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Foreward

"That is, it is the common opinion,
and communis opinio is of
good authoritie in law."
—Sir Edward Coke

Common law requires a common opinion, yet how is a common view of the law shaped in our society? In the media we have *Law and Order* attorney Jack McCoy arguing cases to morally satisfying conclusions in 10 minutes or less, Judge Judy barking orders and whacking her gavel to the applause of a studio audience, quick-hit crime montages on the network news, and fast-paced thrillers by Scott Turow and John Grisham, peopled with sassy prosecutors, sympathetic plaintiffs, and gruff cops. From this perspective, we might conclude that the law is speedy, righteous, even glamorous —a form of entertainment, designed to heighten amusement and stimulate heartbeats.

This impression conflicts strongly with the actual practice of law. In one of the following essays, "Greed On Trial," Alex Beam notes, "Trials are boring, and long trials are excruciatingly boring...After awhile I felt like a passenger on a cruise ship, perhaps headed for some place interesting, but becalmed, week after week in a windless...Sargasso of

mind-choking legal seaweed." The real world of law is comprised of courtroom tedium, skyscrapers aglow from dawn to midnight with browbeaten young associates, overburdened DAs and public defenders, and reams of obscure discovery documents. This law is a trail marker for voluminous, often petty, commercial disputes and, with its restraining orders, divorce decrees, evictions, bankruptcy filings and disputed wills, a compendium of everyday disappointments. It is a groaning imperfect system, shaped by doggedness and minutiae, by which humans attempt, with obvious prejudice and ineptitude, to protect themselves from themselves.

How do these conflicting worlds of fiction and reality influence each other? How does either help form the common opinion upon which law depends? It appears that while law as entertainment has reached unprecedented heights of popularity, there is a corollary of growing disinterest in actual legal process, the philosophy and history of law, and the nuanced discussions and decisions that define how our government relates to the world, interacts with its citizens, and encourage one citizen to act toward another. (Vikram Amar takes a look at one aspect of this disgruntlement, in his clear-eyed assessment of the state of modern jury service.)

The essays in this anthology were chosen because they avoid this tendency toward polarization. Written for the common reader, they are passionate without being hyperbolic, persuasive without being overly polemical, and clear while remaining technically accurate. They are accessible, enjoyable, thought-provoking and relevant to issues currently being debated in our courts. How should the law

intervene in the business of "a free market"? Should people of the same sex be allowed to marry? In a country governed by a separation of church and state, how might religious icons be displayed in our public buildings? Is a college student who mixes music on his laptop a thief? What does a state owe to people who are found innocent after spending many years in prison? How much should we look to the laws of other countries when framing our own legal opinions?

In short, this roundup intends to make it easier for readers who want to advance their legal understanding while taking pleasure in excellent writing. At the same time it applauds writers and scholars who are working to encourage a common understanding of the subtleties, complexities and realities of American law.

— Rosemary Passantino

Greed on Trial

A "pro bono" windfall leads to a dispute over more than a billion dollars in fees.

by Alex Beam

My favorite moment during last winter's $1.3 billion Massachusetts tobacco-fee trial came near the end, when Ronald Kehoe, an avuncular, white-haired assistant attorney general, was questioning the state's star witness, Thomas Sobol. Sobol was describing how his former law firm, Brown Rudnick Berlack & Israels, prepared in 1995 to sue Big Tobacco on behalf of the Commonwealth.

Sobol testified that to reduce its risk on what looked like a long-shot lawsuit, Brown Rudnick hired a bunch of cheapo "contract" lawyers, at $25 to $35 an hour, and also cut back on its pro bono commitment, redirecting $1 million worth of work to the anti-tobacco litigation.

KEHOE: Was the tobacco litigation seen by the firm as a form of pro bono activity in part?

ROBERT POPEO [Brown Rudnick's attorney, jumping out of his chair]: Objection, your Honor.

JUDGE ALLAN VAN GESTEL: Sustained.

Did Brown Rudnick view the anti-tobacco lawsuit, which would later pay out the largest legal fee in the Commonwealth's history, as pro bono work? I asked Sobol that question over hot chocolate at Johnny's Luncheonette, in Newton, Massachusetts. Both on and off the stand the forty-six-year-old Sobol cuts a bold figure, closely resembling Bruce Springsteen before the Boss started showing his age. For want of a better term, Sobol —not unlike Jan Schlichtmann, the Boston lawyer who litgated the toxic-waste case made famous in the book and movie *A Civil Action*—has star quality. In one of several tendrils linking the two cases, which were tried in the same downtown courtroom, Schlichtmann and Sobol were briefly colleagues, before quarreling over the—yes—fees in a high-profile class-action suit, unrelated to tobacco.

Sobol told me that some of his Brown Rudnick colleagues did view the tobacco project as pro bono work. "It wasn't considered 'real lawyering,'" he said, "because we were suing corporate America, not defending corporate America. And we weren't making any money on a day-to-day basis." He added, "But this was a fee transaction. We weren't rendering services for free."

No, not exactly. Brown Rudnick and four other firms representing Massachusetts had secured a 25 percent contingency fee in the tobacco litigation. And that litigation paid

off hugely. In 1998 a master settlement agreement (MSA) between forty-six states and Big Tobacco awarded Massachusetts $8.3 billion over twenty-five years, in purported Medicaid losses resulting from smoking. The tobacco companies also agreed to pay the states' legal fees, in many cases relying on an arbitration panel to decide how much each legal team deserved. As the lead law firm for the Commonwealth, Brown Rudnick hit the jackpot. Having invested about $10 million in time and expenses, it won $178 million from the panel, which awarded Massachusetts, of all the states covered by the MSA, the highest legal fees—$775 million in all. In court the state noted that Brown Rudnick's chief of litigation, Frederick Pritzker (also the chairman of its ethics committee), had siphoned off $14 million for seventy hours of work: a rate of $200,000 an hour. Sobol, the lead lawyer, received $13 million. On paper each Brown Rudnick partner stood to make an average of $140,000 a year from this case alone.

But the big numbers equaled only 9.3 percent of the $8.3 billion award. Brown Rudnick asked the state for a compromise between the 9.3 percent and the promised 25 percent fee. Attorney General Thomas Reilly refused to pay a penny more than the arbitration award. Now Brown Rudnick and the four other firms were back in court, asking for the full 25 percent: $1.3 billion more in fees. Brown Rudnick and the others were actually making the tobacco companies look good.

The events that landed the lawyers in Judge van Gestel's cavernous Art Deco courtroom had not exactly heaped honor

on either side. Lawyers for every state in the Union had collected unheard-of fees from the lawsuits that led up to the MSA; Big Tobacco had signed the agreement, which reimbursed the forty-six states for $206 billion worth of smoking-related medical costs, in exchange for protection from further litigation by the states. In Florida, one of four states that settled outside the MSA process, lawyers had also negotiated a 25 percent contingency fee; that fee equaled $2.8 billion, a sum that "simply shocks the conscience of this court," one Florida judge observed. A year after Florida settled, arbitrators awarded its eleven law firms an even larger fee: $3.4 billion—or an average of $300 million each.

The MSA fee arbitration resulted in the doling out of checks on a generous if unscientific basis. The first states to sue won a bonus for getting the ball rolling; the Massachusetts lawyers' $775 million (which amounted to an average of more than $7,700 an hour) reflected the state's role as one of the key participants. In other states lawyers lifted their fingers to the wind of public opinion and eventually settled for the arbitration awards, which were by any reasonable standard gargantuan. (Lawyers in Texas ended up accepting "only" $3.3 billion. They had asked for $25 billion—more than the state's settlement amount—but soon came around. The former Texas attorney general is in jail for trying to defraud the tobacco fund; but that, as they say, is another story.) Brown Rudnick and a co-plaintiff, the San Francisco partnership of Lieff Cabraser, Heimann & Bernstein, decided to sue for their full fees.

While the lawyers were grubbing, the state was hardly covering itself in glory. Scott Harshbarger, who as the

Massachusetts attorney general signed the contingency-fee deal in 1995, ran for governor three years later. His opponent, the incumbent Paul Cellucci, made the "obscene" tobacco fees a campaign issue—as did Governor George W. Bush in Texas. In the heat of the campaign Harshbarger pulled Massachusetts out of the increasingly controversial MSA negotiations. He lost the election anyway, and the state joined the agreement. This allowed Cellucci and his Republican successors to feast on the multimillion-dollar settlement revenues.

By 2000 the word was out across the country that many states were squandering the vast sums raining down on them from the MSA. In theory the money was earmarked for medical care, or for anti-smoking education targeted especially at young people. In practice most legislatures used it for budget balancing or more exotic purposes. In Los Angeles some of the money was designated for improving wheelchair access on sidewalks; and then-mayor Richard Riordan proposed using some to settle abuse claims filed against the Los Angeles Police Department. In Massachusetts the governor and the legislature pillaged the tobacco awards in short order to balance the state budget.

Perversely, the tobacco money proved to be addictive. In 2003 the attorneys general of thirty-three states sided with Philip Morris against an Illinois court that wanted the company to post a $12 billion bond after it lost a huge class-action case. Philip Morris loudly proclaimed that posting the bond would bankrupt it, thus threatening its MSA payments to the states. The litigating lions saved the shorn tobacco lamb; at

the behest of the states, the court reduced the bond to a more manageable $6.8 billion.

During the course of *Brown Rudnick, et al. v. The Commonwealth of Massachusetts*, in a sidebar conversation with Robert Popeo and the Commonwealth's lead attorney, Dean Richlin, the sixty-eight-year-old Judge van Gestel, an old-fashioned lawyer who referred to the law in wistful tones as a "learned profession," expressed shock at the states' plumping for Big Tobacco.

VAN GESTEL: That's, in my view, a very sad event, in that the states have to keep the evil empire, as it's been called, afloat.

RICHLIN: Exactly so.

VAN GESTEL: The next thing you know, the states will be having Joe Camel as the logo. I mean, I only meant that partly facetiously...To me, it's an outrage.

The humorist Dave Barry had great sport with the tobacco litigation, noting,

> [The states] are distributing the money as follows: (1) Legal fees; (2) Money for attorneys; (3) A whole bunch of new programs that have absolutely nothing to do with helping smokers stop smoking; and (4) Payments to law firms. Of course, not all the anti-tobacco settlement is being spent this way. A lot of it also goes to lawyers.

Skirmishes

To sue the Commonwealth, Brown Rudnick hired the Boston firm Mintz Levin Cohn Ferris Glovsky & Popeo, perhaps best known for its partner Robert Popeo. A compact bantam of a man, the ferocious Popeo, who is sixty-five, once garnered a few moments of national fame by halting on camera a 60 Minutes interview with his sulfurous client John Silber, then the president of Boston University. Popeo likes high-profile clients (he recently represented Suzy Wetlaufer, the inamorata of General Electric's retired chief executive Jack Welch, when she was leaving her job as editor of the Harvard Business Review), and he is quite comfortable in a courtroom. The youngest of six children from an Italian-immigrant East Boston family, he comes by his flat vowels honestly. His hard-earned affluence notwithstanding, Popeo put on a credible still-a-man-of-the-people act for the jury and did his best to jolly up the judge.

At sidebar conferences Popeo and Richlin looked like Mutt and Jeff, with the tall string bean Richlin towering over his adversary. One might have expected the assistant attorneys general—Richlin and his boyish forty-two-year-old deputy, David Kerrigan, the head of the Commonwealth's Trial Division—to be outmaneuvered by their private-sector opponents. But the lawyering was well matched. At first glance the balding, dark-haired Richlin looks like an undertaker; but he proved to be a smooth operator in court. His boss and former law partner, Attorney General Thomas Reilly, had entrusted Richlin with delicate work before: monitoring the sale of the Boston Red Sox and the investi-

gation of sexual abuse by Roman Catholic clerics. I had heard Richlin called "Tom Reilly's brain"—a backhanded compliment that falls wide of the mark. Reilly showed plenty of brains by giving his hot-potato cases to Richlin.

Both sides wanted a jury trial, because deep down neither fully trusted its case in the hands of Van Gestel, a veteran litigator and a business-law specialist. "The judge is just another lawyer—we had to get the public involved," Richlin told me during the trial. Popeo had a gut feeling that Van Gestel didn't like the plaintiffs' case, and said so to his face. "His feelings were clear from the outset," Popeo told me after the trial was over. "Look, I've known him for forty years, and I think he's a terrific judge, but the law is an industry now, not a 'learned profession.' When you start asserting that lawyers aren't entitled to their contractual rights, you're saying you want to put a cap on lawyers' earnings. He should not have done that."

Both sides retained jury consultants, who convened focus groups similar to those assembled by television networks and advertisers. The mock jurors heard the lawyers' proposed "clopenings"—abbreviated summaries of possible opening and closing arguments—and pushed buttons when they heard an argument they liked. "The state's obligation was a hot issue," Popeo told me. "Potential jurors wanted the state to keep its word." But he had a problem. His clients had already been paid more than most jurors could hope to earn in several lifetimes. "You were never going to convince anybody that $775 million wasn't enough," he said. "We had all the equities, they had all the emotions."

Across town, Brown Rudnick's case looked pretty strong to the state's attorneys, who had holed up in a small war room in an adjunct office overlooking North Station. They, too, commissioned focus groups, and polls as well. "We learned that 'a deal is a deal' is a very compelling argument for most people," Richlin recalls. "We had to break through that cognitive resistance. And worse yet, as lawyers for the state, we were representing ourselves. We had a huge credibility problem."

The polling showed that inveighing against "greedy lawyers" would prove counterproductive over the course of a long trial. Richlin had included a reference to the Brown Rudnick partners' $140,000-a-year take in a draft of his closing argument, but he took it out. "That wasn't going to win the case for us," he told me. "There were better ways to communicate the issue."

Ultimately, Richlin & Co. decided to educate the jury on the doctrine of "reasonableness," which means what it says: lawyers' fees should be reasonable. The problem was that 25 percent had seemed quite reasonable in 1995, when the state contracted to pay it, and when winning the case against Big Tobacco seemed a remote possibility. After all, many contingency fees are 33 percent or higher. Only after the lawyers scored their $775 million windfall could the case be made that they were not entitled to more. Kingman Brewster was once asked what he had learned during his years as a professor at Harvard Law School, and he shot back, "That every proposition is arguable." Whether the doctrine of reasonableness could be applied both at the time the contract was signed and at the time of payout provided for many hours of soporific debate in Van Gestel's courtroom.

One wintry day during the trial I struggled to match strides with the much taller Richlin as he walked quickly from the courtroom up Beacon Hill to the attorney general's office. He decided to make his case simple for me: "What we're saying, in essence, is 'It's too much money.'"

Tom Moore, a public-relations adviser to one of Tony Blair's Cabinet ministers, made publicity history by sending out an e-mail on September 11, 2001, saying that it was a good day to bury bad news. It is no accident, as the ever dwindling corps of Marxists like to say, that Brown Rudnick filed its claim against the state two days after Christmas of 2001. "LAW FIRM ASKS COURT FOR MORE TOBACCO MONEY," *The Boston Globe* reported demurely.

Although the trial would not start until November 3, 2003, much of the serious combat took place in the preceding twelve months. Some of the pretrial maneuvering seemed trivial. For instance, the state persuaded the judge to prevent Popeo from mentioning Boston's $14.7 billion "Big Dig," a downtown highway-and-tunnel-construction project, in court. While arguing for a summary judgment, Popeo had pointed out that even in the face of mounting cost overruns, the state wasn't welshing on its payments to the highway contractors. So why single out the tobacco lawyers? "The only thing [the anti-tobacco team] did wrong was succeed," Popeo argued—"a pretty good line," Richlin later admitted.

Van Gestel threw the Big Dig out of his courtroom and also granted Popeo's request to keep certain inflammatory phrases out of evidence. The formal-sounding "Plaintiffs' Motion to...Preclude the Commonwealth From Introducing

Any Evidence Regarding Private Counsel's Post-Contractual State of Mind on Reasonableness of the Fee" forbade Richlin to include any lawyers' statements that they considered the demands "'patently unethical,' 'f-ing absurd' or to make one 'look like a pig.'" These were in fact statements from Thomas Sobol and Frederick Pritzker that had cropped up in depositions. The same motion was also meant to exclude one of Pritzker's many inane pretrial observations: that the Brown Rudnick partners' $140,000 annual payoff was "not enough for anyone to retire on." Pritzker decided to repeat it on the witness stand anyway.

Each side fielded motions to knock out potential opposing witnesses. Richlin rejected two academics who were prepared to testify for the plaintiffs on the "risk paradigm"; they would have argued that Brown Rudnick's eighteenfold return on its $10 million investment in the tobacco litigation might have been duplicated in the venture-capital market. He may have done Popeo a favor, by shortening the plaintiffs' endless four-and-a-half-week presentation. "It seemed to me that the plaintiffs' lawyers' strategy was to be very thorough and tedious," the juror Craig Stevens, a mechanical engineer at the General Electric aircraft factory in Lynn, Massachusetts, told me. "It would take three, four, five days for a witness to tell his story, and then another witness told the same story all over again."

Popeo returned the favor by initially including Richlin on his witness list. As the No. 2 man in Reilly's office, Richlin could testify about his boss's decision not to pay Brown Rudnick any more than the arbitrators gave them. (Reilly

could testify too, of course.) "As a tactic, it would be useful for them to put me on the stand and attack my credibility," Richlin told me. If it was a trick intended to get inside Richlin's head, it worked. Richlin offered to withdraw from the case entirely, but two weeks before the trial began Van Gestel granted a motion that kept him off the stand.

Richlin had a trick up his own sleeve. Only Brown Rudnick and Lieff Cabraser had filed suit for the extra fees; the three other law firms that had worked for the Commonwealth demurred. Invoking a provision of Massachusetts law, Richlin forced the three other firms to join Brown Rudnick and Lieff Cabraser at trial. Throwing these firms into the case accomplished two goals for the defense. First, instead of two firms, which would have sued for $564 million, there were now five firms suing for $1.3 billion; Richlin wanted the jury to hear the biggest numbers possible. Second, it was at the very least an annoyance to the lead plaintiffs to sit at the same courtroom table with co-plaintiffs who, if asked, would be happy to say that they opposed the case. "I never would have brought this lawsuit," said Joe Rice, a partner in Motley Rice, of Mount Pleasant, South Carolina. "We begged Brown Rudnick not to file the case." The original plaintiffs "went batshit," one state lawyer told me. A full month after the trial was over, Popeo could not contain his scorn for the "free riders" who had contributed not a penny to the plaintiffs' multimillion-dollar effort: "They don't want to look like 'greedy lawyers,' but they want all the benefits of the case. We did all their work for them."

The three firms' official line throughout the trial was that they had not decided whether they would take their share of

any Brown Rudnick winnings. The sole partner willing to discuss this subject with me, however, answered my question about sharing the booty along the lines of Are you nuts? Of course we'll take the money.

I asked Richlin why he didn't put Rice, one of the architects of the master settlement agreement, on the stand and have him trash Brown Rudnick's case. For one thing, Richlin answered, just because Rice opposed the lawsuit didn't necessarily mean that he thought the 25 percent fee was unreasonable. And anyway, he said, "I had Tom Sobol."

In any complex litigation both sides have "bad facts" their lawyers need to avoid. In addition to its questionable use of tobacco-settlement money, the state had signed the contingency-fee deal not once but twice. Moreover, Harshbarger's office had, in 1998, defended the fee agreement to skeptical state officials, who had toyed with the idea of slashing the lawyers' cut to one percent.

As for the plaintiffs' bad facts, Brown Rudnick and Lieff Cabraser had both represented other states in the tobacco settlement for contingency fees lower than 25 percent. That was inconvenient. Another problem was that they had originally asked the arbitration panel for fees payable for twenty-five years. But because the tobacco companies had negotiated an annual cap on payments of legal fees to the states, Massachusetts's lawyers might not receive their full share of the payment in twenty-five years. So now Brown Rudnick was asking that the fees be paid in perpetuity. That demand seemed excessive to Francisca Evans, a juror who left the trial shortly before its completion for economic reasons: her em-

ployer, a large mutual-fund company, refused to keep her on the payroll, and she couldn't provide for her six-month-old baby and young daughter on the court's $50 per diem. "I had a problem with the lawyers' getting paid forever," she told me, "knowing that my family is surviving on fifty dollars."

Van Gestel, who indulged in occasional sardonic asides out of the jurors' hearing, confessed that he, too, found the fees at stake very large indeed. At one point he said to the lawyers, "Just for your own benefit, I get interested in this case from time to time, and I did the calculations last night, and I find that Mr. Pritzker's share is such that in thirty-five minutes he will make what the Commonwealth pays me for a year. That's an interesting number."

But the ultimate bad fact for the plaintiffs was the presence of Thomas Sobol, the One Just Man in the eyes of the state's lawyers. Popeo called Sobol a "bitter, disgruntled partner, not from one law firm, but two law firms"—he had briefly worked at Lieff Cabraser after leaving Brown Rudnick.

Sobol was the dream witness for the state. He had led all the private attorneys in the Massachusetts case, yet after the $775 million arbitration award—and he fared quite well in the division of the spoils—he had parted company with Brown Rudnick on the fee issue. His first significant disagreement with the firm came over allocation of its $178 million. Sobol had been hoping to use a portion of the money to endow public-interest work by the firm. Ultimately, that didn't happen. Worse yet, to his shock, Brown Rudnick awarded no bonuses to the associates, contract lawyers, and paralegals who had been part of his team and had been paid as little as $10 an hour.

The firm suggested that because Sobol left Brown Rudnick less than two years after the settlement award, he wasn't entitled to his full $13 million share of the tobacco swag. A contested $3 million went to charity, and in May of 2000 Sobol signed a separation letter that would later become a cause célèbre in the courtroom, mainly for the state's futile efforts to have the letter's restrictive provisions introduced into evidence. Brown Rudnick agreed that Sobol did not have to speak on behalf of any claims the firm might file against Massachusetts. For his part, Sobol would "not publicly oppose, disagree with, or advocate against [Brown Rudnick's] position."

A year and a half later Sobol read in the newspaper that Brown Rudnick and Lieff Cabraser were suing the state for the extra fees. One way or another, he was going to have to testify. In 2002, alone among the many lawyers named in the case, Sobol hired his own lawyer and filed an answer to his former firms' lawsuit. Buried at the end of a twenty-four-page document was Sobol's request that the court determine if the Brown Rudnick claim violated a rule of professional conduct that "bars a lawyer from charging or collecting a clearly excessive fee."

Lawyers are paid a great deal of money to read, say, 269 dull paragraphs. Sobol's request appeared in paragraph 268. Suddenly Sobol was showing up on everyone's radar. "He files a response that he didn't have to file, saying the fees may be unreasonable," Richlin said, explaining how the document caught his attention. "And he has his own lawyer. If he's so aligned with them, why does he need his own lawyer?"

Bells went off at Mintz Levin, too. Popeo summoned Sobol's lawyer and reminded him of the nondisparagement clause in the May 2000 letter—Sobol was putting his share of any additional tobacco proceeds at risk. Sobol responded that he wouldn't volunteer information, and that he couldn't be punished for telling the truth under oath. He was deposed for nine days, surrounded by lawyers constantly asserting privileges and filing objections.

Here was the real problem looming for Brown Rudnick: in the bloodless world of corporate law, Sobol was an unabashed crusader who exuded passion for his adopted causes. He hated the tobacco companies ("a true believer," one fellow lawyer called him, half admiringly), and he could communicate his loathing. Of all the witnesses I heard on the stand, only Sobol spoke heatedly about suing Big Tobacco. "The tobacco industry is as close to evil as you can get," he said. Sobol had no objection at all to collecting more money—so long as it came out of Big Tobacco's pocket. "When there is less smoking, there is less human misery," he testified. But he opposed taking the extra money from his former client, the state.

Richlin and his colleagues were confident that 90 percent of Sobol's deposition testimony would make it into the trial. "His answers were a treasure trove," Richlin said.

The Battle Is Joined

Trials are boring, and long trials are excruciatingly boring. Most days Van Gestel's vast courtroom was empty save for the lawyers, the jury, the judge, and we happy few, the handful of interested onlookers.

After a while I felt like a passenger on a cruise ship, perhaps headed for someplace interesting, but becalmed week after week in a windless (not exactly) Sargasso of mind-choking legal seaweed. There were a few brief moments around Christmastime when I could have told you what a "Lodestar cross-check" is (don't ask), or the proper role of a "19(a) defendant" (the three extra law firms were 19(a) defendants) in a Massachusetts courtroom.

My fellow passengers proved to be friendly, if cautious. A neighbor of mine, Betsy Burnett, was arguing the plaintiffs' case alongside her better-known partner, Popeo. She and I chatted occasionally, though for understandable reasons she was mostly in what a friend of hers called "lawyer mode" for the lengthy trial. The media-services engineer, Ian McWilliams, whose firm had wired the courtroom for jazzy, oversize screens on which the plaintiffs would display their exhibits, was also amiable, although he had been instructed not to talk to me. So had most everyone else. Case in point: Betsy has full, juror-head-turning blonde hair, and I wanted to identify its shade precisely. I asked a young lawyer for the Commonwealth what shade it was. She thought for a moment and answered, "Ash blonde. But that's off the record."

Frederick Pritzker, as Brown Rudnick's chief of litigation, showed up almost every day. For better or worse he had become the public face of the plaintiffs. He was amenable to chatting, although not to being quoted. The tightly wound litigator, once a tenacious upper-level squash player at the Harvard Club, turned out to be a comparatively impoverished Boston Pritzker, only tangentially related