



**REMEMBERING  
THE BOSTON  
MARATHON  
BOMBING**

➤ 10

**2014-15 MBA  
OFFICERS AND  
DELEGATES  
ANNOUNCED**

➤ 7

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# MASSACHUSETTS LAWYERS JOURNAL

WWW.MASSBAR.ORG

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## The marathon between marathons

PRESIDENT'S VIEW  
DOUGLAS K. SHEFF



What happened at the Boston Marathon last April was a horrible tragedy. With the next marathon upon us, I want to reflect on what has happened since that fateful day and recognize the inspiring people who have run "the marathon between marathons" along the road to recovery.

Who are these people? First and foremost, they are the survivors who have been working hard and retraining every day to overcome their injuries. Some are teaching themselves to walk again. Some are learning to see, hear and feel again. Some are fighting unseen injuries, such as traumatic brain injury (TBI). Almost all of them are learning what a new normal feels like.

There have been many others who have run this race with them.

Family members, friends and medical providers have been no less inspiring as they have stood side by side with the survivors throughout the often difficult journey through rehabilitation. The members of the public who donated so generously and continue to give financial aid for victims and their families long after the marathon also deserve our gratitude.



I am most proud of how the Massachusetts Bar Association has supported the survivors throughout the days, weeks and months that followed the blasts. Nearly 90 volunteers have donated their time, resources and ex-

pertise to help survivors through our Marathon Bombing Victims Legal Assistance Program.

Members of our legal community volunteered during the MBA's two special Dial-A-Lawyer programs ➤2

## DelVecchio, Stevens to be honored for 'excellence'

The Massachusetts Bar Association will pay tribute to the Hon. Suzanne V. DelVecchio (ret.) and WBZ NewsRadio 1030's Carl Stevens at the May 1 Excellence in the Law event, co-presented by *Massachusetts Lawyers Weekly*. DelVecchio has been selected to receive the Daniel F. Toomey Excellence in the Judiciary Award and Stevens will be honored with the MBA's Excellence in Legal Journalism Award.

The annual Excellence in the Law event, which will be held at the Fairmont Copley Plaza Hotel, also features award presentations in the following areas: Up & Coming Lawyers, Excellence in Pro Bono, Paralegal, Marketing and Firm Administration.

DelVecchio, now 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 ➤5

## Brownsberger hits the ground running as new chair of judiciary committee

BY MIKE VIGNEUX

State Sen. Will Brownsberger began 2014 with a new role when he was appointed chair of the Joint Committee on the Judiciary by Senate President Therese Murray in January. While the chairmanship is a fairly new position for Brownsberger, he is certainly no stranger to the Massachusetts legal community, given his diverse legal background.

A native of Watertown and a resident

of Belmont, Brownsberger has represented the Second Suffolk and Middlesex District in the Senate since 2012. His district covers Back Bay, Fenway, Brighton, Watertown and Belmont, and also includes the south end of Allston. Brownsberger also served as a state representative for the 24<sup>th</sup> Middlesex District from 2007 to 2012.

After graduating from Harvard College and Harvard Law School, Brownsberger spent eight years in New York in the finance and software development industries. In

1992, he came back to his home state of Massachusetts to serve as an assistant attorney general under Scott Harshbarger. He spent five years at the Attorney General's Office as the asset ➤3



Sen. Will Brownsberger

## Annual dinner to feature Matthews, Rep. Bradley and Mayor Walsh

MBA to honor firms, attorneys who have made significant strides in enhancing access to justice

The Massachusetts Bar Association (MBA) will hold its 2014 Annual Dinner on Thursday, May 15, at the Westin Boston Waterfront, 425 Summer St., Boston. Chris Matthews, a highly respected political news commentator who hosts the top-rated "Hardball" program on MSNBC, will deliver the keynote address. Matthews is also a celebrated author of several

literary works, including books profiling some of Massachusetts' favorite sons, John F. Kennedy and Tip O'Neill.

In addition, the MBA Annual Dinner will include the presentation of the Legislator of the Year Award to Rep. Garrett J. Bradley (D-Hingham), First Division Chair, member of the House Rules Committee; the President's Award to ➤12



## PRESIDENT'S VIEW

Continued from page 1

immediately after the bombings. They also provided more lasting assistance through pro bono efforts that benefitted 25 individuals injured in the blasts. In addition to filling out One Fund applications, many of our attorneys have continued help their clients with related legal and non-legal matters, including disability, employment, benefits and housing is-

sues, just to name a few.

Thank you to everyone who volunteered to help others through our program. As I've always said, it speaks a lot to the character of our profession that attorneys are the ones there to help long after a tragedy occurs and long after support from others has faded.

Last year's marathon is over, and

a new race is about to be run. Yet many marathon bombing survivors still face a long road ahead. Some may never cross the finish line in their quest for a full recovery. The MBA will not leave them.

Our marathon — our commitment to help people impacted by the bombings — will never end as long as there are those who need us. ■

## BAR SEEN

## Snapshots from around the MBA

## Affiliated Bar News

MBA President Douglas K. Sheff spoke at this year's Norfolk County Bar Association Dinner Meeting, saying that "The MBA is committed to working with the Norfolk County Bar and every bar to demonstrate that we are not takers, but rather caretakers." ■



From left: Douglas K. Sheff, president of the Massachusetts Bar Association. Judge Mark Coven and Francis X. Bellotti.

## BAR NEWS

## Help change the world through One Can Help



It's been said that it's impossible for one person to change the world, but even if that's true, one can help.

In 2005, while sitting at a Dunkin Donuts with a "very pregnant" teenage client, attorney Anne Bader-Martin found herself discussing the pregnancy. Her client knew she wanted to keep the child and what she wanted most was a stroller, but she knew she couldn't afford one. After a few minutes of conversation, another patron at the donut shop handed attorney Bader-Martin and her client a blank check for \$175.

This event, coupled with what she saw every day in

court led Bader-Martin and a group of attorneys to form the nonprofit organization One Can Help.

Their mission statement is simple: "... to encourage low-income, high-risk children and parents involved in the juvenile court system to get the help they need to make positive changes when no other funds are available from state agencies." And that's exactly what they do.

"Our system allows us to use programs and individuals already in existence so we have very little overhead," said Bader-Martin. "Our goal is to make sure that people

who would be able to succeed but face a financial constraint aren't held back by that."

Currently serving exclusively Middlesex County, One Can Help has helped families involved with the Department of Children and Families (DCF) and the courts with everything from bus passes to domestic violence counseling. Bader-Martin stressed: "What we're able to do is individualize the grants we give. We don't give everybody gloves or everybody this and that, when someone applies they say what they need, it's vetted, and that specific need is met."

The use of existing court

personnel, attorneys and social workers allows for 100 percent of donated funds to go directly to the services rendered by the organization, and they're looking to expand.

Bader-Martin said she's constantly getting inquiries and requests from other counties but as of yet doesn't have the resources to step in. They're also looking to form a legal advisory committee, something MBA members may be interested in.

For more information about One Can Help, visit [www.onecanhelp.org](http://www.onecanhelp.org) or call attorney Bader-Martin at (617) 930-3468. ■

## MASSACHUSETTS LAWYERS JOURNAL

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**BROWNSBERGER**

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forfeiture chief in the Narcotics and Special Investigations Unit, as well as deputy chief prosecutor in the Public Protection Bureau.

“At the Attorney General’s Office I got very interested in issues of criminal justice policy, particularly around drug policy and supervision of offenders in the criminal justice system,” said Brownsberger.

Most of Brownsberger’s legal experience is on the criminal side, both as a prosecutor and a defender. Before coming to the state legislature, he served as a defense attorney in private practice, including court-appointed criminal defense. He also taught and served as a consultant at Harvard Medical School, the Boston University School of Public Health and Harvard’s Kennedy School of Government.

“Senator Brownsberger brings a wealth of real world experience to the senate chairmanship,” said MBA Chief Legal Counsel and Chief Operating Officer Martin W. Healy. “He is very bright and understands the complexities of the legal system.”

When former state senator Katherine Clark left the State House to fill U.S. Sen. Ed Markey’s vacated congressional seat in Washington, D.C., Murray appointed Brownsberger as chair of the judiciary committee, a role previously held by Clark.

“Senator Brownsberger is a deliberative and thoughtful leader in the Senate and has a strong work ethic,” said Murray in a January press release announcing Brownsberger’s selection.

New to the role, Brownsberger is setting realistic goals for the work of the committee at the beginning of his leadership tenure.

“If my colleagues permit me to sit here for five or 10 years, I would like to look back and think that we moved a lot of nuts and bolts improvements that attorneys recognize as being necessary,” said Brownsberger. “There are a lot of complicated issues that

come before this committee, often that reflect consensus products of working attorneys. It’s my hope that we’ll be able to make those things move so that incrementally over the next five or 10 years we’ll be able to see

Brownsberger is motivated to have the committee look at reducing the lengths of some “overly punitive” sentences, which often place “collateral consequences” on offenders once they have made a few mistakes in

**“I’m going to be listening very carefully to members of the judiciary, the working bar and my constituents to identify the measures we need to take to continually improve the criminal justice system and the civil justice system.”**

**— State Sen. Will Brownsberger**

that the system has been improved, streamlined and better able to serve the cause of justice for people and for businesses.”

According to Brownsberger, a vital piece of the committee’s success will be based on listening to and understanding the needs of the state’s legal community. He appreciates the level of collaborative work and consensus building that takes place within the local legal realm, which is often facilitated by the Massachusetts Bar Association through the House of Delegates, section councils and special commissions.

“I’m going to be listening very carefully to members of the judiciary, the working bar and my constituents to identify the measures we need to take to continually improve the criminal justice system and the civil justice system,” he said. “Those working groups that do an effective job at harmonizing and recognizing the common elements and differing points of view in the legal system are groups that I expect to depend on heavily over the years to come. These areas of the law are complicated enough that the legislature rarely moves on them unless there is a rather firm consensus from within the legal community.”

In terms of criminal justice reform,

the criminal justice system. He points to the loss of license after certain drug offenses as an example. In addition, Brownsberger hopes to help pass an adult guardianship reform bill (H.1366), which was referred to the committee last year.

Brownsberger also provided his take on specialty courts and the role of the court administrator. On the topic of specialty courts, Brownsberger is cautious and wants to ensure that the creation of additional specialty courts is appropriate. He notes that national research, particularly as it relates to drug courts, supports the creation of drug courts as an appropriate response for those with very serious drug problems and addictions to hard core substances such as alcohol, cocaine and heroin.

“We need to make sure that when we create specialty courts we are in fact helping people more as opposed to intensifying the consequences of their mistakes,” he said. “It’s important that specialty courts be a vehicle for providing both additional supervision and a lot of additional access to treatment. I think they can be helpful if they’re done right and targeted to the right populations.”

He sees the role of the court administra-

tor as “exceedingly constructive” and essential to the administration of justice. Lewis H. “Harry” Spence was appointed as the first Court Administrator of the Massachusetts Trial Court by the Supreme Judicial Court in April 2012.

“Having a strong civilian administrator like Harry Spence is a great boon to the court system which enables a strong chief justice like Paula Carey to give her attention to the quality of justice as opposed to just the operations of the process,” noted Brownsberger. “We’ve got a good team in place running our trial court right now and I’m very enthusiastic about the work they’re going to do.”

Based on his strong legal background, Brownsberger is well-positioned to hit the ground running — or biking, or even swimming — in this new role as judiciary committee chair. An active father of three daughters, Brownsberger has successfully competed in Ironman triathlons, most recently in Lake Placid, N.Y., in 2009, and Louisville, K.Y., in 2008. He’s also been known to ride his bike to work at the State House from time to time.

In his “latest major athletic adventure,” he rode his bicycle across the country, from Belmont to Anacortes, WA, in the summer of 2011. The 3,000-mile journey took 41 days, and he often stopped along the way to meet people and talk with them.

“Most of all it was an emotional bonding experience with my country,” he wrote on his website in April 2012. “I was raised to love our flag and to think of myself as an American and I do. But the kindness of dozens of strangers brought me even closer to the country.”

Whether it’s competing in a triathlon, biking across the country or serving the Massachusetts legal community, Brownsberger is committed to going the extra mile and invites everyone to come along for the ride. ■



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## LEGAL NEWS

# News from the Courts

### Edgerton reappointed Juvenile Court Chief



Michael F. Edgerton

Chief Justice of the Trial Court Paula M. Carey has announced the re-appointment of Michael F. Edgerton as chief justice of the Juvenile Court in accordance with G.L. c 211B §5. Edgerton will serve in that capacity until he reaches his mandatory retirement date on July 30, 2014. He was appointed to a five-year term as chief justice in 2009.

Edgerton was appointed to the Essex County Division of the Juvenile Court in 1996. He has served on many Trial Court and Supreme Judicial Court committees and chaired the Trial Court's Personnel Policies and Practices Committee, which completely reviewed and revised the personnel manual in 2012.

Edgerton graduated from Suffolk University Law School with a J.D. and a Masters of Law. He served as the general counsel to the Trial Court from 1982 until his appointment to the bench in 1996. Edgerton serves on the adjunct faculty of the Massachusetts School of Law where he teaches Trial Advocacy. The recipient of the 2007 Juvenile Court Judicial Excellence Award presented by the Massachusetts Judges Conference and the 2009 Thurgood Marshall Human Rights Award presented by the Massachusetts School of Law, Edgerton was also awarded the 2010 Chief Justice Francis G. Poitras Award by the Juvenile Bar Association.

### SJC approves Rule 9A amendment

The Supreme Judicial Court has approved an amendment to Rule 9A of the Massachusetts Superior Court Rules, effective April 1, 2014. Visit [www.mass.gov/courts/court-info/sjc](http://www.mass.gov/courts/court-info/sjc) to learn more.

## BAR NEWS

# Know Your Rights! Program educates nonprofits

Representatives from the Massachusetts Bar Association (MBA) attended a kickoff luncheon for the Know Your Rights! Program on March 13 at Mintz Levin in Boston.

The statewide program educates leaders of nonprofit organizations that focus on helping low-income women and their families. Each month, experts teach participants about legal topics that are relevant to the clients they serve. The guest speaker at the kick-off event was Hon. Dina E. Fein, first justice of the Housing Court, Western Division, and the special

advisor for access to justice initiatives.


The MBA recently joined the program as a partner and will film the sessions, allowing nonprofits throughout the state to participate through a webinar format. Other sponsoring organizations are the Women's Bar Association and Women's Bar Foundation of Massachusetts; the American Bar Association Section of Individual Rights and Responsibilities; Mintz, Levin, Cohn, Ferris, Glovsky and Popeo PC; One Family Inc.; and the South Asian Bar Association of Greater Boston. ■



Hon. Dina E. Fein, first justice of the Housing Court, Western Division, and the special advisor for access to justice initiatives speaks to Know Your Rights! Program attendees

PHOTO BY MIKE VIGNEUX

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Presentation of the  
**2014 ACCESS TO JUSTICE AWARDS**

## 2014 Annual Dinner



**THURSDAY, MAY 15**  
**WESTIN BOSTON WATERFRONT HOTEL**  
Reception 5:30 p.m. • Dinner 7 p.m.





**Keynote Speaker**  
**CHRIS MATTHEWS**  
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**EXCELLENCE**

*Continued from page 1*



**Hon. Suzanne V. DelVecchio**

justice in Plymouth County, as a staff attorney for the Boston Legal Aid Society and as corporate counsel for the City of Boston. DelVecchio currently sits on the MBA’s Blue Ribbon Commission

on Criminal Justice Compensation, which examines the impact of low prosecutor and public defender salaries on the state’s criminal justice system.

A graduate of Wheaton College and Boston College Law School, DelVecchio has served as an adjunct professor at Boston University School of Law and received honorary doctor of law degrees



**Carl Stevens**

from both Suffolk University School of Law and New England School of Law. In addition, she is the recipient of the Judicial Merit award from the Massachusetts Academy of Trial Lawyers, the Distinguished Jurist Award from both the Massachusetts Association of Women Lawyers and the Essex County Bar Association, and the Jurist of the Year Award from the Justinian Law Society.

“Judge DelVecchio has been a long-time friend of the MBA’s and we are proud to have the opportunity to honor her with the Toomey award,” said MBA

Chief Legal Counsel and Chief Operating Officer Martin W. Healy. “Both on and off the bench, Judge DelVecchio is known as a fair and respected leader.”

Stevens, the recipient of the Excellence in Journalism Award, is an award-winning general assignment reporter for WBZ NewsRadio 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 Edward R. 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](http://wbz.com).

Prior to joining the station in 1990, Stevens worked at WEEI Radio in Boston, WENH-TV Channel 11, the public

television station in Durham, New Hampshire, and WOKQ Radio in Dover, New Hampshire.

Stevens received a bachelor’s degree in English from Goshen College and a master’s degree in English from the University of New Hampshire.

“Carl has a reputation for uncovering compelling stories about the human spirit and he weaves together pieces that show the plight of the ‘little guy.’” said Sheff. “As an association we work hard to represent those who are under-represented and improve their access to justice. Carl has shown through his work that he is, quite frankly, our kind of guy.”

To purchase tickets to the May 1 Excellence in the Law event or to find out more on the all the events’ honorees, visit [masslawyersweekly.com/excellence-in-the-law](http://masslawyersweekly.com/excellence-in-the-law).

# “NOTABLE AND QUOTABLE”

MBA MEMBERS IN THE MEDIA

## Inspector General's report on Hinton state drug lab

“We may have people in prison who ought not to be there. And we are never really going to know for sure. That's the real tragedy here. There is still going to be a dark cloud over the lab. The fact is: Dookhan had access and there was no oversight.”

MBA CHIEF OPERATING OFFICER AND CHIEF LEGAL COUNSEL  
MARTIN W. HEALY, *BOSTON GLOBE*, MARCH 4

Healy spoke to the *Boston Globe* after the report came out. Healy was also quoted in an Associated Press (AP) article that appeared in several news outlets, including the *Washington Post*.



...

“What a blistering, scathing report. It was like *The Wild West*, the way that agency was run ... there was no supervising, there was no management basically. They weren't training the chemists; the chemists were doing their own protocols. There was no security or safety.”

MBA PAST CRIMINAL JUSTICE SECTION CHAIR PETER ELIKANN  
FOX25 MORNING NEWS, MARCH 4

Elikann spoke to FOX25 Morning News about the released Inspector General report. Dookhan's mishandling of test results has raised doubts about tens of thousands of cases that passed through the state lab, and how they should be reviewed.



## Trial of former Probation chief

“The alleged misconduct should have been dealt with administratively by the Supreme Judicial Court using its well-established, constitutionally recognized general superintendence powers.”

MBA CHIEF OPERATING OFFICER AND CHIEF LEGAL COUNSEL MARTIN W. HEALY  
*BOSTON HERALD*, MARCH 7

Healy spoke to the *Boston Herald* following U.S. District Court Judge F. Dennis Saylor IV's announcement that he was recusing himself from the criminal trial of former Probation Department Chief John J. O'Brien.

## Legal advertising for class action suits

“Some certainly believe that legal advertising has contributed to the downfall of our reputation as lawyers ... Our rules basically say that there must be no false or misleading information.”

MBA PAST PRESIDENT KATHY O'DONNELL  
*PALMER JOURNAL REGISTER*, FEB. 27

O'Donnell noted that the Massachusetts Bar Association is working with the Supreme Judicial Court's Standing Advisory Committee on the Rules of Professional Conduct to develop new rules on this type of broad solicitation.



## SJC Chief Justice Ireland's retirement

“He paid his dues and knows what it's like to practice law, take his lumps.”

MBA PAST PRESIDENT JEFFREY McCORMICK  
*SPRINGFIELD REPUBLICAN*, MARCH 3



McCormick praised Chief Justice Ireland for his “intellectual firepower” in addition to his calm and fair demeanor. In the same article, Chief Operating Officer and Chief Legal Counsel Martin W. Healy also noted Ireland's ability to connect with lawmakers and advocate for reform, which allowed the court to hire a professional administrator for the first time.

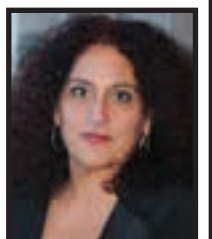


## 'Upskirting' rule

“Unfortunately, the way the law is written it doesn't have the ability to be expanded to this situation. The law has to evolve.”

MBA PRESIDENT-ELECT MARSHA V. KAZAROSIAN  
FOX25 MORNING NEWS, MARCH 6

MBA President-elect Marsha V. Kazarosian appeared on FOX25 Morning News to discuss the Supreme Judicial Court ruling, where justices concluded that taking “upskirt” photos — secretly photographing under a woman's skirt — is not illegal. Two days later, the state passed a new law making photographing or recording video under a person's clothing a misdemeanor.



**BAR NEWS**

# 2014-15 MBA officers and delegates announced

The Massachusetts Bar Association Nominating Committee, led by MBA Immediate Past President Robert L. Holloway Jr., has issued its report for the 2014-15 nominations for MBA officers and regional delegates.

The committee was composed of

Holloway, MBA Past President Richard P. Campbell, MBA Past President Elaine M. Epstein, Francis A. Ford, Martin F. Kane II, MBA Past President Kathleen M. O'Donnell and MBA Past President Denise Squillante.

Marsha V. Kazarosian automatically

succeeds to the office of president on Sept. 1, 2014. Pursuant to Article VIII, Section 1 of the MBA bylaws, the committee filed with MBA Secretary Christopher A. Kenny.

For information about MBA officer positions, please refer to Article VI of

the MBA's bylaws. For information on Committees and Boards, please refer to Article VIII of the MBA's bylaws.

The MBA bylaws are available at [www.massbar.org/bylaws](http://www.massbar.org/bylaws). To view the MBA Nomination and Election Procedures, go to [www.massbar.org/bylaws](http://www.massbar.org/bylaws). ■

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**REGIONAL DELEGATES AND AT-LARGE DELEGATES**

<b>Region 1</b>	Michael I. Flores
<b>Region 2</b>	Scott D. Peterson
<b>Region 3</b>	Miriam H. Babin
<b>Region 4</b>	Lee D. Flournoy
<b>Region 5</b>	Kyle R. Guelcher
<b>Region 6</b>	Walter A. Costello Jr. Annette Gonthier-Kiely

<b>Region 7</b>	Philip J. Privitera Patricia Ann Metzger Lee J. Gartenberg
<b>Region 8</b>	David A. DeLuca Morgan Gray
<b>Region 9</b>	Denise I. Murphy Stephen Y. Chow Michael E. Mone Jr. Paul E. White Sr.

<b>Region 10</b>	Shirley A. Doyle James G. Reardon Jr.
<b>At-Large</b>	Thomas J. Barbar Kevin G. Diamond Martha Rush O'Mara Chris A. Milne Laurence M. Johnson Peter T. Elikann Anthony J. Benedetti

**BAR SEEN**

## Criminal justice compensation hearing highlights negative impact of low ADA, defender salaries

The Massachusetts Bar Association's Blue Ribbon Commission on Criminal Justice Attorney Compensation heard from more than 30 criminal law practitioners and public officials during a three-hour public hearing on Wednesday, March 26, at the John Adams Courthouse in Boston. Prosecutors, defense attorneys and two court chiefs testified about how low salaries have negatively impacted attorney retention, public safety and access to justice. Testimony from the hearing will factor in to the Commission's recommendations, which will be released in its forthcoming report — the first in 20 years to address the issue of criminal justice compensation. ■



CPCS Chief Counsel Anthony Benedetti testifies in front of a packed hearing room.



District attorneys testify before the panel.

PHOTOS BY JASON SCALLY



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## STATE CHAMPIONS OF THE 2014 MOCK TRIAL COMPETITION

The MBA Mock Trial Program began its 29<sup>th</sup> year in January. The competition places high school teams from 16 regions across the state in simulated courtroom situations where they assume the roles of lawyers, defendants and witnesses in hypothetical cases. More than 130 teams competed in this year's competition.

The Mock Trial Program is administered by the Massachusetts Bar Association with support from the **BROWN RUDNICK** Brown Rudnick Charitable Foundation Corp. The 2014 Mock Trial State Champion's trip to the national competition in Madison, Wisconsin, is funded in part by a \$2,500 travel grant from the Massachusetts Bar Foundation, the philanthropic partner of the MBA.



[MOCKTRIAL.MASSBAR.ORG](http://MOCKTRIAL.MASSBAR.ORG)

## BAR NEWS

# ABA proposals highlight March HOD meeting

BY JASON SCALLY

Members of the Massachusetts Bar Association's House of Delegates (HOD) endorsed several proposals, and honored an MBA stalwart, during their March 6 meeting at Suffolk University Law School.

Before delving into the evening's full agenda, MBA President Douglas K. Sheff honored MBA Chief Legal Counsel and Chief Operating Officer Martin W. Healy for 25 years of service to the MBA. Healy was given a commemorative watch.

During the first of two American Bar Association-related issues taken up at the meeting, Past President Richard P. Campbell asked the HOD to endorse the report of the ABA's Task Force on the Future of Legal education, which passed unanimously. HOD members also voted to support an ABA resolution, introduced by MBA President-elect Marsha V. Kazarosian and MBA Vice President Christopher P. Sullivan, which opposes a federal tax proposal that would require firms with annual gross receipts of more than \$10 million to use the accrual method of accounting.



House of Delegates members honor MBA Chief Legal Counsel and Chief Operating Officer Martin W. Healy (right) for his 25 years of MBA service

Past President Kathleen M. O'Donnell then presented extensive comments from her Professional Conduct Committee's look into proposed changes to the Rule of Professional Conduct. After the HOD endorsed her presentation, O'Donnell received a loud ovation in appreciation of her work on this exhaustive task, with Sheff noting, "This was not a project; it was a journey."

HOD members also readily supported presentations by the Juvenile Law, Probate and Access to Justice Section



PHOTOS BY JASON SCALLY

MBA Past President Richard P. Campbell speaks to House of Delegates members on March 6

Councils, which included approval of the 2014 Access to Justice Award nominees.

Continuing this year's tradition of guest speakers, Chief Justice of the Superior Court Barbara Rouse spoke to HOD members early on in the agenda about attorney judicial evaluations, assuring them that attorneys' comments were indeed anonymous. The meeting also featured a full membership vote, which supported changes to the MBA's bylaws.

## Calendar of Events

### TUESDAY, APRIL 22

Digital Forensics for Litigators  
4-6 p.m.   
MBA, 20 West St., Boston

### THURSDAY, APRIL 24

35th Annual Labor & Employment  
Law Spring Conference  
1-5:30 p.m.  
University of Massachusetts Club,  
225 Franklin St., Boston

### TUESDAY, APRIL 29

Tiered Community Mentoring  
Wrap-up Event  
9 a.m.-noon  
John Adams Courthouse,  
1 Pemberton Square, Boston

### WEDNESDAY, APRIL 30

Central MA Health Care Conference  
9 a.m.-noon  
University of Massachusetts  
Medical School,  
55 Lake Avenue North, Worcester

### THURSDAY, MAY 1

Juvenile & Child Welfare Section  
Council  
open meeting with DYS  
Commissioner  
5-7:30 p.m.  
MBA, 20 West St., Boston

### WEDNESDAY, MAY 7

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

### THURSDAY, MAY 15

2014 MBA Annual Dinner  
5:30-9 p.m.  
The Westin Boston Waterfront,  
425 Summer St., Boston

### THURSDAY, MAY 22

Practicing with Professionalism  
8 a.m.-5:30 p.m.  
University of Massachusetts  
Medical School,  
55 Lake Ave. North, Worcester



Real-time webcast available for purchase through MBA On Demand at [www.massbar.org/ondemand](http://www.massbar.org/ondemand).



Indicates recorded session available for purchase (after live program) through MBA On Demand at [www.massbar.org/ondemand](http://www.massbar.org/ondemand).

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# MBA CLE AT-A-GLANCE

APRIL CONTINUING LEGAL EDUCATION PROGRAMS BY PRACTICE AREA



## 35<sup>TH</sup> ANNUAL LABOR & EMPLOYMENT LAW SPRING CONFERENCE

Thursday, April 24, 1–5:30 p.m.  
University of Mass. Club Function Room  
225 Franklin St., 33<sup>rd</sup> Floor, Boston



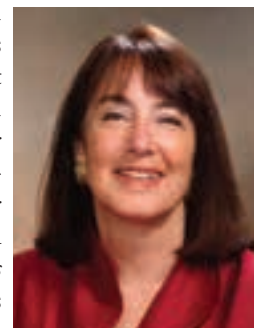
**Faculty:**

- Galen Gilbert, Esq., conference co-chair  
Gilbert & O'Bryan PC, Boston
- Angela L. Rapko, Esq., conference co-chair  
Constangy Brooks & Smith LLP, Boston
- Meghan H. Slack, Esq., conference co-chair  
Law Office of Meghan Slack, Arlington
- Todd J. Bennett, Esq.  
Bennett & Belfort PC, Cambridge
- Jeffrey A. Dretler, Esq.  
Fisher & Phillips LLP, Boston
- Andrew L. Eisenberg, Esq.  
Seyfarth Shaw LLP, Boston
- Brian P. Fox, Esq.  
Murphy, Hesse, Toomey & Lehane LLP, Quincy
- Audrey Gasteier, director of employer policy  
Massachusetts Health Connector
- Nathan L. Kaitz, Esq.  
Morgan, Brown & Joy LLP, Boston
- Denise I. Murphy, Esq.  
Rubin & Rudman LLP, Boston
- Beth Myers, Esq.  
Rodgers Powers & Schwartz LLP, Boston
- Leigh A. Panettiere, Esq.  
Sandulli Grace PC, Boston

### KEYNOTE SPEAKER

#### HON. NANCY GERTNER (RET.)

Gertner, who retired from the bench in fall 2011 for a position at Harvard Law School, was appointed to the bench in 1994 by President William J. Clinton after two decades of criminal defense and civil activist work. In 2008, Gertner became the second woman to receive the Thurgood Marshall Award from the American Bar Association's Section of Individual Rights and Responsibilities. Voted by *Massachusetts Lawyers Weekly* readers as one of the "best" federal judges in Boston, Gertner has also been awarded the Daniel F. Toomey Judicial Excellence Award from the MBA and *Lawyers Weekly*, the 2006 Massachusetts Bar Foundation's Great Friend of Justice Award, the 2007 Suffolk University of Law Charles P. Kindregan Award, the 2010 Morton A. Brody Distinguished Judicial Service Award and the 2011 Massachusetts Bar Association Hennessey Award for extraordinary leadership and dedication to improving the administration of justice. In 2013, Gertner received the National Association of Women Lawyer's highest award, the Arabella Babb Mansfield award, presented to a female attorney "whose career embodies qualities of professional achievement ... and valuable contribution to the advancement of women's interests in an under the law."



A distinguished academic, lawyer and judge, Gertner's autobiography, *In Defense of Women: Memoirs of an Unrepentant Advocate*, was released in April 2011. As a lawyer, Gertner taught at Boston University Law School, Boston College Law School and Harvard Law School, and as a judge, Gertner taught for more than 10 years at Yale Law School. Since becoming a judge, Gertner has also traveled widely, teaching women's rights and human rights, most recently working with Chinese judges and scholars on sentencing reform.

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### REAL ESTATE LAW

#### How to Open a Real Estate Practice

Thursday, April 17, 4–6 p.m.   
MBA, 20 West St., Boston

**Program chair:**

Francis K. Morris, Esq.  
Law Office of Francis K. Morris, Brookline Village  
Additional faculty to be announced.



FRANCIS K. MORRIS

### CIVIL LITIGATION

#### Digital Forensics For Litigators

Tuesday, April 22, 4–6 p.m.  
MBA, 20 West St., Boston

**Program chair:**

Raymond P. Austrotas, Esq.  
Arrowood Peters LLP, Boston  
Additional faculty to be announced.



RAYMOND P. AUSTROTAS



Supreme Judicial Court Rule 3:16 requires all persons newly licensed to practice law in Massachusetts on or after Sept. 13, 2013 to complete a one-day Practicing with Professionalism course. As the only approved provider offering the course in multiple locations statewide, the Massachusetts Bar Association is committed to ensuring that newly-licensed attorneys enter the profession in good standing by offering an affordable and convenient means of satisfying this rule's requirement.

Thursday, May 22, 8 a.m.–5:30 p.m.  
UMass Worcester  
55 Lake Avenue North, Worcester

### CENTRAL MASSACHUSETTS HEALTH CARE CONFERENCE

Wednesday, April 30, 9 a.m.–noon  
UMass Medical School  
55 Lake Ave. North, Worcester

**Faculty:**

- Lorianne Sainsbury-Wong, Esq., conference chair  
Health Law Advocates Inc., Boston
- Rebekah Diamond, Esq.  
Mintz, Levin, Cohn, Ferris, Glovsky & Popeo PC Boston
- Matthew R. Fisher, Esq.  
Mirick, O'Connell, DeMallie and Lougee LLP Worcester
- Kimberly Larson, J.D., Ph.D.  
Assistant Professor, UMass Medical School Law and Psychiatry Program
- Paul O'Connor, Esq.  
Milton, Laurence & Dixon LLP Worcester
- Laura Roias, MSW, LICSW  
Director, Walden Behavioral Care LLC Worcester Clinic



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# WE REMEMBER ...

## How quickly the call was answered



Marathon Dial-A-Lawyer volunteers (from left): Thomas Barbar, Samuel Segal, MBA President Douglas K. Sheff (standing), Bethany Bartlett and Robert Carney. The MBA held two special Dial-A-Lawyer programs and MBA volunteers also offered pro bono services to marathon bombing victims.

In the aftermath of the Boston Marathon bombings last April, the Massachusetts Bar Association quickly mobilized a relief effort through the creation of the Marathon Bombing Victims Legal Assistance Program.

Former Civil Litigation Section Chair Paul E. White was instrumental in organizing a group of volunteer attorneys who provided legal assistance to victims injured by the bombings. He also helped arrange a meeting with One Fund Boston Administrator Kenneth R. Feinberg to discuss protocols related to victim compensation under the fund. (See photo below.)

“Paul White did the lion’s share of the work,” says Immediate MBA Past President Robert L. Holloway Jr., who along with White each represented a victim of the bombings. “He was tremendous in all respects in terms of recruiting lawyers and putting together suggested protocols [for the One Fund payouts]. He was absolutely superb in the process.”

Holloway says MBA Past President Leo V. Boyle was also a driving force behind the relief effort who “understood what the goal was [of the MBA Marathon Bombing Victims Legal Assistance Program] and brought incredible passion and humanity to bear in making sure people did the right thing.”

Reflecting back on the MBA’s response one year ago, White recalls a strong desire to address the needs of victims in the days following the bombings. He knew that victims could potentially en-

counter obstacles without legal assistance and wanted attorneys to be available to help.

“Everyone wanted to provide our support as lawyers, as well as people,” says White. Both he and Holloway say they admire how quickly the call for help was answered by local attorneys who donated their time and talents to help victims of such a horrific tragedy.

“I was proud everyone wanted to do something in a way where we, as lawyers, could provide constructive help,” says White.

“Lawyers are folks that do give back to society on a regular basis and this [MBA Marathon Bombing Victims Legal Assistance Program] is an example of it,” adds Holloway. “Lawyers stepped up and did the right thing — not expecting to get anything out of it. That is the real message for me.”

The MBA’s support continues, as several attorneys are still helping victims with legal issues related to their injuries. The One Fund has also indicated that there will be a second distribution from the charity this summer.

“The marathon bombings affected so many people in so many different ways. As long as there are people suffering from this tragedy, we will continue to advocate on their behalf for additional assistance,” says Martin W. Healy, the MBA’s chief legal counsel and chief operating officer. “The Mass. Bar Association will stand with the victims every step of the way.” ■

“We are taught as lawyers that our profession performs in the public interest and with the community in mind. I know of no better example of this than how the



Massachusetts Bar Association stepped up and provided pro bono, quality legal counsel to the victims and families of the Boston Marathon bombings. Once again the MBA was in the forefront of making sure that victims and families in need would benefit from legal representation. The MBA has a long and glorious history that is part and parcel of the history of the commonwealth. Its work last year following the bombings is just the latest example of how the MBA comes to the rescue of our citizens in times of need.”

Kenneth R. Feinberg  
One Fund Boston Administrator

### MBA'S BOSTON MARATHON BOMBING VICTIMS LEGAL ASSISTANCE

#### BY THE NUMBERS

**\$10,000** donation to the One Fund

**87** attorney volunteers

**25** victims received lawyers

**2** special Dial-A-Lawyer programs for marathon victims

## MBA works with the One Fund



Former Civil Litigation Section Chair Paul E. White, MBA Chief Legal Counsel and Chief Operating Officer Martin W. Healy, One Fund Boston Administrator Kenneth R. Feinberg, Feinberg Rozen Business Manager Camille S. Biros, MBA Past President Leo V. Boyle and MBA Past President Robert L. Holloway Jr.



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# BOSTON MARATHON 2013

## Pro bono is personal for marathon victim's attorney

*Like many volunteers with the Massachusetts Bar Association's Marathon Bombing Victims Legal Assistance Program, Peabody & Arnold partner Katherine Kenney participated in the special marathon Dial-A-Lawyer program, and represented pro bono a victim who needed help with her One Fund application and other related legal issues. Kenney spoke with Lawyers Journal about her experience and why she got involved.*

"Mary" (an alias) was cheering on runners near the finish line of the 2013 Boston Marathon, when her life changed forever. The first bomb went off, leaving Mary with a severe injury to her leg where she lost about 30 percent of her calf. Only 25 years old, Mary's recovery has included three surgeries, so far.

Although Katherine Kenney would not meet Mary, her client, until weeks later, Kenney's pro bono work on behalf of the victims became personal as soon as she saw what happened.

"I've lived in Boston for 20 years. I live near the marathon route, and I've run it twice. It's one of my favorite days of the year," says Kenney. "When I heard about it, I thought there must be something I can do. I am glad the MBA gave me the opportunity to help."

Kenney volunteered with the MBA's Marathon Bombing Victims Legal Assistance Program, and attended the information and training session run by Paul White and MBA Past President Leo Boyle. After she was paired with Mary, Kenney helped her client with her One Fund application and represented Mary at her meeting with One Fund Boston Administrator Kenneth Feinberg.

"I tried to explain the result of how the bombing has affected her in order to put her in the best position to get an award from the One Fund," says Kenney. "Ken Feinberg treated our client well, and the meeting was so satisfying. You could tell he really cared and wanted to do the best he could and as quickly as he could."

Mary ultimately received an award from the One Fund and, like other already compensated victims, is automatically a candidate for future distributions.

After her experience with the Marathon Bombing Victims Legal Assistance Program, Kenney has continued her giving ways by becoming a regular at the MBA's monthly Dial-A-Lawyer program. She says her most rewarding pro bono work continues to be with Mary, whom she is still assisting with some collateral matters related to her injuries, including medical and employment issues.

She credits the MBA for giving her and other volunteers the tools they needed to navigate the sometimes tricky One Fund application process and assist their clients.

"I'm simply impressed with the Mass. Bar Association rallying around the victims," says Kenney. "They provided the information we needed in such a well-done program. It was seamless. Everyone at the MBA was so responsive."

Kenney also says her firm was incredibly supportive of the program. Fellow Peabody & Arnold partner Harvey Weiner worked with Kenney on Mary's case, and several other firm attorneys volunteered on different marathon-related pro bono efforts.

"Peabody & Arnold was extremely responsive and offered as much assistance as we needed with quite a few attorneys at their firm," says Elizabeth O'Neil, the MBA's director of community and public services. "We are so grateful for the outpouring of support we received from so many attorneys and firms. It was heartening to see the legal community pull together like it did." ■



Katherine Kenney, one of the volunteers who took on a pro bono case.

## Thank you to our volunteers!

For a full list of names, see page 13.



**MBA Past President creates scholarship for bombing victim:** Massachusetts Bar Association Past President Richard P. Campbell and his wife, Barbara, created a scholarship for UMass Boston students in honor and in memory of bombing victim Krystle Campbell (no relation).

"Krystle hailed from the same neighborhood in Medford as me, graduated from Medford High School as my wife and I did and attended the University of Massachusetts Boston as did I," Campbell, a UMass trustee, told *Lawyers Journal* last year. "We feel a kinship with her and have great empathy for her family on losing such a vibrant, energetic and beautiful daughter."

The MBA recently made a financial contribution to the Krystle Campbell Scholarship Fund, which supports scholarships and other projects that advance young women interested in pursuing careers in business.



# WE REMAIN BOSTON STRONG.

# EXPERTS & RESOURCES

## BAR NEWS

### MBA student member works for prisoners' rights through clinic



Shannon Jurgens

BY JOSHUA CRAWFORD

On Nov. 14, 2013, Derrick Sutton went before the Massachusetts Parole Board for the second time since he pleaded guilty to second degree murder and unlawful possession of a firearm in 1994. Sutton, a North Carolina native who became involved with drugs and street violence in Roxbury in his later teens, had turned away from the streets with the birth of his son. Then, in 1993, he fatally shot a former associate after a dispute between the two occurred earlier in the day. At this parole hearing, granting Sutton parole to a long-term residential program after one year in lower security, he was assisted by Northeastern University Law School student and SJC Rule 3:03 attorney Shannon Jurgens.

Jurgens, a student member of the Massachusetts Bar Association (MBA), who wants to be an assistant district attorney after graduation, came to Sutton by way of Northeastern University School of Law's Prisoners' Rights Clinic. The clinic accepts 10 to 12 students and places them with an inmate serving life with the possibility of parole.

Jurgens, a Needham resident who did her undergraduate work at Boston College, took a year off after college to work in the Middlesex District Attorney's Office. Knowing what her ultimate goal was, Jurgens wanted a well-rounded law school

experience and was attracted to the work of the Prisoners' Rights Clinic.

Every Friday, and sometimes both Wednesdays and Fridays, she would make the trip to Massachusetts Correctional Institution (MCI) – Shirley and talk with Sutton for six to seven hours at a time. According to Jurgens: "I got his whole life story, his whole background. By about the third week, we got to the crime. When we were together we'd talk and prepare for the hearing, and how he was going to present himself."

But that wasn't the extent of the work she did. "Outside of my visits to see him I met with his family, his friends, people in his community. I went to the parole board and got his whole file. I went to the prison and got his whole DOC record. I did some outside investigation, legal research and a lot of psychology research given that he was 19 when the crime occurred."

All that work paid off in the end for Jurgens and Sutton. Of the 12 inmates up for parole represented by students in the Prisoners' Rights Clinic, only Sutton received it.

For Jurgens, membership in the MBA is all about learning. From networking with future colleagues to CLE classes, "The MBA seemed like the perfect way to meet lawyers who I can learn from, especially by reading the newsletters that go out and the opportunities to attend trainings and different events." ■

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CONTINUED ON PAGE 13

#### ANNUAL DINNER

*Continued from page 1*

Boston Mayor Martin J. Walsh; and the 2014 Access to Justice Awards.

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Visit [www.massbar.org/ad14](http://www.massbar.org/ad14) for additional sponsorship and table information and to view the growing list of 2014 Annual Dinner sponsors. For additional information call (617) 338-0530. ■

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# Public Law Conference focuses on public pension policies



PHOTO BY MARC A. D'ANTONIO

Conference Co-Chair David Hadas, Conference Panelist Susan G. Anderson and Conference Co-Chair Brian C. O'Donnell

The Massachusetts Bar Association's (MBA) Public Law Section Council hosted its annual conference Friday, Feb. 28, at the MBA, 20 West St., Boston.

The conference focused on practice issues and challenges involving public pension policies. Panelists included attorneys from the private and public sectors who discussed, in detail, both the complicated landscape of public employee pension programs and the consequences for employee terminations, resignations, prosecutions

and disciplinary actions, including when a criminal conviction will cost your client their pension, and when it will cost them every dollar they put toward their pension.

"The program panelists covered an interesting variety of issues from the statutory underpinnings of myriad Massachusetts pensions systems to some of the equitable concerns raised by pension forfeitures, which some may view as excessive punishment for misconduct directly or indirectly related to an employee's public duties," said Conference Co-Chair Brian O'Donnell. A conference attendee added, "The conference had a great combination of speakers representing a wide range of pension law."

The day ended with former Inspector General of the Commonwealth of Massachusetts Gregory W. Sullivan delivering the keynote address. Sullivan is now the research director of the Centers for Better Government and Economic Opportunity at the Pioneer Institute. Throughout his speech, Sullivan explored ways state and federal government could be more efficient to prevent waste, fraud and abuse. ■

# Inspiring speakers, speed networking highlight Tiered Community Mentoring program event



PHOTO BY MIKE VIGNEUX

Students participate in the MBA's Tiered Community Mentoring Speed Networking event on March 7

Members of the Massachusetts Bar Association's (MBA) Tiered Community Mentoring Program gathered for a Murder One Appeal Hearing and Speed Networking event at the John Adams Courthouse in Boston on March 7.

Following the hearing, the group heard three inspiring speakers from the legal community talk about how they've achieved both personal and professional success. Speakers included Hon. Serge Georges Jr., associate justice, Boston Municipal Court/Roxbury Division; Kimberly Y. Jones, CEO and founding attorney at Athena Legal Strategies

Group; Hon. Diana L. Maldonado, associate justice of the Massachusetts Appeals Court; and Hon. Robert Ronquillo, Jr., chief justice of the Boston Municipal Court.

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, Suffolk Law School and Northeastern University Law School. ■

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# SECTION REVIEW



MASSACHUSETTS  
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MASSACHUSETTS BAR ASSOCIATION

YOUNG LAWYERS DIVISION

## DOJ's offshore compliance initiative If your clients haven't come forward yet, now's the time

BY CHRISTOPHER G. BECK

According to a 2008 U.S. Senate report, the use of secret offshore accounts to evade U.S. taxes costs the U.S. Department of the Treasury an estimated \$100 billion annually. The U.S. Department of Justice's Tax Division's current offshore program began in 2008, when it opened an investigation into UBS AG. As a result of the investigation, UBS agreed to enter into a deferred prosecution agreement by February 2009, admitting guilt on charges of conspiring to defraud the United States, agreeing to turn over the names of approximately 4,500 account holders and paying \$780 million in fines.

On the heels of this investigation, the Internal Revenue Service announced its Offshore Voluntary Disclosure Initiative (OVDI), which set forth a means for disclosing previously unreported accounts with a fixed program for civil penalties. This program ran from March to Oct. 15, 2009. A second offshore program was announced in February 2011, ending in September 2011, and a third and continuing program was announced in January 2012. With each successive program, the penalties were increased. The OVDI programs have so far been responsible for the collection of more



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than \$5 billion in tax, interest, and penalties, and have brought forward more than 40,000 foreign account holders.

Despite their success, the voluntary disclosure programs have come under criticism for the draconian manner in which taxpayers are penalized. Taxpayer advocate Nina Olsen, in her 2013 Annual Report, faulted the programs as "a good deal for 'bad actors' but not for 'benign actors.'" According to Olsen, the penalties paid under the programs have averaged more than double the unpaid tax and interest associated with the unreported accounts. Yet for those with accounts valued in the lowest 10 percent

(\$87,145 or less), the penalties were a higher multiple of the unpaid tax, and for pro se taxpayers, the multiple was even higher. The severe penalty regimes have led many account holders to consider other means for coming into compliance.

While many taxpayers have come forward through the programs to report their previously unreported bank accounts, some have become current simply by correcting their returns, paying additional tax and interest (but not under the programs' penalty regime) in what are called quiet disclosures. Some have also simply begun reporting their foreign accounts prospectively. It is yet to be seen whether these individuals will face additional penalties in the future.

In continuation of its efforts, the DOJ announced a special voluntary disclosure program aimed at a large group of Swiss financial institutions in August of last year. The program was made possible by a U.S.-Swiss agreement of enhanced information exchange. While the Swiss government (along with many other governments) agreed to comply with the Foreign Account Tax Compliance Act (FATCA), which began on Jan. 1, 2014, under which both the United States and Switzerland will automatically exchange foreign account information, the special program announced

in August would allow an eligible Swiss financial institution to avoid prosecution in the United States in exchange for detailed disclosures for years prior to 2014. Upon announcing the special program, the DOJ also announced that it would place a moratorium on investigations of Swiss financial institutions until Jan. 1, 2014. Beyond that date, the DOJ may determine any bank not in the program to be the target of an investigation, and therefore ineligible to enter the program. Some institutions may postpone applications into the program until as late as Oct. 31, 2014. On Jan. 25, the DOJ announced that 106 Swiss entities have applied to enter into the program.

As we have seen in our practice over the past five years, taxpayers with undisclosed offshore accounts have faced significant pressure to come forward through the voluntary disclosure programs. Now, with the special voluntary program aimed at their financial institutions, the pressure will be coming from their banks, as well. Many financial institutions have begun sending letters to account holders they believe are U.S. citizens stating that they will be releasing their information to the DOJ. If taxpayers have thus far been holdouts on coming forward with unreported accounts, now is the time to seriously consider doing so. ■

YOUNG LAWYERS DIVISION

## Will Massachusetts seize the chance to help abused elephants?

### After multiple attempts at becoming a law, a fledgling bill gets a hearing

BY KAREN RABINOVICI

Elephants, the largest living land-dwelling animals, have become an iconized source of fascination in our culture. In nature, female elephants spend their entire lives in close family groups, with different groups bonding with one another. The center of the group is the calf, which relies on its mother for as long as three years. Elephants have complex communication systems using sight, smell, sound and the all-important touch. They are typically gentle creatures and are believed to have self-awareness and cognition, and show empathy for their dying or dead.

However, all of these natural tendencies of elephants are thwarted by life in captivity.

Elephants have very unfortunately become a cornerstone of wildlife entertainment. In captivity, these magnificent creatures endure abusive and violent treatment at the hands of their caretakers. Trainers use sharp metal or steel-tipped prods, usually called bull hooks (similar to a fire poker) which can puncture and tear elephant skin, or be used like a baseball bat. Trainers strike elephants for no purpose other than to cause pain and fear to coerce the elephant to perform unnatu-



**KAREN RABINOVICI**

practices health care and business law with Pierce and Mandell PC, in Boston. She is an avid animal lover and a passionate animal rights advocate.

ral and nonsensical tricks.

Captive elephants are also subject to chaining. Chaining severely restricts an elephant's movements, prohibiting it from lying down, walking and socializing. Chaining can cause neurotic psychological behavior, physical injury and death. In fact, chaining causes foot problems and arthritis, which are the leading causes of euthanasia for captive elephants. None of these issues are observed in wild elephants. Despite trainers' attempts to conceal wounds, these industry methods are no secret, as Kenneth Feld, the owner of Ringling Bros. and Barnum & Bailey Circus admitted under oath in 2009. These methods are also chronicled in the upcoming HBO documentary, "An Apology to Elephants."

Enter S. 1626, An Act Relating to the Treatment of Elephants. This bill, which

has been bounced around for several years, was heard before the Massachusetts legislature's Tourism, Arts and Cultural Development Committee on Feb. 3, 2014. This bill would prohibit the use of bull hooks and chains on elephants performing in Massachusetts. Why hasn't this bill yet become a law in Massachusetts, a state that prides itself on being progressive and enlightened? Massachusetts is already behind more than 35 other local jurisdictions in the United States that have restricted the use of elephants or the use of bull hooks on elephants. S. 1626 was filed by Sen. Robert L. Hedlund, who serendipitously became passionate about the issue when a constituent he met at the gym brought it to his attention — an example of the power of one. Kara Holmquist, director of advocacy at the Massachusetts Society for the Prevention of Cruelty to Animals, reported that the hearing had a large showing from constituents, legislators, animal protection groups and animal experts.

One such expert is Scott Blais, co-founder and CEO of Global Sanctuary for Elephants, the first and largest habitat sanctuary for rescued elephants. With more than 25 years of experience working with elephants, he initially learned with the bull hook. He provided compelling

testimony, calling these methods sadistic, barbaric, archaic, and abusive, and he discredited every argument in favor of them. He also testified about the other non-violent methods of training that are available, but willfully ignored. In a letter to the committee, he states, "There is no way for me to truly convey the intensity, the depth of fear, the echoing, hollow, empty sound of their screams, these are sounds of complete despair."

If the committee votes in favor of S. 1626, it will hopefully progress until it reaches the Senate floor. When asked why the bill, which seems like a no-brainer, has been met with adversity, Holmquist responded that it's a process for people to reconcile their belief that something is pure, fun, family entertainment with the fact that it is actually inhumane and violent.

There is no shortage of evidence supporting the need to ban bull hooks and chains. If such treatment were used on dogs, the public would be outraged. It's time for Massachusetts to live up to its reputation, and to contribute to the alleviation of the suffering of captive elephants.

For further information on the intersection of the law and animal rights, please consider joining the MBA's Animal Law Practice Group. ■



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# SECTION REVIEW



MASSACHUSETTS  
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YOUNG LAWYERS DIVISION

## Family, business and ownership Multiple layers of family governance

BY STEPHEN C. GEORGE

Experts estimate that around 80 percent of all businesses in North America are family controlled, and family businesses account for approximately 70 percent of global gross domestic product (GDP). That said, less than one quarter of family businesses in the United States survive into the third generation. This gives attorneys good reason to understand the nuances that make family businesses different from other clients.

The oldest family-owned business in the United States, Zildjian, a cymbal-manufacturing company, pre-dates the United States itself. Founded in 1623 in the Ottoman Empire, Zildjian continues to operate as a 14th generation family business in Massachusetts. Such family businesses survive thanks in part to clearly established rules and policies regarding family involvement in and expectations for the business. It is important for lawyers advising family businesses to understand not only the elements of corporate governance, but also family governance.



**STEPHEN C. GEORGE**

received his J.D. from Charlotte School of Law and an LL.M. in International and European Business Law from the University of Vienna, Austria. He is

presently a doctoral candidate in European Law at the University of Vienna and serves on the family council of a North Carolina-based family business.

The first point of overlap between corporate governance and family governance is generally a buy-sell agreement. The agreement may include to whom shares of a company may be sold, conditions for a shareholder buy-out and a method for determining the price of the shares. Family businesses will commonly want to provide a first right of refusal to the business and/or other family shareholders before a shareholder can turn to outside buyers in order to protect the ownership interests of the business.

Families further along in their dialogue about the relationship between the family and the business may want a more comprehensive shareholders agreement that includes additional business and ownership elements beyond share transfer conditions. Some sample elements of a family shareholders agreement may include: confidentiality agreements, conflict of interest and non-compete agreements, provisions concerning death or divorce of a family shareholder, dividend policies and board composition, among many others. An important point of practice is to carefully and conspicuously mark any certificated shares covered by a buy-sell or shareholders agreement as being subject to such agreement.

While shareholders agreements are generally legally binding documents, there are a number of other family ownership considerations that may be addressed in other documents that may not be legally binding. These documents may include family employment and compensation agreements, coordinated estate planning agreements, prenuptial agreement policies, codes of conduct, family philanthro-

py policies, public relations policies and future leadership or development policies among others. Some families consolidate these policies into a single family constitution. While a carefully drafted family constitution, or the separate elements thereof, may be legally binding if the basic contract elements are satisfied, most family business experts accept the family constitution as a non-legally binding document valued for the dialogue surrounding its creation. Often, dialogue and consensus are more valuable to the business and the family than a legally binding document that alienates one or more of the shareholders.

Family businesses generally have a longer-term focus than other businesses, which means their governance goals will likely differ from typical business clients. When dealing with family businesses, attorneys should ensure that the client is properly informed on which documents are legally binding and how non-binding documents could be made legally binding, but one should also accept that modifying documents to improve their legal efficacy is not always the best course of action for the family involved. ■

YOUNG LAWYERS DIVISION

## Nelson Mandela, the lawyer

BY JANE CERASO

Nelson Mandela's contributions to the cause of social justice are legendary. Less well known is the role Mandela's experience and training as a lawyer played in his successful transformation of a country on the cusp of civil war into a functioning democracy. The son of a Thembu chief, Mandela developed an early interest in the law while watching his father mediating disputes at tribal council sessions.

Mandela was the first in his family to attend college. Later, he enrolled as the only native African law student at the University of the Witwatersrand, and became involved in the African National Congress (ANC). The ANC sought to reform laws, such as The 1913 Land Act, which deprived blacks of most of their territory. Mandela realized that the goals of justice touted by South Africa's legal system could be used to shine a light on the hypocrisy of the country's racist laws.

In 1953, Mandela and a friend from college, Oliver Tambo, opened the only African-run law firm in South Africa. Because many everyday activities were criminalized for blacks under Apartheid laws, blacks often found themselves in court. Mandela and Tambo provided affordable legal representation for many who would otherwise have faced trial without representation.

Mandela discovered that trials could be a powerful instrument of social change. Courts at the time were unconstrained by the restrictions imposed on black South



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Africans. Mandela's courtroom performances capitalized upon the etiquette he picked up in his British-influenced education, his mastery of debate and his strong belief in justice. Like the tribal council sessions, the courts provided a space where conflicting interests could be deliberated. Through artful advocacy, Mandela took advantage of the tools of the law, and the values of law and liberty, which white authority had claimed for itself.

After spending nearly a decade honing his legal talent, Mandela applied these skills to the daunting task of creating a democratic South Africa. When tried for acts of resistance against the government, he participated in his own defense, showcasing the values of freedom, fairness and democracy and juxtaposing them against a society that dishonored those values. At his Rivonia Treason Trial, rather than take the stand as a witness, he chose to make an impassioned speech for democracy which catapulted him onto the world stage. Although many believed the trial would end in a death sentence, Mandela was given life imprisonment. ➤18

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# SECTION REVIEW



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YOUNG LAWYERS DIVISION

## Post-judgment issues in Massachusetts landlord-tenant matters

### Young lawyer practice in the later stages of a summary process case

BY MICHAEL J. MOLONEY

Summary process proceedings, though designed to move quickly through the judicial process, can sometimes consist of substantial post-judgment litigation by attorneys practicing in landlord-tenant actions. New attorneys, especially those unfamiliar with housing law, can benefit from an understanding of these matters, as the efficient use of time is crucial to both sides in a residential summary process case. While these post-trial issues are commonplace in other civil categories, knowing the housing law challenges can be a useful tool for any young attorney who is representing either a landlord or a tenant.

M.G.L. c. 239, § 10 provides that when the parties enter into an agreement for judgment, no execution shall issue unless the plaintiff first brings a motion for the issuance of the execution and the court, after a hearing, determines that the tenant is in "substantial violation" of a material term or condition of the agreement for judgment. Thus the question



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2011. Moloney is a graduate of Roger Williams University School of Law, where he received his juris doctor, and Sacred Heart University, where he received his bachelor of arts. A native of Worcester, Moloney is the secretary for the Massachusetts Bar Association Young Lawyers Division.

is: Was there a substantial violation of the agreement for judgment? Whether a breach is substantial is determined by the circumstances of each case. The tenant's attorney can argue the breach does not warrant the serious consequences of the loss of a housing unit, or they can show a degree of mitigating circumstances regarding the violation. If the alleged

breach was due to mental disabilities, the requisite intent may fail to exist. If, after a hearing, the court determines that the tenant is in substantial violation of a material term of the agreement for judgment, it must issue an execution. M.G.L. c. 239, § 9 provides that a stay of execution can be granted to a tenant whose tenancy has been terminated without fault. This stay period can be up to six months, or additionally can be 12 months if the tenant or a household member is 60 years of age or disabled. When asking to stay the issuance of an execution, a tenant's advocate should argue that the tenant has made diligent efforts to secure alternative housing, that he or she needs more time to secure alternative housing, and without this time, the tenant faces a high risk of homelessness.

Once the execution for possession has been issued by the court, it remains valid for 90 days. If the court does not issue the execution for possession within this 90 day timeframe, or the landlord does not levy on the execution within 90 days of it being issued, the execution is stale. See M.G.L. c. 235, § 23. An advocate

for the landlord would then need to file a motion to get the execution reissued. An execution for money damages, on the other hand, remains valid for 20 years. In a nonpayment post judgment eviction, in which the landlord subsequently accepts the entire judgment amount, M.G.L. c. 239, § 3 provides that the judgment is satisfied, and a new tenancy is created. Finally under M.G.L. c. 239, § 3, the landlord must give the tenant a 48 hour written notice before levying on the execution. Tenant advocates should set aside defective notices through a motion to suspend use of the execution for possession.

These various post-judgment tools allow attorneys in summary process proceedings to ensure that cases are fully litigated and equitably resolved. Additionally, being proactive in knowing and understanding these key provisions can be a valuable asset to the advocates on either side. Knowledge of these legal skills ultimately benefits the young attorney, without seriously undermining the expedited process which is so central to the disposition of landlord-tenant matters. ■

## LABOR & EMPLOYMENT LAW

### Civil service law today

BY GALEN GILBERT

Civil service was a great 19th century reform to deal with the problem of patronage in public employment. However, the expense of classifying jobs and administering examinations has given way to other budget priorities in our age. Without examinations, the agencies fill up with provisional employees, who have few rights under civil service law. Public sector labor unions fulfill some of the functions of civil service, including disciplinary hearings based on "just cause" instead of "at will."

In public safety positions (police, fire and corrections) the civil service system is alive and well. Examinations are given on regular annual schedules, and the employers use civil service lists exclusively. There are strong unions representing these employees, and long traditions of using civil service for hiring, promotion, discipline and layoffs.

Lawyers representing employees and



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(MCLE, 2001), Gilbert has published and edited *Massachusetts Merit System Reporter* (1997) and served as editor of the *Massachusetts Civil Service Reporter* (1996). Gilbert appears frequently before the state Civil Service Commission representing clients. He is a member of the Massachusetts Bar Association Labor & Employment Section Council, a trustee of Boston Groundwater Trust (1987-2014) and a third-degree Mason.

applicants have to know about appeals to the state Civil Service Commission. The

most common reason for a private lawyer to represent an applicant is when someone takes an examination, scores highly on the certified list, and suffers having a lower ranked rival appointed instead. That is called a bypass, and can be appealed to the commission within 30 days. Legal issues that can arise are: the legality of the administrative 30 day limit in face of the statutory grant without any such limit; if the two candidates are tied in their score (is that a bypass?); and what happens if the state human relations administrator foregoes the statutory duty to review the proposed bypass reasons before the appointment. Factual issues include whether the reasons for bypass are true, equally applied, pretextual or illegal. Civil service ranking involves preferences for veterans, minorities, residents, and kinship, and these are applied before the test score is factored in.

The commission holds hearings, preceded by a conference where the commissioner will question your client directly to probe possibilities of settlement or capit-

ulation. There is a small filing fee. If you survive the conference, the commission will schedule a hearing a few months out.

Other civil service appeals involve discipline, layoff, job titles, examination fairness, proper marking of examinations and proper application of civil service law. In disciplinary appeals the time limits are the shortest in any field: 10 business days for an appeal to the Civil Service Commission. For a suspension of five days or less, no hearing or other rights inure unless the employee requests in writing a hearing from the employer within 48 hours of the start of the suspension.

Provisional employees, the vast majority of public sector workers, have scant civil service rights. One of the big legal arguments is over the right to take a civil service examination, and whether the appointing authority has a duty to give examinations. If the appointing authority has not given examinations, are they stopped from claiming that an employee they want to lay off is truly a provisional employee? ■

**NELSON MANDELA**

*Continued from page 17*

During a 27-year incarceration, Mandela and his colleagues, many behind bars, crafted the legal ideas that would eventually birth a modern democracy in South Africa. Emerging from prison in 1990 empowered, and foreseeing no gains from acrimony, Mandela miracu-

lously led the way to peace and democracy with the same regime that had imprisoned him.

In 1994, Mandela became president of South Africa's first multi-ethnic government. Under his leadership, Apartheid was finally dismantled. In 1996, Mandela oversaw the enactment of a new democratic constitution, developed by South Africans from both sides of the political

divide. He also established the Truth and Reconciliation Commission, leading the way for a more lasting civic cohesion.

On Dec. 5, 2013, Nelson Mandela died, leaving the world a far better place. For lawyers, Mandela's legacy serves as an example for our own practice through the values he was willing to put his life on the line for: human rights, democracy and equitable laws for all. ■

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MBF President Robert J. Ambrogi was on hand to congratulate the Winsor School Mock Trial Team, which recently won the 2014 Mock Trial State Championship (administered by the MBA). He presented the team with a donation to cover a portion of their trip to Madison, Wis., on May 8-10, to compete in the National High School Mock Trial Championship.

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