THE LAW FORUM
UNIVERSITY OF BALTIMORE SCHOOL OF LAW

DEPARTMENTS

Letter from the Dean .................................................................1
Letter from the Editor in Chief ..................................................3

ARTICLES

Prosecuting Past Civil Rights Claims in Maryland
By John Maclean .................................................................4

RECENT DEVELOPMENTS

Att’y Grievance Comm’n of Md. v. Braskey..................................11
Brooks v. Lewin Realty III, Inc. ..................................................13
Denicolis v. State. .................................................................15
Frase v. Barnhart .................................................................17
Friendly Fin. Corp. v. Orbit Chrysler Plymouth Dodge Truck, Inc. ....19
In re Jason W. .................................................................21
Park Station Ltd. P’ship, LLLP v. Bosse ..................................23

MARYLAND GENERAL ASSEMBLY UPDATES - page 25
We are coming to the close of a very exciting year at the School of Law. In my short three years as Dean, we have seen significant progress and some daunting challenges. Everything we have accomplished has been the result of the joint efforts of faculty, students, staff, alumni, and the administration. We survived a significant reduction in state assistance in fiscal year 2003 and a correspondingly significant increase in tuition for the current academic year. In the meantime, the health of the School of Law keeps getting better and better. Applications to and enrollment in the School of Law is up and increasing and the School of Law is enjoying more attention, more accolades, and a better reputation than ever before.

This year has been particularly gratifying as we strived for programmatic excellence and professional development within our community. We continued the lecture series, *Journey to Justice*, commemorating the 50th Anniversary of the historic Supreme Court decision in *Brown v. Board of Education*. We had the honor of featuring a talk by Charles Hamilton Houston, Jr., the son of Charles Hamilton Houston, architect of the legal strategy that led to the *Brown* decision. On the same evening, we recognized the contributions of William Murphy, Jr., Esq. to the field of litigation, with the inaugural Charles Hamilton Houston Award for Litigation Excellence. The *Journey to Justice* series also included talks by Chief Judge Robert M. Bell of the Court of Appeals of Maryland and Theodore Shaw, Esq., Associate General Counsel of the NAACP Legal Defense Fund, as well as panel discussions and brown bag lunches led by faculty and administrators of the School of Law. Judge Bell also received the Robert M. Bell Award for Leadership in Public Service at the annual auction sponsored by the University of Baltimore Students for Public Interest. Students organize and conduct the auction and raised more than $16,000 to support student summer internships in public interest organizations. Additionally, students raised more than $1,100 for charity at this year’s Barrister’s Ball.

Our students have excelled in other arenas. The National Civil Rights Moot Court Team produced the “Best Brief” and advanced to the quarter final round in the national competition. The Intellectual Property Law Society held its 5th Annual Symposium, and recognized a local company, *180s*, for its efforts in advancing intellectual property law, with the Outstanding Maryland Company Award. Third-year student Mishonda Baldwin completed her second term as the National Chair of the National Black Law Students Association (NBLSA) at the 36th Annual Meeting in Boston. During her tenure, participation in the annual meeting tripled in attendance as more than 400 BLSA chapter members from around the country gathered for education and edification.

Not to be outdone by our students, the faculty of the School of Law continued to provide local, regional and national leadership in the classroom, in scholarly pursuits, and service. At the January 2004 Annual Meeting of the Association of American Law Schools, Professor Barbara White was elected chair of the Antitrust & Economic Regulation Section; Professor Tim Sellers was elected chair of the International Law Section; Dean Gilbert Holmes was elected as a member of the Executive Committee of the Part-time Divisions Programs Section; and Professors Jose Anderson, Barbara Babb, and Jonathan Lipson were elected as members of the Executive Committees of, respectively, the Defamation & Privacy Section, the Family & Juvenile Law Section, and the Commercial & Related Consumer Law Section. Moreover, Professor Jane Murphy currently serves as the co-chair of the ABA Committee on Clinical and Skills Education and Professor Robert Rubinson recently completed his tenure as the Reporter for Ethics 2000, a task force established by Judge Bell. Since July 1, 2003, twenty-four faculty members have published fifteen law review articles, six books and more than seventeen newspaper columns and commentaries. This level of scholarly production rivals any school in this region and most schools nationwide. In March, at the beginning of the national debate on same-sex marriages, fifteen School of Law faculty members conducted a media workshop to inform members of the local media and our community on the implications, ramifications, and complications of same-sex marriages. The workshop included family law experts,
property, tax and estate planning experts, and civil litigation, conflicts of law and constitutional law experts, and clearly demonstrated the breadth and depth of our faculty’s expertise as well as the complexity of this very controversial area. Finally, faculty members continue to receive recognition for their excellence in teaching, mentoring and public service. Professor Tim Sellers became a University System of Maryland Regent’s Professor in the fall, and Professor Jane Murphy received the Board of Regents Faculty Award for Excellence in the spring.

The final area of accomplishments I wish to highlight is our outreach to alumni. Over the past two years we have established and staffed the External and Alumni Relations (E&AR) office in the School of Law. Through E&AR, we have expanded the annual reunion honoring the members of four classes – 10th, 20th, 25th, and 50th reunion years – to create a Homecoming Weekend to which we invite all alumni, and highlight five classes – the 10th, 20th, 25th, 40th and 50th reunion years; we have converted the Alumni-Student Golf Outing to the Alumni Golf Tournament and tripled participation; and, we have conducted seven regional alumni receptions – two each in Howard, Prince George’s, and Montgomery Counties, and one in Washington, D.C. We have also held alumni receptions and visits in New York, Chicago and Miami, and alumni dinners in San Antonio, Boston and Dallas. We have created a new and invigorating structure within the Law School Advisory Council and begun to establish relationships with the Governor’s office in Annapolis and the Mayor’s office in Baltimore City. As a result, while we still have much work to do in this area, private support of the School of Law has exceeded levels achieved in every year, except one, of the last ten.

Clearly, the University of Baltimore School of Law is on very solid ground and we are looking forward to greater success in becoming the top regional law school on the East Coast with a national reputation for many of our programs. We are engaged in a strategic planning process to hone in on areas of emphasis and strategic objectives for the next three years, and we invite you – our faculty, students, alumni, staff, administration and friends – to partner with us on this journey to excellence, satisfaction, and service that is the future of the University of Baltimore School of Law.

Gilbert A. Holmes
Dean and Professor of Law
Letter from the Editor in Chief

With the publication of Volume 34.2, my tenure as the Law Forum’s Editor in Chief comes to an end. The Editorial Board has accomplished much this year. I hope each Editorial Board member takes with them the sense of pride, achievement, and satisfaction that comes with meeting an extraordinary challenge head on— and conquering it. We leave the Law Forum in an excellent position for the upcoming school year and in very capable hands. I am confident that the new Editorial Board, under Bryan Hughes’ leadership, will pick up the torch and continue to improve the Law Forum’s reputation as a valuable educational and informational resource for busy Maryland practitioners.

This Volume contains case summaries across an array of topics, with which every lawyer who practices in Maryland should be familiar. Our article, Prosecuting Past Civil Rights Crimes in Maryland, written by University of Baltimore School of Law graduate John Maclean, discusses the evidential challenges to reopening unsolved civil rights cases. Finally, we have included summaries of legislation passed during the 2004 Maryland General Assembly Session. One new law of particular importance was introduced by Delegate Carmen Amedori – House Bill 1463 – which prohibits personal liability for personal injury to or death of any person who enters another person’s dwelling or place of business with the intent to commit burglary or a crime of violence.

Many thanks from myself and the Editorial Board to our Associate Editors and Staff Editors for their trust in us to move the Law Forum forward. Their commitment to quality and dedication to our team effort allowed us to meet our very heady goals. My personal thanks to Allisan Pyer, RD Editor, for selecting and completing the final edit of our Recent Developments; to Jenny Piateski, Assistant RD Editor, for selecting and compiling the General Assembly Updates; to John Borelli, Production Manager, for ensuring the Staff Editors met the deadlines; and to Megan Bramble, who worked closely with me on article edits. Thanks also to Dean Gilbert Holmes, Assistant Dean Stephen Wilson, and Karen Taylor for their assistance with the budgetary and administrative aspects of the Law Forum. And lastly, I thank my husband, Barry, for his unwaivering support through my law school trials and tribulations.

This publication also marks the end of my law school days at the University of Baltimore School of Law. There are too many Professors and Administrative Staff to thank individually for their encouragement and support; however, please know that you made my law school experience a memorable and valuable one. Best wishes to you all!

Brenda N. Taylor
Editor in Chief
PROSECUTING PAST CIVIL RIGHTS CRIMES IN MARYLAND

By: John Maclean

Time’s glory is to calm contending kings,
To unmask falsehoods and bring truth to light ....
– William Shakespeare

I. Introduction

On October 18, 1933, in Princess Anne, Maryland, a mob of at least 500 white Eastern Shore residents gathered around the county jailhouse. They cried out for “justice.” They wanted to see George Armwood, an African American male charged of attacking an eighty-one-year old elderly white woman, punished. A fight ensued at the jailhouse door; thirteen State Troopers were injured. Overcome, officers failed to stop the stampede.

The mob dragged Armwood from his cell to the street. They raised up his body and lynched him. The next day, Governor Albert Cabell Ritchie ordered the Attorney General of the State of Maryland to take charge and lead the investigation. With the aid of detectives from Baltimore, several suspects were later arrested. One of the suspects was a police officer. However, no one was ever charged or convicted in the death. Case closed.

Imagine – you are a prosecutor in Maryland with enough evidence on the perpetrators of this crime to bring the case to trial. Would you reopen the case seventy years later and prosecute, knowing that you will face evidentiary problems and possible public backlash?

Over the last twenty years, state prosecutors are increasingly addressing similar questions and, in some cases, deciding to prosecute. Maryland prosecutors could soon face such decisions. In addition to the Armwood murder, there are other unresolved civil rights crimes in Maryland’s past, including: (1) at least six deaths and 600 injuries during the 1968 Baltimore City riots; (2) a non-fatal shooting of a police officer in 1967; and (3) a mob lynching in 1931.

Aside from evidentiary hurdles, should Maryland prosecutors try these cases, they will inevitably face issues of politics. To be sure, prosecuting unresolved civil rights cases would create its own niche of prosecutorial rules and pitfalls in Maryland.

II. Should We Prosecute Unsolved Civil Rights Crimes?

Legal scholars, historians and civil rights attorneys differ on whether past unsolved civil rights crimes should be prosecuted. Dr. Sylvia Bradley, former American history professor at Salisbury University, argues that crimes in the distant past, like the 1930s, should not be prosecuted. According to Dr. Bradley, such prosecutions would revive animosity or racial dissent, which was buried by progress during the civil rights movement and through time. Further, Dr. Bradley suggests that more recent civil rights crimes should be prosecuted as a matter of criminal justice and in light of the evidence specific to the case, not as hostile response to racial acts committed in the past.

Other state civil rights leaders and historians disagree. Neil Duke, a Maryland attorney and NAACP Baltimore Chapter First Assistant Vice-President, contends that past civil rights crimes should be prosecuted without regard to negative feelings that may resurface. In Mr. Duke’s view, society needs to confront past crimes in order to move forward. Professor Sherrilyn Ifill, an expert on 1930s civil rights crimes, agrees with Mr. Duke. Professor Ifill asserts that since mass lynchings are crimes committed by many members of a community, they are crimes committed essentially by society. According to Professor Ifill, society must reconcile its past problems to improve and understand present circumstances. Lastly, Cambridge Police Department Chief Kenneth Malik opines that police officials should investigate and prosecute these past crimes because they are crimes, and, as such, all crimes should be followed...
through to closure. Bradley, Duke, Ifill, and Malik raise fundamental issues relating to the vindication of past civil rights crimes. Indeed, prosecuting such crimes should be undertaken if there is enough evidence. Moreover, unresolved past civil rights crimes are no different than any other crime and should not be afforded special treatment to bypass the criminal justice system. In addition, prosecuting the perpetrators of these crimes would serve as reinforcement to minority groups that their rights would be heard by society and the criminal justice system. By prosecuting past civil rights crimes, the criminal justice system, which is cast in a shadow of distrust by many in the minority community, could demonstrate that it strives to serve their interests, not merely the interests of the wealthy, the few, and the privileged.

III. Types of Evidence

As many law students may recall from their second year of law school, there are two types of evidence: direct and circumstantial. According to Black’s Law Dictionary, direct evidence is “evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.” Circumstantial evidence, on the other hand, “consists of proof of collateral facts and circumstances from which the existence of a main fact may be inferred according to reason and common experience.”

Prosecutions of unresolved civil rights crimes fall into three case scenarios: (1) the case against the defendant will only involve direct evidence; (2) the case will involve a combination of direct and circumstantial evidence; and (3) the case will involve only circumstantial evidence showing the defendant’s guilt.

Cases in which prosecution occurs years after the crimes were committed tend to use circumstantial evidence. Indeed, lack of direct evidence could be a reason for not prosecuting these cases in the first place. Naturally, state investigations conducted years after these crimes occurred would more likely discover circumstantial evidence than direct evidence, which may have been lost or destroyed. As a result, it is likely that prosecutors would rely on circumstantial evidence, with a scant level of direct evidence, to seek indictments and, thereafter, successfully prosecute past civil rights cases. To be sure, the United States Supreme Court held it is possible to secure a conviction with only circumstantial evidence of a defendant’s guilt, but it is uncommon that a case against a defendant would only involve circumstantial evidence.

One conviction, however, stands out for its near total dependency on circumstantial evidence. In 1963, the nation was stunned by the bombing of the Sixteenth Street Baptist Church in Birmingham, Alabama in which four young African American girls were killed and a number of other people injured as a result of a domestic terrorist attack by Klu Klux Klansman Robert Edward Chambliss. The church was destroyed. The only stained glass window in the church that remained in its frame showed Christ leading a group of little children, but the face of Christ was blown out. President John F. Kennedy, yachting off Newport, Rhode Island, was notified by radiotelephone almost immediately and Attorney General Robert F. Kennedy ordered Burke Marshall to Birmingham. Within days, at least twenty-five FBI agents, including bomb experts from Washington, were sent to investigate the bomb scene.

Despite substantial federal and local resources, the State of Alabama indicted Chambliss in September of 1977. As the appellate court noted, by that time, the case against Chambliss was largely circumstantial. The prosecutor’s office relied on statements and conduct by Chambliss evidencing his anger and racism towards African Americans (i.e., his membership in the Klu Klux Klan), his knowledge of bomb making, and a conversation with his niece a day before the bombing in which he stated that “he had enough stuff put away to flatten half of Birmingham” and “[y]ou just wait until after Sunday morning, and they will beg us to let them segregate … just wait … [y]ou will see.” More damning, however, was a statement made in the presence of his niece on the Saturday evening following the bombing. According to Chambliss’ niece, a television broadcast mentioned the likelihood of murder charges stemming from the bombing and that Chambliss responded, “It wasn’t meant to hurt anybody. It didn’t go off when it was supposed to.” Additionally, Ms. Gertrude Glenn testified for the State and said that she saw
Chambliss’ automobile parked on Seventh Avenue North behind and across an alley from the church at two o’clock on the morning of the explosion. No one, though, saw Chambliss at the crime scene moments prior to or after the bombing. Nevertheless, Chambliss was convicted for the murders in 1977 and died in jail eight years later at the age of eighty-one.

Affirming the trial court’s decision, the appellate court emphasized, “As we have indicated this case is based on circumstantial evidence. Appellant did not testify. The evidence presented by the State [is uncontradicted].” Moreover, the court noted, “Where the State relies upon circumstantial evidence for a conviction testimony may permissibly take a wide range and any fact from which an inference may be drawn is competent evidence.”

While Chambliss relied almost exclusively on circumstantial evidence, most cases, including past civil rights crimes, require and involve both circumstantial and direct evidence. For instance, Alabama prosecutors used circumstantial evidence of the defendant’s conflicting statements, which placed him at the crime scene at the approximate time of the homicide. The prosecution also presented direct evidence that the murder weapon was observed in the defendant’s home prior to the crime.

IV. Conviction Standards & Appellate Review

From almost day one in criminal law class (or by watching The Practice or Law & Order), law students learn that in a criminal trial the prosecution has the burden of persuasion as to every element of the case. The Court of Special Appeals of Maryland has held that a judge must view the evidence in the light most favorable to the prosecution when determining whether the prosecution has established a prima facie case. The general standard of proof for a criminal conviction is belief beyond a reasonable doubt. That standard applies to the three types of evidentiary scenarios mentioned supra.

As the Chambliss case demonstrated, rarely, however, does the process of litigating civil rights crimes end at the trial court stage; appellate courts often weigh in. Appellate courts have upheld convictions if the direct and circumstantial evidence supported rational inferences from which the trier of fact could have been convinced beyond a reasonable doubt of the essential elements of the crime. However, federal and state case law dictates that convictions based solely on circumstantial evidence are also subject to other standards. The Court of Special Appeals of Maryland has stated that inferences of circumstantial evidence must be inconsistent with any theory of innocence. When considering the evidence, a conviction may be achieved even if there is a weak link in the chain of custody, meaning not every link of the chain needs to reach the reasonable doubt standard. The culmination of evidence, however, must reach the reasonable doubt standard.

If the evidence presented does not counter all theories of innocence there is a “mere suspicion” of the defendant’s guilt. Both federal and state case law hold that a “mere suspicion” of guilt cannot lead to a conviction. Since the “mere suspicion” standard is subjective, case law is inconsistent with regard to convictions and acquittals. Cases resulting in acquittals with seemingly strong evidence to the contrary include one in which the defendant was seen away from the scene shortly after the crime occurred. In another case, a defendant’s presence in a room where a theft occurred was not strong enough evidence to meet the “mere suspicion” standard because others had access to the area.

The discussion, supra, assumes, naturally, that a prosecutor is able to build a case for trial to satisfy these standards for conviction. In cases of past civil rights crimes, however, that assumption is difficult to realize. Indeed, piecing together the prosecution of a past civil rights crimes is in and of itself a difficult endeavor.

V. Litigation Problems

Although circumstantial evidence may result in (or sustain) criminal convictions, evidentiary problems may arise while gathering evidence for cases years after the crimes occurred. Such problems include the admission of out-of-court statements, which may include statements from dead or lost witnesses, and racially sensitive evidence.
Another problem is the possibility that evidence has been lost in the intervening years.

The issue of the admissibility of out-of-court statements is significant, if not crucial, in the context of past civil rights crimes. It is well recognized that out-of-court statements of witnesses may not be admissible hearsay if they are made long after the crimes occurred and are not subject to cross-examination. However, United States Supreme Court precedent and the Maryland Rules of Evidence (Rules) provide exceptions. In *Williamson v. United States*, the Supreme Court held that out-of-court statements are admissible through hearsay exceptions. In Maryland, some exceptions include: (1) present sense impressions; (2) excited utterances; (3) statements of then existing mental, emotional, or physical condition; (4) former testimony; (5) statement under belief of impending death; (6) statement against interest; and (7) statement of personal or family history. Indeed, in the 1994 prosecution of Medgar Evers, killed in 1963, the Mississippi Supreme Court relied on a former testimony exception to allow a transcript of an unavailable witness into evidence because the witness had been cross-examined during previous testimony.

Past civil rights crimes prosecuted today, however, must overcome yet another evidence law burden — the landmark *Crawford v. Washington* decision. There, Justice Antonin Scalia, writing for a 7-2 majority, concluded that based on the Framers’ understanding of the Sixth Amendment confrontation right, testimonial statements of a witness absent from trial are admissible only where the witness is unavailable, and only where the defendant had a prior opportunity to cross-examine. Justice Scalia emphasized that the history of the Confrontation Clause supports two principles: (1) the principal evil at which the Clause was directed was the civil law mode of criminal procedure, particularly the use of *ex parte* examinations as evidence against the accused, and (2) the Framers would not have allowed admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify and the defendant had a prior opportunity to for cross-examination. An extra-judicial statement is testimonial in nature if the statement was made “under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial.”

Aside from the devastating effect *Crawford* may have on the prosecution of child molesters, it may severely limit the breadth of available evidence against defendants in civil rights cases. Indeed, statements made to police officers or prosecuting offices years ago may not be admissible if the witness is now dead or is otherwise unavailable to testify.

As if *Crawford* is not in and of itself an unmovable hurdle, lost evidence may be. However, pursuant to the Rules the previous existence of lost evidence may be proved through authenticated public records describing the evidence. Also, a copy of a lost transcript may be admitted if authenticated.

Naturally, the prosecution of civil rights crimes often includes racially sensitive evidence, ranging from evidence showing racial prejudice of the defendant to evidence showing membership in traditional racist organizations. Rule 5-403 permits the admission of relevant evidence unless it is substantially outweighed by unfair prejudice.

**VI. Beyond the Law: The Politics of Prosecuting Past Civil Rights Cases**

In the media age, polls drive campaigns and government action. True, there are some politicians with the courage and conviction to do what is right regardless of the political consequences. Yet, more and more, as the Karl Roves and James Carvilles of America drive the political decision-making process, major decisions must first be politically correct. Prosecuting past civil rights cases is not an exception to this prevailing trend. Today, these cases benefit from a more favorable political environment.

“Before Emmett Till’s murder, I had known the fear of hunger, hell and the Devil. But now there was a new fear known to me – the fear of being killed just because I was black,” wrote Mississippi civil rights activist Ann Moody. Emmett Till was a fourteen-year-old from the South Side of Chicago visiting his relatives near Money, Mississippi. Joined by his cousin, Emmett met up with
some other black children outside Bryant’s Grocery and Meat Market.83 Outside of the store, Emmett showed off a picture of a white girl who was a friend of his in Chicago.84 One of the boys told Emmett, “Hey, there’s a [white] girl in that store there. I bet you won’t go in there and talk to her.”85 Emmett took up the dare and went into the store. As he left, he told the woman, “Bye, Baby.”86 A few days later that woman’s husband, Roy Bryant, returned from a trucking job.87 The woman told her husband about the incident in the grocery store. In response, he and his brother-in-law, J.W. Milam, took Emmett from his cousin’s home and killed him.88 Emmett was tortured with a metal fan that crushed his face and then he was dumped into the Tallahatchie River with a noose of barbed wire.89 Neither man was convicted of a crime.90 As Chicago Sun-Times writer Mary Mitchell noted, “No one – not a judge or jury – would dare convict the men who meted out the punishment.”91

It has taken this nation, and Mississippi, forty-nine years to resurrect this case. Recently, Senator Charles Schumer (D-New York) and Congressman Charles Rangel (D-New York) urged the federal government to re-examine the 1955 murder of Emmett.92 On May 10, 2004, the United States Department of Justice and the Leflore County district attorney announced that they would reopen the case, which was prompted largely by two documentaries that claim the crime involved as many as ten people, not just the two men acquitted.93

VII. Conclusion

Prosecuting past civil rights crimes draws immediate media attention. The recent Till case developments and the 2002 prosecution of a York, Pennsylvania mayor for the 1969 race-riot murder of a young black woman are merely some examples.94 These cases, these moments of past sin and the failings of our criminal justice system, are instant dramas. Yet, for prosecutors, these cases may be among the most important tests of their respective careers, both legally and politically. America has moved faster, and stronger than most nations in addressing a history of violence and injustice. We still have further to go. Another step in the direction of healing is to open these cases, try these cases – should the evidence to prosecute exist – and ensure that justice is served.

ABOUT THE AUTHOR

John Maclean graduated from the University of Baltimore School of Law in May 2003, where he served as the Managing Editor of the University of Baltimore Law Forum. Thereafter, he clerked for the Honorable Wanda Keyes Heard, Associate Judge of the Circuit Court for Baltimore City. He was sworn in as a member of the Maryland Bar in June 2004.

2 Ritchie Ouster Urged; Lynch Probe Widens, Wash. Post, Oct. 20, 1933, at 1A; Telephone interview with Sherrilyn Ifill, Professor, University of Maryland School of Law (Oct., 2002).
3 Ritchie Ouster Urged, supra n. 3, at 1A.
4 Id.
5 Professor Ifill interview, supra n. 3.
6 Id.
7 Ritchie Ouster Urged, supra n. 3, at 1A.
8 Id.
9 Id.
10 Professor Ifill interview, supra n. 3.
11 Id.
12 Id.
14 Telephone interview with John Wallace, Sergeant, Baltimore Police Department Arson Investigation Unit (Oct., 2002); Federal Forces Rise to 4,900 as Violence Fans Out from the Slums, BALT. SUN at 1A, April 9, 1968; Sharp Drop Reported in Lootings and Fire Between 9 and 11 P.M., BALT. SUN at 1A, April 10, 1968.
15 Telephone interview with Kenneth Malik, Chief, Cambridge, Maryland Police Department (Oct., 2002).
16 Parallel in Probes, BALT. SUN, unknown page (October 25, 1933)
17 Telephone interview with Sylvia Bradley, Ph.D., former Professor of American History, Salisbury University (Oct., 2002).
18 Id.
19 Id.
20 Telephone interview with Neil Duke, First Vice-President, NAACP Baltimore, Maryland Chapter (Oct., 2002).
21 Id.
22 Professor Ifill interview, supra n. 3.
23 Id.
24 Chief Malik interview, supra n. 16.
25 BLACK’S LAW DICTIONARY 577 (7th Ed. 1999).
26 Finke v. State, 56 Md. App. 450, 468 A.2d 353 (1983); BLACK’S LAW DICTIONARY 576 (7th Ed. 1999)(“Circumstantial Evidence. Evidence based on inference and not on personal knowledge or observation.”).
28 Interview with Byron Warnken, Esq., Associate Professor, University of Baltimore School of Law (Nov., 2002).
29 Id.
30 Id.
34 Id.
35 Id.
36 Id.
37 Id.
38 Chambliss, 373 So.2d at 1188.
39 Id. Judge Harris stated, “The evidence in this case is circumstantial and the passage of time presents many complex problems which we must resolve.”
40 Id. at 1192-94.
41 Id. at 1194.
42 Id.
43 Id. at 1197.
44 Six Dead After Church Bombing, supra n. 35.
45 Chambliss, 373 So.2d at 1210.
46 Id.
47 See Smith v. State, 145 Md. App. 400, 404, 805 A.2d 1108, 1111 (2002) (an individual’s status as a driver/owner of a car was sufficient to permit the inference that driver/owner had knowledge of contraband in the vehicle); Braxton v. State, 123 Md. App. 599, 720 A.2d 27 (1998) (knowledge of a crime may be inferred by owning an item used in a crime); Hebron v. State, 331 Md. 219, 230, 627 A.2d 1029, 1034 (1993) (possession of a stolen money order supported the inference that defendant was a thief); Pressly v. State, 295 Md. 143, 147, 454 A.2d 347, 349 (1983).
51 Finke, 56 Md. App. at 480, 468 A.2d at 368.
52 Smith, 145 Md. App. at 400, 805 A.2d at 1108.
53 Finke, 56 Md. App. at 468, 468 A.2d at 353.
54 Id.
55 Finke, 56 Md. App. at 469, 468 A.2d at 363.
56 See Petrovich v. United States, 205 U.S. 86, 27 S. Ct. 456, 51 L. Ed. 722 (1907); Pressly, 295 Md. at 143, 454 A.2d at 347 (stating, it is not necessary that the circumstantial evidence exclude every possibility of a defendant’s innocence, or produce an absolute certainty in the minds of the jurors); Nichols, 5 Md. App. at 340, 247 A.2d at 722.
59 Hickory v. United States, 160 U.S. 408, 423, 16
Articles

S. Ct. 327, 333, 40 L. Ed. 474, 479 (1896) (holding that the fact that defendant fled after allegedly committing murder did not create a presumption of guilt and was merely a circumstance to be considered and weight with other evidence).

60 Wilson v. State, 319 Md. 530, 536, 573 A.2d 831, 834 (1990); See also Wear, 127 Md. App. at 664-65, 756 A.2d at 400 (noting that while there was evidence of appellant’s motive and intent to have the building burned, such evidence was not sufficient proof to show that she successfully solicited someone to do so); Collins v. State, 318 Md. 269, 280, 568 A.2d 1, 6 (1990) (citing Brown v. State, 281 Md. 241, 378 A.2d 1104, (1977)) (emphasizing that evidence must corroborate testimony in order to convict).


63 Md. R. Evid. 5-803(b)(1).

64 Md. R. Evid. 5-803(b)(2).

65 Md. R. Evid. 5-803(b)(3).

66 Md. R. Evid. 5-804(b)(1).

67 Md. R. Evid. 5-804(b)(2).

68 Md. R. Evid. 5-804(b)(3).

69 Md. R. Evid. 5-804(b)(4).

70 Beckwith v. State, 707 So. 2d 547, 604-05 (Miss. 1997) (citing Mitchell v. State, 572 So.2d 865, 870 (1990)).

71 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004).

72 Id. at 1369, 158 L. Ed. 2d at 197.

73 Id. at 1363, 158 L. Ed. 2d at 192.

74 Id. at 1366, 158 L. Ed. 2d at 194.

75 Id. at 1368, 158 L. Ed. 2d at 193.


77 See id. at 547 (the original court transcript was lost).

78 Md. R. Evid. 5-901(b).

79 Md. R. Evid. 5-803(8).

80 Beckwith, 707 So.2d at 547; Chambliss, 373 So.2d at 1185.


82 Id. at 39.

83 Id. at 41.

84 Id. at 42.

85 Id.

86 Id.

87 Williams, supra n. 82, at 42.

88 Id.


90 Id.

91 Id.


The Court of Appeals of Maryland held disbarment is appropriate when an attorney collects an unreasonable fee combined with a course of unintentional misrepresentation. *Attorney Grievance Comm’n of Md. v. Braskey*, 378 Md. 425, 836 A.2d 605 (2003).

In November 1989, James F. Braskey (Braskey) was retained by John Dormio (Dormio) to represent him in a personal injury claim. Dormio incurred $30,000 in medical bills covered through Medicare and administered by Blue Cross/Blue Shield (BC/BS). BC/BS gave timely notification to Braskey of its subrogation lien on any proceeds recovered. Representation was on a contingency fee basis, with Dormio responsible for all incurred costs. Braskey negotiated an automobile policy settlement in the amount of $25,000 and deposited the check in his own attorney trust account.

Braskey withdrew $6,250, his one-fourth contingency fee, as well as $750 for costs incurred. The $18,000 balance remained in the trust account. Braskey, not knowledgeable in negotiating with BC/BS, made only cursory attempts to contact BC/BS to resolve the lien on Dormio’s proceeds. In February 1996, Braskey and Dormio agreed to divide the remaining $18,000.

In early 1996, after learning Dormio had suffered a stroke, Braskey withdrew an additional $9,000 in legal fees. After Dormio’s death, Braskey contacted Dormio’s estate representatives and offered to split the $18,000. The estate representatives refused, demanding the money be placed in an interest-bearing account. On July 10, 1997, Braskey falsely represented to Dormio’s estate representatives that the entire amount was in his trust account, but failed to return the $9,000 from his personal assets until July 14, 1997. In July 1999, Braskey again withdrew $9,000 from the account and made a series of misleading statements regarding the location of the $18,000. The estate representatives filed a formal complaint with the Attorney Grievance Commission (AGC) in July 1999.

Braskey cooperated fully with the AGC and, after almost three years, the AGC filed charges through Bar Counsel. In March 2002, Braskey filed a motion to dismiss on due process grounds. Attorney Grievance Commission Administrative and Procedural Guidelines § 5-104 specifies the Inquiry Panel must complete disciplinary hearings within forty-five days from receipt of the file. The Inquiry Panel and Review Board denied Braskey’s motion to reconsider his dismissal motion and the Review Board recommended disciplinary charges be filed. Braskey then filed a motion to dismiss with the Circuit Court for Washington County, which lacked authority to rule on the motion to dismiss and denied his motion.

The Court of Appeals of Maryland conducted an independent review of the record and accepted the hearing judge’s findings of fact. *Id.* at 444–45, 836 A.2d at 617. The court found no violation of due process, noting that even though the proceedings were delayed, Braskey was afforded notice and opportunity to defend in a full and fair hearing. *Id.* at 442, 836 A.2d at 616.

In deciding to disbar Braskey, the Court of Appeals of Maryland looked at the combination of Braskey’s statements and conduct. *Id.*. The court found Braskey’s statements in letters to the estate representatives concerning the location of the $18,000 false and misleading, whether or not he intended to deceive them. *Id.* at 449, 836 A.2d at 620. The court further stated the test to determine if there is a dispute is whether there was in fact a fee disagreement between the parties concerning the respondent’s entitlement to the amount withdrawn at the time of the withdrawal. *Id.* at 450, 836 A.2d at 620. Finding the rule unambiguous, the court held an attorney may not withdraw a portion
Recent Developments

of deposited funds when the attorney’s right to receive that portion is disputed by the client. *Id.*

The court next looked at Braskey’s conduct concerning the excessive fees charged. The court agreed with the hearing judge’s conclusion that Braskey attempted to collect an unreasonable fee and held the collection of an unreasonable fee is “conduct prejudicial to the administration of justice.” *Id.* at 452, 836 A.2d at 622.

In making its decision, the court looked at four factors set out in the ABA Standards for Imposing Lawyer Sanctions: 1) the nature of the ethical duty or duties violated; 2) the attorney’s mental state; 3) the extent of the actual or potential injury caused by the attorney’s misconduct; and 4) the existence of aggravating or mitigating factors. *Id.* at 454, 836 A.2d at 622. Regarding the duties violated by Braskey, the court found all four factors were met. *Id.* The court agreed with the hearing judge’s conclusion that, even though Braskey was inexperienced in negotiating a subrogation agreement with BC/BS, he failed to maintain funds in the proper account. *Id.* As to the actual injury caused by Braskey’s misconduct, the court again agreed with the hearing judge’s conclusion that the money Braskey withdrew represented an unreasonable fee. *Id.*

Finally, the court took note of several mitigating factors: Braskey had practiced law since 1977 without prior disciplinary problems, he was truly remorseful, acted promptly, and cooperated fully with the AGC, and most importantly, the court agreed with the hearing judge’s conclusion that Braskey was “not a thief.” *Id.* at 456, 836 A.2d at 624. The court concluded it was irrelevant whether Braskey’s misrepresentations and conduct were intentional or fraudulent in determining if the Rules of Professional Conduct were violated. *Id.* at 452, 836 A.2d at 622. Disbarment is the appropriate sanction when attorneys engage in misrepresentation combined with collecting an unreasonable fee. *Id.* at 461, 836 A.2d at 627.

With this decision, the Court of Appeals of Maryland sends a message loud and clear to practicing attorneys in Maryland. The court is committed to protecting the public from conduct that betrays the trust placed in attorneys. Innocent intentions and lack of knowledge will not protect an attorney from severe sanctions when his or her conduct brings the legal profession into disrepute.

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Brooks v. Lewin Realty III, Inc.:  
A Prima Facie Case in a Negligence Action Involving Lead Paint Violations May Be Established Without Notice to the Landlord

By: Sarah Miller

The Court of Appeals of Maryland held a prima facie case in a negligence action involving lead paint violations may be established without notice to the landlord. Brooks v. Lewin Realty III, Inc., 378 Md. 70, 835 A.2d 616 (2003). Additionally, the court held a landlord is presumed, as a matter of law, to have notice of a defective paint condition. Id.

In August 1988, Shirley Parker (Parker) rented a house in Baltimore City. The house’s interior was painted at the beginning of the tenancy. Soon thereafter, Parker’s daughter, Sharon, moved into the house and Sharon gave birth to a son, Sean. In the early spring of 1991, Lewin Realty (Lewin) purchased the house at auction. Marvin Sober, a Lewin stockholder, did a walk through inspection of the house and discovered peeling, chipping, and flaking paint in many areas, including Sean’s bedroom. Parker and Lewin entered into a new lease agreement, and Lewin did not re-paint the house’s interior. Sean was diagnosed with an elevated blood lead level in February 1992. Four months later, the Baltimore City Health Department (BCHD) contacted Sharon about Sean’s blood lead level and issued a lead paint violation notice for the property to Lewin. Upon inspection of the property, BCHD found fifty-six areas of peeling, chipping, and flaking lead paint.

Sharon filed a five-count complaint individually and on behalf of her son against Lewin in the Circuit Court for Baltimore City. Four claims were dismissed, leaving the complaint of alleged negligence with regard to Sean. A jury found Lewin liable. Lewin appealed and the court of special appeals reversed and remanded. The court of appeals granted certiorari to elucidate the notice requirement in negligence actions based on lead paint violations of the Baltimore City Housing Code (BCHC).

The existing Maryland rule regarding the notice requirement in lead paint cases comes from the holdings of Richwind v. Brunson, 335 Md. 661, 645 A.2d 1147 (1994) and its progeny. Id. at 75, 835 A.2d at 619. Richwind’s holding placed the burden of pleading and proving the landlord knew or had reason to know of the defective paint condition on the plaintiff to establish negligence. Id. That court also held a landlord has no duty to inspect a premises for defective paint conditions during the lease period. Id.

The issues before the court were whether 1) a landlord has a duty to inspect a premises for a defective paint condition at any time during the lease period; 2) a plaintiff has the burden of pleading and establishing the landlord had notice of a defective paint condition; and 3) the landlord should, as a matter of law, be presumed to have notice of the dangerous paint condition. Id. at 75-76, 835 A.2d at 619.

From the beginning, the court endorsed Petitioners’ argument that Richwind applies only in the absence of an applicable statutory scheme. Id. at 78, 835 A.2d at 620. Specifically, Petitioners argued Richwind incorrectly joined two common-law lines of cases requiring notice to an alleged tortfeasor – failure to warn of known latent defects and breaches of covenants to repair – in determining liability for injuries resulting from a violation of a statute or ordinance. Id. at 76, 835 A.2d at 620. Neither of these common-law doctrines applied in this case since the controlling standard was provided in the BCHC. Id., 835 A.2d at 619. The court noted when a defendant’s duty is set out in a statute or ordinance, “violation of the statute or ordinance is itself evidence of negligence.” Id. at 78, 835 A.2d at 620.

Under this common-law rule, a prima facie case in a negligence action may be made if the plaintiff proves a violation of a statute or ordinance designed to protect a specific class of persons which
Recent Developments

includes the plaintiff and that the violation proximately caused the injury. *Id.* at 79, 835 A.2d at 621. Proximate cause is determined by evaluating whether the harm suffered was the type that the statute’s drafters intended to thwart and whether the plaintiff was within the protected class. *Id.*

Applying this rule to the instant case, the court opined Sharon and Sean were obviously within the class of persons protected by the BCHC. *Id.* at 81, 835 A.2d at 622. The court continued by laying out all relevant BCHC sections and how the BCHC supports the notion that a landlord has a duty to keep a leased premises in good repair and safe condition. *Id.*, 835 A.2d at 623. Under the plain meaning of the BCHC’s language, the “nature of the landlord’s duty is continuous” throughout the lease period. *Id.* at 84, 835 A.2d at 624.

BCHC Section 909 enables a landlord to carry out his or her duty by allowing a landlord to enter a leased premises for such continuous maintenance as necessary during the lease period. *Id.* Lewin’s primary argument was the landlord surrendered control of the premises at the inception of the lease and thus, had no duty to inspect the premises during the lease period. *Id.* The court refuted Lewin’s argument because of the control granted to a landlord under Section 909. *Id.*

The court ended its analysis by explaining *Richwind’s* major flaw. *Id.* at 87, 835 A.2d at 626. *Richwind* extended to occupants the notice requirements of Sections 301 and 303 of the BCHC, which requires the Commissioner of Housing and Community Development to notify a landlord of alleged violations. *Id.* Sections 301 and 303 address only the notice requirements of an administrative agency before the agency may act upon a BCHC violation; the sections do not address notice requirements of occupants. *Id.* at 88, 835 A.2d at 626. The court held the BCHC “does not make the landlord’s notice of defective condition a factor with regard to the landlord’s duty to the tenant.” *Id.* at 89, 835 A.2d at 627.

By removing the burden of notice from the plaintiff, the court made the establishment of a *prima facie* case based on negligence more attainable for Maryland plaintiffs. To avoid liability, landlords must have a greater awareness of their leased premises’ condition and must conduct periodic inspections to remain in compliance with the BCHC.

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Recent Developments

Denicolis v. State:
Failure to Notify Defendant and Counsel of Jury Note Requesting Clarification of Definition of Solicitation is a Violation of Maryland Rule 4-326(c)

By: Victoria Z. Sulerzyski

The Court of Appeals of Maryland held a failure to notify defendant and counsel of a jury note requesting clarification of the definition of solicitation is a violation of Maryland Rule 4-326(c). Denicolis v. State, 378 Md. 646, 837 A.2d 944 (2003). In so holding, the court emphasized the Maryland Rules require communication between a jury and a judge shall be communicated to a defendant and his or her counsel. Id.

In 2000, Christopher A. Denicolis (Denicolis) and two co-defendants were awaiting trial for several armed robberies. Judge Dana Levitz of the Circuit Court for Baltimore County sentenced the co-defendants to twenty years in prison. After the co-defendants were sentenced, Denicolis approached his cellmate, Kenneth Moroz (Moroz), and solicited the murder of Judge Levitz and prosecutor Mickey Norman. Moroz agreed to commit the murders and a price was negotiated. Later, seeking relief for himself, Moroz told police that Denicolis had solicited him to murder the judge and prosecutor. Moroz obtained a recording of their discussions regarding the details of the murders, wherein Denicolis stated he was not completely set on killing Mr. Norman, but Judge Levitz remained his primary target. Denicolis was charged by criminal information with two counts of solicitation to commit murder. Neither count identified an intended victim.

Denicolis filed an Omnibus Motion pursuant to Maryland Rule 4-252 arguing the charges be dismissed because of defects in the institution of the prosecution and in the charging documents. However, the motion was silent as to the specific defects. The motion was denied and the trial began.

The court, in its preliminary jury instructions, stated the State alleged the petitioner solicited an individual to murder Judge Dana M. Levitz on or about January 11, 2001, while he was incarcerated. The judge said nothing about solicitation for Mickey Norman's murder or the allegations of Count I of the indictment. Similarly, in opening statements, the prosecutor stated Denicolis was only being charged with solicitation to murder Judge Levitz and was silent on the alleged solicitation to murder Mickey Norman. Not until the judge instructed the jury at the end of the evidence stage was the alleged solicitation to murder Mickey Norman mentioned. No objection was made on the record by the defense, and no exceptions were made.

The jury passed four notes to the judge. The note in question concerned a clarification of solicitation. The note was in the record, but the record was silent as to whether the court responded to the note. There was no date-stamp on the exhibit. Counsel was unaware of the note until after the verdict and sentencing, when appellate counsel discovered it in the record.

On appeal, the Court of Special Appeals of Maryland held the record was silent with respect to the jury note and Denicolis had failed to establish that error was committed. The Court of Appeals of Maryland granted certiorari to determine whether the court erred in failing to notify Denicolis and counsel of the jury note.

The court began its discussion by stating the requirements of Maryland Rule 4-326(c). This rule “requires a trial court to notify the defendant and the State’s Attorney of the receipt of any communication from the jury pertaining to the action before responding to the communication.” Id. at 656, 837 A.2d at 950. Further, the rule specifies, “all such communications between the court and jury shall be on the record in open court or shall be in writing and filed in the action.” Id. The rule partially preserves a defendant’s constitutional and common-law right to be present at every critical stage of trial. Id.

Maryland law requires a criminal defendant to be present
Recent Developments

during communications between the jury and judge. *Id.* The court referred to *Midgett v. State*, 216 Md. 26, 36-37, 139 A.2d 209, 214 (1958), where it held a defendant has the right to be present “when there shall be any communication whatsoever between the court and the jury[,] unless the record affirmatively shows that such communications were not prejudicial or had no tendency to influence the verdict of the jury.” *Id.*

Appellants have a responsibility to provide a sufficient factual record for the appellate court to determine whether clear error occurred. *Id.* at 657, 837 A.2d at 951. However, Denicolis was incapable of producing such a record because the record was silent as to the jury note. *Id.* Appellant and his counsel were not informed about the jury note until after the verdict was rendered and sentence imposed. *Id.* at 657-58, 837 A.2d at 951. Even though the record was silent on whether the trial judge responded to the jury note without consultation, the court determined the record was sufficient enough to determine an error had occurred. *Id.* at 658, 837 A.2d at 951.

The court further reasoned once error is established, it becomes the State’s burden to show, beyond a reasonable doubt, that it was a harmless error. *Id.* at 658-59, 837 A.2d at 952. Here, the State failed to meet its burden. *Id.* The court referred to its holding in *Taylor v. State*, 352 Md. 338, 351, 722 A.2d 65, 71 (1998), in which it stated “even an ambiguous record cannot support a harmless error argument, and if an ambiguous record is insufficient, so, surely, is a silent record.” *Id.* at 659, 837 A.2d at 952. Accordingly, the court reversed and remanded. *Id.*

Denicolis raised a second issue on appeal. *Id.* at 649, 837 A.2d at 947. The court concluded the issue was not properly preserved, but did address the issue of whether the trial court erred when the criminal information failed to meet the constitutional requirement of informing the defendant of charges against him as guidance to the trial court on remand. *Id.* at 655, 837 A.2d at 950.

The complaint did not specify by name the targets of the solicited murders. *Id.* at 659, 837 A.2d at 952. Appellant argued there was confusion since the two intended victims were not specifically named in the indictment, and Maryland Rule 4-202(a) requires the complaint specifically and concisely name potential solicitation victims. *Id.* The court stated the rule does not require a victim to be specifically named and discussed the rule’s legislative intent. *Id.* at 662, 837 A.2d at 953-54.

The holding in *Denicolis v. State* makes it clear that a failure to notify a defendant and counsel of a jury note is a violation of the Maryland Rules. Furthermore, the court emphasized Maryland Rule 4-326(c) requires any communication between a jury and a judge shall be communicated to defendant, his or her counsel, and the State’s Attorney prior to responding to a jury’s question. The court of appeals also provided guidance to criminal law practitioners that Maryland Rule 4-202(a) does not require a victim to be specifically

named in an indictment for solicitation to commit murder.
**Frase v. Barnhart:**
Conditions Cannot Be Placed on Custody Awards Because Conditions Impermissibly Interfere with Parents’ Right to Make Child Rearing Decisions

By: Thomas Sova

The Court of Appeals of Maryland held conditions cannot be placed on custody awards because conditions impermissibly interfere with parents’ right to make child rearing decisions. *Frase v. Barnhart*, 379 Md. 100, 103, 840 A.2d 114, 115 (2003). In so holding, the court of appeals made it clear that conditions placed on custody are inappropriate because they violate parents’ due process guarantees. *Id.*

Deborah Frase (Frase) was a single mother of three children – Justin, Tara, and Brett. Frase struggled with drugs and alcohol for quite some time. During November 2001, Frase and her children lived with her mother, Ms. Keys. Around that time, Frase was arrested and she requested that Ms. Keys place Tara and Brett with another couple. Ms. Keys ignored her daughter’s request and placed the children with two families she knew from church – the Eskows and Barnharts.

Upon her release from jail, Frase regained custody of Tara and Brett and moved into a trailer with two other adults. The trailer’s crowded living conditions proved to be too much and Frase allowed the Eskow family to take physical custody of Tara. Frase retained custody of Brett. The Barnharts filed a complaint in the Circuit Court for Caroline County seeking to regain custody.

Frase attempted to obtain counsel, and testified that overloaded or conflicted schedules precluded her from getting a legal service agency attorney. Frase, therefore, filed a *pro se* answer and counterclaim. At the April 15, 2002 scheduling hearing, Frase requested the court to appoint an attorney for her son, but she did not request an attorney for herself. On May 20, 2002, an evidentiary hearing was held before the master of the Circuit Court for Caroline County. Frase appeared without counsel and did not request counsel. Frase testified, presented witnesses, and cross-examined Barnhart’s witnesses.

The master filed a report and recommendation on June 3, 2002 and recommended Frase be given custody of Brett provided she met the following conditions: (1) immediately apply and obtain housing at Saint Martin’s House; (2) Brett spend every other weekend with the Barnharts, so long as his brother, Justin, was still in their home; (3) cooperate with the Family Support Center and the Department of Social Services of Caroline County; and (4) the matter was reviewable in ninety days. Frase filed exceptions claiming her right to counsel was denied and the court-imposed conditions were unfair.

The trial court integrated the custody conditions into its orders and scheduled a review hearing. Frase filed an emergency motion to strike the conditions. Frase also requested postponement of the review hearing, unless counsel was provided, so she could have her fourth child. The trial court denied the postponement request and made no ruling on Frase’s other motions. Frase appealed and the Court of Appeals of Maryland granted certiorari.

The court first addressed the issue of whether the November 1, 2002 order was an interlocutory order, and if it was, whether it fell within the scope of Maryland Courts and Judicial Proceedings § 12-303(3)(x). *Id.* at 110, 820 A.2d at 120. Section 12-303(3)(x) states that an interlocutory order “depriving a parent, grandparent, or natural guardian of the care and custody of his child, or changing the terms of such an order” is immediately appealable. *Id.* The court of appeals reasoned that if any of the September 16, 2002 orders were intended as final in nature, then the November 1, 2002 order could have no meaning. *Id.* at 115, 820 A.2d at 122. Thus, the court held the September 16, 2002 orders were interlocutory making the November 1, 2002 orders interlocutory as well. *Id.*

The court next decided whether the November 1, 2002 order effectively deprived Frase custody of her child, and if it did, whether the
Recent Developments

order was immediately appealable under Section 12-303(3)(x). Id., 820 A.2d at 123. The court held the November 1, 2002 order was immediately appealable under Section 12-303(3)(x) because the custody conditions essentially eliminated Frase’s discretion regarding the legal and physical custody of her children. Id. at 119, 820 A.2d at 125.

Finally, the court examined the validity of the conditions attached to the custody award, namely, the visitation provision and requirement that she apply and accept housing at Saint Martin’s House. Id. at 120, 820 A.2d at 125. The United States Supreme Court made it clear in Troxel v. Granville, 530 U.S. 57 (2000) that the due process clause “does not permit the state to infringe on the fundamental right of parents to make child rearing decision simply because a state judge believes a ‘better’ decision could be made.” Id. at 125, 820 A.2d at 128.

The Court of Appeals of Maryland resolved the visitation condition by stating that Troxel prohibits forcing a mother to take her child to a place occupied by people who were her adversaries. Id., 820 A.2d at 128-29. The court recognized Frase was not opposed to visitation between Brett and Justin and she simply wanted some control in deciding visitation terms. Id., 820 A.2d at 128.

The court dealt with the condition that Frase apply and accept housing at Saint Martin’s House, stating it was contrary to Troxel to require Frase to move with Brett to a locations undesirable to her. Id., 820 A.2d at 129. As Frase was found to be a fit parent, the court stated “the [trial] court had no more authority to direct where she and the child must live than it had to direct where the child must go to school or what religious training, if any, he should have, or what time he should go to bed.” Id.

This opinion is important for attorneys, judges, and non-attorneys alike because it makes clear to those involved with custody disputes that conditions cannot be placed on custody if they interfere with the fundamental right to parent a child. This opinion is also important because it is a start to insuring that even the poorest parents have representation in cases that could cost them their children.

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Recent Developments

Friendly Finance Corp. v. Orbit Chrysler Plymouth Dodge Truck, Inc.: Garageman’s Lien Has Priority Over Perfected Security Interests in a Motor Vehicle When Lien Holder Intends to Conduct a Statutory Sale

By: Jason Levine

The Court of Appeals of Maryland held a garageman’s lien has priority over holders of perfected security interests in a motor vehicle when the lien holder intends to conduct a statutory sale. Friendly Fin. Corp. v. Orbit Chrysler Plymouth Dodge Truck, Inc., 378 Md. 337, 341, 835 A.2d 1197, 1199 (2003). In so holding, the court of appeals reaffirmed the Maryland General Assembly’s intent to give priority to such liens over previously perfected security interest.

In August 2000, Israel Atkins (Atkins) purchased a used car from Orbit Chrysler Plymouth Dodge Truck (Orbit). Atkins financed the vehicle purchase with Friendly Finance (Friendly). The loan was secured by the vehicle and perfected in the District of Columbia. Thereafter, Orbit performed major repairs and maintenance on the vehicle, but was never paid for their services. Consequently, Orbit filed a garageman’s lien on the vehicle pursuant to Title 16 of the Commercial Law Article. The court ruled that Orbit had an absolute right to possession pending sale unless the repair bill was paid or the lien was discharged through some other statutory process. Consequently, the district court dismissed Friendly’s replevin action. On direct appeal, the circuit court affirmed. Friendly appealed and the Court of Appeals of Maryland granted certiorari to consider whether a garageman’s lien on a motor vehicle is subordinate to a previously perfected purchase money security interest if the lien holder intends to conduct a statutory sale of the vehicle and whether the holder of a previously perfected purchase money security interest is an owner within the meaning of Section 16-208 of the Commercial Law Article.

The court first examined the rationale behind the lower courts’ rulings, concluding they properly recognized the legislative intent behind Section 16-202(c) of the Commercial Law Article. In addition, Atkins defaulted on his purchase money loan from Friendly and gave notice that Orbit had possession of the vehicle. Upon learning that Orbit possessed the vehicle, Friendly filed a replevin action in the District Court of Maryland, sitting in Prince George’s County, but refused to pay the charges due Orbit. Orbit responded by asserting its garageman’s lien and sought dismissal of the replevin action. The district court ruled that Orbit had an absolute right to possession pending sale unless the repair bill was paid or the lien was discharged though some other statutory process. Consequently, the district court dismissed Friendly’s replevin action. On direct appeal, the circuit court affirmed. Friendly appealed and the Court of Appeals of Maryland granted certiorari to consider whether a garageman’s lien on a motor vehicle is subordinate to a previously perfected purchase money security interest if the lien holder intends to conduct a statutory sale of the vehicle and whether the holder of a previously perfected purchase money security interest is an owner within the meaning of Section 16-208 of the Commercial Law Article.

The court next concluded the lower courts correctly held that only an owner can file a replevin action and Friendly was not an owner under the statute. Id. In addition, the court held despite Orbit’s conceded failure to follow statutory notice provisions, the only penalty for the omission was that Orbit could not recover storage charges incurred. Id. at 347, 835 A.2d at 1203. The lien for the repair bill, however, was unaffected by Orbit’s omission. Id.

Friendly cited Section 16-205(b) of the Commercial Law Article to support its contention that it had the right to possess the vehicle. Id. at 348, 835 A.2d at 1204. That section, however, notes that a garageman’s lien is subordinate to previously perfected security interests “except in the case of a motor vehicle sold under § 16-207 of this subtitle.” Id. (emphasis added). The court, therefore, was persuaded that “the reference to § 16-207 in § 16-205(b) gives a garageman . . . priority of possession . . . when the garage intends to sell the vehicle under [that section].” Id. at 349, 835 A.2d at 1204.

Friendly next argued the Legislature intended to give a garageman’s lien priority only if
Recent Developments

the statutory sale was completed, and that in this case, it had not. *Id.* The court held, however, that “[o]n the contrary, the Legislature intended the garage to retain priority of possession throughout the process leading to a § 16-207 sale.” *Id.* The court noted the policy consideration behind its legislative interpretation, and stated “[t]he garage has added value to the vehicle. A secured interest holder would receive a windfall if it were to obtain the right to possess and sell the vehicle without first paying the garage’s repair bill.” *Id.* at 350-51, 835 A.2d at 1205.

Finally, the court disposed of Friendly’s second contention that it was the vehicle owner, holding that throughout Title 16 the Legislature treats owners and perfected secured parties quite differently. *Id.* at 352, 835 A.2d at 1206. The court also noted Atkins had sole possession of the vehicle at the time it was delivered to Orbit and he had not yet defaulted on Friendly’s loan. *Id.* at 353-54, 835 A.2d at 1207. As such, the court held Friendly had a security interest that could potentially mature into a right to possession but it did not then possess the vehicle. *Id.*

The Court of Appeals of Maryland held a garageman’s lien has priority over any holders of perfected security interests in a motor vehicle when the lien holder intends to conduct a statutory sale. In doing so, the court made clear the legislative intent behind the statutory scheme relating to garageman’s liens. Moreover, the court took an important step in protecting the rights of statutory lienors who seek to procure payment for their services without worrying that secured creditors may deprive them of their right to recover. Through a somewhat murky path, the court navigated through the legislative scheme of Title 16 of the Commercial Law Article and settled questions that may often arise where secured creditors are forced to compete with lien holders.
Recent Developments

In re Jason W.: 
Routine School Disturbances Do Not Warrant Juvenile Delinquency Charges

By: Katherine Kiemle

The Court of Appeals of Maryland determined routine school disturbances do not warrant juvenile delinquency charges. In re Jason W., 378 Md. 596, 837 A.2d 168 (2003). The court held a juvenile’s mere writing on a school wall, without regard to its content, does not constitute a violation of Maryland Education Article Section 26-101(a).

On December 13, 2001, a teacher at Washington County’s Clear Spring Middle School caught a student, Jason W., writing “There is a Bomb” in pencil on a school hallway wall. The principal photographed the writing and called police and Jason’s mother. The principal took no action to clear the school building or contact the fire marshal for bomb detection. Upon the deputy sheriff’s arrival, Jason was Mirandized and questioned in the presence of his mother and a teacher. Jason was charged with juvenile delinquency based on his alleged violation of two criminal statutes. The first violation, of then Maryland Code Article 27 Section 9, alleged Jason committed a felony by threatening to explode a destructive device. The second violation of the Education Article Section 26-101(a) charged Jason with willfully disturbing or otherwise preventing the orderly conduct of activities, administration, or classes of any institution of elementary, secondary, or higher education.

At the adjudicatory hearing, the State amended its petition to replace the violation of Article 27 Section 9 with a violation of then Article 27 Section 151A. The new charge alleged Jason had committed a felony by circulating or transmitting to another, with actionable intent, a known false statement or rumor about the location or possible detonation of a destructive device. The court concluded his conduct was intentional and disruptive to the school’s administration, as it initiated an investigation and cleaned up his graffiti. Additionally, as a consequence of Jason’s actions, administrators were taken out of the ordinary course of the school day.

Jason appealed and the Court of Special Appeals of Maryland reversed, stating no evidence was presented showing classes were halted or other students were aware of Jason’s writing. Despite the fact Jason was disciplined and police were contacted, the disturbance did not constitute the type of disturbance contemplated by the statute. The court of appeals granted certiorari.

The Court of Appeals of Maryland began its discussion at the origin of the State’s public education law. Id. at 600, 837 A.2d at 171. The court traced the Education Article allegedly violated through its origin in 1865 with the establishment of free public schooling, to 1966 and 1970, when the law was re-codified to punish disruptive student protestors. Id. at 602, 837 A.2d at 173.

The court examined the public and legislative commentary at the time of the law’s re-codification in 1970. Id. A Baltimore Sun article published in 1970 documented the House of Delegates Judiciary Committee’s heated debate over the Act. Id. at 603, 837 A.2d at 173. Lawmakers feared that if literally applied, the Act could be used to punish a kindergarten child for a temper tantrum. Id. The law was passed with assurances to the Governor that it would be helpful to diffuse student protests of the day. Id. at 604, 837 A.2d at 173.

The court determined the Education Article at issue must be read rationally, as it was enacted to provide school administrators with a remedy to keep schools orderly during the tumultuous student activism of the 1960s and 1970s. Id., 837 A.2d at 174. It was not to be used to criminalize disobedient school children. Id. The court reasoned the trial court’s reading of Section 26-

34.2 U. Balt. L.F. 21
Recent Developments

101(a) would make unlawful any unauthorized conduct requiring even a minimal response by a school official. *Id.*

The court explained statutes must be given a reasonable interpretation, not one contrary to common sense. *Id.* The typical school day is not without its disturbances, and it would be illogical to hold those student disruptions criminal. *Id.* Without a doubt, some student conduct is dangerous and serious enough to warrant criminal intervention. *Id.* at 605, 837 A.2d at 174. However, there is a level of disturbance involved in school activities and it is intended that school administrations deal with it. *Id.* Such disturbances are necessarily outside the application of Section 26-101(a). *Id.*

On these grounds, the court of appeals rejected the State’s argument that there need not be an actual disturbance to warrant criminal intervention of Education Article Section 26-101(a). *Id.* at 606, 837 A.2d at 175. The court applied a rational interpretation to the statute and determined it necessitated a disturbance be an actual one and more than simply minimal or routine. *Id.* The disturbance must be one that significantly interferes with the school’s orderly activities, administration, or classes. *Id.* Therefore, in Jason’s case, since the principal did not take Jason’s writing as an actual threat and he was accurate in his assessment, the disturbance did not rise to the level warranted by the Education Article. *Id.*

With its decision, the court of appeals sought to counteract an increasing trend in discipline in educational institutions. School officials, eager to have disobedient students removed from school grounds, have been quick to categorize routine disturbances as serious. Such categorization has led to rising police involvement in schools and more frequent juvenile delinquency adjudications for offenses committed by students during school hours. Unfortunately, such increases have strained the already overburdened juvenile system. This decision is meant to discourage educators from using juvenile courts as a forum for punishing troublesome students. The court’s holding is meant to send a message to both school officials and juvenile court authorities. Common sense dictates routine school disturbances be dealt with in school by those most appropriate to discipline students – teachers and administrators.
The Court of Appeals of Maryland held a gift of land is not a sale triggering a right of first refusal and rights of first refusal do not violate the Rule Against Perpetuities (RAP). Park Station Ltd. P’ship, LLLP v. Bosse, 378 Md. 122, 835 A.2d 646 (2003). In so holding, the court determined a collateral benefit received from a gift will not transform the conveyance into a sale and interests in property vesting during a party’s lifetime do not violate the RAP. Id.

James and Lois Bosse (Bosse) owned, in fee simple, a rectangular parcel of land in Anne Arundel County. Park Station Limited Partnership, LLLP (Park) owned, in fee simple, a parcel of land surrounding Bosse’s parcel on three sides. In 1986, the parties entered into a contract for reciprocal easements, which granted Park rights of first refusal in the event Bosse wished to sell the parcel. Bosse was required to give Park written notice of a desire to sell and the sale price and terms. Park was required to accept or reject the terms within thirty days or Bosse was free to sell the property to others. In 2001, Bosse created a religious foundation, Jehovah-Jireh, and decided to gift the parcel to them, which would result in a tax deduction. Bosse informed Park that the transfer was a gift without consideration. Park contended the right of first refusal applied because the transfer was a sale. Bosse filed for a declaratory judgment in the Circuit Court for Anne Arundel County alleging the land transfer was not within the right of first refusal and the right of first refusal violated the RAP. Both parties filed motions for summary judgment. The circuit court declared the gift was not a sale within the right of first refusal and rights of first refusal do not violate the RAP. Park and Bosse appealed to the Court of Special Appeals of Maryland, but the Court of Appeals of Maryland granted certiorari on its own motion before the case was heard.

The court began its analysis by dissecting Park’s unsupported argument that the transfer of property was a sale rather than a gift. Id. at 128, 835 A.2d at 650. The court looked to its Eastern Shore Trust Co. v. Lockerman, 148 Md. 628, 636, 129 A.2d 915, 918 (1957) interpretation of the plain meaning of “sale,” which defined “sale” as transferring to another, for valuable consideration, the title or right to possess property. Id. at 129, 835 A.2d at 650.

Fifty years after Eastern Shore, the court defined a “sale” involving a right of first refusal. Id., 835 A.2d at 651 (citing Straley v. Osborne, 262 Md. 514, 526, 278 A.2d 64, 71 (1971)). Relying on Eastern Shore, the Straley court held a transfer of property to a corporation without consideration was not a sale, did not violate any right of first refusal held by the corporation, and was a gift. Id. at 130, 835 A.2d at 651.

The court next analyzed whether Bosse’s tax benefit constituted consideration, making the transfer a sale rather than a gift. Id. For a transfer to be a sale, consideration received must be intended to serve as consideration for the transfer. Id. For the transfer to be a gift, there must be intent to transfer property, donor delivery, donee acceptance, and no compensation for the transfer. Id. at 131, 835 A.2d at 651-52. Therefore, a collateral benefit to a donor, such as a tax benefit, has an altogether different purpose than intended and is not sufficient to make the transfer a sale. Id. at 130, 835 A.2d at 651. As a result, the court concluded Bosse received no consideration from the proposed transfer of property to Jehovah-Jireh. Id. at 131-32, 835 A.2d at 652. The court found all elements of a gift present and the transfer was not a sale implicating the right of first refusal. Id.

The court next addressed Bosse’s cross-appeal that alleged the right of first refusal violated the RAP. Id. Maryland retains the common-
law definition of the RAP that “no interest is good unless it must vest, if at all, not later than twenty-one years after some life in being at the creation of the interest.”  Id. Although the RAP generally does not apply to contracts, a contract that creates an equitable right in real property, such as a right of first refusal, subjects the contract to the RAP.  Id. at 134, 835 A.2d at 653.

The court of appeals stated that the right of first refusal did not include Bosse’s successors or assigns.  Id. Since the right of first refusal applied only to the Bosses, the right vested when the Bosses sold the property or was extinguished upon their deaths.  Id. Therefore, the right of first refusal did not violate the RAP.  Id. at 135, 835 A.2d at 654.  The court reinforced its conclusion by applying a principle held in several other jurisdictions that addresses rights of first refusal.  Id. at 137, 835 A.2d at 655.  The principle states rights of first refusal are presumed personal and not transferable or assignable unless the contract granting the right of first refusal clearly refers, grants, or intends such a right to successors or assigns.  Id. The principle was reiterated in Vogel v. Melish, 203 N.E.2d 411, 412-14 (1964), holding it unreasonable to assume parties intend rights of first refusal to survive the death of a party when no provision for the right is made in the agreement.  Id. Therefore, the court held a right of first refusal does not violate the RAP.  Id. at 138, 835 A.2d at 656.

The Park decision is a significant effort to solidify several principles associated with land transfers – rights of first refusal and contract construction. The Park holding redefines the proper and fair methodology of interpreting potentially ambiguous language. Further, Park is important to Maryland landowners who may attempt to protect potential future land interests with rights of first refusal. As clearly enunciated in this case, a landowner with a right of first refusal must be aware that those rights may be impeded if the contract is not properly crafted to include all potential transfers, including gifts.
HOUSE BILL 180: REAL PROPERTY - RECORDATION OF DEEDS AND INSTRUMENTS OF WRITING

By: Erin S. Galvin

House Bill 180, entitled “Real Property – Recordation of Deeds and Instruments of Writing,” repealed a prohibition against recording a deed or other instrument of writing in certain counties. The Bill prohibited recordation until the property granted is transferred on the assessment rolls of the county where the property is located in specified circumstances.

The Bill affected § 3-104 of the Real Property Article of the Maryland Annotated Code. The Bill requires the certificate of the collector of taxes of the county in which the property is assessed, and also a complete intake sheet, a copy of the instrument, and any survey for submission to the Department of Assessments and Taxation.

The House Bill faced no opposition in the Maryland Legislature, passing the House of Delegates by a vote of 140-0 and the Senate by a vote of 47-0. The Chairman for the Environmental Matters Committee sponsored the Bill.

This Bill took effect July 1, 2004.

HOUSE BILL 194: THEFT – USE OF INTERACTIVE COMPUTER SERVICE

By: Jean McKenzie

House Bill 194 adds a provision to the Maryland Annotated code, Criminal Law Article, § 7-101. The Bill provides jurisdiction for prosecution of theft by use of an interactive computer service and defines interactive computer service.

Under the new law, a person who violates this section by use of an interactive computer service may be prosecuted, indicted, tried, and convicted in any county in which the victim resides or the electronic communication originated or terminated. The law also defines “interactive computer service” as an information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including a service or system that provides access to the Internet.

This Bill, co-sponsored by twenty-four delegates, was supported by the Maryland Legislature and passed the House of Delegates by a vote of 140-0 and the Senate by a vote of 47-0.

The Bill takes effect October 1, 2004.
HOUSE BILL 209: VITAL STATISTICS ADMINISTRATION - ADJUDICATIONS OF PATERNITY

By: Patricia K. Jaron

House Bill 209, entitled Vital Statistics Administration – Adjudications of Paternity – Repeal Requirement for Fee, repeals a requirement that the Department of Health and Mental Hygiene collect a fee to process an adjudication of paternity. This Bill repealed and reenacted, with amendments, Maryland Annotated Code, Health Care – General Article, § 4-217 (c)(1). Under current law, a processing fee of $12 is charged to process an adjudication of paternity. Under the new law, the $12 fee will no longer be required.

This Bill was sponsored by the Chairman, Health and Government Operations Committee and was fully supported by the Maryland Legislature, passing the House of Delegates by a vote of 139 – 0 and the Senate by a vote of 47 – 0.

This Bill takes effect on October 1, 2004.

HOUSE BILL 295/SENATE BILL 194: CRIMINAL LAW – PAROLE ELIGIBILITY

By: Kristine Rea

House Bill 295 and Senate Bill 194 establish parole eligibility for specified nonviolent offenders who are ordered to undergo drug or alcohol treatment. The Bill authorizes a State’s Attorney, at the defendant’s request or on the State’s Attorney’s own motion, to agree to the disposition of nolle prosequi with a requirement for drug or alcohol treatment or state with a requirement for treatment for specified defendants.

The Bill faced little opposition in the Maryland Legislature, passing the House of Delegates by a vote of 132-2 and the Senate by a vote of 45-0. Over 50 delegates sponsored the Bill.

This Bill affects several statutes including Criminal Law Article 5-609, which includes the sentencing requirements and parole eligibility for certain controlled substance and conspiracy crimes. The statute currently states that a person is not eligible for parole during the mandatory minimum sentence, except as provided in § 4-305 of the Correctional Services Article.

This Bill took effect on July 1, 2004.
HOUSE BILL 373: TRANSPORTATION - VEHICLE LAWS - DRIVING WHILE IMPAIRED BY CONTROLLED DANGEROUS SUBSTANCE - PENALTIES

By: Sarah Miller

House Bill 373 repeals and reenacts, with amendments, Section 27-101(c), (f), (j), (k), and (q) of the Annotated Code of Maryland. House Bill 373 was passed on April 9, 2004 to modify penalties for a conviction of driving while under the influence of a controlled dangerous substance (Section 21-902(d)). Specifically, the Bill aligns the penalties for a Section 21-902(d) violation with the penalties for driving while under the influence of alcohol.

The Bill provides fines and mandatory minimum imprisonment penalties for offenders with multiple Section 21-902(d) violations within a five- or ten-year period. Repeat offenders are also required to undergo a comprehensive drug abuse assessment and, if the assessment so recommends, participate in a court ordered drug treatment program.

House Bill 373 takes effect on October 1, 2004.

HOUSE BILL 446: STATE PERSONNEL AND PENSIONS – AUDITS AND AUDITORS

By: John D. Gifford

House Bill 446 repealed and reenacted, with amendments, the Maryland Annotated Code, State Personnel and Pensions Article, §§ 4-203 and 7-201. The Bill creates definite time periods for certain position and operational audits and recruitment and hiring reviews and audits.

House Bill 446 requires the Maryland Secretary of Budget and Management to conduct position classification audits and operational audits of classification practices at least once every three years. House Bill 446 also requires the Department of Budget and Management to review and audit recruitment and hiring practices of all appointing authorities at least once every three years. Prior to passage of House Bill 446, the Department of Budget and Management had a mandate to complete these tasks, but not within any time period.

This Bill takes effect on October 1, 2004.
HOUSE BILL 555: CHESAPEAKE BAY WATERSHED RESTORATION

By: Carlin La Bar

House Bill 555 repealed and reenacted, with amendments, the Maryland Annotated Code Agriculture Article §§ 8-801.1, 8-803, 8-803.1, and 8-806. The Bill amends existing law to reduce the nutrient load released into the Chesapeake Bay by wastewater treatment facilities and farms.

This Bill established the Chesapeake Bay Watershed Restoration Fund as a special, continuing, non-lapsing fund in perpetuity from which moneys may not revert into other state funds. The Bill provides for grant funding of wastewater treatment facility upgrades to reduce the nutrient load. The Bill further imposes a surcharge on users of wastewater treatment facilities.

Farms are required to design and implement nutrient management plans and the Bill authorizes site visits to ensure implementation. The licensing procedure for nutrient management plan consultants is detailed in full to assist farm owners and operators in designing nutrient management plans.

This Bill takes effect on October 1, 2004.

House Bill 666: BIOLOGICAL AGENTS REGISTRY PROGRAM

By: Thomas Sova

House Bill 666, entitled Biological Agents Registry Program, repealed and reenacted, with amendments, the Maryland Annotated Code of Maryland, General Health Article, §§ 17-601, 17-602, and 17-604.

This bill compels the Department of Health and Mental Hygiene to create a registry that shall identify all biological agents possessed and maintained by any person in Maryland. This bill also implements regulations requiring all local jurisdictions to be informed of the nature and location of particular biological agents listed in the Biological Agents Registry.

Under this bill, specific information entered into the Biological Agents Registry can be released to State and federal law enforcement agencies, the Center for Disease Control, the Maryland Management Agency, the Maryland Department of the Environment, and the Maryland Institute for Emergency Medical Services Systems. Furthermore, this bill requires that all released information must be kept undisclosed unless the Biological Agents Registry Program approves the release.

This Bill takes effect on October 1, 2004.
HOUSE BILL 1083: DEPARTMENT OF JUVENILE SERVICES - REORGANIZATION AND REGIONALIZATION

By: Katherine Kiemle

House Bill 1083, cross-filed with Senate Bill 768, provides for the regionalization of Department of Juvenile Services facilities. This Bill establishes five specific regions within the state, each to include specialized facilities and step-down after-care services. The facilities are to ensure separation of pre- and post-adjudicatory children and will provide detailed medical, mental, rehabilitative and educational services. Additionally, Bill 1083 requires the appointment of regional directors to oversee the consistent maintenance and performance of each facility. The House Bill amends Sections 1-101, 2-101.5, 2-101, 2-104, 2-117, 2-118 and 2-127 of the Juvenile Justice Article.

The Bill defines the mission of the new Juvenile Services system as one concerned with community safety. It emphasizes that delinquent children must be held accountable to their victims and communities. The Bill also focuses on assisting children to develop the competencies necessary to enable them to become successful members of society.

The Bill passed overwhelmingly, 136 – 0, and was enacted on March 27, 2004.

HOUSE BILL 1463: CRIMINAL LAW & COURTS AND JUDICIAL PROCEEDINGS - VICTIMS OF CRIME

By: Larna M. Cutter

House Bill 1463 repealed and reenacted Maryland Annotated Code, Criminal Law, Sections 5-602 and 6-202 - 6-204, and added to Section 5-807 of Courts and Judicial Proceedings. The purpose of this bill is to reduce the liability of home and business owners to persons who trespass on their property and are subsequently injured or killed.

The Bill prohibits personal liability for the personal injury or death of a person who entered another person’s dwelling or place of business with the intent to commit burglary or a crime of violence defined in Section 14-101 of the Criminal Law Article. This provision changes existing law by replacing the individual’s commission, or attempted commission of a crime involving controlled dangerous substances with an individual’s intent to commit first-, second-, and third-degree burglaries or a crime of violence. The Bill does allow recovery if a home or business owner acts with gross negligence or malice. The Bill further establishes that a governmental entity is unaffected by the new provisions because it is not considered a “person.” Finally, the Bill forbids limiting or abrogating immunity from civil liabilities or defenses available to an individual under existing statutory or common law.

The Bill was sponsored by Delegate Carmen Amedori and takes effect on October 1, 2004.
SENATE BILL 34: MOTOR VEHICLE ADMINISTRATION - ADMINISTRATIVE APPEALS AND HEARINGS

By: Kevin Trogdon

Senate Bill 34 repealed and reenacted, with amendments, Maryland Annotated Code, Transportation, § 12-104. The bill expands the authority of the Motor Vehicle Administration to delegate to the Office of Administrative Hearings the power to render final decisions under the Maryland Vehicle Law.

Under current law, the Motor Vehicle Administration has the authority to delegate to the Office of Administrative Hearings the power to render “proposed” findings of fact and “proposed” conclusions of law in certain hearings. Under the new law, the Motor Vehicle Administration has the authority to delegate to the Office of Administrative Hearings the power to render “final” decisions in hearings under the Maryland Motor Vehicle Laws.

This Bill takes effect on October 1, 2004.

SENATE BILL 43: CRIMINAL PROCEDURE – CRIMINAL INJURIES COMPENSATION BOARD – LIFE INSURANCE BENEFITS

By: Jason L. Levine

Senate Bill 43 modified current law and provided that any proceeds of life insurance in excess of $25,000 are deducted from any final award made by the Criminal Injuries Compensation Board. The Bill eliminates the former requirement found in § 11-811 of the Criminal Procedure Article that an award from the Criminal Injuries Compensation Fund be reduced by any amount of an award obtained from any collateral source.

The Senate Bill unanimously passed through the Maryland Legislature. The bill was sponsored by the Chairman of the Judicial Proceedings Committee at the request of the Department of Public Safety and Correctional Services.

The Bill took effect on April 13, 2004.
SENATE BILL 55: ELECTION LAW - MISCELLANEOUS TECHNICAL AND CLARIFYING CORRECTIONS

By: Brandy Scheydt

Senate Bill 55 repealed and reenacted, with amendments, the Maryland Annotated Code, Election Law Article, §§ 1-101(d), 2-206, 3-202(b), 3-203(d), 5-1204, 16-304, and 9-106. The Bill repeals provisions that related to the use of mechanical lever machines and alters current law to be consistent with the use of electronic voting systems. Additionally, the Bill modifies definitions to correspond with current practices.

Under current law, if a driver’s license renewal is not completed in person, the Motor Vehicle Administration must state that the information will be used for voting purposes only and the driver may declare that the information not be used for any other purpose. However, this section was repealed and now states that the Motor Vehicle Administration must follow the procedures established by the Motor Vehicle Administration and the State Board.

This Bill took effect on July 1, 2004.

SENATE BILL 65: ENVIRONMENT – WATER QUALITY – PENALTIES

By: Brian Casto

Senate Bill 65 repealed and reenacted, with amendments, Maryland Annotated Code, Environmental Article, § 9-343.

Under the previous statute, a misdemeanor conviction for making false statements on any document required under the article or tampering with monitoring equipment was subject to a $10,000 fine and six month’s imprisonment. The amended statute increased the penalties to $50,000 and 2 year’s imprisonment.

This Bill takes effect on October 1, 2004.
SENATE BILL 285:  CHILD IN NEED OF ASSISTANCE - PERMANENCY PLAN HEARINGS

By: Cendoria Yvonne Dean

Senate Bill 285 repealed and reenacted, with amendments, the Courts and Judicial Proceedings, Section 3-823 of the Annotated Code of Maryland. Senate Bill 285 was passed unanimously by the House of Delegates and Senate. The bill restores a requirement that all children in out-of-home placements, committed under child in need of assistance proceedings, have permanency-planning hearings held by the appropriate court.

Senate Bill 285 is the same as the current version of Section 3-823; however, the Bill’s purpose was to reiterate the requirement for a permanency-planning hearing.

Senate Bill 285 was an emergency measure and took effect April 14, 2004.

SENATE BILL 372:  REAL PROPERTY – RESIDENTIAL LEASES – INTEREST ON SECURITY DEPOSITS

By: Pete Maheridis

Senate Bill 372 repealed and reenacted, with amendments, Article - Real Property § 8-203(e) of the Annotated Code of Maryland. The Bill’s purpose is to alter the rate of interest paid on a security deposit held by a landlord within a certain time upon termination of the tenancy.

Under the new law, a landlord is required to return a security deposit within forty-five days after the tenancy terminates, together with accrued simple interest in the amount equal to the Federal Reserve discount rate as of January 1 of each year of the tenancy, less any damages justly withheld. Interest is not compounded and shall accrue at six-month intervals beginning with the time the landlord secures a deposit of $50 or more. Under the old law, simple interest accrued in the amount of four percent per annum.

The Bill was sponsored by Senator Haines and was introduced and read for the first time on February 4, 2004.

This Bill takes effect October 1, 2004.
SENATE BILL 477: FAMILY LAW - MEDICALLY FRAGILE CHILDREN

By: Victoria Z. Sulerzyski

Senate Bill 477 requires the Governors’ Office for Individuals with Disabilities, the Department of Human Resources, and the Department of Health and Mental Hygiene to study and issue a report by December 1, 2004 on the placement of medically fragile children in Maryland.

The Bill provides for the determination of the total number of medically fragile children who are in out-of-home care in Maryland, alternatives to address medically fragile children who are in out-of-home care permanency placement, and the total cost of providing equipment and services to medically fragile children.

The study will also determine the number of families who have given up custody of medically fragile children, who have adopted medically fragile children, the number of unsubsidized medically fragile children, families willing to adopt medically fragile children if ongoing support is available after a child reaches the age of twenty-one, and any other action necessary for the State to undertake to prevent the institutionalization of medically fragile children who turn twenty-one years of age.

The Bill passed unanimously in both the Senate and the House and took effect on July 1, 2004.

SENATE BILL 837: CRIMES - COUNTERFEITING AND POSSESSION OF COUNTERFEIT CHECK, LETTER OF CREDIT, OR NEGOTIABLE INSTRUMENT

By: Matthew F. Penater

Senate Bill 837 repeals and reenacts, with amendments, the Maryland Annotated Code, Criminal Law Article, § 8-601. This Bill expands the felony prohibition against counterfeiting private instruments. It adds a check, a letter of credit, a negotiable instrument, and the endorsement or assignment of a check to the existing list of instruments an individual, with the intent to defraud, may not counterfeit, cause to be counterfeited, or willingly aid or assist in the counterfeiting. Felony violators are subject to maximum penalty of ten year’s imprisonment and/or a fine of $1,000.00.

This Bill also creates a misdemeanor section prohibiting a person from knowingly, willfully, and with fraudulent intent possessing any of the counterfeited items in the felony list. A violation of the misdemeanor provision may result in a maximum of three year’s imprisonment and/or a fine of $1,000.00.

This Bill provides both the State’s Attorney and the Attorney General the authority to prosecute violations under this section.

This Bill takes effect on October 1, 2004.