



Messenger

MILWAUKEE BAR ASSOCIATION, INC.

Est. 1858

Summer 2011

Volume 2



**Michael
J. Cohen,
MBA's
112th
President,
Addresses
2011
Annual
Meeting**

Picture courtesy of Kevin Harnack, the Wisconsin Law Journal

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BUT WE MAKE A LIFE
BY WHAT WE GIVE.

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Be Part of the *Messenger*

Please send your articles, editorials, or anecdotes to editor@milwbar.org or mail them to Editor, Milwaukee Bar Association, 424 East Wells Street, Milwaukee, WI 53202. We look forward to hearing from you!

If you would like to participate on the *Messenger* Committee, we have seats available. Please contact James Temmer, jtemmer@milwbar.org.



The *MBA Messenger* is published quarterly by the Milwaukee Bar Association, Inc., 424 East Wells Street, Milwaukee, Wisconsin 53202. Telephone: 414-274-6760
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MBA Announces Annual *Messenger* Award

Starting in June 2012, the MBA will add an award to its Annual Meeting lineup to honor the author or authors of the best article in the *MBA Messenger* during the preceding year. All published articles (other than those by MBA staff) are eligible for the award, and will be evaluated by a panel of three distinguished judges according to the following criteria:

- Originality of topic
- Informational or entertainment value of article
- Effectiveness of writing style, with emphasis on concise and precise expression
- Adherence to journalistic standards of research, accuracy, and fairness
- Overall quality of impact on the reader

Ladies and gentlemen . . . start your word processors.

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Letter From the Editor



Charles Barr, Editor

The Milwaukee Bar Association was instrumental in founding what is now Marquette University Law School in 1892, and the Legal Aid Society of Milwaukee in 1916. The details of those MBA projects are, of course, lost in the mists of time. One can imagine, however, that they must have been long, arduous tasks, the success of which, at times, must have appeared uncertain. One suspects they were not merely things that someone decreed should happen and then magically did happen.

Today the MBA is engaged in founding a project of similar moment—the Milwaukee Justice Center. One indication of the magnitude of this project is the identity of the MBA's partners in it: none other than the aforementioned Law School and the County of Milwaukee itself. The MJC's very purpose—helping self-represented litigants access justice in Milwaukee County's court system—also announces just how vital it is to the social welfare of our community. The economic chasm between county residents who can afford to retain private counsel, and those who are served by organizations, such as the Legal Aid Society, dedicated to pro bono representation, can only be described as vast. That chasm has a teeming and steadily increasing population. It is an unavoidable reality that for the foreseeable future, legions of needy Milwaukee County citizens without legal training will have to represent themselves in the courts.

From a historical perspective, then, the Milwaukee Justice Center is the next logical step in the evolution of advocacy in the cause of communal justice. Establishment of the Law School ensured a supply of well-trained lawyers in this community, and establishment of the Legal Aid Society and similar organizations ensured that the very poorest in the community—but nonetheless a mere sliver of the population actually in need of legal assistance—would have counsel. Now, the MJC seeks to ensure, on an institutional and long-term basis, that those in the much larger group, who need but realistically cannot expect to have formal legal representation, receive the assistance necessary to give them at least a fighting chance in their encounters with a complex

judicial system. Undeniably, the MBA has staked its reputation, indeed its very identity as an organization, on the long-term success of the MJC.

The MJC is up and running, and running very well, as detailed in its 2010 Annual Report and summarized by a video shown at the MBA's 2011 Annual Meeting. Indeed, as we went to press, the MBA Foundation won a prestigious national award based on the Milwaukee Justice Center (see page 5). The continued existence of the MJC, however, is far from a sure thing. Creating the financial resources to accomplish that goal is no easy task, no snap of the fingers. It takes years of strenuous effort, and the result is inherently uncertain. As in the years leading up to 1892 and 1916, therefore, the MBA is at a crossroads in its history. Either the MJC will succeed as an established institution, or it won't. The road taken will depend on the efforts of MBA's leaders and, ultimately, its members.

Failure is not an option. Our new President, Mike Cohen, discussed at the Annual Meeting and reprises in his inaugural message in this issue what must be done for the MJC to survive its infancy. If you give serious thought to only one thing in our humble publication, give it to that message.

On a lighter note, we've decided to go ahead with our summer issue despite the fact that, as of this writing and from a meteorological perspective, summer evidently ended last Thursday after a run of two days. So what's in the *Messenger* this time? Golly, a boatload of stuff, but as space for this letter runs short, we respectfully refer you to the Table of Contents on the preceding page. We can't resist mentioning, however, the institution of a new award for the author(s) of the best article published in the *Messenger* each year. How would that look on your living room mantle under the antlers? See page 3 for the exciting details.

We hope you enjoy this edition of the *Messenger*, and that what the calendar insists is summer grants us a few days that are something other than sweltering or freezing. Hey, if you think of it, drop us a line, or maybe even an article. Who knows: you could be the inaugural winner of the *Messenger* award.

—C.B.

Volunteer Spotlight

Michael Levine



Michael Levine is a third generation Milwaukee attorney who practices with the Law Offices of Robert A. Levine. His primary focus is criminal defense, but he also handles civil matters such as section 1983 civil rights litigation and

personal injury. In addition to practicing law, Michael is a partner in an international corporate real estate advisory firm known as CresaPartners.

Despite a heavy workload and a young family, Michael makes it a point to volunteer in the legal community on a regular basis. He contributes his time and expertise to both the Milwaukee Justice Center and the Marquette Free Legal Clinic. He accepts public defender appointments. And he has spoken to groups of young Milwaukee students about being a lawyer.

Michael says he volunteers because it gives him a chance to work with and provide assistance and guidance to people that otherwise could not afford to hire him privately. The programs with which he is involved provide the tools and resources for Michael to accomplish that objective.

Outside the legal community, Michael also volunteers by coaching sports teams. Thank you for all you do, Michael!

Member News

Boyle Fredrickson, Wisconsin's largest intellectual property law firm, announced the elevation of **Kirk Deheck**, **Michael Griggs**, and **Eric Lalor** from Associates to Shareholders.

Fox, O'Neill & Shannon has added **Matthew O'Neill** to the firm's full-service litigation practice. O'Neill has more than 20 years of commercial litigation and appellate practice experience, and was recently elected President of the Eastern District of the Wisconsin Bar Association.



Matthew O'Neill

Christopher P. Banaszak

has been named Chair of Reinhart's Labor and Employment Practice. With more than 15 years experience as a labor attorney and litigator, Banaszak serves a wide range of manufacturing and service industry clients, including financial institutions.



Christopher P. Banaszak

Simandl & Prentice announced that **Ann Barry Hanneman** has joined the firm as a shareholder. Hanneman represents employers in administrative matters as well as federal and state court proceedings.

Shannon Corallo has formed the Law Office of Shannon Corallo, 222 East Erie Street, Suite 210, Milwaukee, and will focus on family law and mediation.

Reinhart Boerner Van Deuren announced the addition of four attorneys to the firm.

James D. Borchardt and **Christopher J. Gass** joined the Intellectual Property Practice. **Jennifer L. Naeger** joined the firm's



James D. Borchardt



Christopher J. Gass



Jennifer L. Naeger



Mindy F. Rice

Litigation Practice, and **Mindy F. Rice** joined Reinhart's Banking and Finance Practice.

MBA Foundation Earns Award for Milwaukee Justice Center

Shortly before the *Messenger* went to press, the National Conference of Bar Foundations and LexisNexis announced that the Milwaukee Bar Association Foundation has been selected to receive the inaugural Partnerships for Success Award. The Foundation was selected for its Milwaukee Justice Center project.

The Partnerships for Success Award honors bar foundation initiatives that make a significant impact in their community on issues for which lawyers are uniquely

positioned to lead.

This new award is made available through the support of LexisNexis. It will be presented to Jim Temmer, Executive Director of the MBA, on August 5 during the ABA Annual Meeting in Toronto.

Look for more details about this award in the next issue of the *Messenger*.

Congratulations to the Milwaukee Bar Association Foundation!

Thank You!

Law Day Volunteers

Ann Jacobs	John Bennett
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Rick Steinberg	Michelle Fitzgerald
Catherine LaFleur	Richard Zaffiro
Sigrid Dynek	Anne Wal
Kiley Zellner	Valerie Vidal
James Santelle	David Saucedo
Jonathan Gruhl	Jill Kastner
Joe LaDien	Steve Howitz
Eric Knobloch	Jacqueline Sestito
Charlie Barr	Keith Llanas
Brian Romans	Carmen Ortiz

Message From the President

Attorney Michael J. Cohen, *Meissner, Tierney, Fisher & Nichols*



I would like to first thank all the members of the MBA who put their trust in me to lead this great organization as President this coming year. I feel very fortunate to be in the position of following the path of the late Ralph Hoyt of my firm (then Shea & Hoyt) as MBA President, and look forward to continuing the good work of my more immediate predecessors, who have been great role models to me over the last few years as I have proudly served as MBA officer and Board member. I am also very thankful that my job will be made so much easier due to the outstanding and hard-working staff of the MBA, led by Jim Temmer, whom we are very fortunate to have as Executive Director, and an exceptional group of Directors.

Like Past President Rachel Schneider, probably the biggest challenge I will face as President, and this organization must continue to address as a priority in the upcoming year, is meeting the present financial needs of the Milwaukee Justice Center and ensuring that the good work being done in this program continues well into the future. As you know, the MJC provides essential legal information and clinic counseling to people who would

otherwise face our daunting court system without any help. Self-help legal services are an essential component of an effective legal aid delivery system. In today's challenging economic times, the demand for civil legal services is extraordinary. The legal aid organizations are experiencing the effect of budget cuts and are overwhelmed, and thousands of people are denied assistance every month. The MJC strives to address the substantive and procedural barriers facing unrepresented litigants so that they can better navigate our challenging legal system.

As was stressed at the Annual Meeting, there are many things that are going right with the MJC. The philosophy of the project, that unrepresented litigants have a fundamental right to access the justice system even if they cannot afford an attorney or do not qualify for legal aid, is sound and undeniable. We are very fortunate to have the support and backing of two great institutional partners, Milwaukee County and Marquette University Law School, and of a host of top notch civic-minded law firms such as Foley & Lardner; Hinshaw & Culbertson; Michael Best & Friedrich; O'Neil, Cannon, Hollman, DeJong & Laing; and Reinhart Boerner Van Deuren. We have an exceptional leader in Executive Director, Dawn Caldart. Dawn is a tireless worker with an unwavering passion to see this project through to long-term success. We have had the good fortune of being the beneficiary of over 7,000 *pro bono* hours per year from over 300 volunteer lawyers, community members, interns, law students, and paralegals, who all take time out of their busy lives and careers to give back to the community. The comments we hear from the volunteers engaged in this project are consistent: we are making a big difference.

The need for the MJC's services is borne out by the substantial number of clients served, over 7,500 direct contacts per year. The MJC website, www.milwaukeejusticecenter.com, was only launched in October of 2010, yet received more than 13,500 visits in 2010 from unrepresented litigants, who can find forms and filing instructions for divorce, child support, custody, small claims, foreclosure, landlord-tenant disputes, Chapter 128, and name changes. We received the exciting news recently that the County is allocating space specifically for the Justice Center in the Courthouse. This is indeed a major step

forward for the program, which has been operating in borrowed and makeshift space since its inception. It also creates, however, a more immediate need to raise the funds necessary to build the MJC the permanent home that it deserves.

The MJC is clearly meeting a need and doing wonderful things. The problem is that we only have the funds to operate it for a few more years. Moreover, we need money now to enable the MJC to make the physical improvements needed to provide more and better services to Milwaukee's unrepresented poor, and to secure the MJC's long-term future. In addition to building an endowment, we are working on plans for an annual campaign. We will be reaching out to our members and looking for your support. The volunteer support we have received to date from our members has been outstanding, and illustrates well the generosity of this legal community. Now we need greater financial support to make this project sustainable in the long term.

As Winston Churchill once said, "You make a living by what you get. You make a life by what you give." By contributing to the MJC, you will help make a significant impact in our community by improving access to justice for Milwaukee County's most vulnerable residents, a core tenet of the MBA. Please go to www.milwaukeejusticecenter.com, click on "Support the MJC," and make a donation today. We would honor and welcome any assistance you can provide in supporting this worthwhile program.

Welcome New MBA Members!

Jesse G. Ammerman

Ryan M. Billings, *Weiss Berzowski Brady*

Jessica A. Burke, *Willms*

Rebecca Ciralsky Levin, *Crivello Carlson*

Eric R. Hart, *Hart Law Office*

Craig R. Johnson

Ryan Kastelic, *Kastelic Law Office*

Mark A. Lotito, *Michael Best & Friedrich*

Kate McChrystal, *Gagne & O'Halloran*

Jennifer L. Naeger, *Reinhart Boerner Van Deuren*

Meghan C. O'Connor, *von Briesen & Roper*

Nicole Robbins, *Robbins Law Group*

Angela F. Schultz, *Marquette University Law School*

Mark P. Suhr

Andrew B. Swigart

Cheryl A. Ward,
Ward Law Office



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Guest Editorial

Proposed State Budget Would Make Wisconsin Only State in Midwest Not to Fund Indigent Civil Legal Services

Attorney Matthew W. O'Neill, Fox, O'Neill & Shannon

The proposed 2011-2013 biennial budget (SB27/AB40) contains many controversial items. Buried deep within the proposal, however, is a relatively inconspicuous but potentially devastating change to a fund dedicated to helping the poor attain access to the civil legal system.

In the 2009-2011 budget, the Justice Information Fee under Wis. Stat. § 814.86 (a fee imposed on drunk drivers) was increased from \$12.00 to \$21.50. About half of the increase was specifically earmarked for indigent civil legal services. The fee provided critical funding to organizations, such as Legal Action of Wisconsin, which provide free civil legal services to the poor. Under the current proposed budget bill, the fee remains at \$21.50, but the use of the funds for indigent civil legal services is eliminated completely (Section 719, p. 431) and instead redirected to the Department of Administration and other general appropriations.

From the perspective of Legal Action of Wisconsin and the hundreds of clients it serves, the proposed elimination of this funding is unnecessary, shortsighted, and will have potentially tragic consequences for the neediest families in the state. In the past fiscal year alone, Legal Action received approximately \$1.3 million from the Justice Information Fee, which helped pay for over a dozen lawyers who, on a day-to-day basis, help those who need it the most. These lawyers, and those working for other organizations providing legal services to the poor, do so out of a conviction to help others; the pay is radically below the prevailing pay in private practice and even the public sector. Elimination of this funding will result in layoffs, thereby greatly limiting access to free legal representation in a broad array of critical areas, including housing, child care, health care, domestic abuse, and elder care.

In concrete terms, the probable consequences of this funding shift are:

- Organizations providing free legal services to the poor will be forced to lay off attorneys.
- There will be a sharp decline in the available legal representation for the poorest people in Wisconsin.
- Fewer victims of domestic violence will be able to find adequate representation.
- Fewer people facing the loss of housing or available sustenance will be able to get needed help.

Put bluntly, the proposed elimination of all state funding for indigent civil legal services appears to be an effort to balance the budget on the backs of the poor. If this part of the budget is not fixed, Wisconsin will become the only state in the Midwest that does not provide any funding for indigent civil legal services. This would be shameful. I urge all MBA members to contact their legislative representatives and ask that the budget be amended to restore the earmarked portion of the Justice Information Fee to fund indigent civil legal services.

O'Neill is the MBA-Designee Director of Legal Action of Wisconsin.

Upcoming Events:

Go!g Outing

August 3

Milwaukee Justice Center 5K Run for Justice

September 22

State of the Court Luncheon

October 12

Battle of the Barristers

October 13

CLE Calendar

It's sum-sum-summertime! Give the ol' brain a breather and have a lemonade. Here are a few of the CLE programs on tap for fall:

September 23, 2011

MBA Presents

Estate Administration Procedures: Why Each Step Is Important

Presenters: F. Brian McElligott, Law Offices of Attorney F. Brian McElligott; Thomas J. Kroll, Thomas J. Kroll Attorney at Law; Perry H. Friesler, Law Offices of Perry H. Friesler
8:30 - 9:00 a.m. (Registration/Continental Breakfast)

9:00 - 4:00 (Presentation)

Noon - 12:30 (Lunch will be provided)

7.0 pre-approved CLE credits including 1.0 ethics credit

September 29, 2011

MBA Presents

Significant Cases of the Wisconsin Supreme Court's 2010-11 Term

Presenter: Justice Patience Drake Roggensack, Wisconsin Supreme Court

Noon - 12:30 (Lunch/Registration)

12:30 - 1:30 (Presentation)

October 14, 2011

MBA Bench/Bar Probate

Title/Presenter(s): TBA

Noon - 12:30 (Lunch/Registration)

12:30 - 3:30 (Presentation)

October 28, 2011

MBA Presents

The Art of Representing Children

Presenters: Margaret G. Zickuhr, Houseman & Feind; Michael J. Vruno, Jr., Legal Aid Society of Milwaukee Guardian Ad Litem Division; Dr. Sheryl Dolezal, clinical and forensic psychologist, North Shore Psychotherapy Associates

8:30 - 9:00 a.m. (Registration/Continental Breakfast)

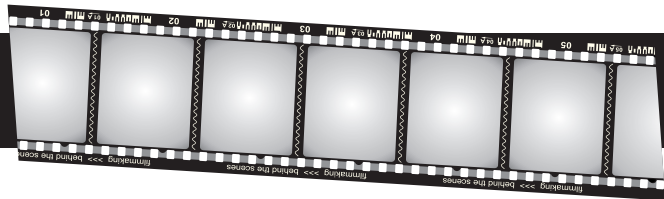
9:00 - 4:00 (Presentation)

12:30 - 1:00 (Lunch will be provided)

7.0 pre-approved CLE credits including 1.0 ethics credit



The Reel Law



Attorney Fran Deisinger, Reinhart Boerner Van Deuren

The Verdict

1982; running time 122 min.

I had been practicing for only a few months when *The Verdict* was released in 1982. I remember that I went to see it in the cracker box theater at the Prospect Mall on Milwaukee's east side. I left the theater irritated, even a little indignant. Here was a movie about the law in which the defense counsel was blatantly corrupt, the plaintiff's counsel a callow drunkard, the judge a toady. To an ingénue litigator like me, it was all too insulting to the profession I had just entered.

Half a lifetime later, I'm happy to say both that I have not encountered such skullduggery in the Wisconsin courts in which I have practiced, and that I have learned to appreciate *The Verdict* for what it is—a fine, atmospheric drama populated by wonderful characters, who are brought to life by superb actors, a great writer, and a great director.

I should digress to say that in past reviews, I have criticized films that got the details of legal and trial practice wrong. *The Verdict* fares no better on this count, and in fact is worse in many respects. This fault is overcome by the other artistic elements. We often need to “suspend disbelief” in watching movies. That's difficult to do when a movie brings little else to the table. But it's the right way for lawyers to approach *The Verdict*.

The story arc of the film is easily summarized. Frank Galvin (Paul Newman) is a plaintiff's lawyer reduced to trolling funerals for clients. We later learn that he hasn't fallen from grace so much as been made the fall guy in a legal scandal by the big firm where he started his practice. A friend, Mickey Morrissey (Jack Warden), throws him a case involving a woman left permanently comatose after a botched childbirth at a hospital operated by the Boston archdiocese. The archdiocese is represented by a top defense lawyer, Ed Concannon (James Mason, oozing Brahmin malevolence).

At first the case looks like an easy deal that Galvin can settle meekly for a quick contingency fee. But a visit to the hospital to see the victim leads to Galvin's self-realization that he has wasted his life and


practice. Galvin smells a rat in the deal offered by Concannon and decides to press the case, to the collective fury of the judge (the great character actor Milo O'Shea), the woman's sister and brother-in-law, and Morrissey. Concannon, the defense lawyer, welcomes the fight and, in addition to mobilizing a room full of associates (as if—but again, suspend disbelief), he puts his thumb on the scale of justice by planting a spy in Galvin's camp (or more accurately, his bed). The spy is a woman named Laura Fischer (Charlotte Rampling, in another bit of superb casting), an attorney trying to “get back in the game” after a failed marriage.

It should not surprise that this heady stew of corruption, broken souls, anger, and power was written for the screen by David Mamet (*American Buffalo*, *Glengarry Glen Ross*). There are few peaceful moments in the film, even though the only violence is when Galvin, learning of Fischer's treachery, punches her in the face in the courthouse. Somehow that punch, which barely draws blood, is more powerful than the cinematic gore of an entire HBO series.

All of this tension is orchestrated by the excellent director Sidney Lumet, who died in April. (Lumet also was the director of another truly great movie about the law—*12 Angry Men*.) As vividly as the characters in this film are portrayed under Lumet's direction, I especially admire the sense of place and tone with which the story is imbued by Lumet and his art director. *The Verdict* takes place

in a Boston legal community that is all dark wood, oxblood leather, gray skies, smoky taverns, and dust. There is no sunshine in this film, but there is redemption. It is a response to Galvin's closing argument—a plea so raw, simple, and elevated that every trial lawyer should see it. The redemption in *The Verdict* is in the verdict.



 **Mission Statement**
Established in 1858, the mission of the Milwaukee Bar Association is to serve the interests of the lawyers, judges and the people of Milwaukee County by working to:

- Promote the professional interests of the local bench and bar
- Encourage collegiality, public service and professionalism on the part of the lawyers of Southeastern Wisconsin
- Improve access to justice for those living and working in Milwaukee County
- Support the courts of Milwaukee County in the administration of justice

and

- Increase public awareness of the crucial role that the law plays in the lives of the people of Milwaukee County.

All You Need to Know to Open a Law Practice

On August 19, 2011, the MBA will host six speakers, each of whom will present a 30-minute topic relevant to opening a law practice. Mary HoeftSmith of the Office of Lawyer Regulation will review trust account set-up and management. Nicholas Lascari of Balistreri, Jezo, & Lascari, LLP will discuss accounting issues, business structure, and IRS requirements. A representative of Park Bank will provide information on opening business and trust accounts, in addition to requirements for credit lines and the operation of credit cards. Michael Schmitt of Dickman Real Estate Company will discuss lease terms and how to evaluate space needs and lease options. Toni Walzak of Walzak Marketing will provide guidance on how to network and market your practice. And Attorney Gawain Charlton-Perrin of CNA will discuss errors and omissions insurance policies, how they work, and why you need them. A networking cocktail hour will follow the presentations.

Always Something New at the Courthouse, Even When There Isn't

Honorable Richard J. Sankovitz, Milwaukee County Circuit Court



It's been quiet on the local rules front lately, no controversy to report, nor any confusion. (A sign we've achieved utopia? Possibly. Another explanation might be that we're back to business as usual, with the local rules largely ignored until something goes seriously wrong.)

In the meantime, there are always new developments at the courthouse worth following. Here are two:

- On June 19, 2011 the **new State Public Defender eligibility standards** went into effect. A person whose income does not exceed 115% of the current federal poverty guideline now qualifies. The new standards make it possible for many more people accused of crimes to get a lawyer at State expense rather than at the expense of the county.

This is a significant development. The eligibility standards had not been recalibrated since 1987. (You might recall 1987, when a gallon of gas cost about \$0.90, you could buy a decent new car for about \$10,000, and Chris Foley was a relatively new judge.)

Over the years, as the eligibility standards dropped further and further behind the cost of living, more and more people turned to the court to appoint a lawyer, which precipitated substantial county expense. In criminal cases in Milwaukee, the cost has come to exceed \$300,000 per year. But a patchwork system of court-appointed lawyers isn't nearly as efficient or cost-effective as the staff model we have in the SPD.

The bill to update the standards was introduced in the last biennium by then Representative (now Court of Appeals Judge) Gary Sherman and Senator Spencer Cogg. It was passed on a bipartisan vote in the State Senate. All it took in the Assembly was a voice vote. Clearly, the time had come for this change.

- Milwaukee is one of only seven sites in the country still in the running for a federal grant to develop **evidence-based decision making** in criminal courts.

The National Institute of Corrections (an agency within the Department of Justice and Bureau of Prisons) sponsored a nationwide competition for localities to showcase the best ways of applying to criminal justice the data-driven research, cost stewardship, and management disciplines that have proven successful in medicine and in other fields. Last year, the field was narrowed to seven, including Milwaukee.

As the *Messenger* goes to print, a collaboration of Milwaukee leaders is submitting its final set of proposals for reducing recidivism while at the same time lowering the cost of our system and reinvesting the savings. The team is headed by Chief Judge Kremers and includes, among others, District Attorney John Chisholm, First Assistant State Public Defender Tom Reed, Sheriff Clarke, Chief Flynn, Mayor Barrett, County Executive Abele, County Supervisor Willie Johnson, and Kit McNally of the Benedict Center.

A four-pronged project makes up Milwaukee's entry:

1 Developing and deploying actuarial instruments to assess the risks and needs of pretrial detainees, so that we can make smarter, more cost-effective decisions about who we jail and who we supervise in the community.

2 Bringing to the table more detailed information about an offender's background (including information about the risk of reoffending and the particular needs in an offender's background that lead to crime) when plea negotiations begin, rather than at the end of the process, at the sentencing hearing. For low-risk offenders,

many more cases might be diverted from the system altogether.

3 Putting to work innovative research about the "dose" of rehabilitative programming needed to lower the risk of an offender on probation re-offending. For certain offenders, probation may be much more cost-effective if it is geared to particular objectives that the probationer must achieve rather than merely to a certain duration of time without reoffense. When the dosage level is achieved – which might occur months or years before the end of a typical probation period – probation would terminate.

4 Building a deeper, more rapidly accessible database about people with mental illness who have frequent contact with the criminal justice system, so that from the very first moment of police contact their cases can be streamlined and the right mix of services provided to them, without exacerbating their sometimes fragile, sometimes volatile conditions.

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The Milwaukee Foreclosure Mediation Program: the Calm in the Midst of the Foreclosure Storm

Attorneys Debra Tuttle and Amy Koltz, Milwaukee Foreclosure Mediation Program, contributor; Attorney Natalie Fleury, Marquette University Law School

Currently, there are more than 6,400 active foreclosure cases in Milwaukee County. When foreclosure filings in the county dropped 20% in the second quarter of 2011, compared to the same period in 2010, Russell Kashien, a University of Wisconsin-Whitewater economics professor tracking Wisconsin foreclosures, told the *Milwaukee Journal Sentinel*: “There’s no cause to celebrate. For the state in 2003, 2004, 2005, you had about 11,000 foreclosures. And in 2010, we were at like 26,000. That means [at the 20% rate] it will probably take until 2015 to get back to a typical level of foreclosures.” Milwaukee County 2005 filings were 2,500, versus 6,500 in 2010.

Although foreclosure mediation does not prevent court filings, it is recognized nationwide as one of the most effective interventions to prevent foreclosure sales and help homeowners with transitions.¹ Both parties benefit: homeowners often keep their homes through capitalization of delinquencies and affordable mortgage payments, and lenders get performing loans; or, homeowners voluntarily relinquish the home on a planned basis, preventing the devastation associated with abandoned properties. According to Attorney Abigail O’Dess of O’Dess & Associates, “when surrender is agreed to in mediation, homeowners are often willing to turn over the property in broom-swept condition and give notice when turning off the utilities.”

In 2008, the Milwaukee Foreclosure Partnership Initiative’s Intervention Committee, recognizing the early success of other foreclosure mediation programs, proposed that Milwaukee develop a program. In May 2009, Wisconsin Attorney General J.B. Van Hollen, Milwaukee Mayor Tom Barrett, and the Marquette University Law School Dean Joseph D. Kearney announced the launch of the Milwaukee Foreclosure Mediation Program (MFMP) administered as a part of Marquette University Law School’s (MULS) dispute resolution and public service programs. MFMP received funding from the City of Milwaukee and the Wisconsin Department of Justice to support its work for up to three years.

MFMP staff includes Attorney Debra Tuttle (MULS ’87), Chief Mediator; Attorney Amy

Koltz (MULS ’03), Mediation Program Coordinator; and two administrative staff, Maritza Amaro Hernandez and Natasha Sharp—all under the supervision of Attorney Natalie Fleury, Program Coordinator for Dispute Resolution at MULS. MULS students volunteer their time to support MFMP operations, while learning about the legal structure surrounding foreclosures in Wisconsin.

Mediation is available to parties in first mortgage foreclosure actions involving owner-occupied property of up to four units. There is a flat fee of \$100 for both the homeowner and lender. Each homeowner meets with a housing counselor prior to mediation, and in addition to private attorneys who practice in the foreclosure area, Legal Aid Society attorneys are available to assist homeowners at the session. Mediations often take place during the redemption period, but generally must take place prior to sale. MFMP mediators employ the facilitative style of mediation, in which the mediator is neutral and impartial. Mediators do not impose an outcome on the parties.

MFMP is a voluntary program: both the homeowner and lender must agree to participate. Lenders choose to mediate in 80% of eligible cases. Cumulative applications to the program exceed 1,775, and an application is filed in 18-20% of all eligible cases. The first mediation took place on September 11, 2009. MFMP added Waukesha County to the program in February 2010. To date, loan work-out settlements have topped 330, more than one-third of the over 900 cases accepted for mediation and completed. MFMP staff have mediated 68% of the cases, and volunteer attorney mediators have mediated 32%.

Today’s residential loan default/work-out environment is in chaos. Due to unprecedented volume in a highly regulated and scrutinized environment, both lenders and homeowners experience frustration seeking and obtaining the information necessary to determine whether home retention is possible and sustainable. Cases can spend months in loss mitigation “limbo” where the lenders are unable to collect required documentation from homeowners, or homeowners are unable to obtain the result

of loan modification reviews from lenders. Mediation offers the parties an opportunity to cut through much of the chaos. Complete financial packages are exchanged in advance so all parties are working from the same data set. Relevant facts are discussed in a collaborative environment, allowing homeowners to be heard and lenders to explain their guidelines and constraints. Mediation allows for a final resolution in a more expedited manner. According to Attorney O’Dess, “one of the real values of the program is the back-and-forth communication prior to the mediation so that options can be discussed at the session.” Many homeowners reach solutions such as a modified loan or repayment plan. Those who do not qualify for a retention option leave the mediation with a better understanding of why not, and some sort of closure.

As foreclosure filings decline, and servicers’ staffing volume and quality improves, the hope is that the program will no longer be needed. That day, however, is not yet within sight. In June 2012, MULS will complete a three-year commitment to administer the program. Therefore, MFMP supporters will soon convene with the stakeholders who benefit from or are impacted by the program to work out funding details for fiscal year 2013, so that the program can continue under the auspices of another entity.

According to Attorney Ryan Blay of Lakelaw, “mediation has been a blessing for homeowners in the counties that offer it. Kenosha is slated to commence a Marquette-based program in the next few weeks, and the United States Bankruptcy Court for the Eastern District of Wisconsin has adapted the MFMP approach to work with Chapter 13 bankruptcy debtors. Mediation provides a solution.”²

¹See “Emerging Strategies for Effective Foreclosure Mediation,” U.S. Department of Justice and U.S. Department of Housing and Urban Development (February, 2011), p.1, www.justice.gov/atj/effective-mediation-prog-strategies.pdf (viewed June 11, 2011).

²Lakelaw and the Legal Aid Society of Milwaukee received funding from the Wisconsin Housing and Economic Development Authority in 2009 to assist homeowners in fighting foreclosure. A portion of this two-year grant has been used to represent homeowners without charge in foreclosure mediations approved by the local circuit courts, chiefly in Milwaukee and Waukesha Counties.

Milwaukee: Hometown of the Internationally Renowned *Robert's Rules of Order*

Attorney Hannah C. Dugan

A quorum is usually a mundane procedural matter. Yet this year in Wisconsin, a quorum count, one senator shy of a properly convened assembly, locked the gears of government for weeks and rescheduled the weekend plans of hundreds of thousands of citizen-protesters. Such enormous power of a parliamentary rule, its popular understanding, and its nearly universal acceptance derive from a book of rules originally written and printed in Milwaukee. This article recounts the role Milwaukee played in the creation of the "law" known as *Robert's Rules of Order*.¹

Who Was Robert and Why Was He Concerned With Order?

Henry Martyn Robert's biography suggests a person who sought order and had the DNA and example to command order and decorum.² Robert graduated from West Point fourth in his class in 1857 and, during the next 44 years, served as an officer in the Army Corps of Engineers (*nee* Department of Practical Engineering). Robert's posts and dispatches involved military fortification, defense projects, territorial taming, and harbor and lighthouse construction. He carried out complex engineering feats, as well as Corps superintending duties of increasing responsibility all over the country.³

The rigors of 19th Century military life and the precision of engineering logically suggest that Robert would be inclined toward creating a system of order. But the inspiration for writing the Rules arose not from Robert's military command and engineering discipline but, rather, from a single occasion of personal embarrassment.

"The writer will never forget his embarrassment"

In 1862, Robert attended a church meeting with other citizens of New Bedford, Massachusetts to discuss volunteer service for the war effort. Apparently, his uniform gave him the appearance of authority and inclined those assembled to nominate and elect him to conduct the meeting. Despite having taught West Point mathematics classes, led Corps soldiers, and tamed waterways in the Great Northwest, Robert found himself completely at a loss as chair of this meeting of eager

volunteer-citizens. He later wrote precisely about his inadequacy and the disastrous and disorganized event that ensued: "The writer will never forget his embarrassment."

In the aftermath, and anticipating a future role as chair, then-Lieutenant Robert pursued study of assembly and parliamentary procedure. In New Bedford he discovered a dearth of reference materials on the subject, finding merely a few pages about parliamentary law in the *Compendium of Universal Knowledge*.

The then-current bibliography of parliamentary procedure consisted essentially of but two books: *The Manual of Parliamentary Practice* by Luther Cushing (1845), and *Constitution, Jefferson's Manual, the Rules of the Houses of Representatives of the Congress, and a Digest and Manual of the Rules of Practice of the Houses of Representatives of the United States* (1804). It wasn't until years later that Robert was able to read Cushing and Jefferson's books. He found the materials inadequate, indecipherable, and inaccessible. He decided to write (and print at his own expense) a very short parliamentary pamphlet of his own.

Robert's pamphlet notation stated:

San Francisco, Cali., 1869. Set up with my type and a few copies printed at Hd Qrs Mil. Division of the Pacific. HMR. Never Completed.

The pamphlet's several pages outlined two parliamentary practices: the process of rising to be recognized and the methods of using motions to advance the assembly's business. His modest work was well received among its very small circulation. Robert decided that a gap existed in social order, a gap that could be filled by a readily accessible set of rules to be used by assemblies of every ilk.

The Will of the People Emerges in Milwaukee

In 1873, the Corps stationed Robert in Milwaukee to superintend lighthouse construction on the Great Lakes, and oversee river and harbor improvements along the Mississippi and Fox Rivers and, notably, in the Milwaukee harbor.⁴ He came to the Cream City as a Major, eleven years after

his public humiliation, and left Milwaukee a decade later as a General and author of one of the most widely circulated reference books ever written in America.

Milwaukee itself played a key role in the creation of the Rules. The city's climate was so harsh and the winters so long that Robert was constrained in his superintendent travels. Being restricted for long periods to Milwaukee, he finally had the time, and took the time, to actually construct the Rules, and thereby release himself from the embarrassment in which he had been frozen for 13 years.⁵

Robert's engineering background is evident in the structure of the Rules. The design, like a building, is dependent upon a sound foundation, and then built out from the foundation to accommodate and strengthen stress points and power relationships that must withstand tests and volleys of all sorts.

continued page 17

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Outgoing President Rachel A. Schneider reflects on the past year. ↑



Hon. Jeffrey A. Kremers delivers remarks after accepting the E. Michael McCann Distinguished Public Service Award. →



Lawyer of the Year Joseph Kearney accepts his award.



Richard S. Gallagher receives the Distinguished Service Award for his many years of service to the MBA and the MBA Foundation.



Fox 6 Law Day

Volunteer attorneys answer questions from the public at the Fox 6 Law Day phone bank.



Memorial Service

2011



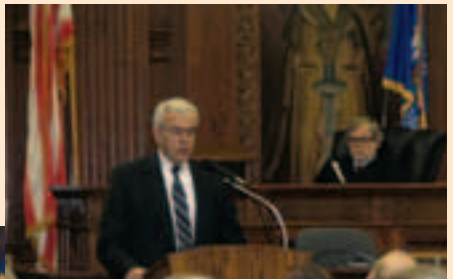
Chief Judge Jeffrey A. Kremers and MBA President Rachel A. Schneider read the names of the deceased attorneys and judges.



MYLA President Elect Michael Balter recognizes the achievements of those being honored.



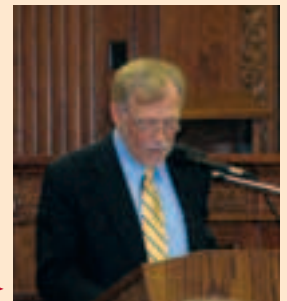
Joseph E. Tierney III delivers the Memorial Address.



Robert C. Burrell reflects on the career of Edmund "Ned" Powell.



Hon. Michael J. Skwierawski offers remarks about those being honored.



The MBA's Mentor Program: One Mentee's Experience

Attorney John Bennett

How should I deal with a deadbeat client who won't pay? How much time and mental energy should I invest in marketing myself? How do I carve out a niche for myself? All of these questions and more were the subjects of discussions with my mentor during a few informal coffee meetings.

The Milwaukee Bar Association developed the mentor program for new attorneys last year and I was glad to accept guidance from anyone willing to give it. The program was simple: just fill out a simple questionnaire and show up for the "meet & greet" at the MBA. My experience has been both enjoyable and productive.

Risky Input?

Every participant must complete the questionnaire so that the MBA can match mentor and mentee. On a whim, I placed in the "Interests" section that I enjoy "science." That stems from my background as a biologist. I felt like a dork, but a leopard

can't change its spots. At first, I didn't think it was relevant. To the contrary, it was one of the key elements that the MBA staff used to match me with Attorney David Ruetz, who has a masters degree in the sciences and a long background as an environmental scientist. It was nice to have some common background other than law for our early conversations. I suppose that boating, tennis, or playing in a band might all be worthy interests to note, so that match potentials can be identified.

Dave is in-house counsel for an environmental consulting firm, whereas I am a sole practitioner focusing on elder law. Our divergent practices were no impediment to a good relationship. We quickly realized that our professional discussions would probably not be based on procedural or practice issues. Instead, we tended to discuss elements of success and professionalism. Our discussions took unexpected turns because I did not present simple questions of "how do you do this?" Such focused questions might

have led to rote answers that could otherwise be found in a benchbook. Our discussions prompted me to ask "why" questions rather than "what procedure" questions.

Difficult to Find the Time, Easy to Give the Time

Both of us are busy and we struggle finding times when we can get together. We've both recognized, however, that the time is out there on our calendars. We've never felt obligated to, say, meet on the first Tuesday of the month. Instead, we've just looked forward several weeks to find a time that would work. This has led to a couple situations when we had to reschedule, but that was easy.

I'm glad to have had the opportunity to participate in the program because I've made a great connection with someone I otherwise wouldn't have met, and it has opened the door to practical discussions about how I need to develop as an attorney.

Updates from the Milwaukee Justice Center

Noah Gehling, Milwaukee Justice Center

Things at the Milwaukee Justice Center have been very busy this summer, and there are some exciting updates to share. The MJC will hold its first annual *MJC 5K Run for Justice* fundraiser on Thursday, September 22 at 5:45 p.m. in Veteran's Park. All proceeds of the run will support the work of the MJC in assisting self-represented litigants throughout Milwaukee County. Following the run, participants are invited to attend a post-race bash and enjoy the musical stylings of Milwaukee's own "Blue, Seriously." Registration is \$25.00, \$20.00 for students, and will soon be available on the MJC website, www.milwaukeejusticecenter.com.

The MJC has also launched the inaugural issue of *MJC Quarterly*, a newsletter created to provide volunteers, supporters, and community partners with updates and other noteworthy information about the MJC. Each issue will feature a different volunteer of the Justice Center in the "MJC Volunteer Spotlight" section, photos, and other timely news and updates. The newsletter is issued electronically and also posted on the Milwaukee Justice Center's website. Please contact the MJC if you would like to be added to the e-mail list.

Lastly, the Milwaukee Justice Center's 2010 Annual Report is now available online. In 2010, 304 MJC volunteers served over 7,541 self-represented litigants. The report highlights the work of the Justice Center through photos, statistics, and both client and volunteer testimonials. The report is available on the Milwaukee Justice Center's website.



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The late Attorney Jim Klein

The legal community has its share of characters. Government lawyers do not heavily populate this group. Jim Klein was an exception. He worked his entire career for the U.S. Department of Treasury Office of

Chief Counsel—that is, the I.R.S. Klein died on March 25, 2011 at the age of 54, three months short of a planned retirement. His story is worth recounting.

Klein was a Milwaukee kid. Apart from law school in Madison, he lived his whole life in the city. He came across as a bit rough around the edges. He was built like a three-fifths version of a football lineman. His personal shopper appeared to be whoever was on duty at Goodwill Industries. He looked like he had woken up from a camping expedition after having slept in his office clothes. He had short hair and a short beard. He loved to argue; perhaps that's why he never married. He enjoyed the opera. He'd fly to Munich for Oktoberfest or to Las Vegas for a round of golf. He did not couch his thoughts. He could sometimes be loud, provocative, and undiplomatic.

That said, he was likeable and a very good government attorney. What makes a good government attorney? A person who is smart and thoughtful. A person who can talk to people. A person with an appreciation of the special role a government attorney must play. Winning should not be the ultimate goal. The ultimate goal should be doing what is right – even if that means, from time to time, backing down, reversing course, or conceding.

To my knowledge, nobody has improved upon the formulation stated by then Attorney General Robert H. Jackson at an April 1, 1940 gathering of U.S. Attorneys. Jackson's words apply equally to any government attorney who serves in an enforcement role.

Your positions are of such independence and importance that while you are being diligent, strict, and vigorous in law enforcement you can also afford to be just. Although the government technically loses its case, it has really won if justice has been done.

A sensitiveness to fair play and sportsmanship is perhaps the best protection against the abuse of power, and the citizen's safety lies in the prosecutor who tempers zeal with human kindness, who seeks truth and not victims, who serves the law and not factional purposes, and who approaches his task with humility.

“We try to collect the right amount of tax, not the most tax,” says Mark Miller, a long-time colleague of Klein's. “Despite the occasional hot air, Jimmy Klein understood this.”

He also worked hard at it. Klein volunteered for everything, said Miller. He'd never say no. He was dogged. He used to refer to himself as “Killer Klein,” as depicted—still—in the faded pest control advertisement on the north side of the F.H. Hochmuth Building on Old World Third Street at Juneau. If he was convinced a taxpayer was really bad, he had a hard time letting go of a case.

On the other hand, Klein was honest to a fault. If he, or the government, messed up, he would make the matter right. One case I had with him involved a client who claimed that the I.R.S. was wrongfully trying to collect a liability that the client had resolved with an I.R.S. attorney about eight years before. The client had no documentation. He remembered the lawyer: Klein. Klein met with us. After about 90 seconds, and before he had retrieved his own file, Klein told the client that he recalled the whole thing, the client was right, and that he, Klein, would fix it. He did. We requested and were granted attorneys' fees. Klein did not object.

Klein's high-mindedness was not always well-placed. Attorney Ed Roepsch remembers a case in which Klein insisted at a pretrial conference, over Roepsch's objection, that the trial stipulation state that Roepsch's client was divorced. Klein thought that it went to credibility. The judge mentioned to Klein that she, the judge, was divorced. Roepsch offered to withdraw his objection.

My last case with Klein settled in U.S. Tax Court before trial. We argued heatedly about a few issues that Klein claimed he had full authority to press, but after some *sturm und drang*, Klein informed me that given the circumstances he would agree to yield. The I.R.S., as occasionally happens, messed up the post-decision adjustments to the taxpayer's account. Klein helped me fix it. On my last visit with him, in the hospice, I handed him some documents. On top was a letter from the Service Center. The I.R.S. had corrected the error. All was well. Klein studied the document for a long time and looked up. “Good,” he said.

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Milwaukee County Finally Sees Decline in New Mortgage Foreclosure Cases

The brakes have finally taken hold on the runaway foreclosure train. New mortgage foreclosure filings in Milwaukee County Circuit Court dropped by ten percent from 2009 to 2010, reversing a string of dramatic year-to-year increases that accompanied, and in fact preceded, the national economic and housing crises. In the five-year period from the beginning of 2006 through the end of 2010, the volume of new mortgage foreclosure cases increased by 72%, compared with a 166% increase in the five-year period from 2005 through 2009.

Civil Division filings overall increased by four percent between 2006 and 2010, while the Criminal and Children's Divisions saw significant decreases in new cases during the same time period of 21% and 30%, respectively. The Family Division experienced a more modest five-year decrease of two percent. Filings in the Probate Division grew by 17% between 2007—the year offices of the Clerk of Courts and Register in Probate administratively merged—and 2010. The Milwaukee County Circuit Court system as a whole experienced a four percent decline in new cases from 2006 to 2010.

The five-year snapshot of the Milwaukee County Circuit Court is a highlight of the 2010 Annual Report prepared by the Administrative Services Division of the Clerk's Office. John Barrett, Clerk of Circuit Court and Director of Court Services, transmitted the report to Chief Judge Jeffrey A. Kremers on March 29, 2011. The 2010 Annual Report also contains more detailed breakdowns of cases filed and cases disposed of in each circuit court division in 2009 and 2010, statistics on jury management in 2010, a five-year history of appeals, and an analysis of the age of pending cases at the end of 2010.

In addition to the substantial increase in mortgage foreclosures between 2006 and 2010, other large claim contract and real estate filings expanded by 53%, and domestic abuse, harassment, and other TRO cases by 32% over the same time period. This contributed to an overall five-year 40% bump in large claims civil filings. Small claims filings decreased, however, by seven percent during that period, with replevin cases dropping by a notable 70%.

The Civil Division accounted for 43% of new cases filed with the Clerk's Office in

2010, with small claims alone accounting for 29% of that total. (14% of new large claims filings, however, were petitions for domestic abuse TROs, which are counted as civil cases but assigned to Family Division judges.) Most of the remaining 2010 filings (41%) were criminal matters, with misdemeanor and traffic cases accounting for the lion's share (37%). The remaining 16% of new cases in 2010 were divided among family (seven percent), probate (six percent), and children's cases (three percent). Small claims and misdemeanor/traffic cases together constituted two-thirds of the Milwaukee County Circuit Court's caseload in 2010. These statistics are broadly comparable to those for 2009.

In the Family Division, the pace of paternity filings was virtually unchanged from 2009 to 2010, after rising by almost a third from 2008 to 2009. During the five-year period ending in 2010, new paternity cases were up by 16%. The number of divorce filings did not change significantly during that period, but other family matters, such as annulment, legal separation, and various support and maintenance proceedings, were down 63%.

2010 felony charges were up six percent over 2009, after declining by over nine percent the previous year. The five-year picture of felony cases, however, shows a nine percent decline. Misdemeanor and traffic filings did not change significantly in 2010 compared to 2009, but fell by 23% during the five-year period ending in 2010. Non-felonious traffic filings, by far the largest category of cases in the county's criminal justice system, continued to plummet. They were down by more than two percent from their 2009 level, and off by 23% over the five-year period.

Children's Division statistics were notable for the continued decline in delinquency filings, which in 2010 were 14% less than in 2009, and 38% less than in 2006. Also, CHIPS petitions have declined by 15% in that five-year period. Probate filings, on the other hand, increased by 10% in 2010 over the previous year, due to the same percentage increase in protective actions such as guardianships and civil commitments. Protective actions have risen by 23% over the four-year period between the beginning of 2007 and the end of 2010.

continued page 19

Music to Your Ears:

MBA Announces Second Annual Battle of the Barristers

Here's a tough question for you, attorneys: which is easier, *pro bono* work or going to a concert? Well luckily for you, the Milwaukee Bar Association and the Milwaukee Justice Center have devised a way to combine the difficult and frustrating work of standing around listening to music with the fun, relaxing entertainment of helping indigent Milwaukeeans in need of legal services.

The second annual Battle of the Barristers event will be held at Shank Hall (1434 North Farwell) on **Thursday, October 13 at 7 p.m.**, with admission setting you back a hefty ten dollars at the door. Last year over 150 came out to see seven bands, featuring Wisconsin attorneys, show off the musical prowess that law school classically imbues, while raising money for a great cause.

If you, or a Wisconsin attorney or law student near and dear to your heart, would like to be considered for a slot at this year's battle, demo submissions are being accepted through Friday, August 12. We will provide the backline and the drum kit on the day of the show to keep things moving between the fifteen-minute set for each band, and acts will be selected based on a review of submitted demos (at least four songs, electronic submissions preferred).

The 2011 Battle of the Barristers Champion will be determined by a panel of three celebrity (in the Milwaukee legal community, that is) judges, who will evaluate the performance and crowd response. For more information, visit www.milwbar.org/battle or follow us on Twitter @BarristerBattle. For sponsorship opportunities or general information, contact acinnin@milwbar.org.

Robert's Rules continued from p. 11

The foundation on which Robert premised the Rules is: "they must allow assemblies to determine 'the will of the people.'" This principle is the starting and ending point of the Rules. The Rules, in their entirety, are designed to enhance and advance this foundational principle. To achieve this logical end, Robert deconstructed parliamentary procedure (such as it was), analyzed the procedures in light of his foundational premise, and then constructed the Rules from the pieces of parliamentary law that would serve to divine the "will of the people."

On a very practical level, this engineer knew that the means of typesetting and printing the *Rules* meant that the Order had to be complete before printing began. Only 16 pages could be set at a time; type frames were dismantled after printing each of the book's sections. An error in referencing a Rule or a page in one section could result in "reassembling" a type frame, resulting in major delays in production, and increasing reprinting costs. Therefore, Robert had to think through the entire meeting process and the entire schemata of the Rules, and their interrelationships and cross-references, comprehensively before the printer placed one typeface in a frame. The overall structure included three parts: the Rules of Order, a Parliamentary Primer, and Miscellaneous Matters for Deliberative Assemblies and Ecclesiastical Tribunals. A fourth part, added late in the process at the suggestion of his wife Helen Robert, included factual examples to illustrate application of the Rules.

Another reflection of Robert's engineering background was his insistence on a rather unusual design feature for his reference book. He "sized" the book to be carried in a pocket because he wanted the book to be used frequently, referenced easily at assemblies, and portable. Indeed, to underscore this intent, the original title of the *Rules* began with the word "pocket."

It's Robert's Rules—that's "Apostrophe S" not "S Apostrophe"

After writing it during two Milwaukee winters, Robert was ready to shop around his newly completed *Rules*. When a New York publisher declined the manuscript in May 1874, he decided to print and publish his Rules on his own. He retained Milwaukee's Burdick and Armitage, a respected printing firm with offices then located at Michigan and Broadway in the basement of the famous

Newhall House.⁶ He himself selected the typefaces and the mock up, and then arranged all the details of the book. He was so particular that he actually subsidized purchase of new font types by the printers. But he showed his fallibility in his purchase of paper. Robert miscalculated and gave the printers an inadequate supply of the paper. They ran out of it while printing the last section of the *Rules*. Therefore a substantial number of the first edition books were printed on two different grades of paper—distinguishing them from the second printing and increasing their value in the rare book market.

Robert's official duties delayed the already slow process of proofreading 16 pages at a time. The printing and proofing took nearly a year to finish. In December 1875, Robert decided that to increase the Rules' credibility and acceptance, the book had to be distributed through a publishing house.

Robert traveled to Chicago to propose and eventually sell a marketing strategy to the S.C. Griggs & Company. In exchange for the publishing house putting its name on the book, binding the book, and marketing 3,000 copies, Robert proposed that he would pay binding costs of twelve cents per copy. Further, he sweetened the deal such that, prior to public notice of sale, he would distribute 1,000 copies (at his own cost and expense) to legislators, editors, legal scholars, college professors, and heads of fraternal and religious institutions throughout the country. He not only would solicit their opinions of

the book, but would also establish for the skeptical publisher that there was a market for such a reference book. The publisher agreed to the strategy, realizing that it would "sell," at no cost to itself, 1,000 books prior to investing in any advertising. As it turned out, with the solicited opinions of scholars and heads of deliberative bodies who received the books *gratis*, Griggs had its advertising and review copy written by "experts" before the publishing house promoted its 3,000 copies.

A contract was drawn, and in 1876, three years after his arrival in Milwaukee, Major Robert presented *The Pocket Manual of Rules of Order for Deliberative Assemblies*. The first printing consisted of the contracted 4,000 copies, including the 1,000 "free" copies. Publishing this number of copies was significant, especially for a book by an unknown author, for an unknown audience, and (to put the best spin on it) on an esoteric topic. To get a sense of Robert's confidence, or naiveté, or perhaps *chutzpah*, compare the circumstances of this first edition publication with the first edition publication of Mark Twain's *The Adventures of Tom Sawyer* in the same year. This well-known author, writing in the familiar novel genre, using an established British publisher, and pre-selling some of his books via subscription, published 5,000 copies of his book in 1876—only 1,000 more than the *Rules*.

Robert's 75-cent book was so popular that within three months of Griggs' January

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It's Monday, the First Day of the Rest of Your Life.



Too bad last Friday was the last day to file the Bergstrom motion.

Did you know that missing deadlines continues to be one of the most common mistakes leading to malpractice claims? The failure to file a document in the second most common alleged error and the failure to calendar properly was the fifth most common mistake leading to a malpractice claim*. A dual calendaring system which includes a firm or team networked calendar should be used by every member of your firm.

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* American Bar Association Standing Committee on Lawyers' Professional Liability. (2008). *Profile of Legal Malpractice Claims, 2004-2007*. Chicago, IL: Haskins, Paul and Erwins, Kathleen Marie.

Robert's Rules continued from p. 17

1876 promotion, the *Rules* were just about sold out. Plans were put into place to set a second printing. The type frames had to be reconstructed completely, providing a "second edition" opportunity rather than a second printing of the first edition.

The second edition included a number of changes and a larger print, resulting in a 16-page increase to 192 pages. Major Robert viewed the second edition (July 1876) and third edition (1893) as revisions rather than as corrected copies. In its fourth edition (1915), the name was changed to *Robert's Rules of Order Revised*.⁷ Printings occurred every year after 1876.⁸ By 1901, when the author was first identified by his rank as "General Robert," 265,000 copies had been printed. By 2011, over 5,000,000 copies of the book had been printed.⁹

The book spread like wildfire, and Robert became the assumed parliamentary authority throughout the United States. Flocks of Rules-users consulted Robert on specific Rules applications, relying on him as a parliamentary wellspring. They also consulted him on matters not sufficiently covered by the Rules. Robert responded

via mail to all inquiries from 1876 until he died in 1923. These grassroots inquiries and dilemmas posed by ordinary Rules practitioners became the bases for Robert's revisions. Thereby, rather fortuitously and almost serendipitously, the public's response built on Robert's foundational goal: the Rules themselves were being recreated, in their very constitution, by the will of the people and by the very assemblies they were meant to serve.

In the winter of 1876-77, Robert lectured on parliamentary law at the Milwaukee Female College (later Downer College). Often he was asked to lecture, and to serve as parliamentarian, at many functions away from Milwaukee; his military duties precluded the extra travel.¹⁰ A major national Baptist Convention was scheduled in Milwaukee in 1878, in order to have Robert serve as parliamentarian.

By the 1890s, the bylaws of many civic, fraternal, and religious organizations included a clause that *Robert's Rules of Order* was the final authority in all procedural matters.¹¹ The Rules do not have the legal authority of any legislation, yet thousands of assemblies have adopted them as the sole means by which to transact

business, settle disputes, provide guidance and organizational continuity, and expedite proceedings. While clever maneuvering of parliamentary law can cause mischief and give the Rules a bad rap, generally the Rules are used for the power of good rather than the power of rogue advantage.

The Rules Come to Roost in Wisconsin

The early editions included testimonials from enthusiastic users of the Rules. The cover of the seventh printing in 1881 includes praise from Wisconsin Lieutenant-Governor J. M. Bingham, President of the Wisconsin State Senate. He wrote: "I used it constantly during the recent session of the Senate and was always able to find the point I was called upon to decide. It is invaluable to a presiding officer."

The Rules, written in cold Milwaukee winters, continue to determine "the will of the people" in the heat of legislative debate. Indeed, in February 2011, 130 years after Bingham presided, their premises continued to prove invaluable to the Wisconsin Senate's presiding officer.

¹Source materials:

Anderson, W.J., and Bleyer, Julius, eds., *Milwaukee's continued page 22*

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Earn & Learn Program Is an Investment in Tomorrow's Youth

On May 4, members of Milwaukee's legal community gathered for a luncheon at the MBA to discuss the City of Milwaukee's Earn & Learn program. The luncheon, keynoted by Mayor Tom Barrett, was organized by Godfrey & Kahn, which has participated in the Earn & Learn program since 2005.

Earn & Learn helps young people between the ages of 14 and 21 make a successful transition to adulthood by providing opportunities to develop work-readiness skills while earning wages. Earn & Learn employers include private sector businesses and government, community, and faith-based organizations. A partnership between the City of Milwaukee, the Milwaukee Area Workforce Investment Board, and employers, the Earn & Learn program strives to match qualified youths with jobs that will provide them both enjoyment and learning.

In Godfrey & Kahn's experience, Earn & Learn students have been qualified, highly-motivated, and capable. Student workers have performed a variety of work assignments that have contributed positively to the firm's business, and the program offers a great opportunity for students to learn about the many aspects of the legal services profession. Godfrey & Kahn has employed two Earn & Learn youths each summer

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From Madison With Love?

Walker Budget Presents Milwaukee Courts With Mixed Bag

Attorney Vintee Sawhney

Few issues have polarized the State of Wisconsin in recent history as has the passage of Governor Scott Walker's budget repair bill. Controversial, contentious, and the topic of heated debate among lawmakers and laymen alike, the budget repair bill contains numerous provisions that transform the course of Wisconsin's fiscal policy, impacting everything from education to transportation to the environment. Although local and national news outlets largely concentrate on the portions of the bill affecting collective bargaining and benefits for public employees, the impact of the new budget on the Milwaukee County justice system should also be a part of the discussion.

One section of Governor Walker's budget repair bill is devoted entirely to the changes in the justice system. Some of these changes show promise of improving the operation of the courts, while others are likely to impede the cause of justice. New provisions include the following, among many others:

- Providing \$1 million in raises for prosecutors every year from 2011-2013;
- Providing \$993,800 for more public defenders;
- Increasing funding by \$3.4 million to reduce the projected shortfall for the State Public Defender private bar reimbursements;
- Cutting \$52.6 million from corrections; and
- Repealing all mechanisms that would allow any early release of state inmates from prison, extended supervision, or probation.

One of the most controversial provisions of the new budget is the repeal of 2009 Wisconsin Act 28—a repeal that eliminates all mechanisms allowing early release of state prison inmates from prison, extended supervision, or probation. Critics of this plan argue that repealing Act 28 and moving back to a truth-in-sentencing model will force a larger prison population to remain in prison for a longer period of time, increasing the cost to the taxpayers. Supporters of the bill, however, are counting on big savings due to the trend toward lower prison populations not only in Wisconsin, but nationally, as

well. These supporters attribute the decrease in Wisconsin prison populations not to the sentencing modifications of Act 28 but, rather, to the increased success of pre-incarceration diversion programs.

The larger impact this provision will have on the courts, however, involves the status of inmates whose sentences were imposed in reliance on the sentencing modifications of Act 28, and those who did not pursue a direct appeal after their sentences and are challenging their sentences via collateral attack under Wis. Stat. § 974.06. Without a clear indication from the Legislature as to how to resolve the ambiguities inherent in those scenarios, it is likely that the courts will be inundated with requests for sentencing modifications that present difficult issues.

While the courts may feel the impact of such ambiguities in substantive law, the judicial system should benefit from the increased funding to retain experienced and well-qualified assistant district attorneys, and to create 45 new Public Defender positions in anticipation of an increased caseload from the change in indigence standards under 2009 Wisconsin Act 164 (effective June 19, 2011). Efficient and effective prosecution, as well as a well-staffed Public Defender's office, should help streamline the courts' caseloads and ensure that those within the justice system and the people of Milwaukee are receiving the highest level of service from the courts.

Other provisions of the budget repair bill may help to streamline the administrative operations of the courts. For example, the bill requires that the Department of Justice create a single fee of \$7 per request to perform a background record check, regardless of who makes the request. Similarly, the increased funding for additional DNA analyst positions will prevent a backlog of DNA evidence, allowing cases that require such evidence to move through the system without long periods of waiting to receive test results.

On the flip side, the Director of the State Court's Office will experience a ten percent cut, impacting the courts' ability to provide funds for court interpreters, guardians *ad litem*, and other support services. Additional

cuts on the state level will also impact the amount of funding the courts receive for services such as child support enforcement. According to John Barrett, Milwaukee County's Clerk of Courts, the courts have increased revenues in recent years through increases in filing fees, supposedly to account for greater support services. While this year's revenues amount to approximately \$18 million, however, the amount of money the State sends back to the courts for providing such services continues to decrease. It stands at approximately \$5 million this year. (See also article on p.7 regarding elimination of funds for indigent civil legal services.) The continuing trend of decreasing state funding to support such essential court services is the dark side of the Walker budget for the courts.

Foreclosure continued from p. 16

For at least the fifth consecutive year, the Milwaukee County Circuit Court kept current with its overall caseload in 2010, by disposing of 2,757 more cases than were filed in that year. The Civil, Family, Criminal, and Children's Divisions all kept pace, which offset a shortfall in the Probate Division.

Juries tried 440 cases in Milwaukee County in 2010, up nine percent from 2009. Of these, 77% were Criminal Division cases, and 56% were felony cases. A verdict was reached in 87% of jury trials, with about four percent ending in a mistrial or hung jury. Jury trials comprised four percent of felony cases and less than two-tenths of one percent of misdemeanor and traffic cases disposed of in 2010. One-tenth of one percent of civil cases disposed of in 2010 went to jury trial.

Appeals declined by three percent from 2009 to 2010, reversing a 24% jump from 2008 to 2009. Well over two-thirds (69%) of the 854 appeals were in cases from the Criminal Division, while about one in five (21%) were in civil cases. Children's and probate cases accounted for the handful of remaining appeals.

Copies of the 2010 Annual Report are available from the Administrative Services Division of the Clerk of Circuit Court (phone 414-278-5357).

Pro Bono Corner: Community Advocates

The Pro Bono Corner is a regular feature spotlighting organizations throughout the Milwaukee area that need pro bono attorneys. More organizations looking for attorney volunteers are listed in the MBA's Pro Bono Opportunities Guide, at www.milwbar.org.

Community Advocates

Contact: Susan Potts,
Director of Development and Advancement
Office: 728 N. James Lovell Street
Milwaukee, WI 53233
Phone: 414-270-2942
Fax: 414-270-2971
Email: susanp@communityadvocates.net
Website: www.communityadvocates.net

Community Advocates provides advocacy and services to low-income families experiencing urgent and basic needs. Its programs address such myriad concerns as access to health care, affordable and safe housing, shelter and services for victims of family violence, pretrial monitoring services,

and assistance with utility payments for individuals suffering from mental illness or substance addiction. Through its Public Policy Institute, Community Advocates seeks to better understand the causes of poverty in Milwaukee, and to address them from a policy perspective.

Established 35 years ago by three volunteers, Community Advocates recently has grown by leaps and bounds. It more than doubled its staff and programs over the past four years, merging with well-established local organizations such as Justice 2000 and the Milwaukee Women's Center. Today, Community Advocates is the largest human needs advocacy agency in Wisconsin. Its staff of 175 serves 75,000 people annually, comprising nearly 49% of all Milwaukeeans living in poverty. Early this year, Community Advocates consolidated most of its services into a newly refurbished building in downtown Milwaukee.

Community Advocates seeks volunteer attorneys who can provide direct client contact or training for staff and clients in the following areas:

- Landlord/Tenant
- Healthcare Bill of Rights/HIPAA
- Utilities
- Powers of Attorney
- Wills, Trusts, and Estates/Elder Law
- Family Law

Family Law Volunteers Needed to Assist Veterans and Their Families

Are you a family law attorney interested in working with military veterans? The Veterans Legal Workgroup of Milwaukee, together with the State Bar and the State Public Defender's Office, is seeking volunteers to staff its Family Law Advice Clinic in Milwaukee. *Pro bono* attorneys would commit to volunteering for approximately two hours per month, advising veterans or their families regarding child support, custody, and divorce-related issues. Malpractice insurance is provided by the State Bar. To volunteer, or for more information, please contact Laura Gramling Perez at (414) 278-4820.

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Robert's Rules continued from p. 18

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www.robertsrules.com (viewed June 11, 2011).

²He was born to parents of two prestigious South Carolinian families. His paternal line was filled with ministers whose conviction as Huguenots led to their exile due to religious persecution in 17th Century France. His maternal line was filled with military men, including notable soldiers from the Revolutionary and Civil Wars. Both families owned and ran several Southern plantations.

³Robert was stationed at the Island of San Juan (now in the State of Washington) (1859); Washington, D.C. (1860); New Bedford, Massachusetts (1862); West Point, New York (1865); San Francisco, California (1867); Portland, Oregon (1871); Milwaukee, Wisconsin (1873); the Canadian border and Delaware Bay (1882); and Galveston, Texas and the Gulf of Mexico (1890). He retired from active duty in 1901.

⁴While Robert was in Milwaukee, his fifth child and only son, Henry Martyn Robert, Jr., was born in January 1874, just months before he finished his *Rules*.

⁵Besides writing the *Rules*, Robert also wrote an article, "Parliamentary Law," which was published in *The American Encyclopedia* in 1875. Its enthusiastic reception gave further indication of the unsatisfied interest in and need for parliamentary procedure.

⁶The company was founded in 1866 as Hawks and N.L. Burdick. J.E. Armitage joined in 1870, and in 1888 W.S. Allen was added and the company became Burdick, Armitage and Allen Printing. Eventually the company located in the McGeoch Building at Milwaukee and Michigan streets.

⁷Robert personally oversaw revisions until his death in 1923. After the book's fifth (1943) and sixth editions (1951), the title changed to *Robert's Rules of Order Newly Revised*. Subsequent editions are revised by authorship teams selected by the Council of the Robert's Rules Association. The 1970 seventh edition's team consisted of Sarah Corbin Robert, daughter-in-law of General Robert; Henry M. Robert, III, General Robert's grandson; and William J. Evans. The 1981 eighth edition's team did not include the Sarah Robert, who was deceased. The 1990 ninth edition revision team added Daniel H. Honemann; the tenth edition's revision team in 2000 added Thomas J. Balch.

⁸When Major Robert became a Lieutenant Colonel in 1884, 50,000 copies had been printed. When the third edition listed Robert as a Colonel in 1898, 197,000 copies had been printed.

⁹Due to a failure to renew early copyrights, thousands of more "unofficial" copies of the *Rules* have been circulated.

¹⁰Curiously, he also proposed a major undertaking to his superiors. On January 10, 1878, Robert wrote to the Chief of Engineers, Brig. Gen. A. A. Humphreys, stating "the need of a thorough, carefully-prepared, and systematically-arranged index to the eighteen volumes of the Reports of the Chief of Engineers for the last twelve years The main objects ... may be ... (1) To provide every officer in charge of a work with the means of quickly referring to everything of importance in the past history of that work; and (2) To provide the means of quickly referring to information on every point in these reports of value to an officer investigating a special topic, such as 'blasting,' 'dredging,' etc.

"Believing that an index of this kind carefully prepared would be of great value to the officers of the corps, I would respectfully request your approval of the project I propose to do the work without employing any one for the purpose, using the services of my clerk and assistant engineer when not otherwise engaged, I think it will take all of the present year at least."

He had hoped to complete the index over two winters, but it actually took three. He wrote from Milwaukee on June 25, 1880 to his commanding general: "I have the honor to forward herewith the manuscript of an 'Index to the Reports of the Chief of Engineers on River and Harbor Improvements for the years 1806-1879, inclusive.'" Formally, it was titled, *Analytical and Topical Index to the Reports of the Chief of Engineers and the Officers of the Corps of Engineers, United States Army, Upon Works and Surveys for River and Harbor Improvement*.

¹¹The Odd Fellows, the Knights of Pythias, the Grand Army of the Republic, and the Ancient Order of the United Workmen all used the *Rules* in the early 1880's; the United Presbyterian Church adopted the *Rules* as its standard authority in 1877, the year following the first printing.

Arbitration continued from p. 20

Furthermore, a major drawback of arbitration is that, for practical purposes, arbitration decisions are unappealable. The standard for judicial review of arbitration awards gives courts almost no power to fix arbitrator errors, including those on questions of law. These factors have led many employers not to use arbitration agreements.

The opportunity to avoid class action claims, however, is likely to alter the cost-benefit analysis. Arbitration still has significant limitations, but after *AT&T Mobility*, businesses should review existing arbitration agreements and consider adding language to bar class action claims. Businesses not currently using arbitration agreements should reevaluate that decision now.

Earn & Learn continued from p. 18

since 2005. A number of Earn & Learn employees have returned for consecutive summers or during Christmas vacation and have explored different departments within the firm.

Earn & Learn is truly a win-win proposition for all involved. It is not too late to hire an Earn & Learn student for this summer. For more information about the program, please visit the City's website at <http://city.milwaukee.gov/projects/earnlearn.htm>, or contact Bill Malone, Youth Development Coordinator, at (414) 286-5894 or by e-mail at William.Malone@milwaukee.gov.

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