in the electronic age

KATHARINE MCCARTHY is an associate with Robinson Donovan, P.C., where she concentrates on domestic litigation.

There is no question that communica-
tion has become more convenient and ac-
cessible due to advancements in technol-
gy. Computers and mobile devices, as well as

electronic evidence

Technology has changed the face of tra-
ditional evidence. Common types of elec-
tronic evidence attorneys routinely come

in their practice include information obtained from social media sites (Face-

book, Twitter, MySpace, LinkedIn, You-

Tube), Global Positioning System (GPS)

tracking, text messaging, email, blogging,

files stored on a computer and websites.

These types of electronic evidence are increasingly being introduced into family

law cases. For example, in the context of a

highly contested family law proceeding, a family law attorney is aware that a wealth of

relevant information may be gleaned from the op-

posing party’s public Facebook or other social

media page. Too often, clients do not realize the implications of posting com-

ments and pictures on social media sites. A

client could easily damage his or her credi-

bility before the court by posting question-

able content on social media.

In a divorce case, custody is often an is-

sue that is at the center of the dispute. For example, a client appears in pictures or making com-

ments about their spouse on a social media site

where only the “Friend” list who have not made their pages private. Social media ac-

count records can also be subpoenaed for use in a court proceeding.

Additionally, clients should be aware that posting derogatory or negative com-

ments about their spouse on a social media site

could have legal consequences. Such

comments could result in an unnecessary defamation lawsuit, or, depending on the severity of the circumstances, a lawsuit for

harassment or infliction of emotional dis-

tress.

The point here is that individuals in-

volved in family law disputes must be ex-

tremely careful before posting anything on social media. As a best practice, clients should refrain altogether from publishing any information about their pending case, about their spouse or anything else which could
cosignificantly affect the client’s credibil-

ity before the court. If a client has already posted such information, they should take the
time to delete the material immediately so as to

mitigate any potential repercussions which may follow.

PROXY CONTESTS

proximity and instilling fear in the— a “core right” — may be ap-

propriate for the “suitable person” analysis and whether an incident renders an individual unsuitable. Thus, in examining whether an

incident is relevant to the suitability

analysis, a licensing authority, and a reviewing court, may con-

sider that incident in the protection of the Second Amend-

ment. Second Amendment jurispru-

dance will likely contribute to de-

fining the limits on licensing deci-

sions under the “suitable person” standard, such as the relevance of activities outside the home. The

consequence is a potential for judicial rea-

soning of the suitability standard, on a case-by-case basis, and a more focused and involved analysis on the conduct used to determine whether an

individual is unsuitable:


7. See United States v. Williams, 563 F.3d 664 (2009) (citing


The basics of equitable distribution and the treatment of gifted and inherited assets in Massachusetts

By Patricia A. O’Connell and Donald G. Tye

You client has decided to end the marriage, and your client is concerned about future financial security. Your client is eager for reassurance that the other spouse will depart with the marriage with the many gifted assets that your client alone brought into it. On the other hand, your client may be the other spouse who wants only a fair share of the assets that your client brought into the marriage by his/her spouse — assets that your client alone managed and grew over the course of many years. Either way, it is crucial for you to understand and explain to your client the basics of “equitable distribution” of property upon divorce in Massachusetts and, in particular, the treatment of gifted and inherited assets.

Basis of equitable distribution

The marital estate subject to distribution consists of all property owned by either property, including pre-marital and marital assets.

In the Commonwealth of Massachusetts, a Probate and Family Court’s authority to distribute property upon divorce is entirely statutory and governed by M.G.L. c. 208, § 34 (hereinafter Section 34). Section 34 provides, inter alia, that:

In addition to or in lieu of a judgment to pay alimony, the court may appoint to either husband or wife all or any part of the estate of the other, including but not limited to, all vested and non-vested benefits, rights and funds accrued during the marriage and which shall include, but not be limited to, retirement benefits, military retirement benefits if qualified under and to the extent provided by federal law, pension, profit-sharing, annuity, deferred compensation and insurance. M.G.L. c. 208, § 34.

A party’s “estate” (as referenced above) is defined broadly to include “all property to which [he or she] holds title, however acquired” (Rice v. Rice, 372 Mass. 398, 400 (1977)) (rejecting the husband’s contention that the trial court lacked authority to transfer his separate property acquired before the marriage to his wife upon divorce); see also Baccam v. Morton, 434 Mass. 787 (2001) (upholding trial court’s inclusion of premarital assets in the marital estate, despite a fair share of the testator’s estate parties orally agreed to keep those assets off the marital estate subject to distribution.) See also Morton v. Stone, 415 Mass. App. Ct. 151, 156-57 n. 4 (1996) ("The term ‘estate’... includes property obtained by either party prior to the marriage..."). In fact, assignable assets can even include post-marriage assets in certain circumstances. See Brower v. Brower, 61 Mass. App. Ct. 216, 218 (2004) (holding that assignable assets can include portion of teacher’s pension accrued after divorce). In a nutshell, everything is “in the marital pot” for distribution upon divorce. The more nuanced issue is how that marital pot will, in fact, be doled out fairly between the parties.

The court has broad discretion in weighing the statutory factors that determine whether property will be considered when distributing the estate.

How does the actual distribution work in the absence of a negotiated agreement? The Probate and Family Court judge assigned to the case will hold an evidentiary hearing (trial), whereby the attorney for each party will present evidence (i.e., witness testimony and exhibits/documentary evidence) relating to each of the various factors that the court must consider pursuant to Section 34, namely:

• Length of the marriage;
• Conduct of the parties during the marriage;
• Age;
• Health;
• Occupation;
• Amount and sources of income;
• Vocational skills;
• Simplicity of the marital relationship;
• Estate, liabilities and needs of each of the parties;
• The opportunity of each for future acquisition of capital assets and income;
• Amount and duration of alimony, if any, awarded under sections 48 to 55, inclusive;
• The present and future needs of the dependent children of the marriage;
• Contribution of each of the parties in the acquisition, preservation or appreciation in value of their respective estates (discretionary); and
• Contribution of each of the parties as a homemaker to the family unit (discretionary).

These factors “reflect a view of marriage as an implied partnership for the purposes of distribution of property.” Sauvies v. Sauvies, 400 Mass. 250, 252 (1987). In fashioning a judgment to distribute the marital estate following trial, the court must make it clear in written “findings of fact” that he/she considered each one of the “mandatory factors” set forth in Section 34. King v. King, 373 Mass. 40, 47 (1977). Further, the court must provide a clear rationale, based on its findings, for the judgment reached. See Mahoney v. Mahoney, 425 Mass. 441, 447 (1997); Bowring v. Bowring, 399 Mass. 265, 267-68 (1987) (review requires appellate court to look for the lower court’s findings of fact and rationale; the decision must flow rationally from the judge’s findings).

Clients often ask, “Isn’t the length of the marriage the most important factor?” or “Doesn’t the distribution really depend on much income is available?” No one factor trumps all others, and “[t]he weight to be accorded each of the § 34 factors in a particular case is committed to the judge, who has broad discretion in fashioning a judgment under § 34.” Rangerman v. Rangerman, 9 Mass. App. Ct. 869, 870 (1980). Such broad discretion is necessary in order that the courts can handle the myriad of different fact situations which surround divorces and arrive at a fair financial settlement in each case.” Rice, 372 Mass. at 401. See also Redding v. Redding, 398 Mass. 102, 107 (1986) (trial judge’s decision and the weight accorded to the respective Section 34 factors will not be reversed unless the judgment is “plainly wrong”). The practical effect of this far-reaching discretion is that two different judges, evaluating the very same evidence, could arrive at very different judgments — particularly in mid-length marriages, where the equities may be more nuanced than those present in a short-term or long-term marriage. For instance, it is easy to understand why a judge might opt to “split everything down the middle” in a 40-year marriage, or to let each party “walk out with what he walked in with” following a two-year marriage. But what happens in a 12-year marriage where there are two variously gifted and inherited assets (for the purpose of determining what can be included in the marital estate) is “best left to a case by case analysis.” Davidson v. Davidson, 19 Mass. App. Ct. 364, 376 (1985). In many (if not most) cases, the court will consider the Section 34 factors and divide the marital estate as of the date of the divorce. See id. at 375-76. This is particularly true if the parties are separated but one of them is still providing a non-economic contribution by caring for a child. See DeCastro v. DeCastro, 415 Mass. 787 (1993). Yet in certain instances (such as a lengthy separation), the court will value an asset at the date of separation where there have been no subsequent contributions by the parties. See Savides v. Savides, 400 Mass. at 252; Daugherty v. Daugherty, 50 Mass. App. Ct. 738 (2001).

Treatment of gifted, inherited and pre-marital assets

The Supreme Judicial Court has flatly rejected any rule that gifted and inherited assets should inure to the spouse who brought them into the marriage upon divorce. See Williams v. Massa, 431 Mass. 619, 620 (2000) (noting that Massachusetts “has no hard and fast rules” on the allocation of gifted and inherited assets in divorce proceedings, unlike many other states). Gifted and inherited assets are treated like any other property, in that the Probate and Family Court has “considerable discretion” in determining their distribution. Drakep v. Drakep, 399 Mass. 240, 243 (1987). Yet while the commonwealth does reject any “notion that inher- ited wealth should remain in blood lines,” Bacon v. Bacon, 26 Mass. App. Ct. 117, 123 (1988) (Kaplan, J., concurring), the Probate and Family Court will look very closely at the “contributions” of the party who did not receive the gift/in- heritance to the marital partnership and/or to the gifted/inherited assets (such as by managing those assets or helping them appreciate in value). In that regard, the case law suggests that the}
the marriage, the more likely that the husband was the primary breadwinner (running the family's closely-held business, and the wife primarily responsible for taking care of the marriage, the consequence of market factors, of the possible legal penalties so that they
should share so little of the run-up in value of the marital residence, the husband's gifted/inherited assets (suggesting that such assets are more likely to be equitably distributed if there is some co-mingling, particularly in a long-term marriage).

 Still, the tone of the Williams decision suggests that the lower court found the wife more important. One has to wonder if the husband would have been awarded all of his gifted/inherited assets if the wife had not been so apparent in the trial judge's management of the assets.

 The treatment of gifted and inherited assets and the mandate to focus on the parties' contributions to the same — was also carefully addressed in Bacon v. Bacon, 26 Mass. App. Ct. 117 (1988). In Bacon, the wife had gifted/inherited assets of $3,020,552, consisting of property acquired for the wife's benefit by her family prior to the marriage. Id. at 118. When the marriage terminated during the marriage, she received significant distributions. Id. at 119. The assets grew over the years until the time of the parties' divorce, largely due to inflation and the addition of dividends/interest to the principal. Id. The husband did little to appreciate the value of these assets. Id. The marital estate also included $65,261, which was the bene-

ity of $865,621; the home was purchased and improvements were made with the wife's contribution. Id. at 118. The lower court noted that the husband was self-supporting, had adequate housing, and had been abusive during the marriage. Id.

 The Appeals Court in Bacon affirmed the lower court's decision, permitting the wife to retain the bulk of the assets traceable to the corpus of the trust created for her by her biological family and ordering the husband to convey to the wife his interest in that marital asset which had been purchased with her gifted assets. Id. at 118. Like the SJC in Williams, the Appeals Court emphasized the importance of the parties' respective contri-

butions to the gifted/inherited assets — and focused on the distribution of the marital estate as a manner of correcting an imbalance of the respective contributions. Id. The Appeals Court highlighted that:

Disparity of contribution[s] within the context of the family where there is some co-mingling of the possible legal penalties so that they should share so little of the run-up in value of the marital residence, the husband's gifted/inherited assets (suggesting that such assets are more likely to be equitably distributed if there is some co-mingling, particularly in a long-term marriage).

The seeming case involving gifted/ inherited assets in Massachusetts is Williams v. Williams, 434 Mass. 619 (2000). The parties in Williams, who had two children together, had been married for 19 years when they separated in 1993. Id. at 620-21. They lived a comfortable middle-class lifestyle, largely as a result of the husband's gifted/inherited assets (including stocks and bonds gifted by his parents to the New York Stock Exchange, and inter-

ests in failing trusts). Id. at 620-21. The husband worked as the CEO of the family's business, which he had not worked outside of the home since the birth of the parties' first child. Id. at 621.

Following a trial on the distribution of the estate, the court made explicit and de-

tailed findings as to the husband's exten-
sive contributions to the marital estate and the wife's shortcomings in this regard. The trial court found that the husband was the primary breadwinner (running the family business), the primary homemaker, and was primarily responsible for taking care of the children's routine care as they got older. Id. at 624. He also managed the gifted/inherited assets as the court specifically noted, were kept separate from other assets acquired during the marriage, and made all investment decisions. Id. at 625. In short, the husband's contributions to the marital enterprise in Williams far exceeded those of the wife (who had issues relating to mental health and interpersonal relations; who had alienated the parties' daughter from the husband, and who was described in a manner that suggested she was a homemaker). Based on these findings, the trial court awarded the husband all of his inherited and gifted assets (except for 26 and 26 of the non-inherited assets (totaling $507,040) after the evidence re-
fected "no special circumstances which would justify an assignment to the wife of the husband's inherited or gifted prop-
erty."). Id. at 625. The wife was awarded alimony and 74 percent of the non-in-

herited assets (totaling $1,443,115). Id. at 624. The wife appealed, claiming that the trial court utilized an improper "spec-

ial circumstances" test to distribute the estate.

The Supreme Judicial Court affirmed the lower court's decision, rejecting the argument that (i) the court had entirely excluded the gifted and inherited assets from the marital estate, and (ii) the trial court imposed an improper test "specifying the facts on the case presented. Such an examination should reveal whether the marriage has been a true partnership, characterized by team effort, or whether the burdens have been unequally shared (or if the assumption of responsibilities and burden[s] is an indication that each spouse has failed to contribute. The discretionary to make an equitable rather than an equal division of property en-
ables the trial judge to deal flexibly with the problem of imbalance.

Id. (citing Inker & Clower, "Towards a New Justice in Marital Dissolution: The Massachusetts Family Scheherazade and Due Process Analysis.", 16 Suffolk U.L. Rev. 907, 935-936 (1982)). The failure of the husband in Bacon to make any no-
to the possibility of assignment of appreciated wealth which the wife brought to the marriage, to or to homemaker, was critical in allowing the wife to keep most of the gifted/inherited assets. However, the reality is that an imbal-
ance of contributions is not readily ap-

parently "unlikeable" and if the marriage were to end, where his interest would vest only if his father died at a date certain and the husband's interest would vest only if the trust failed to make any no-
to the possible legal penalties so that they should share so little of the run-up in value of the marital residence, the husband's gifted/inherited assets (suggesting that such assets are more likely to be equitably distributed if there is some co-mingling, particularly in a long-term marriage).
They just can't stay there. They get married, they get a mortgage, they have student loans a lot of them, and so as a result, they're forced out of the public defender service or the prosecutor's office.

MBA BLUE RIBBON COMMISSION MEMBER MARTIN KANE
NECN, MAY 19

Kane, a defense attorney and former assistant district attorney, and Middlesex County District Attorney Marian Ryan appeared on "Broadside" with Jim Braude to speak about the new report issued by the MBA's Blue Ribbon Commission on Criminal Justice Attorney Compensation.

Any time DCF supports those types of allegations, it's a serious situation. It 'basically means' there is evidence the child was abused or neglected or at risk of being abused or neglected.

MBA PRESIDENT-ELECT MARSHA V. KAZAROSIAN
CAPE COD TIMES, APRIL 25

Kazarosian was quoted in the Cape Cod Times in a story on a Department of Children and Families (DCF) report that accuses two South Yarmouth caregivers of abuse against 23-month-old Lucas Braman.

Never before has the United States Supreme Court decided whether or not a cellphone is subjected to police search after the arrest of an individual.

MBA CHIEF LEGAL COUNSEL AND CHIEF OPERATING OFFICER, MARTIN W. HEALY, WBUR (NPR), APRIL 28

Healy spoke to Boston's NPR affiliate about the Supreme Court case United States vs. Wurie, which originated in South Boston. At question is whether police without a warrant can search the call log of a cell phone found on someone who has been arrested.

The statute just doesn’t provide for property damages on a state road. If you can find some way of saying maybe the city and state combined to create a defect then you might have an argument.

MBA PRESIDENT DOUGLAS K. SHEFF
WBZ TV CHANNEL 4 (CBS BOSTON), APRIL 28

Sheff spoke to WBZ TV as part of a story on damage caused by potholes on both city and state roads in Boston. State and municipal roads are not governed by the same statute.
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