Summer 2013 • Volume 2

MBA Messenger

Judges Richard Sankovitz and Diane Sykes at the MBA's 155th Annual Meeting

Milwaukee Bar Association
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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, we have seats available on the *Messenger* Committee. Please contact James Temmer, jtemmer@milwbar.org.

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Telephone: 414-274-6760
E-mail: marketing@milwbar.org

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Contact Information

Milwaukee Bar Association, Inc.
424 East Wells Street
Milwaukee, WI 53202
Phone: 414-274-6760
Fax: 414-274-6765
www.milwbar.org

Letter From the Editor


Charles Barr, Editor

Anyone who knows anything about baseball knows that hitting is contagious. In the arid depths of an interminable team slump, sometimes all it takes is a scratch hit by one player, and everyone else seems to catch fire. An intangible something sparks the atmosphere. In the end, no one remembers or cares who started it or who got the biggest hit; the feeling of accomplishment is entirely communal.

I think of the MBA membership's support of the Milwaukee Justice Center in those terms. Several major donations by key players in the legal community at the outset of the project, in conjunction with the MBA's Sesquicentennial Anniversary, got the MJC on its feet. Then MBA members stepped up to the plate in the first annual MJC Campaign with contributions on a broader basis, as well as another eye-opening individual gift. All of a sudden, Milwaukee County approved space for the MJC's permanent home in Room G-9 of the Courthouse, and even more remarkably, appropriated funds for the buildout. Yet another generous gift, this one to Marquette University Law School, created a program to put the MJC on wheels. In turn, MBA members again responded generously to the second annual MJC Campaign this past March to raise operational funds for this vital public service project. A list of donors appears on page 16.

I don't consider these developments to be unrelated. For instance, I don't imagine that the Milwaukee County Board and the County Executive were unaware of the level of support for the Milwaukee Justice Center among the MBA membership. Each initiative has fed off the positive energy created by what has gone before. The result has truly been a team effort—the "team" in this case being an alliance among the legal community, the Law School, and County government—to improve access to justice in Milwaukee.

And it has done just that. In 2012, the MJC served well over 10,000 clients, 32% more than in the previous year. *Pro bono* service hours at the MJC also increased significantly. The 2013 numbers to date portend another significant increase in the number of clients served. Within a few months, the MJC will go mobile, traveling to economically depressed Milwaukee neighborhoods where many residents in need of legal guidance cannot feasibly travel to the Courthouse.

There can be no doubt that all this is making a real and substantial impact in the community. Many lifetimes have been lived in Milwaukee without seeing a public service project of this magnitude and unique character. While the work is far from done—this "ball game" will take many years to win—I think we can justifiably pause and take stock of what has been accomplished. The donors and volunteers who have made this happen should know that every contribution, however modest, has been and will continue to be important to the success of the Milwaukee Justice Center.

Meanwhile, back at the ranch, the *Messenger* offers a garden of delights for your summertime reading pleasure. We have a primer on the Second Amendment—indispensable in our firearm-obsessed society. We survey the estate planning landscape in light of recent legislation, and right-to-work laws in the upper Midwest. We learn what can separate the wheat from the chaff among banks as they emerge from the Great Recession. In addition to an update on the aforementioned Milwaukee Justice Center, there are reports on the Milwaukee Foreclosure Mediation Program and the continuing development of evidence-based decision-making in Milwaukee County criminal cases. We have a review of an updated treatise on commercial litigation in federal courts. In the practice guidance arena, frequent contributor Michael Moore addresses the basics of law firm succession planning. We have "art" (that's what we in the pressroom call photographs) from a number of noteworthy bar events. And in "The Reel Law," resident film critic Fran Deisinger takes on another law-themed cinematic entry. Who knew there were so many?

We hope you enjoy this edition of the *Messenger,* and that you find some time this summer to power down and recharge the old batteries. If the longer daylight hours should happen to stimulate your creative juices, our editorial door is always open. Remember, the third annual *Messenger* Award awaits a deserving author. Why not you?

—C.B.

Volunteer Spotlight

David Ruetz

Attorney David Ruetz is Assistant General Counsel and Senior Environmental Scientist for GZA GeoEnvironmental, Inc., an environmental engineering and consulting firm with 25 offices nationwide. He has been an attorney for the past 22 years and has served as the Chair of the MBA Environmental Law Section for the past eight years. David previously worked as an aquatic biologist for the U.S. Forest Service, an environmental scientist for a local environmental consulting firm, administrative director of a Governor-appointed advisory council, and president of an environmental consulting and engineering firm. David states that his legal career has been particularly rewarding because he enjoys helping people solve some of the most difficult problems they may face in their lives.

This multi-talented attorney has also been a professional musician (having played Summerfest stages with many different bands) and a fly fishing guide in Montana.

David's focus as Chair of the MBA Environmental Law Section has been to schedule CLE programs that provide attorneys with practical information to assist them in their practice of environmental law. In the past several years, speakers from the Wisconsin Department of Natural Resources, U.S. Occupational Health & Safety Administration, and the former Wisconsin Department of Commerce have discussed various environmental laws from the perspective of regulators. Environmental attorneys from local area law firms have also presented at CLE programs.

In addition to his CLE work, David also has participated in the MBA's Mentoring Program. He says that he has been fortunate to have some great mentors in his life help him get started in his career, and believes it is important to assist others as they get started in the practice of law.

2013 Annual Meeting Comes in Under the Wire

The 2013 MBA Annual Meeting adjourned at 1:33 on June 11—well within the ten-minute tolerance that was a material term of the personal "on-time" guarantee by yours truly (*Messenger,* Fall 2012). Thanks are due to Katy Borowski, the MBA's Director of Projects, for her careful planning. Thanks also to the speakers and attendees for their cooperation. And to all you doubters out there: BOO-YAH!

—C.B.

Messenger Jumps the Gun

The Spring 2013 issue of the *Messenger* erroneously listed in its Table of Contents an article on page 23 by Michael Moore of Moore's Law entitled "Succession Planning: for Whom the Bell Tolls." That article did not appear in that issue, but does in this one, on page 19. We apologize to our readers—and Michael Moore, who has contributed frequently to our humble publication—for the confusion.

—C.B.

Member News

Halling & Cayo announced the promotion of **Sean M. Sweeney** to shareholder. His practice focuses on business litigation, business law, and stockbroker fraud cases. The firm also announced the promotion of **Josephine M. Gee** to senior associate. She will continue to practice in the area of civil litigation.

The Law Librarians Association of Wisconsin (LLAW) announced the election of new officers for its 2013-2014 term:

President: **Emily Koss,** Reinhart Boerner Van Deuren
Vice President/President-Elect: **Lisa Winkler,** Dane County Resource Center
Secretary: **Steven Weber,** Quarles & Brady
Treasurer: **Julie Baldwin,** Northwestern Mutual

Quarles & Brady announced that **Kathryn "Katie" A. Muldoon** has joined the firm's Milwaukee office as an attorney in the Trusts and Estates Practice Group. The firm also announced that **Alyssa D. Dowse** has joined the firm's Milwaukee office as an associate in the Labor & Employment Practice Group.


Kathryn A. Muldoon


Alyssa D. Dowse

von Briesen & Roper announced that **Ralph V. Topinka** has joined the firm's Health Law Section and will be practicing in the firm's Madison office. Additionally, **Patrick J. Cannon** recently joined the Health Law Section and will be practicing in the firm's Milwaukee office.

Message From the President

Attorney Beth E. Hanan, Gass Weber Mullins

Shortly before her Alzheimer's diagnosis, my mother learned I was going to be a finalist in a moot court competition. As a means of encouragement she sent me this statue of Abe Lincoln.

I had to smile. The gift had so many layers. At the least, I'm sure my mother wanted me to be honest in my argument. She may have wanted me to be inspired by an accomplished oralist. I don't think she was saying that she wanted me to be President.

But 18 years later, I'm humbled to accept this peaceable post, surrounded by accomplished oralists and honest lawyers of every stripe. The MBA consists of practitioners and judges who voluntarily support an organization that exists to serve them, their colleagues, the local courts, and by way of extraordinary volunteer effort, thousands of people who find themselves with legal problems but with limited or no options for personal legal advice. You know I'm talking about the Milwaukee Justice Center. You just might be one of those extraordinary volunteers. You certainly could become one.

In fact, there are innumerable options for you to become a bit more involved with the MBA, and thereby increase your benefit. Why not turn that recent successful suit, motion, or transaction into a one-hour CLE presentation or an article in the *Messenger?* At a professional crossroads and looking to delve into a new practice area? Sign up for the MBA mentor program, and get some valuable insights from lawyers who have "been there." Stay on top of legal developments by joining a practice-based committee. Increase the rich networking benefit of the MBA by encouraging a colleague to become an MBA member. Refine your golf swing and enjoy a meal with other lawyers and judges at the MBA Foundation Golf Outing.

All these opportunities and more make it an honor to serve the Milwaukee Bar Association in its 155th year. I don't come into the post with a huge agenda, but you could say I come bearing pom pons. In other words, the primary role of the MBA president is to be a cheerleader for the organization. More importantly, you can be confident that each and every MBA board member is committed to being a good steward of current MBA programs, and to thinking creatively about how to further advance the MBA mission. That we are assisted by a top-notch, long-tenured, and professional MBA staff accounts in large measure for the quality of services available.

The MBA first took root during Abe Lincoln's presidency, as a way to fortify the legal profession and its contribution to national stability and integrity. Today, the MBA is yours, and it offers a wealth of resources to help you improve your practice and enjoy the journey. If there is something else you think we should be doing — hopefully with your help — give me or any of your board members a call and we'll try to achieve it.

MBA Law & Technology Conference Returns for 2013!

Save the Date! Mark off December 5, 2013 in your calendars for the return of the Wisconsin Law & Technology Conference, 2013 edition. By popular request, the Milwaukee Bar Association is bringing back this event that was so popular a number of years ago. With two tracks of legal technology and law practice management programming, you'll be able to earn all your ethics credits, as well as six total CLE credits. Featuring top faculty, the conference will educate on contemporary topics including cloud computing in your law practice; best ways to use iPads, tablets, and smartphones; the legal and ethical issues related to electronic collaboration and cloud computing; the best approach to selecting a practice management system and how to use it in your practice; top tips for extracting the most from Microsoft Word and Acrobat; being Paper-LESS in the age of the cloud; and more. Watch the *Messenger,* the MBA website, and your e-mailboxes for more info soon.

CLE Calendar

Fall Preview

CLE at the MBA is on vacation for the summer. Slip into those flip-flops, fire up the grill, and, as my sainted mother used to say, "try and relax." Here's a small sample of what's on tap this fall.

September 10, 2013
Health Law Section
All Aboard the HIPAA Omnibus: What Health Care Entities Need to Know About Complying With the New Privacy and Security Regulations
This presentation will outline key components of the new HIPAA Omnibus Final Rule, including new consumer protections, expanded business associate liability, breach requirements, and new investigation and enforcement considerations. Presenters will guide attorneys who work with HIPAA-covered entities, business associates, and subcontractors through requirements and tips for complying with the new rules.
Presenters: Diane M. Welsh and Meghan C. O'Connor, von Briesen & Roper
Noon – 12:30 (Lunch/Registration)
12:30 – 1:30 (Presentation)
1.0 CLE credit

September 13, 2013
Employee Benefits Section
Leaves of Absence and Employee Benefit Plans
Discussion of the compliance challenges that leaves of absence present to employee benefit plans. The discussion will have a particular focus on health plan and 401(k) plan compliance issues presented by FMLA, USERRA, and state and federal disability leave.
Presenters: Kirk A. Pelikan, Michael Best & Friedrich
Noon – 12:30 (Lunch/Registration)
12:30 – 1:30 (Presentation)
1.0 CLE credit

September 26, 2013
MBA Presents
Title Insurance: Common Underwriting Issues
Presenter: Jim Marlin, Attorney's Title Guaranty Fund, Inc.
Noon – 12:30 (Lunch/Registration)
12:30 – 1:30 (Presentation)
1.0 CLE credit

October 11, 2013
Bench/Bar Probate Committee
Annual Probate Seminar
Presenter(s): TBA
Noon – 12:30 (Lunch/Registration)
12:30 – 4:00 (Presentation)
3.5 CLE credits

Book Review

An Expanded Trial Lawyers' Resource

Attorney Jim Clark, Foley & Lardner

About six years ago, I wrote a review of the second edition of a treatise entitled *Business and Commercial Litigation in Federal Courts.* (*Messenger,* Vol. 16, No. 3, March 2007.) Among other things, the review noted that this eight-volume set had over 90 chapters, written by some of the most experienced federal litigators in the country, providing a valuable ready reference for busy trial lawyers to procedural and substantive issues often encountered in federal court.

The third edition of this treatise has now been published, again under the leadership of Robert L. Haig, a distinguished litigator with the firm of Kelley Drye & Warren. Haig has also written and lectured extensively on a variety of topics related to trial work. Thirty-four new chapters have been added to the third edition, which has expanded the number of volumes from eight to 11. These new chapters include discussions of increasingly important subjects such as Regulatory Litigation with the SEC, Reinsurance, Foreign Corrupt Practices Act, Consumer Protection, and Information Technology, among many others.

Two of the new chapters caught my eye. The new chapter on Internal Investigations (Chapter 5) leads the reader through a process that often is difficult to navigate. It discusses subjects ranging from privilege issues, the management of documents, steps required in connection with witness interviews, and issues related to disclosure of the results of the investigation. This chapter also includes a helpful investigation checklist and some forms often needed in these investigations.

Many business trial lawyers, if only occasionally, undertake *pro bono* representation regarding commercial matters in federal court. The new Chapter 64 offers many practical tips and practice aids for attorneys who perform this public service. This chapter discusses the importance of fully vetting the facts associated with a *pro bono* representation, early resolution of any differences with the referring legal services agency as to how the case should be handled, and appropriate management of client expectations. This chapter also contains other helpful reminders about various aspects of litigating a business case on behalf of a *pro bono* client, all designed to help avoid the fate of some attorneys who have found themselves as defendants in malpractice claims arising from *pro bono* representation. (Some good deeds don't go unpunished.) A sample engagement agreement and other forms are included at the end of this chapter.

Over 250 authors, among the most experienced federal court litigators and judges in the country, contributed to this treatise. Even in this age of computer research, I have found that this treatise continues to have enormous value in my practice. It offers a readily accessible and quick-read summary of subjects that most business trial lawyers do not regularly confront, helping to identify where a deeper dive may be necessary in any given case. And some of us just like the feel of a good book in their hands.

Welcome
New MBA Members!

Ryan Patrick, *Albregts*
Phoebe Amberg
Anthony J. Anzelmo, *Whyte Hirschboeck Dudek*
Gordon F. Barrington, *Barrington Law Office*
Jesse Beringer, *Foley & Lardner*
Scott Birrenkott
Amanda A. Bowen, *The Kingsbury Firm*
James M. Campbell, *Foley & Lardner*
Stefanie Carton, *Simandl Law Group*
Kaley Connelly, *Foley & Lardner*
Mark C. Darnieder, Jr.
Beth Eisendrath, *Eisendrath Law Office*
Sarah Endres, *Foley & Lardner*
Mary Ferwerda, *Milwaukee Justice Center*
Kristina Cervera Garcia, *Cervera Garcia Law Offices*
Elizabeth Gebarski
Kimberly Gehling, *Renee E. Mura, Attorneys at Law*
Molly Gena, *Legal Action of Wisconsin*
Michael Gentry, *Heins Law Office*
John P. Graham, *Marquette Law School student*
Brian Grayson, *Foley & Lardner*
Jacqueline Hallac, *Renee E. Mura, Attorneys at Law*
Ann Barry Hanneman, *Simandl Law Group*
Paul Jonas, *Michael Best & Friedrich*
Monica Irelan Karas, *Affiliated Attorneys*
Aneet Kaur
Constance P. Korth, *Simandl Law Group*
Bethany Kroes, *Mahany & Ertl*
Zachary Lackey, *Foley & Lardner*
Natalia Lindval, *Law Offices of Natalia Lindval*
Omar Mallick, *Mallick Law Office*
Brian Manda
Brad Meyer, *Boyle Fredrickson*
Erika Frank Motsch
Renee Mura, *Renee E. Mura, Attorneys at Law*
Paul Nylen, *Deloitte & Touche*
Dawn Peters, *Ivanovic Law Offices*
Eric R. Platt, *Mawicke & Goisman*
Emerita Carolina Rodriguez-Alfaro
Andrew Sagartz, *BENNU Legal Services*
Daniel Sanders, *Kohler & Hart*
Comm. Rauly A. Sandoval, *Milwaukee County Circuit Court, Family Division*
Corey Sheahan, *Foley & Lardner*
Benjamin Sparks
Jordan Staleos
Pamela Stokke-Ceci, *Badger Meter*
Ili Subhan
Keith Trower, *Trower Law*
Benjamin Van Severen, *Birdsall Law Offices*
Aaron Vanselow
Wes Webendorfer, *Milwaukee County Circuit Court*
Matthew Weith, *Northwestern Mutual*
Jacqueline Wheeler, *Wheeler Professional Practice Group*
Nicholas Zepnick, *Foley & Lardner*
Mari R. Zimmermann, *Zimmermann Law Offices*

Milwaukee Justice Center Update

Congratulations to Ayame and Justin Metzger

The Milwaukee Justice Center family has grown with the addition of Emmitt Benjamin Cataldo Metzger, the newborn son of Ayame and Justin Metzger. Emmitt was born on June 5, weighing 7 pounds, 9.4 ounces and measuring 20.5 inches long. Ayame is the MJC Legal Director and Justin is the MJC Community Outreach and Marketing Manager.

Welcome Marquette PILS Fellows


Public Interest Law Society Fellows Danielle LeMieux and Katie Seelow

The MJC is honored to have two Marquette University Law School students, Danielle LeMieux and Katie Seelow, as Public Interest Law Society Fellows for summer. The Public Interest Law Society (PILS) is a student organization at the Law School that organizes the annual "PILS Auction," a fundraiser providing summer fellowships for students who spend at least 35 hours per week for 10 weeks in a public interest organization.

Danielle and Katie are alumnae of the University of Wisconsin-Madison and will be entering their 2L year in the fall. They took a few moments to reflect on their experience at the MJC so far:

Q. What is a PILS Fellow?
Danielle: We are students who spend the summer volunteering in an organization that helps *pro se* and/or indigent populations.
Katie: This year, students have fellowships in a variety of organizations, from the Public Defender's Office to the United Nations.

Q. What interests you about public service law?
Danielle: I like the human interaction and knowing that my actions are making a difference to someone.
Katie: There are so many routes to take in the law. At the end of the day, I want to do any small bit of good that I can do. I want to help people.

Q. Why did you choose the Milwaukee Justice Center for your fellowship?
Danielle: I am interested in learning about family law. I want to see if this is an area that I could see myself practicing.
Katie: It is a good opportunity to be in the courthouse and see what happens here. I want to work with unrepresented clients and interact with the justice system. This is a good opportunity for practical experience in family law before taking any classes in the topic.

Q. What has been the most satisfying thing about your fellowship?
Danielle: Knowing that, when clients leave the MJC, they have been helped. You can visibly see that they have received the help they need. Also, I am happy to get up every day and go to work, which has not always been the case!
Katie: Helping clients, even particularly challenging ones, to get done what needs to get done and to move on with their lives. Nine times out of ten, the clients leave more relieved than when they arrived. The clients are grateful. We're easing people's minds.

American Taxpayer Relief Act of 2012 Profoundly Impacts Estate Planning

Attorney Susan C. Minahan, Michael Best & Friedrich

In an attempt to avert the "fiscal cliff" at the end of 2012, Congress passed the American Taxpayer Relief Act of 2012 (the "2012 Act") on January 1, 2013, and the President signed it into law on January 2. The 2012 Act has significant impact on all taxpayers, and is a game-changing piece of legislation in the estate, gift, and generation-skipping transfer (GST) tax arena.

The 2012 Act permanently extends the $5,000,000 unified federal estate, gift, and GST tax exemptions implemented under the 2010 Tax Relief Act for all such transfers occurring after December 31, 2012. All three exemptions are indexed for inflation. As a result, the exemption amount in 2013 is $5,250,000. The 2012 Act increases the maximum tax rate from 35% to 40% for any transfers in excess of the exemption amounts.

It should be noted that the exemptions are "permanent" only as long as Congress chooses not to change them. No tax law change should actually be considered "permanent" with a new Congress every two years.

The 2012 Act also "permanently" extends portability of unused estate tax exemption for married couples. Portability, a concept introduced in the 2010 Tax Relief Act, allows a surviving spouse to "port" or add a deceased spouse's unused estate tax exemption amount to the surviving spouse's exemption amount without the use of a traditional credit shelter trust. Portability standing alone, however, should not be considered as an estate planning substitute, for several reasons. First, the ported amount can be lost if the surviving spouse remarries. Second, portability does not provide the same asset protection after the first spouse's death that traditional credit shelter trust planning provides. Third, portability does not apply to the GST exemption; therefore, in order to leverage GST planning, careful dynasty trust planning is still necessary.

In light of the 2012 Act and the current estate planning environment, estate planning is still necessary, and the following are continuing opportunities for transferring wealth:

Low-Interest Rate Planning

Historically low interest rates continue to present the opportunity for intra-family, low-interest loans or refinancing of such loans. The January 2013 mid-term applicable federal rate (for 3-9 year loans) is 0.87%. Low-interest rate loans also can be combined with gifting, resulting in larger tax-free transfers. Sales to intentionally defective grantor trusts (IDGTs) and grantor retained annuity trusts (GRATs) are commonly used techniques for this type of planning, and the 2012 Act fortunately does not impose limits on IDGTs, GRATs, or valuation discounts that had been proposed. Congress may impose limits on the use of these techniques in the future, but at least for the time being, the window of opportunity remains open.

GST Planning

Dynasty trusts that utilize the GST exemption can be a method to transfer assets from generation to generation, avoiding estate, gift, and GST tax at each generation. Under current exemptions, a single person can protect $5,250,000 and a married couple can protect $10,500,000, indexed for inflation, in this manner. As previously noted, the GST exemption is not "portable" and, therefore, dynasty trusts are important for married couples in protecting the GST exemption of each spouse. Limitations on the number of years a dynasty trust can run are also not part of the 2012 Act.

Asset Protection

Trusts remain an important part of estate planning, even for smaller estates, because they provide means of asset protection. Trusts can be used to protect assets from a beneficiary's creditors, including a divorcing spouse. Trusts also can protect assets in the event a beneficiary becomes disabled. Moreover, lifetime irrevocable trusts provide an estate and gift tax "freeze" for a donor's estate at the value of the trust as of the date of the lifetime gift.

Annual Gifts

In addition to the lifetime gift tax exemption, each taxpayer may make annual exclusion gifts to any number of donees. The annual exclusion was indexed for inflation in 2001 tax legislation, and in 2013 the annual gift tax exclusion amount is $14,000 per donee.

Here are some other notable impacts of the 2012 Act on individuals:

- Extends tax cuts for individuals with income under $400,000 and married couples with income under $450,000;
- Raises the ordinary income tax rate from 35% to 39.6% for individuals with income over $400,000 and married couples with income over $450,000;
- Raises capital gains and dividend tax from 15% to 20% for individuals with income over $400,000 and married couples with income over $450,000;
- Reinstates the overall limit on itemized deductions for individuals with income over $250,000 and married couples with income over $300,000, which may impact lifetime charitable giving plans;
- "Permanently" indexes the alternative minimum tax (AMT) for inflation;
- Expands employees' ability to convert traditional retirement accounts, such as 401(k)s and 403(b)s, into Roth accounts; and
- Extends through 2013 the tax-free IRA "rollover" to qualifying charities after age 70½. (Note: special rules relate to actions that may be taken in January of 2013 to treat contributions as being made during 2012.)

The author concentrates her practice on estate planning matters, including estate, gift, and GST taxes.

A Primer on the Second Amendment Right to Keep and Bear Arms

Attorney Paul Jonas, Michael, Best & Friedrich

"A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. Amend. II.

When those words were ratified into law in 1791 as part of the Bill of Rights, Americans gained a constitutional right to gun ownership. This article discusses the scope of that right as defined by the United States Supreme Court in *District of Columbia v. Heller,* 554 U.S. 570 (2008), and by Wisconsin law.

Federal Gun Law Under *Heller*

For 217 years following passage of the Bill of Rights, the United States Supreme Court refrained from defining the scope of the right of individual citizens to keep and bear arms.[1] In the absence of clear Supreme Court guidance, two general schools of thought developed on the meaning of the Second Amendment. The first view was that the right to keep and bear arms, like other rights enumerated in the Bill of Rights, is an individual right possessed by all Americans. Under this view, the government could infringe on the right of law abiding citizens to keep and bear arms only in limited circumstances and for a compelling purpose. An alternative view was that the right to keep and bear arms is inextricably linked by the text of the Second Amendment to service in a militia. This latter view, combined with a strong political aversion to gun ownership in certain jurisdictions, led to the passage of laws making it virtually impossible for ordinary citizens to possess, let alone carry, operative firearms. It was such a law that led to the landmark 2008 case of *District of Columbia v. Heller,* where the Supreme Court upheld the right of law-abiding citizens to keep and bear arms for purposes of self-defense in their own homes.

In *Heller,* the Supreme Court found unconstitutional a District of Columbia law that banned handgun possession and required other lawfully possessed firearms to be disassembled or bound with a trigger lock so as to be inoperative. *Id.* at 628. In a 5-4 decision, the Court concluded that the law violated the Second Amendment by preventing citizens from exercising their right to keep and bear arms for purposes of self-defense. *Id.* at 628-29. The Court explained that handguns are the preferred method for citizens to exercise their Second Amendment rights, and that a blanket ban on handguns, extending even into peoples' homes, failed the elevated standard of scrutiny under which laws infringing Second Amendment rights are assessed. *Id.* at 628.

The Supreme Court set forth several important tenets in *Heller.* First, the Court rejected the premise that the right to keep and bear arms is predicated on membership in a militia. *Id.* at 592. Instead, *Heller* equates Second Amendment rights to speech and assembly rights—individual rights possessed by all Americans. *Id.* at 591. Second, the *Heller* Court identified the right of self-defense as a primary, if not exclusive, objective of the Second Amendment at the time of its passage. *Id.* at 599. Because the trigger lock/disassembly requirement at issue in *Heller* rendered even lawful guns useless for purposes of self-defense, this aspect of the D.C. law was deemed unconstitutional. *Id.* at 630. Third, the Court found that handguns are a modern corollary to the "bearable arms" the Framers meant to protect, *id.* at 582, and that the overwhelming popularity and effectiveness of handguns as a means of self-defense places such guns at the heart of the right to self-defense inherent in the Second Amendment. *Id.* at 629. Thus, the fact that the District of Columbia allowed limited possession of long guns could not save the constitutionality of the District's ban on handguns. *Id.* at 629. Finally, *Heller* expressly and categorically supports the constitutionality of several common limitations on Second Amendment rights, including bans on firearm possession by felons and the mentally ill, restrictions on firearms in sensitive places such as schools and government buildings, and certain requirements for the commercial sale of firearms. *Id.* at 626-27.

Though *Heller* clarified the meaning and scope of the Second Amendment, it left at least two critical questions unanswered.[2] First, and much to the chagrin of Justice Breyer in dissent, *see id.* at 687-88, *Heller* does not specify a standard of review under which Second Amendment questions should be analyzed. Rather, *Heller* states only that the law in question in that case was invalid under any standard previously applied to enumerated constitutional rights. *Id.* at 628. The fact that the Court endorsed several categorical restrictions on Second Amendment rights suggests to some, however (including Justice Breyer), that strict scrutiny does not apply. *Id.* at 688-89. Second, the rule of *Heller* is limited only to the right to keep and bear arms in one's home. *Id.* at 635. The question of whether the Second Amendment right to self-defense extends to firearms possessed outside one's home remains unanswered.[3]

The Right to Keep and Bear Arms Under Wisconsin Law

Heller defines the minimum protections afforded by the Second Amendment, but states are of course free to offer their own citizens more rights than the minimum granted by federal law. Wisconsin has done so with regard to the right to keep and bear arms, both by constitutional amendment and by statute.

In 1998, 10 years before *Heller,* Wisconsin voters ratified an amendment to Article I, Section 25 of the Wisconsin Constitution, stating: "The people have the right to keep and bear arms for security, defense, hunting, recreation or any other lawful purpose." Subsequent statutory changes granted Wisconsinites the ability to carry concealed weapons (subject to training and licensing requirements),[4] travel in vehicles with uncased weapons,[5] and carry concealed weapons in their own homes without a license (a right they presumably would have had in any event after *Heller* and *McDonald*).[6]

At the same time, Wisconsin imposes multiple restrictions on the right to keep and bear arms. As suggested in *Heller,* Wisconsin prohibits felons and the mentally ill,[7] as well as unsupervised children[8] and persons under injunctions,[9] from possessing firearms. Wisconsin requires handgun purchasers to wait 48 hours and submit to a "firearms restrictions record search" before buying a handgun from a federally licensed dealer.[10] Guns are prohibited, even for persons otherwise licensed to carry concealed weapons, in schools,[11] public buildings with a posted gun prohibition,[12] and taverns (if the licensee is consuming alcohol).[13] Certain types of weapons and accessories, including machine guns,[14] sawed-off shotguns and rifles,[15] and silencers,[16] are also generally prohibited.

In sum, while Wisconsinites have substantially greater rights to keep and bear arms than the minimum required under *Heller,* the right to keep and bear arms is subject to substantial limitations in Wisconsin based on the person, place, and type of weapon in question.

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The Reel Law

Attorney Fran Deisinger, Reinhart Boerner Van Deuren

Compulsion

Directed by Richard Fleischer
1959; 103 minutes

Nearly 90 years later, most of us instantly recognize the names "Leopold and Loeb." The two perpetrated one of the most cold-blooded and sensational murders in the history of Chicago: the 1924 kidnapping and killing of a 14 year-old neighbor boy, Bobby Franks. The crime was not for gain—Leopold and Loeb were both wealthy sons of successful Chicago businessmen—nor, in the usual sense, was it a crime of passion. The two men, neither yet 20 years old, were academic prodigies. Leopold was already a Phi Beta Kappa graduate of the University of Chicago and a law student there. Loeb was the youngest graduate ever of the University of Michigan and about to begin law school at Chicago. The murder was the culmination of a lurid experiment based on their perception of the Nietzschean "superman" philosophy. They believed that individuals of their superior intellect were above ordinary concepts of morality, and they engaged in an escalating progression of crimes as a way both to prove their cleverness and confirm their differentness. The kidnapping and killing were to be their "perfect" crime.

Compulsion is a fairly close retelling of the actual case, with some minor narrative embellishments. Although the names are changed, there is no doubt that Jud Steiner and Artie Strauss, played respectively by Dean Stockwell and Bradford Dillman, are Leopold and Loeb. Their defender in real life, Clarence Darrow, is Jonathan Wilk in the film, played by Orson Welles. Other fine actors in the cast include Edward Binns as the investigating reporter, Martin Milner as his assistant (and a fellow student of the defendants—a dramatic contrivance), and E.G. Marshall as the prosecutor.

Welles made this movie not long after finishing his magnificent *Touch of Evil,* a film that in many ways put an exclamation point on the American *film noir* genre. There, under his own direction, Welles played a volatile, corrupt police detective in a Texas border town. Here his character is at the other end of the moral and legal spectrum. Playing Wilk (or really, Darrow), Welles comes into the film late, after the "perfect crime" inevitably has fallen apart because one of the superior intellects managed to drop his glasses where the body was left, and the two prodigies are led to confess through ordinary interrogations.

Although this is neither a "whodunit" nor a standard courtroom drama in which the masterly defense lawyer secures acquittal against all odds, Wilk nevertheless dominates the courtroom scenes. First, he surprises everyone by changing the defendants' plea of not guilty to guilty. Wilk assesses that he has little chance of persuading a jury that the two young men were legally insane and concludes that he is much better off to try to sway the judge alone on the only real question at issue: death by hanging or life imprisonment. Based again on Darrow's famous real-life appeal, the dramatic apex of the film is Wilk's closing argument, calm but emotional, stirring but reasoned, that executing the two men advances no moral purpose. As in real life, the judge sentences the men to life imprisonment.

Welles is always a delight to watch; his prodigious acting talent is sometimes forgotten in the glare of his astonishing work as a director. Here he somewhat underplays his take on Darrow. (Compare, for example, Spencer Tracy's more strident courtroom "Darrow" in *Inherit the Wind.*). From the lawyer's standpoint, the film is worth seeing for this alone. But the work of Stockwell as a tightly wound, emotionally insecure sycophant, and Dillman as his sociopathic Svengali, is perhaps even more impressive. As Strauss, Dillman egotistically glories in his attempt to lead the investigation astray until it backfires on him. As Steiner, Stockwell exhibits a palpable need for acceptance and approval. There are coded glances and dialogue suggesting a more intimate relationship between the two, although typically for a Hollywood production of this period there is a female character placed in the story to make things more ambiguous. The direction, by Richard Fleischer, is competent and well-paced.

Many plays, books, and films have been based in one way or another on the Leopold and Loeb story. Hitchcock's *Rope* is another fine example. But *Compulsion,* although certainly not a documentary, is as faithful a retelling of the case as Hollywood, at least, has provided.

Postscript: In real life, Darrow's successful effort to spare the two murderers from the gallows had mixed results. Loeb was killed in prison in 1936 by another inmate. Leopold was released in the late 1950s, sponsored by a charitable organization. He moved to Puerto Rico, where he worked as a medical technician in the charity's hospital and wrote ornithological studies of the island's birds before dying naturally in 1971.

Upcoming Events

August 7
MBA Foundation Golf Outing

October 17
State of the Court Luncheon

Annual Meeting 2013

President Beth Hanan and Past President Charlie Barr at the Annual Meeting

City Attorney Grant Langley accepts the E. Michael McCann Distinguished Public Service Award.

Thank you to our Annual Meeting sponsors:

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Memorial Service 2013

Judge Charles N. Clevert, Jr., delivers the Memorial Service address.

Fr. Cliff Ermatinger plays the bagpipes.

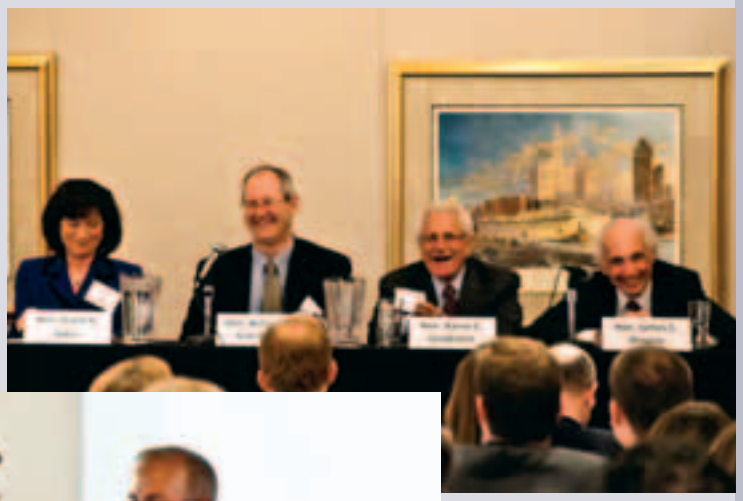
MBA President Charlie Barr welcomes family members and representatives of the bench and bar.

Rev. Margaret Schoewe of St. Matthew's Evangelical Lutheran Church offers a spiritual message.

EDWBA *Annual Meeting* 2013

Over 250 people attended the EDWBA's Annual Meeting luncheon on April 25, 2013. ▲

Laurence C. Hammond, Jr., speaks to the crowd after receiving the Judge Myron L. Gordon Lifetime Achievement Award. ▲



A panel of judges discuss best practices during the plenary session of the EDWBA's Annual Meeting. ▶

Chief Judge William C. Griesbach addresses attendees at the Eastern District of Wisconsin Bar Association's 11th Annual Meeting. ▲

Incoming EDWBA President Tony Baish is introduced by outgoing President Al Schlinsog. ▲

Bill Mulligan congratulates Judge William E. Callahan, Jr., recipient of the Robert W. Warren Public Service Award. ▲

Jay Pitner, Nathan DeLadurantey, and Debra Tuttle received the Judge Dale E. Ihlenfeldt Bankruptcy Award for their work with the Bankruptcy Court's Mortgage Modification Mediation Program. ▶

All photos courtesy of Daryl Olszewski

The Honorable William J. Bauer, U.S. Court of Appeals for the Seventh Circuit, gives the luncheon keynote at the EDWBA's Annual Meeting. ▲

Milwaukee County Community Justice Council Seeks to Implement Evidence-Based Approaches

Attorney Thomas H. Reed, State Public Defender, Milwaukee Criminal Trial Office

Milwaukee County courts, guided by the Milwaukee County Community Justice Council (MCCJC), are promoting more disciplined, evidentiary decision-making processes at crucial points in criminal cases. The MCCJC was established by Milwaukee County Board ordinance in 2007 to ensure a fair, efficient, and effective justice system that enhances public safety and the quality of life of the community. MCCJC members include the Chief Judge, County Executive, District Attorney, Sheriff, Mayor of Milwaukee, State Public Defender, and Milwaukee Police Chief, who meet regularly to address issues in the justice system.

As a result of this process, the Milwaukee County Circuit Court successfully sought technical assistance and related grants from the National Institute of Corrections, the Department of Justice, and the Office of Justice Assistance.

The objective of these grant-funded activities is to begin to use evidence-based practices at critical points in criminal justice system decision-making. Specifically, research identifies important data to be gathered and used in making decisions and measuring outcomes.

An important example of this process was the subject of a rare closure of all criminal courts on May 10, 2013. Nearly 200 judges, commissioners, assistant district attorneys, public defenders, and pretrial staff gathered at Marquette University Law School to review the results of Universal Screening of all defendants booked into the jail using a validated Pretrial Risk Assessment. This process provides prosecutors additional important information at charging, and courts the ability to identify populations who can be safely released on bail. The process includes a carefully calibrated scale to allocate limited pretrial monitoring and treatment slots to those offenders who can best benefit from services based on their risk and needs levels.

Chief Judge Jeffrey A. Kremers described this new approach to attendees at a May 22, 2013 MCCJC meeting at the Clinton Rose Center:. "Sound professional judgment has always been at the heart of any justice system. Research shows when such judgment is augmented with the latest research it results in the best outcomes for victim safety, offender accountability, and the most efficient use of taxpayers' dollars." Other Community Justice Council evidence-based practices include mental health and crisis intervention training for police, diversion and deferred prosecutions, and dosage-based sentencing. Thanks to these evidence-based initiatives, in conjunction with the Drug Treatment Court, the Veterans Treatment Court Initiative, and related programming, Milwaukee County has become a leader in seeking effective and innovative interventions for those entering the criminal justice system.

As Foreclosure Crisis Lingers, Mediation Program Extends Services Statewide

Attorney Debra Tuttle, Executive Director/Chief Mediator, and Attorney Matthew Plummer, Staff Mediator, Metro Milwaukee Foreclosure Mediation Program and Wisconsin Foreclosure Mediation Network

It is widely recognized that residential foreclosure is a losing proposition for all. The foreclosure crisis has devastated neighborhoods and destabilized the tax base in the City of Milwaukee. The solution to the foreclosure crisis involves two strategies: (1) cut off the foreclosure pipeline with mortgage loan workouts; and (2) if foreclosure is unavoidable, keep the home continuously occupied or limit the period of vacancy. The recently retooled Metro Milwaukee Foreclosure Mediation Program continues to play a major role in achieving those two missions.

Residential properties currently account for 61% of the property tax base in the City of Milwaukee.[1] From 2008 through 2012, residential properties lost 26% of their value.[2] Most of this decline has been attributed to the unprecedented wave of foreclosures. As of September 2012, there were over 2,300 vacant properties owned by the City of Milwaukee or banks due to foreclosure. Vacant properties become a magnet for scavengers, who rip out pipes and wiring for scrap; and are targets of vandalism, arson, and other criminal activity. Despite the recent decline in new foreclosure filings, the road to recovery is a long one.[3] In September 2012, over 4,300 properties faced foreclosure in the City of Milwaukee alone.[4] Foreclosures erode the tax base; depress the value of surrounding homes; and sap the resources of law enforcement, fire departments, and neighborhood services.[5]

Foreclosures negatively impact lenders, as well. One study concluded that each foreclosure could cost lenders more than $50,000.[6] All told, that study estimated that the financial impact of a single foreclosure on the homeowner, lender, and community is nearly $80,000.[7]

In response to the foreclosure crisis, the federal government created the Making Homes Affordable ("MHA") loan modification program in March 2009. Participation is mandatory through December 2015 for lenders who received TARP funds in 2008.[8] Under MHA, lenders review homeowners for mortgage modifications that may capitalize past due amounts, lower interest, extend terms of loans, and even forbear or forgive principal to create an affordable mortgage payment. Some lenders offer comparable modifications instead of or in addition to MHA. Connecting homeowners with these solutions, however, has proven difficult. There are many reasons for this: homeowners lack awareness of the programs or application process; and the application requires extensive time, sensitive documentation, and precise completion of forms, all during a time when many homeowners feel a sense of helplessness and despair. Homeowners who do overcome the document hurdle often encounter delays or receive no response at all from servicers.

The Milwaukee County Foreclosure Mediation Program was launched in July 2009 with funding from the City of Milwaukee and the Wisconsin Department of Justice, as the result of a stakeholder design process involving local government, lending institutions, creditors' and homeowners' attorneys, and a wide range of community organizations. Originally administered by the Marquette University Law School, the Metro Milwaukee Foreclosure Mediation Program is now run by an independent non-profit corporation under a service contract with the Milwaukee County Clerk of Circuit Court. The program continues to have as its goal "to employ mediation as an efficient, neutral, voluntary and confidential vehicle to bring about mutually satisfactory results to parties in a residential foreclosure action." The program has helped more than 3,500 families since its first mediation in September 2009. Nearly 50% of all mediated cases result in a loan modification, giving homeowners a fresh start and lenders a performing loan.

In February 2013, through a directive executed by Chief Judge Jeffrey Kremers, the Milwaukee Program added several process enhancements:

1. expanded eligibility criteria consistent with the MHA criteria for modifications;
2. a streamlined method of sending documents and messages through a secure, web-based file-sharing system called the "DMM Portal";
3. a well-defined timetable for each participant's steps in the process;
4. transparency among all participants and the court staff with respect to progression through the well-defined mediation process; and
5. limited withdrawal from the mediation process, promoting closure in each case.

"Our new program model is the product of a collaborative effort between all of the stakeholders in the mediation process," explained Debra Tuttle, Executive Director and Chief Mediator. "We really focused on identifying and eliminating the key obstacles to successful mediations. The result is a more streamlined program using cutting-edge technology to facilitate the mediation for everyone involved. This should produce better results across the board. We also are seeing lenders implement relaxed modification guidelines, such as Fannie Mae's and Freddie Mac's 'Streamlined Modification,' which have made modifications available to an increasing number of homeowners. Now is the best time so far to qualify for a workout option."

Even when it is determined that modification is not an option, homeowners and lenders agree that mediation can be a valuable tool. The goal shifts to preserving the value of the home and facilitating a smooth transition. By providing a confidential, respectful environment in which the parties can discuss why a modification is not possible (or perhaps desirable), and questions regarding the foreclosure process and timelines can be answered, homeowners and lenders often are able to come to an understanding of next steps and plan a transition that is agreeable to all parties.

One transition option that prevents vacancy is a sale to a third party for less than the amount owed, known as a "short sale." Another option recently gaining ground is the "Deed for Lease," in which a homeowner deeds the property to the bank in return for a market-rate, one-year lease. This not only provides the homeowner with a means to remain in the home, but also provides a revenue stream and avoids vacancy. While these options are not the first choice of most homeowners, they nonetheless can help soften the blow to homeowners and communities alike.

Last year, in recognition of the Foreclosure Mediation Program's effectiveness, the Wisconsin Department of Justice provided additional funding to launch the Wisconsin Foreclosure Mediation Network, a vehicle to make streamlined foreclosure mediation services readily available to foreclosure litigants throughout the entire state. The Network now has five established regional centers: La Crosse, Hudson, Green Bay, Oshkosh, and Wausau. The DOJ also set aside funds to support these programs, and the metro Milwaukee program, through 2014.

Homeowners facing foreclosure, as well as

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MJC Campaign Affirms MBA Membership's Commitment to Justice

MBA members once again demonstrated their support of the Milwaukee Justice Center, the organization's signature public service project, by donating $37,810 during the second annual Milwaukee Justice Center Campaign in March.

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Law Day 2013

Attorney Kristen Nelson gives free legal information at Central Library.

In celebration of National Law Day, the Milwaukee Bar Association provided free legal information clinics to the public on Saturday, May 4, 2013, from 1:00 to 4:00 p.m. The clinics were held at four metro Milwaukee locations:

- South Side – Bay View Library, 2566 South Kinnickinnic Avenue
- Downtown – Central Library, 814 West Wisconsin Avenue
- North Side – Center Street Library, 2727 West Fond du Lac Avenue
- West Side – Atkinson Library, 1960 West Atkinson Avenue

Each location's "legal team" was made up of members of the MBA, as well as other volunteer lawyers from the Milwaukee area. The attorneys answered general legal questions and provided insight into the practice of law.

"The legal clinics are part of the National Law Day Education Program which is in its 52nd year," said Britt Wegner, Director of the MBA's Lawyer Referral and Information Service. "Law Day is designed to help alleviate the confusion, anxiety, and fear that can result when individuals participate in the legal process. Law Day is one of many free services that the Milwaukee Bar Association provides to the greater Milwaukee community."

Thank you to our Law Day Volunteers!

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Attorney Emily McIntyre consults with two people at the Law Day free walk-in legal clinics.

Pictures are courtesy of Kevin Harnack at Wisconsin Law Journal.

Mike Jacobs, Britt Wegner, and Carole Meekins promote the free legal clinics for Law Day 2013.

Michigan's New Right-to-Work Law: What It Means for Employers, Workers, and the Upper Midwest

Attorney Scott C. Beightol, Michael Best & Friedrich

On December 11, 2012, Governor Rick Snyder signed into law two bills collectively enacting "Right to Work" legislation in the State of Michigan. Michigan became the 24th state to enact some form of a right-to-work law, and joined Indiana as the second state in the Upper Midwest to do so in 2012. Wisconsin passed a similar law in 2010, although that highly publicized legislation applies only to public sector employers and unions. The most significant aspect of right-to-work laws is that they prevent unions and employers from requiring workers to join a union or to pay union dues as a condition of employment. The law will take effect gradually (its effective date was on or about April 1, 2013), as it allows all current collective bargaining agreements between unions and employers to remain in place.

So what does the new law actually say? Michigan's Right-to-Work Law was passed as two separate Public Acts. Public Act 348 addresses private sector unions and amended 1939 PA 176, which governs many union activities and the relationship between unions and private employers in Michigan. Public Act 349 is nearly identical legislation that relates to public sector employers and unions. The following is a summary of significant changes to private sector relationships between unions and employers as a result of Public Act 348:

Outlaws Closed Shops

Private sector employees may now choose, individually, whether or not to join a union or pay any dues or charitable contributions in relation to union membership ("open shop"). Individuals can no longer be required, as a condition of new or continued employment, to join or pay dues to a union, or to pay any charitable organization or third party an amount in lieu of union dues. Under prior Michigan law, a labor agreement could compel an employee to join a union and pay dues (referred to as "closed shop" or "union security" clause). That is now banned.

Individuals Still Must Be Allowed to Join Unions

Consistently with prior Michigan law, individuals will not be required to refrain or resign from membership in or to avoid financially supporting a union as a condition of employment.

Invalidates Closed Shop Agreements

Any agreement, contract, understanding, or practice between an employer and a labor organization that violates the Act is invalid.

Current Collective Bargaining Agreements Unaffected

The Act contains a "Grandfather Clause." The prohibition against closed shop agreements applies only to an agreement, contract, understanding, or practice that takes effect or is extended or renewed after the effective date of the Act.

Violation Subject to Civil Fine

Any individual, employer, or labor organization that violates Section 1 of the Act by requiring an individual to join or resign from a union, or pay or refrain from paying dues, may be fined up to $500.

Private Right of Action for Injured Persons

Any person injured by a violation of the Act (i.e., forced or threatened to induce him or her to join or quit a union as a condition of employment) may file a civil action for injunction and damages. The provision contains a "fee shifter," meaning that a prevailing plaintiff gets costs and reasonable attorney fees associated with the civil action.

Employees Subject to Civil Fines for Intimidation

Any employee who attempts to compel by force, intimidation, or unlawful threats any person to join a union or pay dues may be liable for a civil penalty of up to $500.

Responsibilities of the Michigan Department of Licensing and Regulatory Affairs (LARA)

The Act allocates $1 million to LARA to: (1) respond to public inquiries regarding the Act; (2) provide sufficient staff and resources to implement the Act; and (3) inform employers, employees, and labor organizations concerning their rights and responsibilities under the Act. An informational hotline, website, and informational pamphlets are likely to become available as a result of this section.

Public Act 349 contains nearly identical provisions pertaining to public sector employers and unions in Michigan. The only significant difference in Public Act 349 is that it contains an exception for public police, fire departments, and state police unions. Those unions may continue to collectively bargain for an agreement that all members of their organization must pay union dues or fees to their union or exclusive bargaining representative.

There are likely to be challenges, both legal and political, to the new legislation. Labor unions, including the Michigan-based UAW, have already pledged to challenge the Acts in court. The Acts grant exclusive jurisdiction to the Michigan Court of Appeals, and indicate that the court of appeals will hear the action in an expedited manner. From a political standpoint, the monetary allocation to LARA in each Act prevents a referendum on the Acts because of language in Michigan's Constitution. Instead, the UAW has indicated it will attempt to recall state legislators who supported Act 348, and

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Succession Planning: for Whom the Bell Tolls

Michael Moore, Moore's Law

One of the most important challenges facing many law firms is succession planning. This is because there are certain demographic realities coming your way. Quite simply, the baby boomers are going to be leaving your firm, whether by retirement or for health reasons. Are you prepared for this inevitability? Two essential elements must be addressed. The first is to transition the accountability for important client relationships and the revenue they provide to a new generation of lawyers. The second is to develop new leaders to contribute to firm management. One is not necessarily more important than the other; both, however, must be addressed for your firm to continue successfully.

Effective knowledge transfer

Succession planning requires specific strategies to transfer knowledge to the younger lawyers who are the future of the firm. During their careers, lawyers create, use, and store vast amounts of information. Examples include details about key clients, the core values of the firm's culture, its practices, and important historical details. This information has recognized value because it includes both knowledge and experience. At many law firms, older lawyers leave without their knowledge being transferred. If such a transfer occurs, too often it occurs only through one-on-one conversations, without sharing among all who may find it useful or have a need for it.

Law firms often appear to be a collection of individual practices. Without effective knowledge transfer, research may be duplicated, and agreements and other documents created from scratch when prior models already exist. The missed opportunities sacrifice not only efficiency but also the advantage of using best practices. Exponential success, however, can be created from a culture of willingly sharing information. Many clients expect such knowledge transfer to already be in place and are unwilling to pay for work product created in an inefficient manner.

Client transition

A law firm can create a competitive advantage by proactively encouraging the succession of clients from older to younger lawyers. One way is to serve clients with teams and cross-selling. With this strategy, business development opportunities can be magnified. Senior lawyers need to take associates to meetings with clients. This introduces younger attorneys into the client development and marketing aspects of the profession. They can learn from the senior attorneys and begin to develop a sense for which "rainmaking" methods they would feel comfortable implementing.

Many law firms also must address the issue of generating new clients and revenue to replace those that may be lost with the departure of a productive partner. The financial impact of a retiring partner on the firm, including personal productivity and marketing ability, requires careful assessment. If the lawyer was a significant part of the business development of the firm, there will be an obvious impact if that partner does not maintain a relationship with the firm. It may even be necessary to work out an "Of Counsel" arrangement, at least for a temporary period of time after the departure of the retiring partner.

Gaining management experience

Succession planning does not actually develop any lawyer to assume a management role within your firm. Only experience makes lawyers ready for their future contribution. Depending on the structure of your firm, there are different ways to transition management responsibilities. It is important that senior lawyers involve younger lawyers in management early in their careers with the firm.

After their first two to three years at the firm, involve young lawyers in management committees within the firm. Assigning specific tasks within these committees will test their ability to organize and handle projects. Involve young lawyers in the recruitment of other lawyers to your firm, which is a significant management role. If your firm has a formal mentoring program, participation by future leaders should be a requirement. As a mentor, the lawyer becomes responsible for coordinating the work of others, as well as assisting in their assessment and formal evaluation.

Are you developing future leaders?

In November 2010, Patrick J. McKenna released a study of 220 law firms and their leaders. Only 14% of the firms claimed to have some form of formal succession plan in place. McKenna found that effective law firm leaders must have a financial understanding of their firm and the strategic thinking skills necessary to address increased competition. In other words, these leaders must understand their markets and their firm's place in them. When developing future leaders, a firm will need young lawyers with these skills.

Effective law firm leaders also need excellent interpersonal and communications skills. These leaders require both the courage to make tough decisions and the patience to reach consensus. Any development program for future law firm leaders must include training in effective communication skills. In addition, the most effective leaders have a keen sense of humor. This is significant because lawyers frequently take themselves too seriously, and creating a positive culture is very important.

A sustainable future

Among my law firm clients, succession planning is rapidly moving from a strategic objective to a competitive necessity. Firms that have created their own succession plans are more effective when transitioning the management roles within the firm. Key client relationships can also be maintained. Effective succession plans allow firms to minimize the dramatic revenue loss that frequently accompanies the transition of productive partners out of the firm.

Be proactive and plan now for the inevitable impact of time on your firm and its members. Create a plan of action that includes development, training, and transition for both leadership and client relationships. These activities will provide you and your firm a platform for a sustainable and successful future.

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

"Best in Class" Boards: Directors Helping Their Banks Succeed

Attorney John T. Reichert, Godfrey & Kahn

Much has been written about the challenges facing today's community bankers, including ongoing asset quality issues, shifting capital requirements, cut-throat competition for customers, rapid developments in technology, and an endless onslaught of new rules and regulations. Notwithstanding these challenges, many banks have "turned the corner" and see opportunity on the horizon. What distinguishes the banks that are improving (and perhaps even excelling) from those that continue to struggle? In many instances, we believe the difference can be traced to the boardroom. This article summarizes common characteristics we have observed in those banks that are thriving, at least in part as a result of their boards' involvement, guidance, and strategic direction.

Composition

Take a step back: a board's primary objectives are to represent the shareholders' interest; provide oversight of management; and provide direction, support, and guidance to management. Those boards that excel at these objectives often are comprised of people with different backgrounds, experiences, and perspectives. Consider the following:

- While your bank undoubtedly has business owners on its board, are their experiences really diverse? Do your directors' business experiences include a mix of manufacturers, retailers, real estate investors, professionals, and, perhaps most importantly, current or former bankers or other people familiar with running businesses that are heavily regulated?
- Is your bank doing a good job of rotating talent on its board? Many boards we deal with have been comprised of the same directors for 15 years or more. How can the bank ensure that fresh perspectives and viewpoints are being contributed if it doesn't rotate people in (and out) of board service? Should the bank consider including a mandatory retirement age in your bylaws?
- Does your bank's board act independently when necessary and are its outside directors willing to ask the right questions of management? The best boards we encounter are capable of "pushing" management, yet stop short of micromanaging. In order to fulfill this role, directors must be willing to invest the time to become (and remain) knowledgeable about the inner workings of the bank.

We think successful banks should be focused on these questions and should be continually looking for ways to attract, retain, and cultivate talented directors who desire to take an active role in the oversight of management and the strategic direction of the bank.

Continuing Education

Can your bank's directors converse knowingly about the operations of the bank without management present? Often, the answer is no. To be sure, outside directors are not expected to know every line item and operational aspect of the bank. They should be sufficiently knowledgeable about the bank and its operations, however, to speak with regulators, shareholders, or the bank's outside advisors about the bank's primary challenges and opportunities without relying on management. If directors are not conversant in the bank's operations, how can they be expected to provide independent oversight or meaningful support and guidance to management, which increasingly is what regulators expect? Yet, many community banks still resist the notion of having their outside directors even become involved in "operating" details or matters that may be perceived as "micro-management." In addition to the use of standard "board packets" and presentations, there are several things directors can do to improve their performance:

- Attend periodic bank director training. This can be done internally by bringing in a third party to conduct a half-day session with the directors. It can also be done through one of many trade groups and vendors that offer director conferences.
- Have bank employees from different business lines make periodic presentations to the board. This allows the directors to hear from the "front line" people what's happening in the bank. It also allows the employees to establish a level of familiarity and comfort with the directors.
- Network with other bank directors. This can be done formally through trade groups and conferences, or informally through a variety of other networking opportunities. By reaching out to other directors, your bank's board will be able to gauge its performance.

Committees

Most bank boards have several "standing" committees. These committees meet regularly and have very clear, ongoing objectives. In our experience, banks performing at better than peer levels often make better use of their committees by "divvying up" responsibility for the numerous challenges and opportunities facing the bank. There are many areas that deserve (or require) in-depth, time-consuming commitments from the directors, yet don't necessarily require full board participation on a regular basis. Examples include:

- Technology: IT remains a primary area of risk for fraud and a large, ongoing expense item for most community banks.
- Capital Planning: it is becoming increasingly important to have a written plan describing how the bank will preserve, deploy, and, when necessary, raise capital and deal with the challenges presented by BASEL III.
- Marketing: successful banks often have directors who are actively engaged as "ambassadors" for the bank in the bank's marketplace. Tasking two or three directors with staying up to speed on the bank's marketing efforts will ensure a more coordinated effort between staff, management, and directors.
- Strategic Initiatives: if your bank is considering a deal, be it a branch sale, loan, sale, or merger, or if it is searching for a new executive, there will be a substantial time commitment required from the board. To ensure that the board can move quickly on a proposal, we recommend that a special committee comprised of two or three outside and management directors be formed to identify, negotiate, and evaluate transactions, and then make formal recommendations to the full board.
- Compliance: much like IT, compliance continues to be a primary area of risk for community banks and requires sufficient attention at the board level.
- "Ad Hoc" committees of several directors, to respond to regulatory enforcement actions, have been formed by many of our clients.

Conflicts of Interest

Many situations arise in which bank directors inadvertently find themselves or affiliated companies in a conflict situation with the bank. In addition to the numerous regulations governing transactions between the bank and its directors, banks should consider procedures to ensure that transactions with directors are fair to all parties involved. Best practices include:

- Adopting self-imposed "blackout periods" where directors cannot trade shares of the bank's stock if they possess information not available to other shareholders and that may be material to a person's investment decision. Even in a company

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Pro Bono Corner

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.*

Veterans Family Law Clinic
Contact: Laura Gramling Perez
Office: Dryhootch FOB
4801 West National Avenue
Milwaukee, WI 53214
Phone: 414-988-9828
E-mail: laura.perez@wicourts.gov

The Veterans Family Law Clinic is up and running at its new location: the Dryhootch Forward Operating Base at 48th Street and National Avenue in West Allis.

The Clinic, a partnership between Dryhootch, the Veterans Legal Workgroup, the State Public Defender's Office, and the State Bar of Wisconsin, launched in the fall of 2011. Staffed by volunteer family law attorneys, the Clinic provides brief legal advice on family law issues to military veterans and their families. It operates for two evening hours on the first and second Thursdays of each month, and each volunteer attorney works at the Clinic once every month or two.

The Veterans Family Law Clinic was the brainchild of the Veterans Legal Workgroup, and has been spearheaded by the Milwaukee Trial Office of the Public Defender. "We recognized that our veteran clients in the criminal justice system faced myriad legal issues, both criminal and civil," according to J.C. Moore, Deputy Regional Attorney Manager in the Milwaukee Trial Office. "It has been really helpful to bring together different service providers, attorneys, and court officials to address those issues creatively."

One legal need that the service providers in the Veterans Legal Workgroup identified at the outset was for help with family law issues. Veterans face the same challenges as others in the community in obtaining counsel or appearing *pro se* in family court. Their family law problems often are magnified, however, by deployments away from home and the underemployment and psychological pressures that may follow the return to family life. Volunteers at the Clinic recognize these unique challenges. "It's especially rewarding to help veterans sort through their legal issues," said Kate De Lorenzo, an attorney at D'Angelo & Jones and a regular Clinic volunteer. "Helping to resolve an issue with child custody or a divorce can help free up clients to focus on the other challenges in the return to civilian life."

The Clinic has an excellent relationship with Dryhootch, a nonprofit organization created by combat veterans to provide a supportive, alcohol-free environment for socializing, group support meetings, and peer mentoring. The Clinic, originally located at the Dryhootch coffee house on Brady Street in Milwaukee, has moved to the Forward Operating Base (FOB)—across the street from the Veterans Administration grounds—to offer greater access to veterans throughout the Milwaukee area. Mark Flower of Dryhootch noted that the Veterans Family Law Clinic provides services that are important not only to veterans, but also to family members of veterans. "It's the family members who fall through the cracks," noted Flower.

Pro Bono Society Marquette University Law School Class of 2013

Marquette Law School's *Pro Bono* Society serves to recognize the *pro bono* service provided by students. To qualify for membership, a student must complete and report a minimum of 50 hours of volunteer, law-related services during his or her tenure at Marquette Law School. The names of those students who recorded 120 hours or more are noted below with an asterisk to reflect their distinguished service.

We proudly recognize this year's graduates (both December 2012 and May 2013) whose generous contributions of time and talent qualified them for membership in the *Pro Bono* Society.

Phoebe Amberg*
Erica Avery*
Priya Barnes*
Kristopher Bolom
Colleen Boyle*
Bailey Briggs
Ashley Butler
Warren Butler
Nicole Cameli*
Patrick Carroll*
Stephanie Chavers
Chantal Couture*
Colleen Crowley
Alyssa Curtis*
Mark Darnieder
Leonie Dolch
Alexandra Dziamski
Kurt Ellison
Alaina Fahley*
Heidi Gabriel*
Matthew Galvin
Elizabeth Gebarski
Michael Gentry
Barry Gill
Andrea Glasgow*
Nicholas Grode
Daniel Guido*
Nickolas Hagman
Matthew Hanson
Caitlin Herbert*
Amber Hinson*
Valerie Johnston
Michael Jude*
Aneet Kaur*
Jessica Kim
Paul King
Adam Koenings
Jessica Kramer
Margaret Krei
Bryan Kroes
Gregory Kruse
Trent Kubasiak
Dayna Lefebvre
Jenna Leslie
Beau Levinson
Kristin Lindemann*
Katie Lonze
Adam Lopez
Maria Lopez*
Joseph Luedke*
Lauren Malizia
Brian Manda
Patricia Mattingly
Kayleigh Mayer
Timothy Maynard*
Jenna McConnell*
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Sarah McNutt
Kristin Menzl*
Jonathan Meulemans
Matthew Miller
Kristina Minor
Ryan Mironczuk
Christopher Molnar*
Erika Motsch*
Jill Mueller*
Margaret Murphy
Kelli Nagel
Paul Nylen
Kelly O'Neill*
Nathan Osborn
Megan Ostling
Emily Pines
Jay Rabideaux
Lauren Raupp
Kauser Razvi
Thomas Rhodes*
Patrick Ritter
Heidi Roche
Emerita Rodriguez-Alfaro
Anne Rowley*
Jessie Schreier
Nida Shakir*
Allison Shepard
Emily Smith*
Jordan Staleos
Emily Stenhoff*
Max Stephenson
Pamela Stokke-Ceci*
Ariane Strombom
Erin Tapke
Elliott Thron
Michael Tidey*
Alexis Townsley*
Ryan Truesdale
Emily Van Deraa
Benjamin Van Severen*
Aaron Vanselow
Ryan Vega
William Vinovich*
Charles Walgreen
Matthew Weith
Cole White*
Willie Williams*
Melodie Wiseman
Megan Zabkowicz

***Foreclosure* continued from p. 15**

attorneys for such homeowners, can learn more about the Metro Milwaukee Foreclosure Mediation Program or the Wisconsin Foreclosure Mediation Network by visiting mediatewisconsin.com, calling (414) 939-8800, or calling the toll-free statewide hotline at (877) 721-6262.

[1]Don Walker, "Property Values Citywide Dip One-Half of 1%," *Milwaukee Journal-Sentinel* (April 26, 2013), http://www.jsonline.com/blogs/news/204855341.html (viewed June 20, 2013).
[2]Don Walker, "In 4 Years, Value of Milwaukee Residential Property Has Dropped $4.4 Billion," *Milwaukee Journal-Sentinel* (April 10, 2013); Don Walker, "Property Values Citywide Dip One-Half of 1%," *Milwaukee Journal-Sentinel* (April 26, 2013).
[3]Paul Gores, "April Foreclosure Filings Fall to Lowest Level in Seven Years," *Milwaukee Journal-Sentinel* (May 1, 2013), http://www.jsonline.com/more/news/waukesha/205610471.htm (viewed June 20, 2013). Milwaukee/Waukesha foreclosure filings for January through April 2013 dropped by 36%, to 1,667 from 2,623 during the same period in 2012. Experts attribute the decline to a more stable economy and improved servicing of delinquent loans, thereby averting foreclosure early in the default cycle. Russell Kashian, a University of Wisconsin-Whitewater economics professor who tracks residential real estate in the state, said the new numbers and the trends indicate that the region—and probably the state—have turned the corner on foreclosures. "You don't go down 50% just on a fluke," he said. Kashian added, however, that in an economy still "struggling along," the monthly foreclosure filings aren't likely to go much lower for several years. Job growth is needed to further reduce foreclosures, he said, and right now, layoff announcements remain common.
[4]Don Walker, "Foreclosures Inflict Damage on Multiple Fronts," *Milwaukee Journal-Sentinel* (October 13, 2012), http://www.jsonline.com/news/milwaukee/foreclosures-inflict-damage-on-multiple-fronts-gp76sqj-174052081.html (viewed June 20, 2013).
[5]*Id.*
[6]G. Thomas Kingsley, Robin Smith, and David Price, *The Impacts of Foreclosures on Families and Communities* (The Urban Institute, May 2009).
[7]*Id.*
[8]For more information about the Troubled Asset Relief Program of 2008, see http://www.treasury.gov/initiatives/financial-stability/Pages/default.aspx (viewed June 20, 2013).

***Second Amendment* continued from p. 10**

[1]This is not to say that the Supreme Court had not ruled on cases implicating the Second Amendment prior to *Heller. See,* e.g., *U.S. v. Miller,* 307 U.S. 174 (1939). Rather, *Heller* was the first case to answer the question of whether the right to keep and bear arms extends to individual law-abiding citizens independent of their membership in a militia.
[2]In addition to the two questions detailed below, *Heller* also left open the question of whether the Second Amendment is applicable to the States via the Fourteenth Amendment. Two years after *Heller,* in *McDonald v. City of Chicago,* 561 U.S. 3025 (2010), the Supreme Court held that the Second Amendment limits the power of state and local governments to restrict citizens' rights to keep and bear arms in the same way it limits the federal government.
[3]Although the Supreme Court has not ruled on the constitutionality of restrictions on carrying loaded firearms outside the home, the Seventh Circuit ruled in 2012 that the right to bear arms recognized in *Heller* implies a right to carry a loaded gun outside the home. *Moore v. Madigan,* 702 F.3d 933, 936 (7th Cir. 2012).
[4]Wis. Stat. § 175.60.
[5]Wis. Stat. § 167.31.
[6]Wis. Stat. § 941.23(2)(e).
[7]Wis. Stat. § 941.29(1).
[8]Wis. Stat. § 948.60.
[9]Wis. Stat. § 941.29(1).
[10]Wis. Stat. § 175.35.
[11]Wis. Stat. § 948.605(2)(b)1r.
[12]Wis. Stat. § 943.13.
[13]Wis. Stat. § 941.237.
[14]Wis. Stat. § 941.26(1)(a).
[15]Wis. Stat. § 941.28(2).
[16]Wis. Stat. § 941.298.

***Boards* continued from p. 20**

that is not publicly traded, there is significant risk related to insider trading.
- Having a majority of the disinterested directors approve any transaction between the bank and a fellow director, including the bank's purchase or redemption of shares from a director, and the price being paid. The "interested" director may not be counted for the quorum, should not participate in the board discussion, and should not vote. The minutes should reflect as much. Make sure such transactions are on arms-length terms, and document why the board feels they are in the best interest of the bank and its shareholders.
- Adopt and periodically review a Conflict of Interest Policy.

As banking becomes more complex and competitive, it will become more important (and difficult) to assemble and maintain a "best in class" board of directors. At the same time, we believe the quality of a bank's board of directors will be a key factor in distinguishing those banks that excel in the next decade from those that merely survive.

John Reichert is a member of the Financial Institutions Practice Group at Godfrey & Kahn. He may be reached at (414) 287-9674 or at jreichert@gklaw.com.

***Right-to-Work* continued from p. 18**

potentially Governor Snyder, as well. A recall effort targeting Governor Snyder may be less likely because he is up for re-election in 2014, but one might expect a scene similar to what played out in Wisconsin throughout 2011.

The significance of this legislation will also to be felt throughout the Upper Midwest. Like Wisconsin, Michigan may be viewed as a bellwether for union opposition to right-to-work legislation. State and local governments, as well as private employers operating in closed shop states, must remain aware of regional trends and shifting business climates as the right-to-work legislation in their neighboring states begins to take effect. Ohio, Michigan's neighbor to the south, is potentially under more pressure to pass a right-to-work measure now that its neighbor to the west, Indiana, also is a right-to-work state.

Employers should continue to monitor legislative developments, especially as they may affect site selection decisions either to expand existing facilities or open new locations. Also, employers with operations in Michigan must now consider issues including employee communications and other impacts the new Michigan law will have on existing operations.

For more information, please contact the author at 414.225.4994 or at scbeightol@michaelbest.com.

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mmcdonnell@atgf.com

ATG Wisconsin Office
N14 W23800 Stone Ridge Drive, Suite 120
Waukesha, Wisconsin 53188