

NEWSLETTER

COMMITTED TO THE PRINCIPLES OF LEGAL EXCELLENCE, COMMUNITY SERVICE, AND INCREASED MINORITY PARTICIPATION IN THE PRACTICE OF LAW

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FROM THE PRESIDENT'S DESK



Debra M. Davis

In the spirit of forming alliances with other organizations, this is an exciting year for your bar leadership. I am joined by several firsts: the first and second African American Presidents of the American

Bar Association, **Dennis Archer** and **Robert Grey** respectively, and the first African American President of the Maryland State Bar Association, **Harry Johnson**. In addition, the incoming president of the National Bar president **Kim Keenan**; the President and President-elect of the Prince George's County Bar Association, **Krystal Alves** and **Maurene Epps-Webb** respectively, and the President of the Prince George's Chapter of the NAACP, **June White Dillard**, are all members of JFB. I have had the privilege of meeting each of these col-

leagues and continually draw upon their experiences.

Perhaps our largest alliance is with the ten community organizations that have joined to sponsor the series of lectures and events in celebration of the 50th Anniversary of the **Brown v. Board of Education** decision. Just last week students from Prince George's County Community College and the Prince George's County public schools re-enacted portions of the *Brown* argument before an audience of lawyers, judges, and educators. They did a terrific job. Thanks a million to **Roger Thomas** for his hard work in representing JFB in this endeavor.

As a part of the continuing series of programs, co-sponsored by JFB and celebrating the *Brown vs. Board of Education* decision, there will be an Awards Banquet on May 17, 2004 at 7:00 p.m. at the Largo

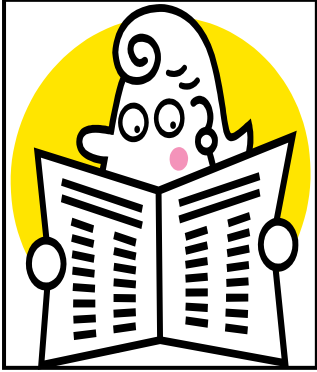
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PRINCE GEORGE'S ASA'S REUNION DINNER

Glenn F. Ivey, State's Attorney for Prince George's County, invites all current and former Assistant State's Attorney's for Prince George's County to the **First Annual Assistant State's Attorney's Reunion Dinner** from 6:00 p.m. to 9:00 p.m. on **Wednesday, May 19, 2004** at Florian Hall in Bowie, MD.

Special guests include former Prince George's State's Attorneys **Arthur "Bud" Marshall**, **Hon. Alexander Williams**, **Hon. Toni Clarke**, and Prince George's County Executive, **Jack B. Johnson**.

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JFB Newsletter Committee

Sharon V. Burrell

Chair

(240) 777-6722

E-mail:

sharon.burrell@montgomerycountymd.gov

Newsletter Editor

Lloyd A. Johnson

(301) 809-0944

E-mail:

lloydajohnson@comcast.net

The **JFB Newsletter Committee** strives to insure that the *JFB Newsletter* provides a valuable resource to its members. But we need your help. The Newsletter Committee invites your participation as a Committee member or as a contributor. We welcome articles and information on topics of interest to JFB members. For further information, please contact **Sharon V. Burrell** or **Lloyd A. Johnson**. (See above.)

FROM THE PRESIDENT'S DESK (Cont.)

(continued from page 1)

Student Center of the of Prince George's Community College. High school students will be awarded prizes for essays and invited guests include the original plaintiffs in the *Vaughn v. Board of Education* case. The cost is \$25.00 per ticket. For further information, contact **Roger Thomas**, JFB's chair of the project, at (301) 952-0100 or by e-mail at rthomas@kmmnl-law.com. In addition, I have ten tickets. To reserve your

tickets, contact-me at (301) 894-9400 or by e-mail at dmdlaw@erols.com.

Meanwhile, stay tuned for our Reclamation Social, the New Admittees' Reception, and of course our 20th Annual Scholarship Banquet on November 4, 2004 for which we want to do something special. Be sure to weigh in with your ideas and support.

Debra M. Davis, Esquire
President, JFB Bar Assoc.

JFB/PRINCE GEORGE'S NAACP JOINT MEETING

JFB held its April general membership meeting jointly with the Prince George's Chapter of the NAACP on April 15, 2004 at the Everlasting Life Health Center in Capitol Heights, MD. The meeting was co-chaired by JFB President, **Debra Davis** and Prince George's County NAACP President (and JFB member) **June White Dillard**.

Highlights of the well-attended meeting included the distribution of JFB's lawyer referral forms to NAACP members, an update on the NAACP's voter registration drive which will continue through October

1, 2004, and the June 6, 2004 health fair to be held at the Everlasting Life Health Center.

Legislative reports were presented on bills introduced in the Maryland State Senate during the 2004 Legislative by **State Senator Gloria Lawlah** and **Delegate Carolyn Howard**. In addition, State Senator Ulysses Currie reported on legislation involving education and health issues and **Delegate James Proctor** reported on legislation involving historically Black colleges and universities in Maryland.

FIRST ASA REUNION DINNER (Cont.)

(Continued from page 1)

Ivey told JFB, "... the life of an ASA is interesting hectic and stressful, but always rewarding. Although many of our colleagues have left [this] office over the years to pursue other exciting careers, the relationships established within the walls of the State's Attorney's Office remain strong.

"Please join us as we re-establish old friendships, meet past and current prosecutors, and have some fun at the 1st Annual ASA's Reunion Dinner."

Cost is \$35 per person. Spouses and significant others are welcome. For reservations contact **Christy Johnson** at (301) 952-5564 or by e-mail at csjohnson@co.pg.md.us. *Time is short. Make your reservations now!*

U.S. HEALTH PRIVACY ACT & EX PARTE COMMUNICATIONS.

Want to initiate *ex parte* contacts with a treating physician in a medical malpractice case? You may need a Court Order.

HIPAA (The Health Insurance Portability and Accountability Act of 1996). The dreaded acronym is back and not just on those long forms you have to sign at the doctor's office. It has invaded discovery practice wherever "individually identifiable health information" may be found. Of particular interest to Maryland medical malpractice attorneys is HIPAA's effect on the ability of defense counsel to contact a plaintiff's treating physician without the authorization or consent of the plaintiff.

I addressed this issue in *Law v. Zuckerman*, 2004 WL 438327 (D. Md. 2004). Following a nascent line of federal and state trial court cases, I held that the federal enactment of HIPAA preempts Maryland law and is controlling on the issue of *ex parte* communications. Therefore, prior to having *ex parte* communications with a plaintiff's treating physician, defense counsel must get the consent of the plaintiff or a court order through the procedures outlined in HIPAA. While this opinion is not controlling authority for any court, some judge might find the analysis interesting and persuasive. Look at HIPAA before initiating contact with a treating physician.

Given the possibility of sanctions, it might behoove defense counsel to take another look at

HIPAA before initiating contact with a treating physician.

When approaching medical witnesses, it may be helpful to think of contacting them in the same manner as one would contact high ranking corporate employees of an adverse party. In the corporate employee scenario, Rule of Professional Conduct 4.2 is the guidepost. That rule prohibits *ex parte* contact with the former employee of an adverse party when the lawyer knows or should know that the former employee has been extensively exposed to confidential client information. The consequences of failing to get consent of the other party or court approval for such contacts can be potentially devastating. It can result in the loss of key evidence or possibly the disqualification of counsel. A serious violation of HIPAA could be equally catastrophic.

Bottom line: Thanks to HIPAA, informal discovery of health care professionals may be a thing of the past. Until further clarity comes from our appellate courts, wise counsel should tread carefully since non-authorized conversations with medical witnesses may not only result in a rebuke by the court, but possibly the loss of the case.

Charles B. Day, U.S. Magistrate Judge, U.S. District Court for the District of Maryland.

Anna K. Livingston, law clerk for Judge Day

DID YOU KNOW ...



J. Wyndal Gordon, Esquire, and MD Bar Counsel, **Melvin Hirshman**, will be our guest panelists at JFB's May Membership meeting on "Solo and Small Office Practitioners and Grievances: How to avoid them and what to do if you hear from the AGC."

The panel of jurists and practitioners will lead a wide ranging discussion on this sensitive and troubling area for many solo and small office practitioners. *Plan to attend!*

The *JFB Newsletter* is published monthly except July. All rights are reserved but articles may be reprinted without permission, provided proper credit is given. JFB members receive this newsletter at no cost. Statements expressed herein are those of the authors and do not necessarily reflect the views of the **J. Franklyn Bourne Bar Association, Inc.** or its officers.

The *JFB Newsletter* invites letters and articles. Submissions should be sent by FAX to (301) 809-0921 or by E-mail, in MS Word format, to lloydajohnson@comcast.net. Editor reserves the right to shorten any submissions to meet space limitations. Deadline is the 29th of each month.

J. FRANKLYN BOURNE BAR ASSOCIATION, INC.

P.O. Box 1121

Upper Marlboro, MD 20773-1121

Important Dates to Remember

General Membership Meeting

Attorney Ethics Panel Discussion

Thurs., May 20, 6:30 p.m.

Greenbelt Community Center

15 Crescent Road

Greenbelt, MD

New Admittees Reception

July 2004

Date & Place TBA

MEMBERSHIP INFORMATION



The **J. Franklyn Bourne Bar Assoc. Inc.** is committed to legal excellence, community service, and the advancement of African-American minorities in the legal profession. Our membership consists primarily of African-American attorneys who live and/or work in Montgomery and Prince George's Counties.

Membership classes are:

Active: Licensed to practice law in Maryland. Dues: admitted to the Bar for less than 5 years — \$25; all others — \$50.

Associate: Licensed in *any other jurisdiction*, who lives in Montgomery or Prince George's County. Dues: admitted to the Bar for less than 5 years — \$25; all others — \$50.

Student: Matriculated at a Washington metropolitan area law school *or* lives in Montgomery or Prince George's County and matriculated in any law school. Dues: \$5.

New Admittees: Admitted to practice in Maryland in the last 12 months. Dues waived.

For membership applications, contact **Belinda Bell** at (301) 504-0626, extension 1338 or by e-mail at mitch1738@msn.com