

**Barnstable County
Bar Association
Real Estate Law
Free Seminar**

“LIENS EXPLAINED & DEFECTS REMOVED”

*Title problems and how to resolve them
An informative program in “FAQ” format*

Presented by

**John M. Janiak, Esquire
David J. Buczkowski, Esquire
Chicago Title Insurance Company**

with special guest

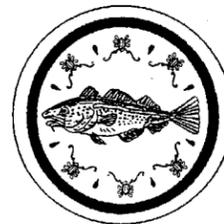
John F. Meade, Esquire, Register of Deeds

Date: Thursday March 27, 2008
4:00 PM

Location: Barnstable County Registry of Deeds
3195 Main Steet,
Barnstable, MA

BARNSTABLE COUNTY BAR ASSOCIATION
P.O. Box 718
Barnstable, MA 02630

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BARRISTER

PUBLISHED BY THE BARNSTABLE COUNTY BAR ASSOCIATION

SPRING 2008

PRESIDENT’S MESSAGE

The Executive Committee has been busy this year planning events and educational opportunities for members. In addition, the Committee continues to work on ways to continue to improve access to justice in our Courts by collaborating with the New Center for Legal Advocacy on Pro Bono initiatives. The Committee has also continued to explore throughout the year how to provide additional benefits to our members.

In January 2008, the Bar Association hosted a Forum on Practice in the Superior and District Courts. John Dale and Chuck Ardito arranged this event. The Bar Association is also grateful to Judge Gary Nickerson, Judge Robert Rufo, and Judge John Julian for participating in the forum. The forum was followed by the annual reception for new attorneys which was well attended. I would like to thank Carrie Woods who arranged this successful event.

On March 27, 2008, the Bar Association along with John Janiak, Esq. and David Buczkowski, Esq. of Chicago Title will host a seminar at the Barnstable Registry of Deeds at 4:00 P.M. entitled “Liens Removed and Defects Explained.” John F. Meade, Register of Deeds will be the special guest. This should be an informative seminar for attorneys in many areas of practice.

The Family Law Committee is busy planning a seminar at the Probate and Family Court. Judge Robert A Scandurra, First Justice of the Probate and Family Court, will be a participant in the seminar.

(Continued on Page 2)

LAND OF THE FREE?

(PART ONE OF A FOUR-PART ARTICLE)

In a year of many sources of sobering economic news, one of the most troubling statistics is only partially economic: the number of incarcerated Americans.

The Extent of the Problem

According to a recent report released by the Pew Center on the States, more than 1 out of every 100 adults in the United States is now behind bars. The report indicated that 2,319,258 adults, out of a U.S. adult population of approximately 230 million people, were held in federal, state or local prisons or jails at the beginning of calendar year 2008. This number equates to approximately 1 prisoner for every 99.1 adults. To put this number in perspective, the United States, the Land of the Free and Home of the Brave, reportedly has more incarcerated people than any other country in the world, including China (with a population of almost four times our population, but approximately 1.5 million prisoners). The U.S. reportedly is also the world’s leader in inmates per capita, with 750 prisoners per 100,000 people. By comparison, Russia reportedly has 628 prisoners per 100,000 people.¹

This staggering number of prisoners is not just a one-year blip on the radar screen. According to a

¹ Where not specifically attributed, the statistical information summarized in this article is from one or more of three sources: a report entitled, “America Incarcerated” in the March 17, 2008 edition of Time magazine; a February 28, 2008 article at CNN.com/crime; and an article in the on-line Boston Globe dated February 29, 2008 entitled, “U.S. Prison Population nears 1.6m”.

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PRESIDENT'S MESSAGE

(continued from page 1)

The seminar is scheduled for Thursday, April 17, 2008 at the Court with a social to follow at the Barnstable Tavern. Mary-Beth Holland and Mike Flores are planning this event.

The Bar Association will host the annual Law Day Events in the Falmouth, Barnstable, and Orleans District Courts on May 1, 2008. Adrienne Okon is the Chairperson of this event. She sent letters out to all of the schools on the Cape encouraging students to submit essays and posters on this year's theme which is "The Rule of Law: Foundation For Communities of Opportunity and Equity." Last year many Bar Association members attended the court ceremonies. It is important for the Bar Association to reach out to the young people of our community, as they are the future of our legal profession. We hope more Bar Association Members will attend the Law Day events this year.

On June 20, 2008, the Bar Association will host the Annual Meeting/Spring Bench and Bar Dinner. This year, all of the Chief Justices from the various trial court departments will attend. The meeting will honor Judges Robert E. Terry, and Robert A. Welsh, Jr. for their many years of dedicated service to our community. Carrie Woods is in the process of choosing the location for this event. Further details will follow.

This year would not be complete without our annual trip to see the Red Sox. This year we have two games thanks to the work of Michael Stevens. The first game against Tampa Bay is scheduled for Thursday, June 5, 2008 at 7:00 P.M. The next game against Toronto is scheduled for Sunday, August 17, 2008 at 1:30 P.M. The game against Toronto is meant to be a family event. At this time, both games

are sold out. However, Madeleine has a waiting list should tickets become available.

With the goal of increasing access to Justice in our courts, the Bar Association collaborated with Richard McMahon, Executive Director for the New Center for Legal Advocacy. Every Bar Association Member received a letter requesting that the member take at least one Pro Bono case in his or her respective field. I am happy to report that we had a wonderful response from our members. There are still many opportunities available. If any member would like to take a case Pro Bono, he or she may contact Richard McMahon at the New Center For Legal Advocacy at (508) 979-7160. All cases assigned for Pro Bono work will be for residents of Barnstable County.

Finally, this year was the year in which two wonderful Judges in our community retired. On behalf of the Bar Association, I extend our thanks to Judge Robert E. Terry, First Justice of the Probate and Family Court, and my father, Judge Robert A. Welsh, Jr., Presiding Justice of the Orleans District Court for their many years of service. The Bar Association along with the community certainly will feel the loss of these two very dedicated, hardworking Judges. We wish both of them restful, happy retirements.

The Executive Committee has worked hard this year to provide many social and educational opportunities for our Bar Association members. We hope all of our members will participate in these upcoming events.

Sincerely,
Anastasia Welsh Perrino,
President, Barnstable County Bar Association

LAW LIBRARY NEWS

Announcing RetrieveLaw!

Our library card holders can now access Massachusetts and Federal primary law from home via Retrieve Law. The database includes:

- Mass. SJC and Appeals Court cases
- Mass. General Laws
- CMR
- Mass. court rules
- Federal court cases
- US Code
- CFR
- Federal court rules

We realize it has been a long wait for a new database since Loislaw would not renew our contract to provide home access last July. So thank you for your patience

Massachusetts Cases Online

Even without a library card you can access Mass. cases since 1986.

Over the past six months, the 17 Trial Court Law Libraries have worked together to prepare older Mass. cases to mount on the web. We are pleased to announce the availability of all Supreme Judicial Court and Mass. Appeals Court cases from 1979-1996 at <http://masscases.com>. Cases are accessible by citation, case name, or through a Google custom search on the site. The collection also includes hundreds of the most-cited older Mass. cases. And you can access cases from 1997 to date on the web from Lawyers' Weekly (<http://malawyersweekly.com>).

As always, we welcome your questions and feedback. And, of course, we welcome new cardholders! See How to Get a Library Card on our website (<http://www.lawlib.state.ma.us>) for more information.

Meg Hill
Law Librarian



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JOIN THE BARNSTABLE BAR ASSOCIATION'S FAMILY LAW COMMITTEE FOR A
BENCH AND BAR CLINICAL PRESENTATION

THE ELEMENTS OF PROOF IN A REMOVAL CASE

THURSDAY APRIL 17, 2008 at 4:30 p.m.

BARNSTABLE PROBATE AND FAMILY COURT, FIRST SESSION COURTROOM

Watch as teams of local family law practitioners try various aspects of a removal case before Judge Robert A. Scandurra. **Participate** in the informative discussion that follows each team presentation. **Learn** a new approach to the evidentiary issues involved in these often difficult cases. **Enjoy** the conviviality of your professional colleagues by joining us for drinks and food at the Barnstable Tavern after the program !

The all-inclusive attendance fee for this program is \$19.00 for Barnstable County Bar Association members and \$25.00 for non-member. All attendees are encouraged to join Judge Scandurra and the team members for food and drinks at the Barnstable Tavern after the program. Please note that food is included as part of the attendance fee. There will also be a cash bar available to all attendees.

To register for this exciting presentation, please send your attendance fee to Madeleine Delorey at the Barnstable County Bar Association, 3180 Main St., P.O. Box 718, Barnstable, Massachusetts 02630 by no later than Friday, April 11, 2008. Please make checks payable to the Barnstable County Bar Association. Register soon because seating and space is limited.

If you have any questions or would like to participate as a member of a team, please contact Michael I. Flores, Esq. at mif@zisson-veara.com or MaryBeth Holland, Esq. at MBHollandEsq@aol.com.

The next deadline to submit articles for the Barrister is May 8, 2008 for the Summer 2008 edition. Please send materials as e-mail attachments to attorney Dan Neelon at dneelon@neelonwilder.com.

The Barrister is a publication of the Barnstable County Bar Association and it is intended as an informational tool to its attorney members. The information and opinions expressed in this publication are those of the authors and not the BCBA.

INTER ALIA

Hyannis Legal Office Space

Grade A Hyannis Route 132 office space available for subletting. Large office with secretarial station available as of 4/1/08. Office includes receptionist, use of large conference room and all utilities. \$1,250 per month. If interested, please call Lisa at 508-771-8220.

Red Sox Fever

This year the Barnstable County Bar Association is sponsoring TWO trips to Fenway Park. The first game is for adults only on Thursday, June 5, 2008 as we play the Tampa Bay Devil Rays. The bus will leave the Court complex in Barnstable at 4:00 p.m. and make a stop at the Sagamore Commuter Parking lot 20 minutes later. The second game matches the Sox against the Toronto Blue Jays on August 17, 2008 at 1:30 p.m. and is geared toward a family outing. The bus will leave from the Court complex in Barnstable at 10:30 a.m. with a stop at the Sagamore Commuter Parking Lot 20 minutes or so later.

Originally the BCBA had 55 tickets available for each game, but they have been sold out. If we obtain more tickets, we will advise everyone promptly.

ANNUAL MEETING/BENCH AND BAR DINNER SET FOR JUNE 20, 2008

The Barnstable County Bar Association will hold its Annual Meeting/Spring Bench and Bar Dinner on Friday, June 20, 2008 at the historic Daniel Webster Inn in Sandwich. Cocktails will begin at 6:00 p.m., and dinner will be served at 7:00 p.m. This year, all of the Chief Justices from the various trial court departments will attend. The meeting will honor Justices Robert E. Terry and Robert A. Welsh, Jr. for their many years of dedicated service to our community. Further details will be provided as they become available.

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LAND OF THE FREE?

(continued from page 1)

U.S. Justice Department Bureau of Justice Statistics release from April 2003, America's prison population passed 2 million for the first time in history as of June 30, 2002, nearly six years ago.

Granted, the existence of true freedom depends on many aspects of daily life other than the risk of incarceration for criminal behavior, such as freedom from mass violence that kills hundreds of thousands in a short period (a problem in regions with genocidal tribal warfare) and freedom from persecution for political disagreements with the state. We have not risen to the lifestyle constraints present in Putin's "new" Russia (in which a journalist critical of the apparatchiks was mysteriously thrown out of a multi-story apartment window, and numerous others critical of the state are once again confined to psychiatric hospitals and pumped full of anti-psychotic medication to quell their "delusions"). Nor do we fear that criticizing the government will make us dead, as approximately four thousand political prisoners experienced in a recent year in China. However, the fact that more than one in every one hundred adult residents is behind bars in a society that prides itself on promoting "life, liberty and the pursuit of happiness" requires serious contemplation of the causes and consequences of those circumstances, the desirability of maintaining or changing those circumstances, and the possible methods, costs and benefits of changing them.

The significant increase in our prisoner population does not appear due to any underlying increase in reported crimes or violent crimes committed. To the contrary, it has been reported that violent crime has dropped 25% nationally since 1987. Governor Steve Beshear of Kentucky noted in his recent budget speech that while the state's crime rate had increased only about 3 percent in the past 30 years, the state's inmate population had increased by 600 percent. Of course, these figures do not enable us to compare rates of increase in prisoners and crimes directly and precisely without further analysis; the crime rate

increase could be on a per capita basis, so just an increase in population could drive a corresponding increase in inmate population even at the same crime rate. However, it is indisputable that our increasing inmate population is causing enormous budgetary strains. Incarcerating someone in the United States in 2005, the most recent year for which data is available, cost an average of \$23,876 annually. Assuming a present annual cost of \$25,000 per inmate, maintaining the prison population could cost over \$55 billion this year. According to the National Association of State Budgeting Officers, states spent \$44 billion in 2007 on corrections.

The apparent incongruity between our pride in the United States' role as an exemplar of individual freedom and our extensive resort to incarceration, as well as the enormous financial burden that such approach engenders, require an evaluation of whether our criminal justice system is satisfying its purposes or- by simply slamming more non-violent people into prison for longer periods- actually costing us billions of dollars in unnecessary taxes to take actions that ultimately help perpetuate more crime and otherwise obstruct the achievement of several important goals of a free U.S. society.

Baseline Goals for the Criminal Justice System

Our criminal justice system is but one of many governmental vehicles for accomplishing our societal goals, so our goals for that system should be determined in the context of our overall goals for society. At the very least, society as a whole should want to maximize the achievement of the following goals: economic opportunity for everyone willing and able to work for it; the physical safety, emotional security, and health of our society's members; freedom to pursue our individual professional and lifestyle choices and to express ourselves; and fair and equal treatment of all people (including proportionate responses to harmful behavioral deviations). These are some of the most basic ingredients for happiness

and productivity, individually and collectively. We correspondingly would like to minimize the adverse physical, financial and psychological impact that wrongdoers have on people who conform their conduct to moral and legal norms.

The criminal justice system can and does play a role in accomplishing each of these societal objectives. The most obvious goal of this system is to protect our physical safety and to minimize threats to our sense of physical security. However, since the rapid rise in prisoner count is primarily attributable to non-violent criminal incarceration (frequently driven by strict sentencing guidelines), addressing violent crime² will not be the focus of this article.

Focusing on the context of non-violent criminal behavior, what are our goals for the criminal justice system, the accomplishment of which would comprise "justice"? In view of our societal goals, those goals should be at least the following (not in order of importance):

- (1) to prevent and deter conduct that infringes on the societal goals described above in a harmful manner without reasonable justification, and to protect society from that type of conduct;
- (2) to the extent possible, to compensate the victims of such conduct for what they lost as the result of the objectionable conduct;
- (3) to change the tendencies and conduct of the perpetrator, to the benefit of himself/herself and society;
- (4) to make the victims and others who become aware of the crimes secure enough about their relative rarity that people do not live in constant fear of such events and waste excessive time, money and energy attempting to anticipate and defend against such crimes at an individual level;
- (5) to accomplish the foregoing goals in a manner that costs persons other than the perpetrator no more than absolutely necessary financially; and
- (6) to achieve each of the foregoing in a manner that does not ultimately obstruct more than facilitate the

² For purposes of this article, "violent crime" means any crime involving actual or threatened violence.

accomplishment of all of our primary societal goals.

A seventh goal, in many minds paramount and independent of the others, is just plain punishment. After all, merely knowing that criminals have been punished, without regard to the referenced goals, leaves many of us satisfied that justice has been achieved (that comment is partly sincere and, for reasons to be discussed in Part II of this Article, partly sarcastic).

Three Important Questions

Viewing the incarceration statistics in light of these goals should prompt us to ask at least three questions in the context of non-violent crimes: (1) To what extent have we over-criminalized non-violent conduct? (2) To what extent is an emphasis on punishment itself hindering the accomplishment of several other goals for the criminal justice system- thereby hindering the achievement of justice? (3) Can we better accomplish justice with less emphasis on incarceration and more emphasis on other measures?

In the second part of this Article (to be in the next *Barrister* edition), these questions will be discussed in the context of non-violent, "victimless" crimes. In the third part of this Article, these questions will be discussed in the context of non-violent crimes *with* victims. Contributions to these discussions are invited and would be welcome.

-Daniel P. Neelon, Esq.

