MASSACHUSETTS ACADEMY OF TRIAL ATTORNEYS

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President's Message

President's Message: Law Without Light

"It's so because I say it's so." — Lewis Carroll, Through the Looking-Glass

By Thomas M. Bond

I am proud to serve as MATA president this year as we celebrate our fiftieth anniversary. Although we are a plaintiff's organization, my goal this year is to bring the entire legal community together. Whether we advocate on one side of the "v." or preside from the bench, we share a common need for clarity and consistency in the rule of law. That's why the growing use of the Supreme Court's so-called shadow docket—where major rulings are issued without full briefing, oral argument, or written explanation—has become so concerning. It's not about politics. It's about the rule of law, and the ability of the legal community to do our jobs with clarity and confidence.

I have spent my career watching how clarity—or the lack of it—shapes justice on the ground. A well-reasoned Supreme Court opinion does not just resolve a case; it helps every trial judge, every lawyer, and every litigant understand the rules of engagement. It illuminates the path forward. When that light is withheld, the entire system stumbles.

In every courthouse, large or small, there is a shared rhythm to the work we do. Judges interpret the law, lawyers advocate for clients, and together we look to higher courts—especially the United States Supreme Court—for guidance. That guidance isn't just tradition; it's the backbone of a functioning justice system. We all rely on it: plaintiff's lawyers, defense lawyers, prosecutors, public defenders, and the judges who must apply the law, day after day.

In recent months, the Court has used the shadow docket to intervene in several cases touching on issues of national importance—immigration, federal regulatory power, and emergency relief. Each of these cases profoundly affects how government operates and how individuals experience justice, yet the Court offered little or no reasoning behind its actions.

In one immigration case, the Court stayed a lower court's injunction that had restricted deportations to third countries unless the government first considered claims under the Convention Against Torture. The order came without explanation, leaving lower courts unsure how broadly the stay applied—or whether it changed the government's obligations going forward. Justice Sotomayor, joined by Justices Kagan and Jackson, dissented, criticizing the absence of reasoning.

In another matter involving federal immigration enforcement in Los Angeles, the Court reversed a lower court's injunction that had prohibited ICE from detaining individuals based solely on factors like race, language,

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EDITOR'S NOTE

What are they thinking? Thoughts on juror psychology

By Jonathan A. Karon

The scariest and most re-assuring thing I know about jury trials are the results of a focus group. Forty people watched the same mock trial and were broken into four separate jury panels to deliberate. They reached the following verdicts: two defense verdicts; a $2 million dollar verdict and a $20 million dollar verdict.[1] They had all watched the exact same trial and the clear lesson is that the most important factor on what happens at trial is which twelve people are on your jury.

But it's way more complicated than that. Social science research in behavioral economics, psychology and related disciplines has demonstrated the existence of heuristics, mental shortcuts that folks frequently use to make decisions and which sometimes lead to an incorrect conclusion.[2] As trial lawyers it's important we be aware of these and recognize how the way in which we present information can affect juror decision making.

The difficulty is that in addition to the mental shortcuts used by most folks in problem solving, each juror brings their own underlying beliefs with them and processes the evidence they hear based on those beliefs. In the words of noted Alabama trial lawyer and trial consultant Greg Cusimano, "It's not that the jury will believe it if they see it; instead, if they believe it, they will see it."

The problem, of course, is in knowing what your juror's underlying beliefs are. The obvious answer is voir dire, but sadly in Massachusetts, we are very restricted in what we are allowed to do. Limits on the time allowed and the subject matter of questions make it difficult to uncover these underlying beliefs. This is more important than ever, given that nowadays everyone lives in their own information bubble.

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The power of listening

By Marc Diller

My son tells me he'll be a good lawyer one day because he's good at arguing.

He's not unlike me when I was younger. I was that guy who was first to raise my hand and to offer an answer – even when I turned out to be wrong.

I needed to make my points and give my reasons.

I heard others speaking; but I barely listened. I wanted to make my points in the most eloquent way I knew.

While others were talking, I was too busy listening to the voice in my own head about how I could dazzle them with my words.

I was so focused on what I wanted to say next - the "right" answer in my head. In doing so, I missed the subtle, but critical truths from others.

Are great lawyers great arguers?

ALL STAR TIPS

It's easy to conflate arguing with speaking, especially in this profession where advocacy is central and we think great advocates are great orators.

This is a misconception.

The art of advocacy is not about dominating the conversation.

It's about truly understanding. Understanding begins with listening.

A lawyer who listens carefully gains a deeper appreciation of a client's needs, the nuances of witness testimony and the underlying motivations of opposing parties.

I've learned (the hard way) to challenge the notion that good argument prioritizes talking.

As a young trial lawyer with no gray hair, I was fortunate enough "to argue" at our Supreme Judicial Court.

I prepared a narrative. I had it sequenced perfectly. I knew just what to say and when to say it. My reasons for and against were outlined in just the way I knew it would sell.

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A close look at *Ciampa V. Durham*

By Thomas R. Murphy

One thing we can surely agree on is that the law in this country varies widely from one State to another. If you are a woman concerned about reproductive health care, you do not want to live in Texas. And if joint and several liability is an issue for you, don't get hurt in Michigan. Or take the art of voir dire; many of our sister States – particularly those in the South where story telling is part of the culture – have for decades been using broad-based processes allowing for lawyer-conducted jury selection. In most of those States, voir dire has been a part of the common law for so long that it is almost second nature to trial lawyers; they use it often and they do it well. Not so here. The right to a thorough voir dire has only been the law of the Commonwealth since 2014.

That is when what is now codified in G.L. c. 234A, § 67D went into effect. It says, "the court shall permit" counsel (or a self-represented party) "to conduct an oral examination of the prospective jurors ..." and that sounds rather open-ended, right? But read on; that permit is "at the discretion of the court" which "may impose reasonable limitations upon the questions" in the oral examination. And in case you missed it, the Appeals Court recently decided whether the limitations one judge put on a lawyer's questions during voir dire of a car-crash case were reasonable and within the judge's discretion. The case is Ciampa v. Durham (September 2, 2025) and it deserves a close look. But first, remember that Ciampa was issued under Rule 23 (formerly known as Rule 1:28) and that means a few things: first, those decisions are not circulated to the entire court, are only the opinion of the three-judge panel, and are mostly directed to the parties; also, while Rule 23 cases may be cited for their persuasive value they are not binding precedent.

The case stems from an intersection wreck in Medford back in May 2019. There were three players in the events that day: Defendant 1 (a woman who was clearly liable for the crash and had minimum coverage) was driving a car; Defendant 2 (a guy who might have been liable and was flush with coverage) was in a commercial truck; and Plaintiff (who lost his leg and had extensive damages) was riding a motorcycle. Before the car struck the bike, the truck driver had waved with his hand (as if he were directing – controlling? – traffic) to the woman to pull out. The disputed voir dire questioning attempted to get into what members of the venire thought about a driver's "responsibility" for "waving or signaling" to other drivers. Judge Barry-Smith – a seasoned jurist abundantly familiar with voir dire – would not allow Plaintiff's Florida lawyer to get into it. After jury selection the parties tried the case over several days during which there was a significant settlement offer, and the jury returned a verdict of more than $12 million. They found the woman driving the car was liable, neither the truck driver nor his employer was liable, and with pre-judgment interest the $20 million judgment entered against the defendant with $100,000 in coverage. The case went up on a number of issues, one of them being whether the judge's ruling during voir dire was proper.

Plaintiff's first problem on appeal was the standard of review: abuse of discretion. If you are the appellee, as the truck driver was here and the standard of review is abuse of discretion, you are sitting pretty. That said, Plaintiff's lawyer did a fine job with a difficult case and a most worthy opponent defending the truck driver. The Appeals Court affirmed the trial judge's ruling; its decision came down to a balanced reading of Sup. Ct. R. 6 which details the jury selection process.

Rule 6 (3) (c) provides that during attorney-conducted voir dire, the "trial judge shall, at a minimum, allow ... reasonable follow-up questions ... concerning juror responses to the judge's questions, or concerning any written questionnaire." It goes on to encourage approval of questions "(ii) [that] may reveal preconceptions or biases relating to the identity of the ... nature of the claims or issues expected to arise in the case; ... and (iv) are meant to elicit information on subjects that controlling authority has identified as preferred subjects of inquiry, even if not absolutely required." That sounds like a lawyer should be able to ask the venire what they thought about waiving or signaling in an intersection, right? But wait, there is more to the rule.

Rule 6 (3) (e) details what one cannot ask, such as "questions framed in terms of how the juror would decide" the case, "including hypotheticals that are close/specific to the facts of this case" and "any hypotheticals that may trigger this rule must be presented to the judge before trial." So, the judge had to strike a balance: was asking potential jurors what they thought about "responsibility" for "waving or signaling" (even after the lawyer was given the chance to rephase his questions) simply asking about preconceptions or biases or was he getting into "hypotheticals that are close/specific to the facts" of the case? The Court said it was the latter: the questions were too "close/specific to the facts" of the case. And when you think about it that makes some sense, particularly when considering the ample

discretion accorded to trial judges in managing trials.

But the story does not end there. Look at the docket and you will see that in addition to the underinsured defendant appealing evidentiary rulings and jury instructions, Plaintiff has asked the SJC for further appellate review of the voir dire question. But from where I sit, I do not see them taking up that one. First, the scope of voir dire was well ironed out last year in Ross v. Dietrich, 104 Mass. App. Dec. 458 (2024) which was not issued under Rule 23 and is binding precedent. The standard of review of limitations on voir dire is for prejudicial abuse of discretion, and Ross held that "excluding the particular questions here while inquiring into the same topic area with other questions was within the judge's broad discretion to manage the jury selection process while accommodating attorney-conducted voir dire." Id. at 465. But more than that, the SJC knows all too well what Karl Llewellyn – the legal scholar of a bygone era – meant when he said over a century ago that "where doctrine shows a crack, counsel will be at it with a crowbar."

Tom Murphy is a former trial and appellate lawyer turned mediator practicing in Salem, MA and can be reached at trmurphy@trmlaw.net.

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Washington Update

By Linda Lipsen, CEO, American Association for Justice

As of this writing, the country is in its third week of a government shutdown. This is a tremendously difficult time for government workers who have missed paychecks and jobs and continue to live with constant uncertainty. And, the judicial branch has announced that "it will no longer have funding to sustain full, paid operations."

Lately, Washington, D.C., seems to be the epicenter of uncertainty. While we wait for Congress to achieve some kind of consensus or compromise, AAJ continues its advocacy to protect your practices and ensure that your clients' rights are not eviscerated in any negotiations.

As industries continue to attempt to gain immunity and preempt state law, AAJ is tracking and opposing their efforts:

H.R. 2300, a bill allegedly to bring "national uniformity" to infant formula

This bill would provide manufacturers of premature infant formula broad immunity for death or serious illness caused to preterm babies.

It was designed to eliminate cases brought by parents of babies who died from necrotizing enterocolitis ("NEC") after they were given Similac or Enfamil premature infant formula made by Abbott Labs and Mead Johnson.

Juries across the country have found manufacturers responsible for failing to adequately warn parents about the dangers of their products.

It would provide immunity to any manufacturer of premature infant formula and prohibit states from enforcing *any* rule, regulation, requirement, common law, or court order that is different from applicable federal law.

This bill applies retroactively and would dismiss hundreds of currently pending civil proceedings, resulting in lost time and resources for families seeking justice.

H.R. 4312, the Student Compensation and Opportunity through Rights and Endorsements Act (SCORE Act)

This bill would grant the NCAA broad immunity, wiping out college athletes' ability to legally enforce their Name, Image, and Likeness (NIL) rights and eliminating important protections for college athletes under state law that extend far beyond NIL.

The bill contains a sweeping antitrust exemption for the NCAA and institutions, thus overturning a unanimous Supreme Court decision holding that college athletes do have rights under antitrust laws.

By stripping college athletes of their rights under existing law, they would be left with no way to enforce currently available rules and protections.

H.R. 3548, the Infrastructure Expansion Act of 2025

This bill would nullify New York Labor Law Section 240, known as the "Scaffold Safety Law," which has stood the test of time for over 100 years of major New York construction and growth.

After multiple failed attempts to overturn this well-established New York law at the state level, developers are asking Congress to intervene.

Tort law has always been left to state legislatures and state courts.

This bill tries to get around the federalism problem by preempting New York's scaffolding law whenever *any* federal financial assistance is provided—directly or indirectly—for projects covered by the bill.

H.R. 5437, the Protection of Lawful Commerce in Stone Slab Products Act

This bill would provide legal immunity to manufacturers and sellers of stone slab products, including those used for kitchen countertops, for liability connected to its product that has caused workers to get sick or die from exposure to silica dust.

Workers handling artificial stone slab products have developed irreversible lung damage and silicosis from tiny particles of toxic dust over the past decade, and this issue has gained increasing attention since researchers at UC San Francisco and UCLA published "the largest U.S. study of this emerging health crisis" in 2023.

Regulatory Update: SEC Forced Arbitration Policy Change

On September 17, 2025, the Securities and Exchange Commission (SEC) voted along party lines to reverse its decades-old policy, stating that the presence of forced shareholder arbitration clauses will no longer be considered by the SEC in determining whether a company's registration statement should become effective.

This radical policy change threatens to shield companies from public accountability, put investors at risk of massive losses, depress shareholder value and stock prices, and undermine confidence in our capital markets—and any company that includes a forced arbitration provision in its IPO filing will face legal challenges that will result in significant risk and expense.

AAJ will continue to fight all attempts to curtail patient, worker, and consumer rights.

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or location. Again, the order arrived without a written opinion. The absence of explanation left lawyers and judges to guess where the constitutional line on racial profiling now stands.

The same pattern appeared in an emergency relief case involving the Department of State, where the Court partially stayed a lower court's injunction over canceled foreign aid contracts. The decision, again issued without full briefing, left both the government and affected organizations uncertain about what the ruling meant in practice.

Without reasoned opinions, lower courts are left to guess how to apply these decisions. Attorneys can't advise clients with confidence. And the public, watching from outside the courthouse, is left to wonder whether justice is being done or simply declared. In that sense, these shadow decisions dim the light that has long guided our legal system.

This is not a partisan concern. It's a professional one. The legal community thrives on reasoned discourse and transparent decision-making. Our legitimacy, and the public's trust, depend on it. When the highest court in the land rules without explanation, it erodes the shared foundation on which the rest of us stand.

The work we do throughout the Commonwealth is bound together by a common mission: to uphold fairness, reason, and the rule of law. We don't all argue the same side, but we share the same belief that the law should be principled and knowable. That's what makes the Court's written opinions so vital—they're not just decisions, they're our compass.

So, this is not a critique for critique's sake. It's a plea—from one member of the legal community to another—for light. For transparency. For the reasoning that makes our work possible and our system credible.

After all, as Lewis Carroll warned us, "It's so because I say it's so" may work in Wonderland—but it has no place in a court of law.

Thomas Bond is President of the Massachusetts Academy of Trial Attorneys and has practiced as a plaintiff's trial and appellate lawyer for more than forty years. He represented the plaintiff in Stewart v. Dutra Construction Co., where the U.S. Supreme Court clarified the definition of "vessel" under maritime law, reversing a First Circuit decision. His work representing maritime and undocumented workers reflects his belief that the rule of law must serve everyone equally.

What are they thinking? Thoughts on juror psychology

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For example, years ago, people usually got their information from the same sources. They watched network news (which tended to cover stories the same way) and read the same local newspapers. Thanks to the internet it's all different now. At a recent focus group, one of my participants listed their most reliable news sources as Fox news, Truth Social and Tik Tok, while another listed CBS News, the New York Times, the New Yorker and NPR. Not surprisingly, they had radically different views of the evidence.[3] I doubt that many (possibly not any) Massachusetts judges would let you ask about this and if they did, you probably would not get enough time to conduct necessary follow up.[4]

Nonetheless, voir dire can still be useful in uncovering important underlying beliefs. For example, finding out prospective jurors' experiences with concussions in a tbi case or working in construction in a construction site injury is essential. But unless you get lucky, those kinds of obvious questions may be as much as you're able (or allowed) to uncover in voir dire.

The other arrow in your quiver is focus groups. As we all know, focus groups are not perfectly predictive, but they can give you an idea of at least some of the different underlying beliefs jurors may have and how that could affect their decisions. Cusimano recommends conducting what he calls "concept focus groups" in which rather than doing a complete mock trial you test participants' reactions to key facts and find out what more they'd like to know. I've conducted these types of focus groups as well as more case specific ones, where the participants are given extensive case information and asked to decide liability and damages. In both types of focus groups, I've been surprised by some of the facts that participants found significant. Lots of times folks have been hung up by things I never would have thought would be important because their core beliefs on certain things were just different than mine. In other words, I never would have seen it coming. Which is why focus groups can be invaluable.

But this also leads to an important, but disturbing, issue. One reason we don't understand where jurors are coming from or what would hang them up is that we are trained to think like lawyers. We break cases down into things like duty, breach of duty, causation and damages. We learn the Learned Hand Test in law school. We memorize multiple rules of evidence that are intended (sometimes for good reasons) to deny jurors information they regularly rely on in making decisions.[5] Normal people do not think like us and we have to try to think like normal people if we're trying to figure out what their underlying beliefs might be. Not only that, but if we do manage to channel our inner normal person, defense motions in limine try to limit us to presenting evidence and arguments that only a law professor could love.[6]

So what do we do? We learn about the mental shortcuts humans use to make decisions. We do our best to get in touch with potential jurors' underlying beliefs. We try to get in touch with how normal people think. We then try to "frame" our cases accordingly. Keeping in mind that trial success depends on which folks are on your jury, if we fall short we remember that not only can a bad lawyer lose a good case, but sometimes a good lawyer can lose a good case. Which allows us to tee up the next one, use what we've learned and look forward to our next victory.

[Note: This article was inspired in large part by Greg Cusimano's teachings on how both heuristics and jurors' underlying beliefs affect their decision making. We were fortunate to have Greg present at the MATA virtual coffee hour on October 24, 2025. MATA members can log in and access the recording at MATA's web site. More importantly, anyone serious about trying cases needs to buy Greg's latest book "Seeds for Success" available from AAJ Press which explains all this in great detail while also being an incredibly fun read. Thanks Greg for sharing your wisdom.]

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[1] The focus group was conducted by David Wenner, a nationally recognized trial consultant. I've actually double checked with Dave to make sure I heard him correctly and he confirmed that those were the results.

[2] An excellent book on the subject is the bestseller, "Thinking Fast and Slow" by Daniel Kahneman a psychologist who won the Nobel Prize in Economics for his work in behavioral economics. A fun read as well as valuable to trial lawyers.

[3] Trial consultant Artemis Malekpour cautions that this is not always the case. For example, in one of her recent focus groups the two mock jurors who were most firmly on opposite sides regarding the verdict had almost identical political profiles.

[4] If any Massachusetts judges reading this would allow such questioning and sufficient time to do it, my sincere apologies as well as my thanks for keeping an open mind.

[5] A few examples are rules that exclude: prior instances of the defendant's negligence; subsequent remedial measures; or evidence of insurance-both defendant's and plaintiff's.

[6] Not all law professors. It would be a necessary but not sufficient condition. Some law professors are regular folks who just happen to know this stuff.

The power of listening

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And then… 20 seconds into my argument (which included "Good morning, may it please the court, I am Marc Diller together with my colleague…"), I was interrupted.

Over the next 15 minutes, I was peppered with questions by all seven (7) judges. Most of my time was eaten up by judges' questions.

I knew to expect this.

With every answer, I feared a judge would confront me with "why don't you try answering my question!"

My prepared "brilliant" narrative was scrapped because the judges had a different agenda.

I needed to listen, to process and to respond quickly and meaningfully. With limited time, my answers needed to be concise and precise to make my points in a responsive way.

Since that experience, I've come to understand that listening is more than passive hearing. It's an active, deliberate process.

Too often lawyers, like my younger self, viewed "listening" as waiting for their turn to speak.

Lawyers need to embrace listening. Read the room. Speak just the "right" points.

Imagine a lawyer who enters a negotiation intent on dominating the conversation. They may miss subtle cues, an off-hand remark that reveals the other side's priorities or pressures.

Consider a lawyer who in deposition or trial is intent on asking pre-prepared questions. They may miss opportunities to ask follow-up questions that capitalize on the gifts a witness just gave you live.

Imagine a lawyer who argues to a judge or jury but misses the cues about what the audience thinks is important and that never pivots away from what the lawyer mistakenly believed was important.

Consider a lawyer who, when meeting with a client, spends all the time speaking to impress and little to no time understanding what really matters to the client.

Most times, less is more.

Most times, the best advocates listen to understand. When others feel heard, they are more responsive to your persuasion.

Talk less. Listen more.

That's sound advice for lawyering.

That's sound advice for life.

MARC ADAM DILLER is the managing partner of Diller Law, LLP. He is the Immediate Past President of MATA. He concentrates his practice on plaintiff side catastrophic bodily injury cases including wrongful death, construction site injuries, dangerous premises, products liability, truck, motorcycle and car crash related injuries. Mr. Diller also serves as a trial consultant to other well-respected trial attorneys. He additionally serves on the Judicial Administration Section Council of the MBA. Mr. Diller has received numerous professional recognitions including being selected for eight (8) consecutive years to Super Lawyers Top 100 lawyers in MA and for the past four years, Marc was voted in Massachusetts Lawyers' Weekly Reader Rankings as the top jury/trial consultant in MA. Mr. Diller is a graduate of Suffolk Law School and The University of Michigan, Ann Arbor.

Well-Being Week in Law: A call to action for trial lawyers

By Heidi Alexander, Executive Director, Massachusetts Supreme Judicial Court Standing Committee on Lawyer Well-Being

As we approach the end of the year, it's a natural time for reflection—on our work, our purpose, and our well-being. Earlier this year, *Well-Being Week in Law* reminded us to pause and check in with ourselves and our colleagues. But the truth is, lawyer well-being cannot be confined to one week in May. It requires sustained attention, collective effort, and cultural change throughout the year. As the late Massachusetts Supreme Judicial Court Chief Justice Ralph Gants wisely said, "The health of our legal system depends on the health of the legal profession, and the health of the profession depends on the health of our lawyers."

The State of Well-Being in Massachusetts

Recent data continues to reveal alarming trends about mental health within our profession. In 2023, we learned that over two-thirds of Massachusetts lawyers are experiencing burnout, and nearly half have considered leaving the profession due to mental health challenges. The situation is even more concerning when we look at anxiety, depression, suicidal ideation, and alcohol use—areas where Massachusetts lawyers report significantly higher-than-average rates compared to the general population.

The most troubling part? Many lawyers are not seeking help. Research shows that stigma remains a major barrier to accessing care, which is why we must continue to speak openly about mental health and take active steps to reduce this stigma.

The Unique Struggles of Trial Lawyers

For those in litigation, the challenges are often even more pronounced. Trial lawyers report the lowest levels of life satisfaction among all practice areas. The intensity of this work, paired with high rates of burnout and anxiety, creates a toxic mix for mental health.

Additionally, a troubling 27% of lawyers report experiencing bias, harassment, or discrimination within the profession. Trial lawyers face these issues at a higher rate, often citing attorneys representing opposing parties, employers, and even judges as sources of bias or mistreatment. These experiences deepen the emotional toll of the work and highlight the need to foster supportive, equitable, and civil professional environments.

(Data Source: NORC at the University of Chicago, "Lawyer Well-Being in Massachusetts" (Feb. 1, 2023), available at https://www.norc.org/content/norc-org/us/en/research/projects/massachusetts-lawyer-well-being-study.html.)

Reflection on Today's Legal Practice and Well-Being

In speaking with lawyers and legal professionals across the state, one theme surfaces again and again: a sense of overwhelm. Many lawyers feel overextended—by work, by constant demands, and by the pace of life itself.

You are not alone in feeling this way. One simple but transformative habit is to pause every few months and ask yourself: *How do I feel about my life? How do I feel about my career? What is my purpose, and what might need to change?*

Encouragingly, many law schools are beginning to integrate well-being and professional identity development into their curricula, signaling a cultural shift toward preparing future lawyers not only to succeed professionally, but to thrive personally.

A Call to Action

As Executive Director of the SJC Standing Committee on Lawyer Well-Being, I have the privilege of engaging with lawyers across Massachusetts who are striving to make this profession healthier and more humane. But we can't do it alone. Lasting change requires collective commitment—from every corner of the legal community.

Trial lawyers, in particular, can lead by example. Create moments to debrief after difficult cases. Check in on colleagues who seem withdrawn. Speak openly about your own challenges. Normalize the conversation about stress, mental health, and balance. The more we share, the more power we have to shift the culture of our profession.

Let's recommit ourselves to building a more compassionate and sustainable legal community—one where lawyers can excel in their work *and* maintain their well-being. Let's make sure that the energy sparked during *Well-Being Week in Law* carries forward every day of the year.

Sugarman highlights honorees at Annual Convention

The Massachusetts Academy of Trial Attorneys held its 2025 Annual Convention and Dinner on May 12, 2025, at the Sheraton Framingham. During the event, MATA honored **Neil Sugarman, Esq**. with the Lifetime Achievement Award, **Attorney General Andrea Joy Campbell** with the Public Service Award, Benjamin Lloyd Crump, Esq. with the Champion of Justice Award, **Hon. Douglas Wilkins** with the Judicial Excellence Award, and **Nance Lyons, Esq**. with the Courageous Advocacy Award.

Massachusetts Attorney General Andrea Joy Campbell addresses the attendees.

MATA Immediate Past President Marc Diller presents Hon. Douglas Wilkens with the MATA Judicial Excellence Award

Massachusetts Attorney General Andrea Joy Campbell addresses the attendees.

Marianne LeBlanc introduces Neil Sugarman, Esq. recipient of the Lifetime Achievement Award

Leo Boyle offers comments on Neil Sugarman, Esq. recipient of the Lifetime Achievement Award

MATA Immediate Pat President Marc Diller presents the gavel to MATA President Thomas Bond

Benjamin Lloyd Crump, Esq. presented the Champion of Justice Award, by Immediate Pat President Marc Diller and President Thomas Bond

MATA Past President Douglas Sheff presents Nance Lyons with the Courageous Advocacy Award.

Benjamin Lloyd Crump, addresses the attendees.

Neil Sugarman addresses the attendees after receiving the MATA Lifetime Achievement Award

Leo Boyle presents Neil Sugarman the MATA Lifetime Achievement Award

Structuring the future: Why Massachusetts attorneys must make financial planning part of the settlement conversation

By Christopher J. Seeley, Seeley Howard Private Wealth

As settlement values rise and products evolve, plaintiffs' attorneys have a growing opportunity — and responsibility — to guide clients beyond the verdict.

When a case resolves, most lawyers focus on the number — the size of the settlement. But for plaintiffs, what matters most is how that money lasts. For many, the financial consequences of poor planning can eclipse the legal victory. That's why structured settlements and coordinated financial planning should be part of every Massachusetts lawyer's toolkit.

A Market on the Move

Structured settlements are experiencing renewed momentum. In 2024, roughly $9.8 billion in settlement proceeds were structured — a 10% increase over 2023 and nearly 60% above 2022 levels. New insurers such as Athene and American National have entered the market, while others are rolling out more flexible options, including hybrid index based and inflation-linked annuities.

That growth reflects both opportunity and caution. While the appeal of guaranteed, tax-advantaged income remains strong, regulators and advocates continue to highlight factoring abuses and transparency concerns. The takeaway: lawyers who understand today's structured-settlement landscape can protect clients from risk while leveraging innovation to their advantage.

Why Structured Settlements Still Matter

Structured settlements convert all or part of a lump-sum recovery into a stream of guaranteed payments — often tax-free under IRC § 104(a)(2) for personal-injury and wrongful-death cases. They bring three core advantages:

1. Predictability and protection. Payments are backed by highly rated life insurers, providing security through market volatility.
2. Behavioral guardrails. Clients who might overspend large awards benefit from the discipline of fixed, scheduled payments.
3. Customization. Modern structures can mix lump-sum and deferred payments, escalate over time, or fund major milestones like education or retirement.

A recent MetLife study found that nearly 80% of recipients reported greater financial confidence after receiving structured payments — evidence that careful design supports long-term stability.

But Not Without Drawbacks

Attorneys should also counsel clients about trade-offs: limited liquidity once the structure is set, reliance on insurer solvency, and potential complications with means-tested benefits such as Medicaid or SSI. In some cases, a blended approach — combining a structured annuity with a managed investment portfolio or special-needs trust — delivers the best of both worlds.

Integrating Planning Into Practice

Financial planning shouldn't begin at the check-delivery meeting. Bringing a qualified settlement planner or financial advisor into the conversation early allows lawyers to model future cash flow, test inflation or care-cost scenarios, and align payment schedules with real needs.

At minimum, practitioners should:

- Model multiple options. Compare lump-sum, structured, and hybrid approaches side by side.
- Protect benefits eligibility. Coordinate with estate or special-needs counsel where applicable.
- Educate clients early. Help them understand both guarantees and limitations before emotions peak at settlement time.

"For trial attorneys, client advocacy doesn't end when the release is signed. Helping clients plan for the future is an extension of the duty of care."

A Leadership Opportunity for Massachusetts Lawyers

As structured-settlement products expand and clients' needs grow more complex, Massachusetts attorneys are well positioned to lead. Those who integrate post-settlement financial planning into their practices not only protect clients' recoveries but also elevate their professional value.

In an era of larger settlements, volatile markets, and evolving financial tools, the best lawyers will be those who plan as carefully for the future as they argue in the courtroom.

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Break It Down Again[1]
Modularity and Structure in Legal Writing

By Kevin J. Powers

Briefs are logical instruction sets for courts to apply, in order to reason from issue to ruling.

A legal brief is not a novel, and very few judges have sufficient time to marinate in flowery, meandering prose. A legal brief is a set of instructions, explaining how the court should operate the machinery of the law—including all that is a part of the law, from the standard of review to relevant policy considerations and encompassing all else in between—to produce a particular result. Like a computer program, a legal brief must move step-by-step through each minute piece of reasoning, in order to create a logical path from input (issue) to output (ruling). The best computer programs are modular, breaking down each part into smaller and smaller, bite-size components, with every bite-size component performing one little task. The best legal briefs do the same thing.

Every section of a brief should perform one task.

The Statement of the Case, or Procedural History, should not discuss the underlying facts, because the underlying facts belong in the Statement of Facts. The Statement of Facts should not discuss the litigation, because the history of the litigation is the Procedural History and belongs entirely within the Statement of the Case. Neither the Statement of the Case nor the Statement of Facts should argue, because all argument belongs in the Argument section.

Break every section of a brief, unless limited to a single, isolated point, into sub-sections, each of which performs one task.

Every section of the brief should contain sub-sections, and every sub-section should discuss one topic not addressed in other sub-sections. Where necessary, every sub-section should contain sub-sub-sections, and each sub-sub-section should discuss one topic not addressed in other sub-sub-sections. A brief is not a closing argument, and repetition, far from being a virtue, is an insult to the reader, who should rightly assume from repetition that the writer does not consider the reader sufficiently intelligent to comprehend a point the first time that the writer states it.

This is as true of complex procedural history and complex facts as of complex arguments. The writer insults the reader when the writer forces the reader to pick through a single, undivided chronology recounting an extended and multi-faceted procedural history in order to make sense of an interminable litigation. Suppose that the litigation began before a municipal zoning board of appeals, then proceeded to the Superior Court, and has finally advanced to the Appeals Court. The writer should assist the reader by giving each of those parts of the procedural history an individual sub-section within the Statement of the Case.

The writer also insults the reader when the writer forces the reader to pick through a wide range of factual details lumped together in a single stew. Suppose that the facts involve a divorce in which the trial court ordered somewhat different child custody results (due, perhaps, to one of the two children having a developmental disability) as to parenting time and medical decision-making authority over each of two children, a child support order, an alimony order, and a property division order. The writer should assist the reader by dividing the Statement of Facts into sub-sections for child custody, child support, alimony, and property division. The writer should further divide the child custody sub-section into sub-sub-sections for each of the two children. The writer may even further divide each of the two childrens' sub-sub-sections into sub-sub-sub-sections for parenting time and medical decision-making authority.

Break every sub-section of a section of a brief (or sub-sub-section of a sub-section of a section of a brief), unless limited to a single, isolated point, into paragraphs, each of which performs one task.

Within each division in the outline formed by the headings of sections, sub-sections, sub-sub-sections, etc., every paragraph must have a single, specific purpose and function. Paragraphs should not begin with pedantic, *pro forma*, "throwaway" topic sentences that do not otherwise advance the procedural history, the facts, or the argument. Instead, each paragraph should begin with an initial "functional topic" sentence that, while simultaneously furthering the broader function of the section (or sub-section, or sub-sub section, etc.), makes clear to the reader what particular function that paragraph will serve. That paragraph should then fulfill its particular function and, once having done so, end. Additional space in which the writer repeats a point does not reinforce the point; instead, such a waste of space insults the reader by tacitly suggesting that the reader did not understand the point the first time that the writer stated it.

Break every paragraph into sentences, each of which performs one task.

Sentences are to paragraphs what sub-sections are to sections. Every sentence should say something that no other sentence says, and should be no longer than necessary to make its one, specific point.

Headings and sub-headings are the roadmap through the brief.

The headings, sub-headings, sub-sub-headings, etc., should clearly chart the logical course for the reader through the writer's reasoning. The Table of Contents should be a clear outline of the procedural history, facts, and reasoning necessary to resolve the issue. The headings and sub-headings should reduce even the most complex and multi-faceted information to a series of bite-size segments. As a result, a reader perusing the Table of Contents should feel that, however long the logical journey from issue to ruling may be, that road is comprised of approachable, simple, and incremental baby steps.

Major Argument headings and sub-headings should set off relevant legal sections as logical "because" (conclusion-because-reason) formulations, even if the word "because" does not literally appear in the a particular heading or sub-heading. Headings and sub-headings in the Statement of the Case and Statement of Facts, however, as well as sub-sub-headings in the Argument, need not appear as full sentences or "because" formulations if such subdivisions are simply breaking down relevant procedural history by chronological era, relevant facts by topic, or relevant analysis by element. For example, having once stated in a sub-heading that "The Superior Court abused its discretion and committed clear error of law by issuing a preliminary injunction where [Plaintiff] did not show a likelihood of success on the merits, where [Plaintiff] did not show irreparable harm, and where the balance of harm favored [Defendant]," subordinate sub-sub-headings may simply state "Preliminary injunction factors," "[Plaintiff] did not show a likelihood of success on the merits," "[Plaintiff] did not show a substantial risk of irreparable harm," and "The balance of harm favored [Defendant]." The goal is clarity for the reader, not pedantic, straight-jacketed formalism.

The Massachusetts Rules of Appellate Procedure require that the "summary of the argument . . . must not merely repeat the argument headings." Mass. R. App. P. 16(a)(8). Truth be told, however, in a modular brief with clear headings and sub-headings, conforming to that requirement should be one of the most difficult, and even potentially one of the most frustrating, tasks for the writer. In a well-written brief, the headings and sub-headings *should* summarize the Argument, even if the rules require some linguistic variation in the formal "Summary of Argument" section.

Modular organization, breaking the brief into its smallest possible components, will enable creative counsel to avoid redundancy and comply with word-count limits.

Writers reap a significant reward from modular organization of a brief. By forcing each section, sub-section, sub-sub-section, paragraph, and sentence in a brief to perform one exclusive task, writers avoid redundancy and reduce word count. What could have become an unwieldy morass of spaghetti argument[2] will shed superfluous sections, sub-sections, paragraphs, and sentences until it dramatically downsizes, transforming from obese Professor Julius Kelp into fit and trim Buddy Love.[3] The discipline introduced by modular organization can enable almost any argument, regardless of the potentially-sprawling nature of the underlying litigation, to fit into reasonable brief length limits.

This is also the way in which courts write decisions.

Court opinions are comprised of sections, each of which serves a specific purpose and each of which, when necessary, is subdivided into necessary components in order to enable the reader to understand the court's analysis in a clear and structured manner. An attorney's brief should read as a draft judge's opinion. The first step in making a brief attractive as a draft opinion is to mimic the modular structure of a judicial opinion. Such a brief practically beckons to the judicial reader "Pick me! If you rule as I have argued, then you will have less work to do in order to write your opinion, because I have already done the heavy lifting and arrived at your doorstep as a ready-made draft."

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[1] See Roland Orzabal as Tears for Fears, Break It Down Again, on ELEMENTAL (Mercury Records Ltd. 1993).

[2] In the 1980s, computer programming languages, such as BASIC, that allowed programmers to invoke sudden GOTO statements to arbitrarily branch to random points in the program, without regimented routines and subroutines defining each and every task in a modular, compartmentalized structure, often enabled undisciplined programmers to produce what became known as "spaghetti code." See Spaghetti code - Wikipedia, at https://en.wikipedia.org/wiki/Spaghetti_code (last viewed June 12, 2025). "Spaghetti code" was characterized by incoherent strands snaking through the coding equivalent of a bowl of pasta. Spaghetti argument is the legal equivalent of spaghetti code, and reads with no more logical coherence than its computerized counterpart.

[3] See THE NUTTY PROFESSOR (Universal Pictures 1996).