Justice Matters

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Impact of *Brown* on a Life

Judge Missouri

by William D. Missouri, Circuit Administrative Judge for the Seventh Circuit

[Note: In celebration of this year's Law Day theme "To Win Equality by Law: *Brown v. Board* at 50," the editorial board invited Judge Missouri to share his personal experience.]

On May 17, 2004, the country celebrates the 50th Anniversary of the landmark decision in *Brown v. Board of Education, Topeka et al*[1]. Unfortunately, the celebrations will probably be anemic compared to the actual event. But then no celebration could ever match the significance of *Brown's* impact upon life in America.

Prior to the *Brown* decision, America legally operated under the fiction announced by the U.S. Supreme Court in 1896. The legal fiction referred to is the "separate but equal" doctrine established by the case *Plessy v. Ferguson*[2]. It was under this supposedly fair doctrine that segregation, rooted in post-reconstruction era laws, solidified its hold on the life of recently freed slaves. This was particularly true through-

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Legislative Wrap-Up

Following is the status of court-related bills from the recent General Assembly session.

Court-related bills that were passed by the General Assembly and await the Governor's signature

SB 316—Court fees and costs – Civil Cases – Maryland Legal Services Corporation (MLSC) Fund: This bill will increase the cap on surcharges on civil cases in both circuit courts and the District Court. The surcharge goes into the MLSC Fund to finance legal services for indigent parties to civil cases.

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New Rules Adopted on Court Records Access

The Court of Appeals signed an order on March 4, 2004 adopting Rules 16-1001 to 16-1011. These new rules address access to court records, in both paper and electronic form. The Court agreed to an effective date of October 1, 2004 to allow time to revise existing procedures and to educate all those affected.

Records covered

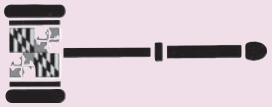
The rules divide court records into four categories:

- Administrative records, which are records concerning court administration, operation and management, including administrative orders;
- Business license records, which are records of business licenses issued by the clerk of court;
- Case records, which are records of one or more specific judicial actions or proceedings. Due to the nature of marriage license records, they are treated like case records; and
- Notice records, which are filed with the court principally to give public notice of the records, e.g., deeds, liens.

Although the presumption of openness applies to all four types of records, they need to be treated differently in some respects. There is no justification for shielding notice records, or any part of them, from public inspection, so they are completely open to the public. Administrative records and business license records are similar in nature and purpose to those kept by executive branch agencies. Access to those records is generally governed by Maryland's Public Information Act. Case records are open to the public except when closed by law, court rule or judge's order. Unless specifically ordered by a court in an individual case, once a case record is admitted into evidence or accepted as evidence in deciding a motion, it is open to the public even if it was previously closed under these rules.

Case records

The rules prohibit public inspection of certain categories of case records as well as specific information in case records. In addition, the rules create procedures for determining whether case records fall within the inspection prohibition, and for providing access to case records that are not otherwise subject to inspection.



There are many categories of case records closed to the public, mostly as a result of specific statutes. For example, case records in adoption and guardianship cases are not open for public inspection. Also, certain specific information in case records may not be disclosed to the public. The rules prohibit inspection of a case record, or part of a case record, that would reveal any part of the social security number or Federal Identification Number of an individual other than the last four digits, for example.

Access compliance and disputes

The rules require that when a case record is filed, a litigant must inform the clerk if the record, or any part of it or any information in it, is confidential under the rules. The clerk is not bound by the litigant's determination. The clerk must keep

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Q & A with Judge Lynne Battaglia

Professionalism Commission Established

In February, the Court of Appeals announced the creation of a Court Commission on Professionalism. The mission of the 36-member commission is to support and encourage members of the judiciary to exhibit the highest levels of professionalism, to support and encourage lawyers to exercise the highest levels of professional integrity in their relationships with their clients, other lawyers, the courts and the public, and to fulfill lawyer obligations to improve the law and the legal system.

Chair of the commission is Court of Appeals Judge Lynne A. Battaglia, who also chaired the Court's Task Force on Professionalism. The task force was created in April 2002 to study the varying levels of professionalism among judges and lawyers across the state. The task force held a series of "town hall" meetings statewide with lawyers to debate and discuss professionalism in the legal field. At the conclusion of the meetings, the task force compiled a report on its findings and made recommendations.

The report can be found at: www.courts.state.md.us/publications/professionalism2003.pdf.

Q: What are your overall expectations for the commission?

All the people on the commission are either representatives of jurisdictions or representatives of entities, so every county is represented as well as all levels of the judiciary, including the U.S. District Court, the Maryland State Bar Association, the Attorney Grievance Commission, the Rules Committee, the Judicial Disabilities Commission, and the two law schools in Maryland. I'm hopeful that we'll be able to bring our experience and knowledge to bear to address the issues identified by attorneys throughout the state.

From the task force there were a number of recommendations, the first of which was to set up this commission. There are other recommendations as well, such as exploring the role of judges in the community and their relationship with members of the bar. Judges are such an important part of this professionalism issue that confronts us. What we found was that in communities where judges interact often with the community and the bar, there was more of a sense of professional atmosphere in that community.

We have to address the traditional notion that judges have to be separate from members of the bar and the community in order to be impartial or be perceived as impartial. At our first meeting, we identified a subcommittee to study this issue, and they will be exploring that duality. But, that's just one of the issues that I expect us to be identifying and addressing.

Court of Appeals Judge Lynne A. Battaglia

Q: The first meeting was held March 31, what happened during the meeting?

Judge Bell opened the meeting by speaking about the importance of this endeavor that we're undertaking. As the chair designee, I explained the mission of the commission, which is to really look beyond the recommendations of the task force and envision what can be done to address the concerns of lawyers about the issues of professionalism.

I talked about the recommendations from the task force and my impressions of what happened during the town hall meetings. Those who attended the town hall meetings gave their impressions as well, and other commission members who were not members of the task force also gave their thoughts on professionalism.

We then had commission members sign up for the eight subcommittees, and identified how we were going to explore the issues within each subcommittee. There are a lot of different ways to study each issue. Some may want to talk to attorneys, others may want to speak with judges, others will do intense research, and still others may want to look at what other states are doing in terms of professionalism. What's important is for the subcommittees to use their time wisely.

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Judge Sets *House* Rules For Media Access

High profile court cases and media interest often go hand in hand. The more significant the case, whether due to the persons involved, the financial implications or the crime committed, the greater the media presence that can be expected. Consequently, when Baltimore City Circuit Court Judge Albert J. Matricciani, Jr. was notified that he would be presiding over the first death penalty case in the City in nearly 10 years—a case that involved the murder of a police officer—he anticipated a strong media presence at the trial. An associate judge for the past nine years in one of the busiest circuit courthouses, Judge Matricciani has heard a number of cases that generated press coverage. Knowing that this case, *State v. Jovon House,* had the potential to attract a great deal of media attention, the judge took several steps to provide the media with adequate access to trial proceedings, while at the same time preserving the sanctity of the court process.

Preparation

"The first thing I did was contact judges and court administrators around the state who handled high profile cases in the past, and judges who recently presided over death penalty cases," said Judge Matricciani. "They were all very cooperative and helpful, and gave me a lot of wonderful ideas, literature to read and useful materials."

Several weeks before the *House* trial began, the judge met with Baltimore City Circuit Court Administrative Judge Marcella A. Holland, Court Administrator Beverly Carter, members of courthouse security and staff from the Court Information Office (CIO) to discuss media access during the trial. Using a protocol order from the case, *State v. Tripp,* written by Howard County Circuit Court Administrative Judge Diane O. Leasure in preparation for her high-profile case in 1999, Judge Matricciani drafted a four-page protocol order that described the parameters for covering the case.

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Women's Hall of Fame

Mike Miller, Maryland State Law Library director, accepts a plaque from Delegate Pauline Menes during the 2004 Maryland Women's Hall of Fame induction ceremony, held in the Miller Office Building in Annapolis on March 23. For 19 years, the Women's Hall of Fame plaques, along with biographical information on over 86 inductees, has resided in the State Law Library.

Among the 86 inductees are four women judges (Rita Davidson, Roslyn Bell, Mabel Hubbard, and Kathryn DuFour) and others who had made outstanding contributions to the law—including Margaret Brent, Etta Maddox, Vivian V. Simpson and Sonia Fuentes. Iif you have an interest in the societal, scientific contributions of famous Maryland women—this is the place to catch up on that piece of Marylandia.

"A lot of what went into the protocol had to do with anticipating the needs of the media, recognizing that there were restraints on the lawyers and myself as to what we could do and say about the case," he said. "We reserved space for them in the courthouse, set up a place to review exhibits and other case materials, designated an area to conduct interviews, created a website to post information about the trial, and coordinated with the CIO to act as the media liaison."

The order, which was placed on the Baltimore City Circuit Court website at www. baltocts.state.md.us/criminal/pressroom.htm, also included security measures, such as the procedure for obtaining press passes, a description of what equipment could be brought into the courtroom, and rules aimed at protecting the jurors and family members of those involved in the case. Once the order was drafted, CIO issued a press release inviting the media to attend a meeting to review the order and ask questions or give suggestions. At the meeting, attendees were provided with a fact sheet on the case (also available on the website above) and the Judiciary's "Cameras in the Courtroom" guide.

"During the meeting, they raised issues that we hadn't thought of, such as providing them with trial exhibits during the lunch break if possible, instead of at the end of the day," said the judge. "The meeting allowed us some time to consider their requests and make decisions before the trial began."

Media Response

As expected, the trial attracted more than a dozen print and electronic media outlets, many covering the three-week trial on a daily basis. Jayne Miller, a veteran reporter for WBAL TV who covered the case, said she was appreciative of Judge Matricciani's efforts to accommodate media requests.

"The fact that he met with the media prior to the trial was extraordinarily helpful," she said. "The procedure for allowing evidence to be photographed after it was [introduced] was very useful and was done efficiently."

Allison Klein, a veteran reporter for the *Baltimore Sun* who covered the case, said that Judge Matricciani set the tone for his staff and court employees to be helpful in assisting the media. She also noted that Judge Matriciani himself was very accessible. "Any time I had a question, even if he couldn't answer it, he was responsive," she said. "He was very organized, orderly and did the best he could to help us."

With the *House* trial concluded, Judge Matricciani has begun preparing for the next death penalty case, which should be heard later this year. He has entered the same media protocol order and will once again be employing the services of CIO, using the Internet to display general case information, and meeting with judges, court officials and members of the press to discuss media-related issues.

"I think the meetings were useful because one individual can't anticipate all the circumstances that may arise," the judge said. "What's important to remember is that we have a job to do and the press has a job to do. What I liked about our relationship is that we worked together to understand each others needs, and [therefore] were respectful of one another."

Diffusing a Time Bomb

Nearing the end of what was shaping up to be a very smooth trial, especially considering the type of case—death penalty—and the intense media coverage, Murphy's Law came into play. After lunch, on the first day of the death penalty phase of the trial, Judge Matricciani was informed that the father of the defendant spoke to a number of jury members about his son's fate.

The media quickly picked up on the situation, and flooded the Sheriff's Office and the judge's chambers with inquiries—specifically looking for clarification as to what happened and what ramifications, if any, would follow. "I called Sally Rankin [CIO Director] and told her what had happened," said Judge Matricciani. "We talked about releasing information to the media about what happened and how it was going to impact the trial, making sure that we protected the jurors."

The judge referred all media calls to CIO. After meeting with the attorneys in the case to discuss the situation, he conducted *voir dire* of the entire jury and issued an order initiating a constructive criminal contempt proceeding against the father. The judge's order was quickly sent to CIO, who distributed it to the media. Fortunately, the incident did not impact the trial and the case moved forward. Members of the media later expressed their appreciation for receiving updates on the situation in a timely manner.

Access to Court Records, cont. from p. 2

the record open if the clerk believes it is subject to inspection under the rules, and must shield information the clerk believes is not subject to inspection. The rules establish a procedure for resolving disputes about whether a record is subject to inspection.

Case records can be sealed, their inspection limited, or opened by order of the court upon motion by a party to the action. The rules allow for preliminary shielding of the record(s) in question while the court considers whether a temporary order should be issued. The rules also describe the issuance of temporary and final orders.

Electronic records and retrieval

The rules describe access permitted to all categories of court records, and to specific case records and information within case records, without regard to the record being in paper or electronic form. A court record in electronic form is open to the public to the same extent as a court record in paper form. The rules permit, but do not require, that paper records be converted into electronic records. The same can be said for creating new electronic records, databases, programs or computer systems. But if they are created, the rules require that they be designed to facilitate access to court records that are open to inspection under these rules.

Procedure for accessing electronic records

Current technology permits the public to have immediate and automatic access to electronic records that are maintained by a court or other judicial agency and that are open to inspection under these rules, via computer terminals at courthouse locations, dial-up modem and web site access. A person seeking access to electronic records to which immediate and automatic access is not available may file a written request with the Court Information Office. That office will review requests, and in collaboration with the Judicial Information Systems and Technology Oversight Board as appropriate, will provide responses. Meanwhile, public access of court records that exists on the effective date of the rules may continue in effect while the Board reviews such access for consistency with these rules. The full text of the rules can be found at www.courts.state.md.us/access/index.html.

Comments on the New Rules

Scott MacGlashan, president of the Maryland Circuit Court Clerks' Association, observed, "Because court records, both judicial and nonjudicial, are presumed to be open to public inspection, it is critical that any rule be fair and consistent.

At the same time, it is the responsibility of any custodian, especially we the clerks of court, to maintain and protect these records in the interest of the public served."

Peter Lally, chair of the Conference of Court Administrators said, "While courthouse records have always been open to the public, the new rules will increase everyone's awareness of what does and does not need to be held confidential.

It will take time, particularly with training employees, about these new procedures. But in the long run, you will have a public that is more informed about business of the courts."

Legislative Wrap-Up, cont. from p. 1

SB 163/HB 511 — Juvenile Law – Waiver of Counsel: Either bill will bar the waiver of the right to assistance of counsel in CINS (Child in Need of Supervision), citation, and delinquency proceedings absent a hearing and specific findings.

HB 746—Marriage Ceremonies–Authorized Officials – Fees: This bill will clarify "judge" for the purpose of performing marriage ceremonies and set a non-refundable fee to be paid to a clerk before a judge performs a ceremony (signed by the governor April 27.)

SB 194/HB 295—Crimes–Substance Abuse–Parole–Civil Commitment–Diversion: Either bill will allow diversion of defendants, by *nolle prosequi*, stet or parole, to treatment recommended after evaluation by the Department of Health and Mental Hygiene or a designee. A county or district administrative judge, or designee, is to be a member of a local counsel.

SB 513/HB 926—Criminal Law–Theft, Bad Checks and Credit Card Crimes–District Court Offenses: Either bill will authorize up to 90-days' imprisonment and/or $500 fine for theft, bad check or credit card offenses as to property valued at $100 or less (signed by the governor April 27.)

HB 1443—Juvenile Causes–Truancy Reduction Pilot Program: This bill will authorize a three-year pilot program in the First Circuit aimed at reducing juvenile truancy.

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HB 624—Criminal Procedure–Expungement–Notice to Defendant: This bill will require that, if all charges against a criminal defendant are disposed of by acquittal, dismissal, *nolle prosequi,* probation before judgment, or stet, the court advise the defendant that he/she may be entitled to expunge the records relating to the charges.

HB 1053—Criminal Procedure–Posting of Bail Bonds–Authorization: This bill will allow a defendant to deposit money with a court, in lieu of a surety's bond, only if expressly authorized by a judicial officer.

SB 418/HB 836—Family Law–Property Disposition–Transfer of Family Use Personal Property: Either bill will enable a court to transfer family use personal property among parties to an annulment or absolute divorce case filed on or after October 1, 2004, with the consent of a lien holder, if any.

Court-related bills that failed or were withdrawn

HB 464, **HB 812 and HB 1234—Sentencing-Revisory Power of Courts–Limitations:** These bills would have authorized a motion by a criminal defendant to revise, modify or reduce a sentence only within 90 days after imposition of sentence absent fraud, irregularity, illegal sentence or mistake; limited a court's power to certain periods after filing of such motion; required a court to notify a victim before acting on a motion; and required a court's decision to change an original sentence to be in writing and state the reasons for the decision.

SB 518/HB 614—Civil Proceedings-Jurors and Alternates: These bills would have enabled a court to order up to nine jurors in a civil case if the court believed that the length of the trial might prevent some jurors from completing their duties. These bills also would have enabled a certain number of jurors remaining after disqualification or other loss of juror to render a verdict. *Note: Other jury-related bills that also failed are SB 150, which would have excused from jury service a mother who is breast-feeding a child under two, and SB 740/HB 91, both of which would have exempted from jury service an individual based on certain religious beliefs.*

SB 516/HB 615—Circuit Courts –*De Novo* Review–Criminal Appeals: These bills would have limited the right to a jury trial in a *de novo* criminal appeal to offenses with imprisonment of more than 90 days authorized or other Constitutional right to a jury trial.

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How 24/7 Rule Has Impacted District Court Judges, Commissioners

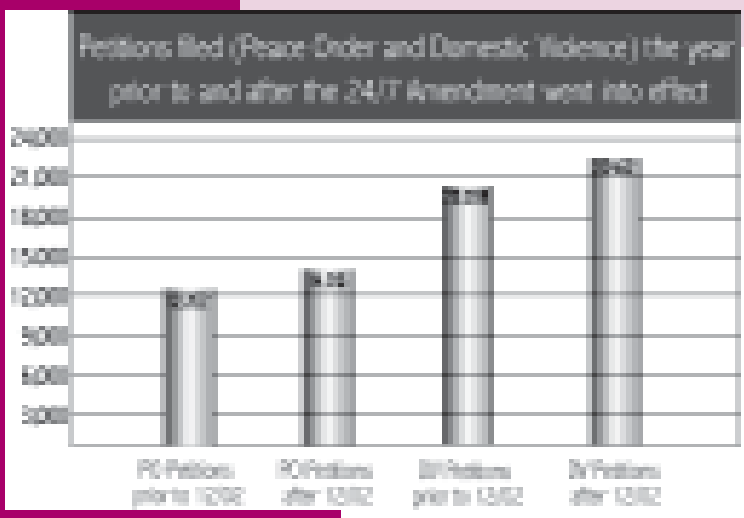
By Hon. William H. Adkins, III

Section 4-504.1 permits Commissioners to hear these petitions "when neither the office of the Clerk of the Circuit Court nor the office of the District Court Clerk is open for business."

On November 5, 2002 the voters of Maryland ratified a constitutional amendment, which authorized District Court Commissioners to hear and rule on petitions for protection from domestic violence (DV) and petitions for peace orders (PO). The General Assembly enacted Section 4-501 through 4-515 of the Family Law Article Annotated Code of Maryland to carry out the mandate of the constitutional amendment. Section 4-504.1 permits District Court commissioners to hear these petitions "when neither the Office of the Clerk of the Circuit Court nor the office of the District Court Clerk is open for business".

Under the new law, which took effect in December 2002, commissioners are available 24 hours a day, seven days a week, 365 days a year to assist citizens who request a petition for protection. One of the immediate questions surrounding the amendment was what effect the new law would have on the operation of the commissioners around the state. After comparing the number of PO and DV petitions filed in the years 2002 and 2003, and communicating with administrative commissioners statewide, it is clear that the 24-7 legislation has significantly impacted the workload of the District Court judges and more particularly the commissioners.

"We realized when we supported the legislation to create these orders that there would be an increase in work for commissioners," said David Weissert, Coordinator of Commissioner Activities for the District Court of Maryland. "The extent of the demand underscores the fact that these orders were needed." In the year prior to December 2002, 32,600 petitions—both PO and DV—were filed. The following year, 36,667 petitions were filed—an increase of 12.5 percent. Of the total petitions filed in 2003, 11,752 were handled as interim hearings by commissioners, which represented 32 percent of the total for 2003. Further analysis reveals a 10.1 percent increase in the number of DV petitions filed between years 2003 and 2002. Looking at the total number of DV petitions filed in 2003 (22,462), 36 percent (8,001) were handled by commissioners as interim hearings. In 2003, 14,215 PO petitions were filed, compared to 12,202 in 2002—an increase of 16.5 percent. Nearly 27 percent (3,751) were filed with commissioners.



A survey of administrative commissioners around the state reveals some enlightening perceptions: According to the commissioners surveyed, it would be *too* speculative to suggest that the 12.5 percent increase in DV and PO petition filings in 2003 was a direct result of the 24-7 legislation. All areas of the District Court's jurisdiction have seen increases in the volume of filings. It is clear, however, that there has been a significant shift in the handling of PO and DV petitions from judges to commissioners.

The commissioners noted that in some rural districts the public is served by "on call" commissioners who remain at home, but are required to come out when needed to handle

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any of the commissioner's work during evenings, weekends and holidays. In most districts, commissioners work shifts, meaning that there is always a commissioner on duty at a commissioner's station. In all districts, the commissioners agreed that there has been a significant increase in the volume of work since the 24-7 legislation went into effect.

In districts served by "on call" commissioners, the actual number of call-outs has not increased dramatically. The time spent on call-outs, however, has grown due to the processing of DV or PO petitions, as well as Application of Statement of Charges (ASC) or to conduct initial appearances. In districts with "shift" commissioners, the increased volume of work has resulted in delays in processing individuals waiting for initial appearances, or those looking to file an ASC and those waiting to bond out an incarcerated individual.

"Commissioners have handled the increased volume with little complaint since they understand the importance of this service to citizens in need," said Weissert, adding that he is currently evaluating staffing needs and factoring the impact of these orders on the workload. "At this time, we are able to handle the workload with existing staff; however, we will continue to monitor the situation."

The other impact 24-7 has had on the District Court is the requirement to hold a third hearing for a DV or PO that was initiated in front of a commissioner. If a commissioner issues an interim order, a second hearing must be held before a District Court judge either as a temporary protective order pursuant to 4-505 or by the end of the second business day the District Court Clerk's Office is open following the issuance of an interim protective order [4-504.1 (9)].

Pursuant to 4-505 (d), the judge may proceed with a final hearing if the respondent appears at the hearing, if the respondent has been served with the interim protective order, or if the court otherwise has personal jurisdiction over the respondent *and* both parties expressly consent to waive the temporary hearing. In some jurisdictions, judges routinely proceed with final hearings, but in other jurisdictions they require both temporary and final hearings.

"What I have always found impressive about this constitutional change is that it was a cooperative effort involving the legislative and executive branches of government and the people of Maryland at the instigation of the judiciary," said James N. Vaughan, Chief Judge of the District Court. "It is a satisfaction to me to see it working as well as it does."

> "We realized when we supported the legislation to create these orders that there would be an increase in work for commissioners. . . . The extent of the demand underscores the fact that these orders were needed."
>
> - David Weissert, Coordinator of Commissioner Activities for the District Court of Maryland

Congratulations to...

- **Baltimore County Circuit Court Judges Vicki Ballou-Watts and Kathleen G. Cox, Baltimore City Orphans' Court Judge Karen C. Friedman, and Baltimore City Circuit Court Judge Carol E. Smith**, all of whom were honored as "Maryland's Top 100 Women," presented by *The Daily Record*. The award, celebrated May 4 at Joseph Meyerhoff Symphony Hall in Baltimore, was created to recognize the outstanding achievements of professional women who reside or work in Maryland.
- **Baltimore City Administrative Judge Marcella A. Holland**, who was inducted into the "Circle of Excellence" and received the sustained achievement award. This award, also presented by *The Daily Record* on May 4, recognizes women who have received the "Maryland's Top 100 Women" award three times.
- **Retired Court of Special Appeals Judge Charles E. Moylan, Jr.,** who received the "Distinguished Graduate Award" on April 15 at Westminster Hall in Baltimore. The award, presented by the University of Maryland School of Law Alumni Association, Inc., recognizes extraordinary accomplishments of the Law Schools' outstanding graduates.

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out the former States of the Confederacy. Those states seemed to relish in taking the doctrine of "separate but equal" to its natural and probable unequal consequences.

I have no personal knowledge of whether segregationist policies in one geographical area were more pernicious, as practiced, than in others. But I do know that regardless of where I was born (Washington, D.C.) or grew up (Sumter County, South Carolina) I was a part of a society that practiced segregation. However, if I was unaware of how segregation was practiced in Washington, D.C., I cannot imagine it being as confining or abhorrent as that practiced in South Carolina—where I spent my early school years.

Hardships

My first day of school, at age seven, came after a walk of about 10 miles. My grandmother held me out of school until I reached the age of seven because of the great distance all of the African-American children in Sumter County District #2 had to walk to attend the high school I ultimately graduated from. Walking 10 miles to Ebenezer High School, which served grades 1-12, was no picnic, and after six months of doing this my grandmother decided that I could not keep up with the big kids, so she re-enrolled me in a school only three miles away from the house.

The disheartening aspect of my early school years was watching the white kids pass by, in their new school bus, as we walked to school. In fact, one of their school bus routes came within a stones throw of our house. I could see the kids on the bus laughing and talking as the driver speeded by. Walking to school continued until my sister, who is five years older than me, reached the ninth grade. At that time Ebenezer received one school bus to service its population. That bus made three trips in the morning and three trips in the afternoon to transport the students to and from school. Initially, my sister walked two and a half miles to catch the bus. My three-mile walk continued because there were no buses for my school.

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When my grandfather and other adults continued to complain about children having to walk so many miles to school to obtain an education, the answer they received was, "We are providing a means of education for colored children. We pay their teachers good salaries. We provide quality school buildings, and therefore we do better than most counties in South Carolina."

My grandfather, a tenant farmer, and other similarly situated adults refused to accept the county's explanation and continued to press for adequate bus transportation for "colored" children. They continued seeking such relief year after year, and in the meantime we were required to attend school every day regardless of weather conditions or needs of the farm. During those years, I often heard the adults discussing segregation and how we were supposed to receive equal treatment under the law. Although I was unaware of what *Plessy* was, I knew that there seemed to be a lawful basis, wrong lawful basis in my mind, for treating African-Americans differently than whites.

This disparate treatment was particularly galling to me when my grandmother would jerk my hand from a water fountain because it was labeled "white only". Also, my first movie experience was in the Lyric Theatre that catered only to blacks. If I wanted to go to one of the other movie houses I had to sit upstairs in the balcony. Moreover, the food establishments in downtown Sumter were not open to African-Americans. Happily, the decision in *Brown* eventually brought changes in the treatment of the African-American population in Sumter County with regard to public accommodations. I say eventually because the schools and public accommodations did not commence integration until 1965.

1954-55

As stated above, Sumter County did not integrate its schools directly after *Brown*, but beginning in September 1954 it provided an appropriate number of buses, including new buses, to transport the children to Ebenezer. As a seventh grader, I thought at last we were given the opportunity to be in school every day and not have to stay home because of bad weather conditions. Notwithstanding those changes, a number of years passed before Sumter County adhered to the *Brown* decision by integrating its schools. South Carolina was one of those States that seemed to interpret "…admit to public schools on a racially nondiscriminatory basis with all deliberate speed…"[3] language in *Brown* to mean with all speed that is appropriate after a long deliberation.

That was in stark contrast to what I discovered upon arriving in Washington, D.C. in January 1955. That year I enrolled in the eighth grade at Langley Junior High School in Northeast Washington, D.C. The school had become integrated as a result of *Bolling v. Sharpe*[4]. Although *Sharpe* was not one of the five cases combined by the U.S. Supreme Court under the heading of *Brown*, it did signal the beginning of the end of segregated education in Washington, D.C. To its credit, Washington, D.C. immediately complied with the *Brown-Sharpe* rulings. Therefore I arrived in Washington, D.C. to an integrated school system.

I say integrated school system since it was such compared to the Sumter County school I previously attended. Integration is relative, however, because Langley Jr. High School's white student population was less than that of the white population of the community surrounding the school. In fact, in 1955 the 1800 block of North Capitol Street, where we lived, and the surrounding area were primarily white. I saw the kids coming and going to school, but the majority of those in my age group were not attending my school.

By the beginning of school in September, 1955 the neighborhood's composition had changed dramatically. That change meant little to me because although I spoke to some of the white neighborhood kids, I never developed a friendship with any of them. By the time we moved to the Northeast Trinidad area in the summer of 1956, the North Capitol Street neighborhood had become 99 percent black.

■ Impact of *Brown*

The impact of *Brown* on life in America in general, and for me in particular, was the opening of educational opportunities that were not present before the *Brown* ruling. I am pleased that my children have not experienced the type of segregation practices that I grew up with, but I am displeased that they do not fully appreciate the history that led to the welcoming of the *Brown* decision. Prior to *Brown*, there were many institutions that excluded African-Americans and other minorities from their ranks. Subsequent to *Brown,* the doors to educational institutions opened, albeit slowly, but they did open.

For the opening of doors and the ability to participate in activities previously barred to them, African-Americans should be forever grateful, and therefore should mark the *Brown* anniversary as a major holiday. But I am sure no one thinks of May 17th as a major holiday because the importance of *Brown* seems dwarfed by the later enacted Civil Rights Statutes of 1964 and 1965.

Furthermore, present society seems free of the pernicious practice of segregation that was so prevalent prior to *Brown*. But, I lament what I consider a failure to take advantage of the opportunities provided as a result of *Brown*. That failure by a significant number of young blacks, especially males, has led to "excuse making" for not doing well in society. My children tell me of their hurt feelings when certain peers call them "bouzie"—short for bourgeois—because they study hard and get good grades. This type of attitude is 180 degrees from the attitudes and views held by most African-Americans prior to *Brown*.

■ Missed Opportunities

Prior to the *Brown* decision, most African-American families considered education the best vehicle for their children to achieve a standard of living better than that enjoyed by them. Those families, therefore, consistently pushed their children to achieve and excel in the educational arena. Sadly, that zest for education seems to have been lost for a significant number of African-Americans who came to adulthood 20 years after *Brown*. The decision in *Brown*, for some, signaled the falling of legal impediments to full participation in America. However, others seem oblivious to what *Brown* meant to blacks that lived in a segregated society. Instead of taking advantage of career opportunities through access to good colleges and universities, they play the "blame game" for their lack of ambition.

It is, therefore, with mixed emotion that I anticipate the 50th Anniversary of *Brown* on May 17. I am happy to be a beneficiary of the *Brown* decision, but I am sad that many fail to appreciate the legacy of the hardworking pioneers who fought for the victory that was realized with the ruling in *Brown* I and II. The decision in *Brown*, although not a panacea, certainly was better than its predecessor, which established the "separate but equal" doctrine. Furthermore, *Brown* signaled the beginning of the modern civil rights era, which led to African-Americans, and all people in America, being provided the opportunity for full participation in this society. *Brown* did not include in its pronouncement the words, "hard work is no longer required to achieve."

[See p. 13 for notes to this article.]

"We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.

. . . We conclude that . . . separate educational facilities are inherently unequal . . . We have now announced that such segregation is a denial of the equal protection of the laws."

- Chief Justice Earl Warren,
U.S. Supreme Court
Brown v. Board of Education
May 17, 1954

Real-time Reporting

By Valerie Dawson, Registered Merit Reporter

Ever wonder how closed captioning comes across your TV screen while you watch the news or your favorite program? Actually, in most instances there is a live court reporter behind the scenes providing that service. Broadcast captioners, also called stenocaptioners, use court reporting skills on a stenotype machine to provide captions for live television programs for deaf and hard-of-hearing viewers through real-time technology. This same technology is being used more and more in the courtroom—mainly due to demand—by specially-trained court reporters.

What exactly is real-time reporting? It is the instantaneous translation of shorthand that is entered by a court reporter on a stenotype machine. The stenotype is connected to a notebook computer, which produces an instant display of live proceedings utilizing computer-aided technology. The resulting text is displayed in real-time on computer monitors for participants in a proceeding, or on projection screens for perhaps a theatre-style audience, a conference or even a courtroom. This highly-specialized skill is particularly helpful in providing deaf or the hearing-impaired with equal access to information. It is also being used by attorneys and judges in legal proceedings, whether in discovery depositions or in a courtroom, in order to follow along as testimony is given.

High-Speed Reporting

Court reporters are trained to use a stenotype machine shorthand theory that enables them to write shorthand on the machine at a minimum speed of 225 words per minute. Computer software translates the machine shorthand into English by comparing it with the court reporter's dictionary, already loaded onto the software, and presto: instant reading.

In legal proceedings the printed copy, or the transcript, which is prepared after a proceeding is completed, becomes the official record—used by lawyers and judges in their future deliberations, or by litigants who want to appeal a decision. The final transcript is the official record, but this technology enables court reporters to hasten the process by producing real-time translation of proceedings. Attorneys can purchase a real-time feed from the reporter, which allows them to watch and preserve the text as it scrolls by as soon as the words are spoken. Feeds can also be sent to judges and counsel for quick reference when ruling on objections. The reporter is often able to provide a draft of the transcript at the end of a proceeding.

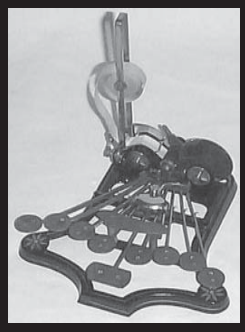
Most people feel that the additional expenses incurred as a result of using real-time are offset by the efficiency gained in having the transcript immediately available. The rough draft of the transcript, though, will have the disclaimer that it is an unedited, unproofed, uncertified rough draft, and therefore, attorneys are prohibited from citing from it as if it were the final certified transcript. Also keep in mind that not every word spoken is in the court reporter's dictionary. Consequently, a mysterious language, called "untranslates" will appear occasionally.

Crafting the Skill

Court reporters are constantly building their dictionaries and working on their writing in an effort to improve the text. In addition, reporters are adding punctuation and speaker identifications that need to be incorporated. As wonderful as real-time is, however, it is only as good as the parties allow it to be. The real-time coming across the screen can be close to perfection if the proceedings are going along at a reasonable pace, nobody is talking over another person, speech patterns are clear, etc. There are

cont. on p. 13

Stenotype Machines—then and now



times when things can get a little dicey, such as when an objection is made but the witness keeps talking, a speaker talks at a very rapid pace, an expert on the stand uses difficult terminology, or someone is speaking softly. In those instances, the real-time technology may include more "un-translates".

Real-time court reporting is a fascinating, yet demanding job. Providing usable, readable copy requires court reporters to exert significant time and effort perfecting their writing style, learning the intricacies of the hardware and software, building a job and personal dictionary, and incorporating real-time-specific changes. Efficient and accurate real-time is a value-added skill, and some reporters invest their own time and money purchasing expensive hardware and software and attending continuing education classes and seminars (although in most jurisdictions a real-time reporter is compensated for that extra skill).

■ Growing Field

With a growing demand for court reporters willing to learn real-time reporting, Congress is looking to provide incentives to those interested in learning this craft. The "Training for Real-time Writers Act" seeks $60 million over three years to train real-time writers to meet the captioning and Communication Access Real-time Translation (CART) requirements established by the Telecommunications Act and the Americans with Disabilities Act of 1990. Court reporters familiar with CART, which assists the deaf and hard-of-hearing community, can provide more personalized services, such as accompanying a deaf student to college classes or assisting a hearing-impaired juror in a courtroom. The funding will benefit the state courts as well, with the addition of more trained real-time reporters coming into the field. Something to think about the next time your watching CNN with closed captioning.

Brown, cont. from p. 11

Notes

1. 347 U.S.483, 744 S.Ct 686, 98 L.Ed 873 (1954). Represented class actions originating in the four states of Kansas, (*Brown, et al, v. Board of Education of Topeka, Shawnee County, Kansas, et al*); South Carolina (*Briggs et al, v. Elliott et. al*.); Virginia *(Davis et. al. v. County School Board of Prince Edward County, VA, et. a*l), and; Delaware (*Gebhart, et. al. v. Belton, et. al*.) by which minor negro plaintiffs sought to obtain admission to public schools on a non-segregated basis. After this ruling by the U. S. District Court and the Delaware Supreme Court, the cases were consolidated for argument in the U.S. Supreme Court under the *Brown* name.

2. 163 U.S. 537, 163, S.Ct 1130,41 L.Ed. 256 (1896). Homer Adolph Plessy, a Louisiana citizen of mixed descent, seven-eighths Caucasian and one-eighth African blood, was ejected, and jailed on June 7, 1892, from an East Louisiana railway car dedicated to the exclusive use of the white race. He was ultimately convicted by Judge John H. Ferguson and noted an appeal from the conviction. The Louisiana Supreme Court affirmed the conviction after which the U. S. Supreme Court granted *certiorari*.

3. *Brown v. Board of Education* (Brown II), 349 U.S. 294, 75 S.Ct.753, 99 L.Ed. 1083 (1955)

4. 347 U.S. 497, 74 S.Ct.693, 98 L.Ed. 884 (1954). *Bolling v. Sharpe* involved a class action brought by African-American children in the District of Columbia who sought admission to schools on a non-segregated basis. The U.S. District Court for the District of Columbia dismissed the complaint and certiorari was granted by the U.S. Supreme Court. This case could not be consolidated with *Brown* because the District of Columbia is governed by federal law, thereby requiring the application of the Fifth instead of the Fourteenth Amendment to questions of equal protection. Chief Justice Warren, in a one-and-a-half page opinion, found that even though the Fifth Amendment did not contain, as did the Fourteenth Amendment, an equal protection clause, the concept of equal protection and due process were not mutually exclusive. He, therefore, concluded that racially segregated public schools in the District of Columbia was a denial of the due process of law guaranteed by the Fifth Amendment to the Constitution.

Saving time and money ....

Maryland Businesses Using Mediation and Other Dispute Resolution Methods

A new study released by the Court's Mediation and Conflict Resolution Office (MACRO) and the Maryland Chamber of Commerce indicates that instate companies recognize the costs of conflict and are turning to mediation and other non-litigious dispute resolution processes to save time and money.

"In recent years, the judiciary has taken steps to expedite high-cost business cases, and courts across the state are increasingly using mediation and other dispute resolution processes to resolve cases short of trial," said Chief Judge Bell. "Our hope is that Maryland businesses will use this study as a blueprint to refine their approach to conflict management."

The study was conducted by MACRO's Business Alternative Dispute Resolution (ADR) Initiative to provide a benchmark from which organizations can assess the effectiveness of their dispute resolution practices against the components of an Integrated Conflict Management System. Such a system: (1) establishes dispute resolution options for all types of problems and all people in the workplace; (2) creates a culture that welcomes dissent and encourages resolution of conflict at the earliest possible time; (3) provides multiple access points to dispute resolution resources; (4) presents multiple options for addressing conflict; and (5) establishes systemic support structures.

"This study is our first major attempt to assess the Maryland business community's perspectives on the universe of available conflict management approaches," said Bob Fleishman, Chair of MACRO's Business ADR Initiative. "Our team worked very hard in recent years to get the word out in the business community that effective conflict management saves time and money and preserves relationships."

Based on extensive survey research and analysis, the study's main recommendations emphasize the importance of:

- Getting senior-level management and general counsel support for ADR programs;
- Taking time to examine recurring disputes and their frequency;
- Designing dispute resolution processes that can be applicable in multiple areas (e.g., procurement, employee relations) and at various levels throughout a business (e.g., senior management, supervisors, "rank and file" employees);
- Creating an oversight body to support the visibility and credibility of the conflict resolution program; and
- Getting employees at all levels to recognize when mediation or other dispute resolution methods are appropriate and to know how to access the corresponding tools and systems appropriately.

"Never before has anyone taken such an in-depth look at conflict management approaches within Maryland's business community," said Kathleen T. Snyder, President and CEO of the Maryland Chamber. "This study offers an opportunity for dialogue about best practices in business dispute resolution, while setting a benchmark by which we can review future progress in this area."

'Trading Spaces' at Montgomery County District Court

By Judge Patricia Mitchell and Administrative Clerk Jeffrey Ward

You've seen it on television, 'Trading Spaces,' the reality show in which two families exchange homes for a weekend and are given $1,000 to redecorate one room. Employees in the Civil Division of the Montgomery County District Court Clerk's Office took this concept one step further.

Late last year, the local public defender's office moved out of the old, gray courthouse; leaving room for the District Court to relocate 28 staff members from shared desk/cubicle space to office space. District Court headquarters authorized the move, but just like the cable television show there was a budget—not $1,000 but just enough petty cash for paint (no funds for labor). District Court civil clerks accepted the challenge.

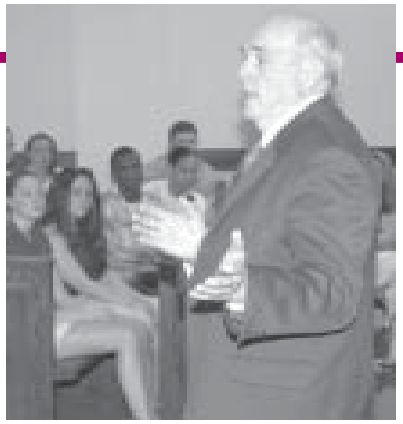
Armed with five gallon buckets of antique white paint, along with colorful paint purchased out-of-pocket by employees, community service workers began to create a brighter, livelier office space. "Team Civil" (the Civil Department) joined in the painting of offices, working spaces, mediation and reception areas and used their own money, family members and labor—including weekends and holidays—to accomplish the task. Curtains and borders helped personalize the new working spaces. The public waiting area was given a beautiful "scales of justice" border specially purchased by Civil Division Chief Bonnie Bell, with donations from District Administrative Judge Cornelius Vaughey, Administrative Clerk Jeff Ward and Civil Clerk Connie Liller.

Inspired by the efforts going on around them, the District Court Commissioners painted their office, moved furniture around, and found new space for administrative and managing commissioners, as well as a courthouse-based commissioner station that is open to the public. Landlord-tenant Clerks Marketa Williams and Tiwana Richardson, who were not part of the move, decided to paint their office as well.

Despite the upgrades and renovations, the "not to be replaced" 16-year-old carpet was ever-visible. Remarkably, staff from the Alternative Dispute Resolution Office found limited funds for new carpeting and installation. Although this endeavor delayed the move, the end product was worth the wait. The new carpet was the finishing touch for this "design on a dime" effort. Visitors to the District Court in Rockville should take special note of the antique, brass wall-mounted clock, located at the main entry to the new civil division. The clock, which was part of the original architecture of the courthouse and tarnished to near invisibility, was hand-polished and restored to its original sheen by Bell. The District Court in Rockville is indebted to the many district six employees, family and friends who helped with this special "Trading Spaces" effort.

Top: Clock at entrance to civil division.
Middle: Civil Clerk Shea Gassaway
Bottom: Civil office.

Judges Drive Home Hard Lessons



More than 100 students from North County, Meade and South River high schools in Anne Arundel County attended the "Schools in the Courts" program, held April 21 at the Anne Arundel District Courthouse. The three-hour program educated students about the real consequences of making the wrong choices—namely drinking and driving, use of drugs and other crimes.

The program began with the students observing unscripted, actual criminal cases being heard before District Court Judge Vincent A. Mulieri [left]. Chief Judge Bell and District Court Chief Judge Vaughan [right] then joined Judge Mulieri in encouraging the students to make the right choices in their lives.

Cpl. T. J. Bathras, of the county police Traffic Safety Unit, provided statistics on the number of alcohol-related arrests and incidents in the county, and Harold Rohrback, Jr., of the Drinking Driving Monitor Program, briefed the students on the requirements of probation and the financial burden of being convicted of drunk driving. Former convicted drunk drivers also gave sobering comments about the choices they made. This is the third year of the program, which was created and orchestrated by Judge Mulieri.

DRUG COURT

MAY 2004 - Drug Court Month

In recognition of Drug Court Month, Drug Treatment Courts across the State of Maryland will be holding special events throughout the month of May. A listing of events is below and online at http://www.courts.state.md.us/dtcc/announcements.html. Contact the Drug Treatment Court Commission of Maryland at 410/946-4908 for more information.

May 12	Baltimore County Drug Court Graduation	Towson, MD
May 13	Photographs and Words by Juvenile Drug Court Graduates	Annapolis, MD
May 14	Baltimore City 10-Year Drug Court Celebration and Graduation	Baltimore, MD
May 14	Harford County Adult Drug Court Open House	Edgewood, MD
May 26	Drug Treatment Court Commission Commencement	Annapolis, MD
TBD	Dorchester County to accept first participant into its Juvenile Drug Court Program	Cambridge, MD

Legislative Wrap-Up, cont. from p. 7

SB 697/HB 822—Permanency for Families and Children Act of 2004: These bills would have revised substantively the provisions for termination of parental rights (TPR) proceedings, guardianship and adoption.

SB 647 and HB 450—Circuit Court Judge–Appointment and Term of Office: These bills proposed Constitutional amendments altering the method of selection and tenure of circuit court judges. **HB 1544**, which would have altered statutes to eliminate primary elections, was also withdrawn.

SB 501, HB 490 and HB 797—Nonviolent Drug Offenders–Drug Treatment Alternative to Incarceration: These bills would have required the commitment of certain drug dependent offenders to treatment services rather than incarceration.

F Todd Silver

State Mock Trial Championship

Park School participants: Back row, left to right with grade in parenthesis: Alex Trazkovich (10), Benjamin Weinstein (10), Benjamin Bloom (12), Bradley Mendelson (10), Chief Judge Robert M. Bell, Matthew Rogers (12), Joseph Rosenberg (10), Adam Rogers (10).

Front row, left to right: Vera Eidelman (11), Allison Brandt (10), Dahlia Silberg (11), Whitaker Cohen (11), Ms. Christina Forbush (Teacher/Attorney Coach), Prescott Gaylord (Assistant Coach).

For the ninth straight year, the Court of Appeals hosted the annual High School State Mock Trial Championship, sponsored by the Maryland Judicial Council, the Maryland State Bar Association, and the Citizen Law-Related Education Program of Maryland. Chief Judge Bell volunteered to preside over the case, which was deliberated by high school students from the Park School of Baltimore and Richard Montgomery High School in Montgomery County.

News from the Bench

J. Barry Hughes was appointed to the Carroll County Circuit Court bench on April 23, 2004. Hughes, a longtime practicing attorney, fills the vacancy created by **Judge Luke K. Burns**' retirement.

The following judges have also recently retired from the bench. No additional appointments have been made as of press time.

Hon. Raymond E. Beck, Sr., Circuit Court for Carroll County

Hon. John F. Fader, II, Circuit Court for Baltimore County

Hon. Donald Johnson, Circuit Court for Dorchester County

Hon. Paul A. McGuckian, Circuit Court for Montgomery County

Hon. A. Gordon Boone, District Court for Baltimore County

Hon. I. Marshall Seidler, District Court for Baltimore County

Hon. R. Noel Spence, District Court for Washington County

In Memoriam

Harry E. Clark, Jr., retired judge who sat on the Talbot County Circuit Court bench from 1966 to 1983.

A. Owen Hennegan, retired judge who sat on the Baltimore City Circuit Court bench from 1983 to 1990.

Marshall A. Levin, retired judge who sat on the Baltimore City Circuit Court bench from 1971 to 1987.

Judge James M. Rea, retired judge who sat on the Prince George's County Circuit Court bench from 1980 to 1993.

http://www.lawlib.state.md.us/

On-Line Law in the Old Line State

On Thursday, April 22, 2004, the Maryland State Law Library hosted "On-Line Law in the Old Line State," in honor of National Library Week and Legal Research Teach-In 2004. The half-day workshop featured demonstrations by the three branches of Maryland State government on the law-related information available from their web sites.

Featured speakers included Jacqueline Curro of the Department of Legislative Services Library; Dennis Schnepfe of the Division of State Documents; and Todd Silver of the Court Information Office (shown here). At the end of the workshop, participants were all able to use the web sites effectively to access Maryland law.

Professionalism, cont. from p. 3

Q: You mentioned previously that one of the first tasks of the commission will be to develop standards of professional conduct and to create guidelines and sanctions.

There are separate subcommittees that will identify and address all of these tasks. We have a subcommittee that will be looking at whether indicia of professionalism can be identified and whether there is a code of professional conduct that goes beyond the code of ethics. They will look at what other jurisdictions have done, what judges as well as bar associations have done to try to identify aspirational goals, and will try to memorialize those goals.

Another subcommittee will study the development of sanctions for judges to use; while another group will be looking at creating a course for errant attorneys. Another subcommittee will be looking at the new admittees' course to see how it can be improved.

Q: The task force and its subsequent report provided plenty of momentum for this cause. How do you plan to maintain that momentum with the commission?

I think that lawyers are really people who want to seize the day, and so I'm hopeful that by charging the commissioner members with certain tasks, providing them with interns during the summer to enable their research, and by setting specific deadlines, that we'll keep this moving. It's important for us to set the tone for the next generation of lawyers, as well as identify the problems that have been addressed by lawyers across the state. I'm hopeful that in a year's time we will have a compendium of recommendations to take to the next step—whether it be sending those recommendations to the Rules Committee or presenting them to the Court of Appeals. I'm hopeful that a year from now we've really moved beyond the exploration stage to making recommendations.

Q: Since the task torce's creation two years ago, have you seen any improvements in professionalism across the state?

What I've seen is that people are discussing the issue more often. People are always asking me what we discovered and mentioning that they read our report. So, there's been an increased awareness of the issues, but you'd have to ask the judges and attorneys out in the field if they have witnessed actual improvements. I have always felt that Maryland lawyers are some of the most professional that I've dealt with, and I've dealt with lawyers from all over the country.

Professionalism Commission Subcommittees

- Judges' Role in the Bar and with Communities
- Standards of Professional Conduct, Including Identifying Indicia of Professionalism
- Professionalism Guidelines and Sanctions for use by Judges
- Discovery Abuse Issues, including Appointment of Discovery Masters
- Development of a Professionalism Course for Lawyers who Exhibit Unprofessional Behavior
- Update Existing Professionalism Course for New Admittees
- Defining Unauthorized Practice of Law
- Mentoring

Court Information Office

Robert C. Murphy Courts of Appeal Building
361 Rowe Blvd.
Annapolis, Maryland 21401
www.courts.state.md.us

To learn more about *Brown v. Board of Ed*, visit these sites:

www.abanet.org/brown/home.html

www.justiceatstake.org

upcoming

- JUNE

16-19 Maryland State Bar Association Annual Meeting. Clarion Resort Fontainebleau Hotel, Ocean City, MD

- JULY

23 District Court Administrative Judges Committee Meeting

- SEPTEMBER

1 Law Clerk Orientation for incoming circuit and District Court law clerks, Annapolis, JTC

22-23 Judicial Institute Programs, Annapolis, JTC

- OCTOBER

1 District Court Judicial Conference

21-22 Judicial Institute Programs, Annapolis, JTC