

Welcome to the Fall 2001 Safe Schools Newsletter!

This issue of the Safe Schools Newsletter focuses on several timely and significant issues. As many of you know, promoting safe use of the Internet – as well as prosecuting those who use the Internet to commit crimes – is among my highest priorities. In June, my office collaborated with Fuller Middle School in Framingham to produce a webcast on Internet Safety. Using the Internet itself as the means to address safety issues proved very successful, and I look forward to continuing to support your efforts to educate students on the benefits and risks of this evolving technology at our fingertips.

Another of my top priorities is enforcing our tobacco control laws. That effort continues, despite an adverse decision in June by the United States Supreme Court. While the Court struck down regulations which would have, for example, prohibited outdoor tobacco advertising within 1,000 feet of schools and playgrounds, many of the Commonwealth's tobacco regulations have survived legal challenges and will be enforced. Additionally, I am actively enforcing the provisions of the Master Settlement Agreement in the multi-state tobacco litigation to protect the children of Massachusetts.

As in prior editions, this Newsletter also summarizes recent school-related legal cases. In one recent case, the Supreme Judicial Court found that a school administrator acted lawfully when she submitted school work of a student suspected of writing racist slurs and obscene graffiti to the police for a handwriting analysis. In another case, the Supreme Judicial Court found that an administrator's search of a high school student was unreasonable as, according to the Court, the administrator had an insufficient basis for believing that the student was concealing contraband at school.

I look forward to continuing our work together.

Sincerely,

Tom Reilly

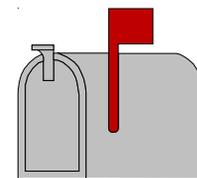
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**AG Reilly Holds Second Conference on
Protecting Students from Hate Crimes and Harassment:
Additional Conferences to be Held in October and November**

The January 2001 Newsletter reported the first in a series of regionally-based civil rights training conferences designed to assist educators in designing and implementing policies, protocols, and programming to address hate and harassment in a school-based setting. The first full-day conference, held in November 2000, was attended by teams of educators from Berkshire, Franklin, Hampden, and Hampshire counties. The second conference, held in February 2001, was attended by educators from Essex, Middlesex, and Suffolk counties.

At these conferences, participating teams engaged in a variety of interactive learning experiences. Initially, teams met in plenary sessions to hear from nationally recognized experts in civil rights as well as local educators, police and prosecutors. Subsequently, the school- or district-based teams met to develop the first steps of an individualized action plan to improve their schools' climates and policies. During break-out sessions, teams from each county compared response strategies to case studies that illustrated some of the many ways in which hate and harassment occur at schools, ranging from clear-cut cases of physical violence and verbal slurs to more subtle instances of intolerance.



**Please watch your
mail for an invitation
to your region's
conference.**

The third conference, for educators from Norfolk and Worcester counties, will be held on October 11. The final conference, for educators from Bristol, Cape & Islands, and Plymouth counties, will be held on November 7.

**AG Reilly Publishes Volume II of
Children's Protection Project Prevention Resource Guide**

As you know, Massachusetts schools and communities support a vast number of innovative programs that support the education, safety, and welfare of children. In an effort to make information about these local programs accessible to educators, police, and community workers, the Attorney General has collected and compiled information, such as program description and contact information, from a wide range of these programs. The resulting Children's Protection Project Prevention Resource Guide Volume II (published in March 2001) includes descriptions of over 200 programs designed to address such common challenges as dropout prevention, gang prevention, parent support, peer leadership, substance abuse, teen dating violence, truancy, and violence prevention. (Volume II also includes and updates all programs that had been described in Volume I.) The Resource Guide will soon be available on the Attorney General's Web site at <http://www.ago.state.ma.us>.

For further information, or if you would like to contribute information regarding a program in your community for inclusion in a future volume, please contact Christina Ruccio, Coordinator, Community-Based Justice Bureau at (617) 727-2200 ext. 2933.

AG Reilly Hosts Internet Safety Webcast

*By Michelle Booth, Mediation Services Division Director, and
Assistant Attorney General Julie Ross*

Access to the Internet provides children with a wealth of educational and recreational opportunities. As we have seen in Massachusetts and other states, the Internet also has the ability to expose children to dangerous persons, places, and ideas. Just as we have provided our children with guidance about safety and appropriate behavior in the physical world, we must also seek to teach them about safety and appropriate behavior on the Internet. In recent years, many schools have integrated Internet safety into the school curriculum, and in connection with these efforts, the Office of the Attorney General has received numerous requests to provide materials and training sessions for students. In responding to these requests, it became clear that there was a need for a means to deliver Internet safety training simultaneously to a large number of schools.

Fueled by the enthusiasm of Attorney General Tom Reilly, this office sought to use the Internet itself as the means to address Internet safety with students. This idea soon blossomed into a collaborative project with Mass Interaction, a non-profit corporation in Cambridge that is well-known in Massachusetts for producing high quality, educational programming. Along with Mass Interaction, the Office of the Attorney General collaborated with students and staff at the Fuller Middle School in Framingham, Massachusetts to design the format of the Webcast, entitled *Internet Safety Tips from Kids Who Know*. This distance learning presentation for students was broadcast both via the Internet and satellite television on June 6, 2001. Prior to the broadcast of the Webcast, classroom instructional materials were made available online for use by teachers and students. Impressively, over 20,000 students from schools across Massachusetts and as far away as Florida and California participated in the event.

Hosted by Attorney General Tom Reilly and Fuller Middle School Principal Juan Rodriguez, the Webcast revolved around two vignettes designed to stimulate conversation with students about a range of Internet safety topics. The first vignette centered on rumors, and how rumors are easily disseminated — and hard to extinguish — on the Internet. The second vignette focused on an adolescent girl who struck up an online friendship with a man whom

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Protecting Schoolchildren from Tobacco — The Fight Continues

*By Assistant Attorney General
Mark Kmetz*

The effective enforcement of our tobacco control laws, to protect our children from nicotine addiction and the deadly consequences of tobacco use, is among Attorney General Reilly's top priorities. That effort continues today, and every day, despite a recent adverse decision by the U.S. Supreme Court in Lorillard v. Reilly (June 28, 2001).

Tobacco and Our Schoolchildren

Overwhelming information demonstrates the connection between tobacco use and disease. In fact, after years of tobacco industry denials about the health effects of smoking, Philip Morris recently commissioned a study for the government of the Czech Republic that actually contended that tobacco use saved government money by reducing the number of people receiving state health care and pensions *due to the "early mortality of smokers."*

The following statistics from the Centers for Disease Control and Prevention demonstrate why young people are particularly at risk, and why preventing tobacco use by young people is so important:

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Supreme Judicial Court Upholds Right of School Officials to Submit Student Work for Handwriting Analysis



By Assistant Attorney General Barbara F. Berenson

Offering support to educators' efforts to investigate and solve crimes committed against a school community, the Supreme Judicial Court held in *Commonwealth v. Buccella*, 434 Mass. 473 (July 9, 2001), that a school administrator acted lawfully when she submitted schoolwork of a student suspected of writing racist slurs and obscene graffiti to the police for a handwriting analysis. In this case, East Bridgewater High School was plagued with instances of racial harassment and vandalism; racial slurs were written on the blackboard in the classroom of an African-American teacher, and obscenities were twice written on a corridor wall. Photographs were taken of the blackboard writing and graffiti. For several reasons, school administrators suspected the defendant: he had an ongoing vendetta with the victimized teacher; on the day of one of the incidents, but before the graffiti appeared, he had used some of the words that were later written on the wall; and on at least one occasion, he was the only student known to have been in the vicinity.

The vice principal provided the police with samples of schoolwork -- papers written by the defendant -- and requested that the police conduct a handwriting analysis to determine whether the handwriting matched the writing in any of the incidents. (The substantive content of the school papers was not relevant to this case.) The police submitted the samples to an analyst who reported that the handwriting in the graffiti matched the defendant's handwriting. A further handwriting analysis confirmed that the defendant was also the likely author of the racial slurs on the blackboard.

Based on these analyses, the defendant was charged with violation of a teacher's civil rights and malicious destruction of property. The defendant filed a motion to suppress the handwriting samples and analyses and to dismiss the case, claiming that school officials acted improperly in providing his school papers to the police and that, therefore, the handwriting analyses were unlawfully obtained. The Commonwealth moved for the production of comprehensive handwriting exemplars from the defendant. The trial judge granted the defendant's motion to suppress and motion to dismiss, and denied the Commonwealth's motion for handwriting exemplars.

The Supreme Judicial Court found that the school had acted appropriately in seeking the handwriting analyses and vacated the order dismissing the case. The Court also ordered the trial judge to deny the defendant's motion to suppress and to allow the Commonwealth's motion for handwriting exemplars.

In its opinion, the Supreme Judicial Court considered whether either statutory or constitutional provisions granted the student privacy in his school assignments. The Court first considered whether state or federal laws regulating disclosure of student records (603 Code Mass. Regs. Section 23.00 (1995) and the Family Education Rights and Privacy Act of 1974 (FERPA), 20 U.S.C. section 1232g) applied to the defendant's schoolwork. The Court opined that neither statute applied because the term "student records" does not include homework, class work, quizzes and tests. The Court emphasized that "absurd consequences" would follow from the interpretation argued by the defendant.

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(Supreme Judicial Court Upholds Right of School Officials to Submit Student Work for Handwriting Analysis, continued from previous page)

Turning to the Fourth Amendment to the United States Constitution, the Court considered whether the student had any other basis for a reasonable expectation of privacy in his schoolwork. While observing that a person does not have a reasonable expectation of privacy in handwriting generally, the Court considered whether the student's expectation that schoolwork would be used solely for educational purposes satisfied the requirement of a reasonable expectation of privacy.



Without making a definitive ruling, the Court decided to assume, for purposes of this case, that the student had a reasonable expectation of privacy that his schoolwork would not be disclosed to anyone outside the educational setting. Based on this assumption, the Court stated that the school's assembling samples of a student's written work and turning them over to the police would qualify as a form of search.

Noting that the United States Constitution requires searches conducted by school officials to be "reasonable" (as the defendant did not claim school officials violated the Massachusetts constitution, the Court did not consider this issue), the Court stated that "[t]he search conducted here easily meets this standard of reasonableness." The school had reasonable grounds for suspecting the defendant and turning these papers over for a handwriting inspection was a "minimal intrusion." In making this determination, the Court also acknowledged the relevancy of the school itself being the victim of the crimes at issue. The Court stated that the school was "like any victim, seeking to assist the police in solving the crimes and preventing further recurrences ... [the school] had a clear obligation to prevent further racial harassment of a faculty member and further physical damage to the public school premises ... This search, if it was a search, easily passes muster under the Fourth Amendment requirement of reasonableness." (Note: In contrast, a search conducted by the police, or under the direction of the police, requires probable cause.)

In her concurring and dissenting opinion, Chief Justice Marshall took issue with the Court's conclusion that homework, tests, and other written work are never student records. She opined that assignments that are kept by a school in its files may become part of a student's record.

Interestingly, the United States Supreme Court will, in the 2001-2002 term, decide whether student grades on routine schoolwork and tests are "educational records" within the meaning of the Family Education Rights and Privacy Act (FERPA). In that case, teachers in an Oklahoma school district allowed students to grade one another's tests and to report the grade received to the teacher. A parent filed a civil suit claiming that the school's practice violated her children's right to privacy under the Fourteenth Amendment and violated FERPA. The district court granted judgment for the defendant school district. In *Falvo v. Owasso Independent School District*, 233 F.3d 1203 (10th Cir. 2000), the Tenth Circuit Court of Appeals concluded that FERPA, though not the Fourteenth Amendment, precluded the grading practice because the statutory definition of "education records" included the grades that were submitted to and recorded by teachers. The Tenth Circuit Court of Appeals denied the school district's petition for a rehearing, with four justices dissenting from this denial. On June 25, 2001, the United States Supreme Court agreed to hear this case.

Supreme Judicial Court Finds School Search Unreasonable

By Assistant Attorney General Barbara F. Berenson



In *Commonwealth v. Damian D.* (August 10, 2001), the Supreme Judicial Court held that a school administrator's search of a student violated the reasonableness standard required by the Fourth Amendment to the United States Constitution. In view of that holding, the Court declined to decide whether Article 14 of the Massachusetts Declaration of Rights imposes a stricter standard than the United States Constitution.

The judge hearing the juvenile's motion to suppress found the following facts: A housemaster at Boston English High School instructed Damian (a pseudonym), who was in a school parking lot during class, to bring his mother to school on the following Monday for a disciplinary hearing. Damian failed to do so, and the hearing was rescheduled for the next day.

The next day, Damian missed the hearing and was not in his assigned class during that time. Shortly thereafter, he showed up at the housemaster's office, apparently of his own volition. The housemaster called the assistant headmaster; they were joined by a Boston school police officer.

The assistant headmaster conducted what she described as an "administrative search" of Damian. She verbally inquired whether Damian had any contraband in his position. When he replied in the negative, she advised him that she intended to search him, and instructed him to empty his pockets. His pockets included a lighter and cigar, neither of which were contraband. The assistant headmaster then patted the legs of his pants and, not finding anything, instructed Damian to remove his shoes. Inside one of his shoes was a pair of folded socks. When the assistant headmaster unfolded the socks, she found a small bag of marijuana. The Boston school police officer then arrested Damian.

Prior to trial, Damian filed a motion to suppress the seized marijuana. The motion judge denied the motion, and Damian appealed. The Supreme Judicial Court vacated the judge's order denying the motion to suppress. Applying the Fourth Amendment standard that a school search must be reasonable under all the circumstances, the Court held that the search was unreasonable because the only basis for the search was Damian's truant behavior. The Court stated that "[s]chool officials had no evidence that suggested Damian was in possession of contraband when they searched him ... or that he had violated any law or any school rule other than truancy. There was no testimony ... that Damian's physical appearance or conduct suggested his use or possession of contraband, or that school officials had received information from any source that Damian was in possession of or had ever been in possession of contraband in school." The Court concluded that "[t]he possibility that he had contraband with him when he missed his class and his hearing ... seems no more likely than the possibility that he had no contraband at all."

Because the Court found that the search was unreasonable at its inception, the Court did not address whether the search itself was excessively intrusive.

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she thought was a college student. However, he turned out to be an adult prowling the Internet for a young, vulnerable girl. This girl knew the importance of not revealing identifying information online but, after a “bad day” when she felt lonely and misunderstood, let down her guard. The Webcast also featured a group discussion which included members of the Attorney General’s High Tech and Computer Crimes Division and student audience participants, as well as tips from students and law enforcement experts on how kids can safely use the Internet.

To ensure that the material discussed in the *Internet Safety Tips from Kids Who Know* Webcast reaches the widest possible audience, the Office of the Attorney General has created a compact disc version of the event. This resource is suitable for students in grades four through eight. Included on the compact disc are the educational materials which were developed for use before and after viewing the Webcast. This fall, a copy of this compact disc will be sent to each Massachusetts school serving students in grades four through eight. Additionally, a copy will be sent to all Massachusetts public libraries for their use in Internet safety programs with youth.

Internet safety, particularly protecting children online, continues to be a top priority for Attorney General Tom Reilly. In this school year, the Office of the Attorney General looks forward to partnering with school superintendents to provide all middle school-age children and their parents with Internet safety brochures. In addition, the Office looks forward to providing other training programs and materials to students, parents, and communities to promote the safest possible use of Internet technology. For more information on Internet training programs, please contact Christina Ruccio, Coordinator, Community-Based Justice Bureau at (617) 727-2200 ext. 2933.

New Law: Hoax Devices

Effective April 12, 2001, a new statute, G.L. c. 266 sec. 102A ½, establishes that it is a felony for any person to possess, transport, use, or place, or cause another to possess, transport, use, or place, a fake bomb or “hoax device” with the intent to cause anxiety, unrest, fear, or personal discomfort to any person or group of persons. The statute defines a “hoax device” as any device that would cause a person reasonably to believe that it places in danger life or property by fire or explosion. A person convicted under this statute may be fined up to \$5000 and/or sentenced up to two and one-half years in a house of correction or five years in state prison.

Existing laws criminalize false fire alarms (G.L. c. 266 sec. 13) and false reports of the location of any explosive or other dangerous substance (G.L. c. 266 sec. 14).

Internet Crimes and Children

A recent study commissioned by the United States Office of Juvenile Justice and Delinquency Prevention (OJJDP) and the National Center for Missing and Exploited Children collected information about incidents of possible online victimization through telephone surveys with a sample of 1,501 youth, ages 10 through 17, who used the Internet regularly. "Regular use" was defined as using the Internet at least once a month for the preceding six months. The survey addressed three main issues: sexual solicitations and approaches; unwanted exposure to sexual material; and harassment. Among other highlights, the survey found that an alarming one in five young Internet users received an unwanted sexual solicitation in the past year and that approximately one in four has experienced unwanted exposure to sexual material. One in 17 youths was threatened or harassed online in the past year.

The survey also found that the majority of youths did not report any of the above episodes to a parent or other authority, such as police, Internet service provider, or hotline. The survey attributes this underreporting to feelings of embarrassment or guilt, ignorance that the incident was reportable, ignorance of how to report it, and perhaps resignation to a certain level of inappropriate behavior in the world. See Office for Victims of Crime Bulletin May 2001, U.S. Department of Justice (NJC 184931).

A survey of middle school students in a Massachusetts regional school district confirms that the experiences of our students are consistent with this national trend. This survey showed that 44 percent of ninth graders and 42 percent of seventh graders have provided personally identifiable information to someone on the Internet; that 29 percent of ninth graders and 22 percent of seventh graders have received online threats; and that 70 percent of ninth graders and 51 percent of seventh graders have received graphic sexual material on the Internet.

Furthermore, cases prosecuted by the Office of the Attorney General over the past few months alone confirm that we all must be vigilant to protect our children as they go online. We have arrested and are prosecuting two men who aggressively pursued 14-year-old girls whom they met in Internet chat rooms. In fact, in each case, that "14-year-

old" was an undercover State Trooper. In one of these cases, defendant John Kennedy allegedly arrived at a bowling alley equipped with a digital camera to take sexual pictures of the "girl" and faces charges in Clinton District Court of possession of child pornography, attempt to entice a minor to pose nude, and attempt to disseminate harmful matter to a minor. In the second case, defendant Robert Sadowski, a retired middle school teacher, allegedly traveled from his home in Rhode Island to a motel in Watertown to engage in sexual activity with a "girl." He too had a digital camera and also arrived at the meeting with sexual paraphernalia and other evidence of his intent. He faces charges in Waltham District Court of attempted statutory rape, attempt to entice a minor to pose nude, and attempt to disseminate harmful matter to a minor.

Predators are not, however, the only danger that children face on the Internet. Far too many children appear not to understand that actions that they themselves take when online can result in serious consequences and indeed, criminal charges. A recent survey conducted by the Pew Internet and American Life Project showed that 45 percent of parents believe that their children may instigate inappropriate or illegal online activity such as threatening other Internet users or hacking. An online poll of nearly 50,000 first through eighth graders conducted by Scholastic News Zone, an educational Web site, showed that nearly 50 percent of the respondents do not even consider hacking a crime.

Here again, the cases prosecuted by the Attorney General's High Tech and Computer Crimes Division reflect the national statistical trend. Over the past year, we have prosecuted a 15-year-old for hacking into United States Air Force and Department of Transportation computers that track the position of non-combat military aircraft around the world; a 19-year-old, Christian Hunold, who used the Internet to terrorize an entire school community in Townsend; a juvenile who used Instant Messaging to send graphic threats to kill a Revere High School chemistry teacher; and an 18-year-old Mashpee High School graduate, Anthony DiPrizio, who allegedly used his computer skills to hack into password-protected areas of the school's computer system that contained grades, student medical files and other confidential information.

Teen Relationships and the Internet

By Assistant Attorneys General Beth Merachnik and John Grossman

It is evident that dating violence threatens the safety and well being of teenagers, both those involved in heterosexual relationships and those in same-gender relationships. Dating violence may include physical or sexual abuse, threats, harassment or stalking. Situations where school administrators might be exposed to teen dating violence include directly observing students involved in an abusive relationship, being advised of the existence of such a relationship, or being advised when one student has obtained an abuse prevention order against another student.

School administrators should be aware that dating violence can occur through Internet communications. Specifically, Internet accessibility provides a new medium for abusers, including teen abusers, to threaten and harass their victims. Using the Internet, an abuser can easily hide his or her identity while instilling fear and terror in a victim from a distance. Instant Messenger, a special Internet service feature, allows members to send messages to each other in real time. According to the Pew Internet and American Life Project, close to 13 million US teens use Instant Messaging.

The following scenarios are examples of abusive situations a teen may encounter while using the Internet:

Scenario I

Two tenth grade teenagers, Teen A and Teen B, have been dating for six months. On Monday morning at school, Teen A breaks off the relationship with Teen B. That evening, Teen A receives the following e-mail message from an unknown sender: "If you go to movies with your friends tomorrow, I will get a gun and come after you."

Scenario II

Two tenth grade teenagers, Teen A and Teen B, have been dating for one year. Teen B breaks off the relationship. One week later, Teen A sees Teen B talking to a new dating partner, X. That evening, Teen A sends an instant message to Teen B stating, "If I see you talking to X again, I will blow up your house."

Administrators should be aware that sending threats via e-mail may constitute a crime, and must be taken seriously. Threatening to commit a crime has been defined as an expression of an intention to inflict a crime upon another and an ability to do so in circumstances that would justify reasonable apprehension on the part of the recipient. An actual ability to carry out the threatened behavior is not required. Additionally, school administrators should be aware that an abuser may, for example, change his or her online identity, enlist friends to send threatening e-mails to a teen victim, and use a chat room to harass or threaten a teen victim.



(Teen Relationships and the Internet, continued from previous page)

Where an administrator suspects that a student has received a threatening e-mail, available responses might include the following:

- Encouraging student recipients of threatening e-mail to report it to police, whether the recipient recognizes the e-mail sender or not;
- Encouraging student recipients of threatening e-mail to print out a hard copy for police including the “Expanded Header.” The “Expanded Header” contains detailed information about the source and route of the e-mail message.
- Encouraging a student to report the threat to the sender’s Internet Service Provider (ISP); the Provider will likely suspend the sender;
- Encouraging students not to respond to the e-mail sender;
- Encouraging student recipients of threatening e-mail to change their screen names and to carefully consider the individuals to whom he or she will disseminate the new screen name;
- Reporting criminal activity to the local police department; and
- Following the school’s student disciplinary policy.

School administrators should be aware of criminal laws which may apply to teen dating violence committed by e-mail or other Internet communications. Those crimes include threats, violations of abuse prevention orders, civil rights violations, stalking, and criminal harassment.

As with all cases of teen dating violence, school administrators should be aware that:

- A teen victim may require service referrals;
- A teen victim may consider filing for an Abuse Prevention Order (often referred to as a restraining order or protective order) against the abuser in a district court. A court order may require the abuser to have no contact with the student seeking the order and to refrain from abuse. A provision for no contact via e-mail, chat room or the Internet may be contained in the order;
- If an abuse prevention order is granted to a teen victim and the teen victim provides notice to his or her school, the school should make every effort to address the situation. The school should assist the teen victim by adjusting class schedule, lunch schedule and/or locker assignments.

Educating students about dating violence, whether or not it occurs over the Internet, is crucial. It is important to recognize and respond to a teen involved in an abusive dating relationship. Resource and service referral information can be beneficial to a teen seeking assistance. For more information, see [Teen Dating Violence and Restraining Orders: The Law and Safety Planning](#), [Internet Safety: Advice from Kids Who Have Faced Danger Online](#) and [The Internet, Your Child and You: What Every Parent Should Know](#), brochures published by the Office of Attorney General Tom Reilly. Brochures are available by contacting the Publications Office at (617) 727-2200, extension 2674, or on the Web site of Attorney General Tom Reilly’s Office at <http://www.ago.state.ma.us>.

(Protecting Schoolchildren from Tobacco — The Fight Continues, continued from page 3)

- an estimated 5 million people who were younger than age 18 in the year 1995 will die prematurely from smoking-related illnesses;
- each day, more than 3,000 young people in the United States become habitual smokers;
- the younger a person is when he or she starts using tobacco, the more likely that he or she will become strongly addicted to nicotine;
- three out of four teenage smokers have tried to quit at least once, but failed;
- of persons who ever smoked daily, 89% first tried a cigarette before the age of 18.



Tobacco companies and tobacco retailers make billions of dollars by selling tobacco products that have been shown to be highly addictive and to cause illness and death. Surveys have shown that the three most heavily advertised brands — Marlboro, Newport, and Camel — are purchased by 85 percent of adolescent smokers. Although the major tobacco companies agreed to the permanent marketing restrictions in the Master Settlement Agreement in 1998, tobacco company spending on marketing increased to a record \$8.24 billion in 1999 (the most recent year for which information is available) — and the companies fought their way to the U.S. Supreme Court to overturn regulations that would have prohibited advertising around schools and playgrounds in Massachusetts.

The Lorillard Decision

On June 28, 2001, in a decision known as Lorillard v. Reilly, the Supreme Court struck down Massachusetts regulations that would have prohibited outdoor tobacco advertising within 1,000 feet of schools and playgrounds (including interior advertising that is visible outside), and also would have prohibited retailers from advertising tobacco products within stores at a height of less than five feet (children’s eye level) within those zones. By a 5 to 4 vote, the Court reversed the Court of Appeals for the First Circuit and held that a federal law — the Federal Cigarette Labeling and Advertising Act of 1969 (“FCLAA”) — preempted these regulations as they applied to cigarettes, and that the First Amendment precluded them as they applied to smokeless tobacco and cigars. The Court upheld certain other regulations.

The fight to protect children from daily tobacco advertising assaults on their way to school and the playground is not over. Attorney General Reilly has called upon Congress to amend the FCLAA to make it clear that its preemption provision concerns only the content of tobacco product labeling and advertising, and not state and local regulation of the location of tobacco advertising. And in the meantime, the Attorney General’s Office is continuing to protect children from tobacco on a number of fronts, including the enforcement of the Attorney General’s tobacco regulations and the Master Settlement Agreement.

The Attorney General's Tobacco Regulations

Most of the Attorney General's tobacco regulations have survived the lengthy legal challenges of the tobacco industry, and will be enforced. These regulations include provisions that:

- require retailers to implement all measures reasonably necessary to prevent the sale of tobacco to persons under the age of 18;
- require retailers to verify the age of all tobacco customers appearing to be under the age of 27, with a valid government-issued photo ID;
- prohibit the use of "self-service" tobacco product displays, and require tobacco products to be located out of the reach of customers (except in adult-only facilities);
- prohibit the distribution of free samples of tobacco products (except in adult-only facilities);
- restrict the distribution of tobacco products by mail, and generally require tobacco products to be sold in direct face-to-face exchanges;
- prohibit the unpackaging or repackaging of cigarettes, smokeless tobacco, or little cigars (e.g., no sales of individual cigarettes);
- prohibit the distribution of branded apparel and other merchandise in connection with the sale of tobacco products;
- restrict the use of cigarette vending machines to establishments that are licensed to serve alcohol, and then only if the machine employs a lock-out device and the machine is within the sight and control of an employee and is posted with a notice that minors are prohibited from purchasing tobacco.

The Attorney General's tobacco regulations were issued under the authority of the consumer protection law, which allows for the assessment of up to \$5,000 in civil penalties for each violation. The effective enforcement of these regulations will help keep tobacco away from children.

The Master Settlement Agreement

In November 1998, the attorneys general of Massachusetts and 45 other states entered into a landmark settlement of litigation against the major tobacco companies. The so-called Master Settlement Agreement will result in annual payments to the states in perpetuity, totaling more than \$206 billion over the first 25 years. More than \$8 Billion is expected to be paid to Massachusetts under the settlement. The legislature has established trust funds for this money, and has restricted its use to the supplementation of existing health-related services and programs, with at least 25 percent dedicated to tobacco control.

In addition, the manufacturers participating in the settlement will fund a \$250 million charitable foundation, and a \$1.45 Billion National Public Education Fund, for tobacco control activities.

(Protecting Schoolchildren from Tobacco — The Fight Continues, continued from previous page)

Some of the most important parts of the Master Settlement Agreement are those that restrict the marketing practices of the participating manufacturers. Among other things, the Master Settlement Agreement:

- prohibits marketing activities that target minors;
- prohibits the use of cartoon characters, such as “Joe Camel,” in the marketing of cigarettes;
- prohibits outdoor advertising, including advertising on billboards and transit vehicles, and in stadiums, video game arcades, and shopping malls;
- limits manufacturers to one brand-name sponsorship of an event per year, and prohibits brand name sponsorship of major team sports (baseball, basketball, football, hockey, and soccer), concerts, events with a significant youth audience, and events where any of the paid participants or contestants are underage;
- prohibits the distribution and sale of apparel and merchandise with brand-name logos (caps, t-shirts, etc.);
- prohibits the distribution of free samples except where the operator of a facility or enclosed area ensures that no underage person is present;

- prohibits proof-of-purchase gifts to minors;
- prohibits the use of tobacco brand names for stadiums and arenas.

Attorney General Reilly is actively enforcing the provisions of the Master Settlement Agreement to protect the children of Massachusetts, and is encouraging other tobacco companies to agree to its terms.

Encouraging News

There is some encouraging news. According to a July, 2001 study by the Federal Interagency Forum on Child and Family Statistics, smoking rates for eighth, tenth, and twelfth grade students have declined significantly since the enactment of the Master Settlement Agreement. And Massachusetts is recognized as a leader among the states in tobacco control.

The Attorney General’s Office will continue to do its part to ensure that children in Massachusetts have the best chance to grow up healthy without tobacco. Working together — with the Massachusetts Tobacco Control Program at the Department of Public Health, local tobacco control programs and boards of health, and others — we can prevail.

National School Boards Association and Massachusetts Association of School Committees file Friend of Court Brief in Lorillard v. Reilly

The National School Boards Association and the Massachusetts Association of School Committees joined with the Attorney of Dupage County, Illinois (these entities are collectively referred to as “Amici”) to file a friend-of-the-Court brief in support of the Commonwealth of Massachusetts in the United States Supreme Court. In the brief, the Amici emphasized that children ought be accorded special solicitude in the First Amendment balance between free speech and permissible governmental regulation of speech, as children lack the cognitive skills to assess and analyze fully the information presented through commercial advertisements. The Amici further argued that tobacco advertising poses a “real threat” to the healthy, well-rounded growth of society’s children.

Juvenile Court and Community Come Together to Address Local Hate Crime

*By Joan M. McMenemy, Assistant District Attorney,
Berkshire County District Attorney's Office*

In February 2001, in a small city in western Massachusetts, three juveniles, aged 14, 15, and 16, vandalized a Jewish cemetery. The cemetery was connected to a local synagogue. The juveniles walked several miles at night to reach their destination, at times complaining of the cold and the distance. The planned act of vandalism had to be at a Jewish cemetery, they decided, and so they pressed on. Upon arrival, they used cans of black spray-paint to deface seven gravestones with Nazi swastikas and the letters S.S. (the abbreviation for Schutzstaffel, the much-feared German paramilitary organization) and W.P. (white power).

The local newspaper carried extensive coverage of the crime, and printed photographs of the vandalized gravestones. Community outrage was immediate and fierce. Letters to the editor from community leaders and citizens expressed their feelings of shock and horror at the sight of the hate group symbols, and called for immediate action to locate the persons responsible for the vandalism.

Local police used information gathered by school resource officers and community sources, and they learned that three particular juveniles had admitted responsibility for the vandalism to their peers. The police immediately interviewed one of the three juveniles. The first juvenile gave a full confession, implicating himself and two others as responsible for spray-painting the gravestones. The police then interviewed the second juvenile, and he also confessed. From their confessions, the police learned that the use of Nazi symbols at the Jewish cemetery was a purposeful act, intended to cause shock and horror. The juveniles specifically chose the cemetery based upon its affiliation with a local synagogue, and walked miles out of their way to deface the gravestones of Jewish citizens. The juveniles indicated that a newspaper article, detailing a similar incident in Germany, was the catalyst for their actions. The third juvenile declined to be interviewed.

The three juveniles were each charged with seven counts of defacing a gravestone. Following their arraignments in Juvenile Court, the victim/witness advocate assigned to the case worked with cemetery officials to locate and contact the surviving family members of those whose gravestones were defaced. Surviving family members were updated throughout the court proceedings.

At the pre-trial hearing stage of the case, the juveniles indicated through their counsel that they wanted to try to resolve the cases with admissions of guilt. Realizing that this type of crime has far-reaching effects, members of the District Attorney's Office assigned to the case began to plan for a disposition that would address the seriousness of the crime and the impact of the offense on the community. The assistant district attorneys, the victim/witness advocate, and juvenile probation officer held a meeting to educate concerned citizens about the possible types of dispositions in Juvenile Court. The group of citizens included the Rabbi from the local synagogue and members of the local Jewish Federation. The surviving family members of the deceased were also consulted as to their ideas and hopes for disposition.

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Police were consulted, and asked to search for incident reports involving these three juveniles. Specifically the Commonwealth wanted information as to whether any of the juveniles had prior involvement in 'hate-motivated' incidents. A local school resource officer searched police files, and located a prior incident report showing that one of the juveniles was involved in a school disturbance incident that was racially motivated. Gathering this type of information helped the Commonwealth create a comprehensive dispositional recommendation.

As a general rule, Juvenile Court proceedings are closed to the public and Juvenile Court dispositions are not available as public record. Recognizing that hate-crimes affect all members of the community, the Commonwealth felt it was important to include the community in the case. As part of the negotiations with counsel for the juveniles, the Commonwealth sought and obtained the juveniles' assent that both sides would recommend to the Court the following: (1) that members of the community be allowed to attend the plea and make impact statements; and (2) that the Commonwealth be allowed to disseminate information to the public concerning the disposition of the cases, without releasing the names of the juveniles.

At the commencement of the plea hearing, based upon this agreed recommendation, the Court allowed the motion. Members of the public were allowed to attend and speak at disposition. Impact statements were prepared in writing and shared with defense counsel prior to the plea. Following the disposition, the local paper published an article concerning the juveniles' admissions and the Juvenile Court disposition. The names of the juveniles were not released or published.

Surviving family members of the persons whose gravestones were defaced, along with members of the

community and police department, came to Juvenile Court. The three juveniles admitted their guilt, and were adjudicated delinquent. Before a sentence was imposed, the court and the juveniles listened, as people affected by the vandalism made impact statements. Family members of the deceased read their impact statements first. They detailed the struggle-filled lives their families led before coming to the United States. They also spoke of the hard work, determination, and honor, possessed by their loved ones, which made their lives such a joy. The Rabbi from the local synagogue, and the caretaker of the cemetery, also spoke, detailing their horror at seeing the Nazi symbols. Finally, a local veteran and Holocaust survivor, who escaped his fate at a concentration camp, spoke eloquently about the evil of such symbols.

The court accepted the agreed upon recommendation of the Commonwealth and defense, and placed the juveniles on probation for 18 months. One of the most important conditions of probation that the juveniles must fulfill is to attend and complete an educational program, with an emphasis on Holocaust education, to address diversity awareness and promote tolerance. The diversity awareness program was originally developed by the Essex County District Attorney's Office. It will be administered in Berkshire County by members of the District Attorney's Office and Juvenile Probation. The educational program will be supplemented with a special series of classes taught by Holocaust survivors and local community leaders. Following completion of the program, the juveniles will write letters of apology to the community.

As additional conditions of probation, the juveniles were also ordered to complete 100 hours of community service work, pay restitution in the amount of \$150, obey a curfew, and possess no tagging

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materials. The juveniles were ordered to attend a program at the local House of Correction, where they will meet with inmates and hear first-hand accounts of the ramification of criminal behavior. They were also ordered to attend counseling.

It is the hope of the parties involved that this disposition will enable the juveniles to closely examine their own behavior and understand the harmful impact that such a senseless act of vandalism has on the entire community. It is the further hope that the juveniles will amend their ways of thinking, and work to adopt attitudes of tolerance and understanding. Finally, it is our hope that this public disposition sends a strong message that hate-motivated crime will never be regarded as a prank, but will be viewed as a serious crime against all members of the community.

Civil Rights Injunctions Protect Students and Promote the Public Interest

By Assistant Attorney General Richard Gordon

The Massachusetts Civil Rights Act

The Massachusetts Legislature enacted the Massachusetts Civil Rights Act (MCRA) in the late 1970s in response to increased incidence of racial violence and harassment, particularly in the City of Boston. In addressing these problems, the Legislature sought to proscribe acts that deprive people of their secured constitutional rights. The MCRA enables the Attorney General to obtain broad civil rights injunctions against perpetrators of bias-motivated violence, harassment or intimidation who use violence or the threat of violence to target individuals because of their status as a member of a particular group.

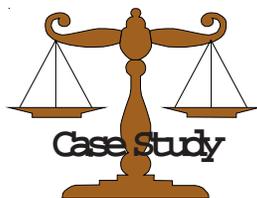
The MCRA provides relief for any violation — whether sustained or sporadic — of any civil right secured by state or federal law. In order to prevail on a request for injunctive relief, the Attorney General must establish, by a preponderance of the evidence, a likelihood that there has been a violation of law and that the requested order promotes the public interest or, alternatively, will not adversely affect the public interest. In addition, the potential for repetition of the defendant's conduct absent an injunction must also be demonstrated. Even a single, egregious incident has been held sufficient to warrant issuance of an injunction where there was evidence of the potential repetition of the unlawful conduct.

In order to obtain a civil rights injunction under the MCRA, the Attorney General must also demonstrate that a victim's protected rights under federal or state law have been violated through threats, intimidation or coercion. Protected rights as defined by the MCRA are not special rights; rather, they are secured rights that most people take for granted. For example, secured rights include — regardless of race, color, religion, ethnic background, national origin, gender, sexual orientation, age or disability — the right to be safe and secure in one's person; the right to an education free from discrimination and harassment; the right to attend school safely; the right to walk the sidewalks and public streets freely; and the right to have access to and enjoyment of parks and other places of public accommodation.

Generally, a civil rights injunction is issued to prevent both the recurrence of past wrongs found to have been committed and to deter potential future wrongs when, in the absence of an injunction, a defendant may feel empowered to continue his unlawful conduct. The Attorney General seeks civil rights injunctions to protect students and other hate crime victims and to prevent unlawful conduct against future unnamed potential victims who are members of the same group as the victim.

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Attorney General Reilly's Civil Rights Division filed a complaint in Norfolk County Superior Court on May 8, 2000 alleging that, during five months of that school year, the defendant had engaged in a pattern of anti-gay intimidation and harassment against a fellow student at a South Shore high school. According to the complaint, the pattern of harassment culminated in February 2000 in a vicious attack against the victim as he sat with friends in the school cafeteria. The perpetrator allegedly punched the victim in the head five or six times until a teacher on cafeteria duty intervened to stop the assault. The victim suffered serious injuries, including internal bleeding and severe damage to an eardrum.

Because the juvenile's alleged conduct was motivated by his apparent bias against the victim's actual or perceived sexual orientation, the Attorney General's complaint stated that he had violated the victim's right to attend school safely, without the threat of discrimination, harassment or violence, and requested a civil rights injunction against the perpetrator.

On July 18, 2001, a civil rights injunction was issued by a Norfolk Superior Court judge, ordering the defendant to refrain from future assaults, intimidation and harassment or face a possible jail term. The defendant voluntarily consented to the order and its provisions, which prohibit him from assaulting, threatening, intimidating or harassing the victim or anyone in the Commonwealth based on their actual or perceived sexual orientation. The order remains in effect for seven years, until the date of the defendant's 25th birthday. A violation of this final judgment constitutes a criminal offense, punishable by up to 10 years in state prison for any future attack that results in physical injury, or 2 ½ years in jail for violations where no physical injury results.

As a result of a plea agreement reached in January, 2001, between the juvenile and the Norfolk County District Attorney's Office in a related criminal case, the defendant also plead guilty to one count of assault and battery for the purpose of intimidation based on the victim's sexual orientation. The defendant was sentenced to three years of probation and ordered to perform 200 hours of community service.

A Powerful Law Enforcement Tool and Deterrent of Future Unlawful Conduct

The issuance and scope of injunctive relief rests within the sound discretion of the trial judge. A civil rights injunction provides the Attorney General's Office with a powerful law enforcement tool when a defendant's threatening and intimidating conduct in the past demonstrates the likelihood that he will feel free to continue his unlawful conduct in the absence of a court order. In the case study above, the defendant's alleged degrading language and egregious behavior at the time of the incident in February 2000, together with the reported pattern of harassment and intimidation over a five-month period, reflected a state of mind indicating that he would likely commit another civil rights violation without the injunction. The court order does not unduly restrict the defendant's activities, but merely enjoins him from doing that which his previous illegal conduct indicates would likely occur in the absence of the injunction. Moreover, the MCRA injunction supports the victim by assuring him that he is not to blame for the defendant's repeated taunts, slurs and unprovoked attack, as well as providing a strong deterrent against potential future harm.

Recent Statistics on Youth Suicide and on the Connection Between Relationship Abuse and Health Risks Among Adolescent Girls

According to a recent study published in the August 1, 2001 Journal of the American Medical Association, *Dating Violence Against Adolescent Girls and Associated Substance Use, Unhealthy Weight Control, Sexual Risk Behavior, Pregnancy, and Suicidality*, approximately one in five female public high school students in Massachusetts experience physical or sexual abuse in a dating relationship, including being hit, slapped, shoved or forced into sexual activity. Approximately one in ten reported physical abuse only; one in 25 reported sexual abuse only. The study was based on responses by over 4,000 randomly selected female ninth through twelfth graders to the 1997 and 1999 Massachusetts Youth Risk Behavior Survey, a survey designed by the Centers for Disease Control and Prevention. In 1997, Massachusetts became the first state to include questions about physical and sexual violence by dating partners. Also according to the Survey, teenage girls who reported abuse from dating partners were found to be at elevated risk for a broad range of health concerns, including being more likely seriously to consider or attempt suicide; use alcohol, tobacco, or cocaine; engage in sexual health risk behavior, including multiple partnering and intercourse prior to age 15; and acquire eating disorders. With regard to suicide, the Survey found that recent suicide ideation and actual suicide attempts were six to nine times as common among girls who had reported being sexually and physically hurt by dating partners.

The 1999 Massachusetts Youth Risk Behavior Survey also reported that suicide is the second leading cause of death in Massachusetts among young people (male and female) aged 15 to 24, as compared to the third leading cause of death among youth nationally. (The Survey results are available on the Massachusetts Department of Education Web site: <http://www.doe.mass.edu>.) While suicidal thinking and attempts by Massachusetts youth has declined since 1993, one out of twelve high school students reported making an actual suicide attempt in the year prior to the Survey. According to the Survey, over one-fifth had seriously considered suicide, and one-sixth had made a plan about how they would commit suicide. The Survey also found that female adolescents had significantly higher rates of suicidal thinking and behavior than their male counterparts. Students who were victimized at school and those who felt that there was no teacher or staff member with whom they could discuss a problem were also significantly more likely than their peers to report depression and to seriously consider or attempt suicide. Additionally, sexual minority youth (i.e., adolescents who either identified themselves as gay, lesbian, or bisexual and/or those who had any same-sex sexual experience) reported higher rates of considering, planning, and attempting suicide, as did youths of Asian and Other/Mixed ethnicity.

Suicide Prevention Efforts in Norfolk County

The Commonwealth's District Attorneys are charged, by statute, with investigating all unattended, unexplained deaths; in the two-and-one-half years since William R. Keating became district attorney in Norfolk County, that has meant investigating six new murders and 89 suicides.

And that 89 does not include most drug overdoses where no note is left, one-car "accidents" where no skid marks indicate any attempt to stop, or other uncertain cases. Twelve of those 89 suicide victims were under the age of 25. The youngest had just turned 14. It is important to note that there are roughly 25 suicide attempts for each completion.

It would be difficult to overstate the frustration of arriving, time and again, when it is too late. That is why the Norfolk District Attorney's Office and the Norfolk Anti-Crime Council, which is chaired by District Attorney Keating, are part of the growing network of medical, education and public health professionals working in Norfolk County to stem this sad waste of human life.

The Suicide Prevention Task Force formed by the Anti-Crime Council last spring is working to bring together the people and programs already existing in Norfolk County to find areas where we can reinforce each other's efforts. There are already several well-established programs, including those described below.

The Adolescent Suicide Prevention Project

The Adolescent Suicide Prevention Project is a collaborative venture between public, private and parochial schools, the community and South Shore Hospital. In existence since 1994, it reaches many school systems in the Norfolk District and, through a grant from the Norfolk District Attorney's Office, will expand to additional communities within the next year.

The primary goal of the program is to provide comprehensive education and consultation for parents, educators and teens in an effort to facilitate early identification, intervention and referral for adolescents at risk.

The program consists of parent education nights; peer leadership training for high school students; and gatekeeper training and crisis intervention consultation for school psychologists, school counselors, etc.

Contact Kim Noble (781-794-7415) or Dr. Barbara Green (781-749-9227) for more information on this project.

Yellow Ribbon Suicide Prevention Program

The Yellow Ribbon Suicide Prevention Program is a national program that offers trainings, seminars and workshops to teach awareness and suicide prevention skills. It began in Colorado after a high school student committed suicide. There are local chapters throughout the U.S. and Massachusetts, including one at Sharon High School.

The Sharon High School Chapter meets weekly. Their goal is to educate other students about suicide and what to do if they or someone they know is suffering from depression or is suicidal.

In addition, through a grant from the Caritas-Norwood Hospital Consortium for the Prevention of Substance Abuse, a movie about suicide prevention and the warning signs that often precede suicide is being produced. Students are writing the script, acting, and filming it themselves.

You may obtain further information at <http://www.yellowribbon.org>.

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SOS High School Suicide Prevention Program: A National Program Based in Wellesley, MA.

Screening for Mental Health, the organization that introduced depression screening over a decade ago, has developed a suicide prevention program for high school students.

The SOS Program, implemented by school health professionals, provides education to teens about suicide warning signs and outlines action steps for dealing with this mental health emergency.

The main teaching tool of this program is an educational video designed to make the action step --ACT-- as instinctual a response as the Heimlich Maneuver. ACT stands for ACKNOWLEDGE the signs of suicide in a friend and take them seriously; let that friend know you CARE about them, and TELL a responsible adult. This simple combination of education and three-step action response can save a teen's life.

The cost of the program is \$150 per school; however, funding for the first 1000 high schools is being offered free of charge through a grant from Ronald McDonald House Charities. For more information, call the SMH offices at 781-239-0071 or visit their Web site at <http://www.mentalhealthscreening.org>.

In addition, the Suicide Prevention Task Force is working to provide additional information and materials to schools and organizations who work with youth to educate them about the problem of teen suicide, alert them to the warning signs, and suggest steps that may help youth at risk.

To obtain further information on these suicide prevention efforts, please call Kathleen Barnett at the Norfolk County District Attorney's Office, at (781)830-4800, ext. 339.

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Editors:

Barbara Berenson, Assistant Attorney General, Community-Based Justice Bureau
Michelle Booth, Mediation Services Division Director

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Boston: One Ashburton Place Boston, MA 02108 (617) 727-2200	Western Massachusetts: 436 Dwight Street Springfield, MA 01103 (413) 784-1240	Southeastern Massachusetts: 105 William Street; First Floor New Bedford, MA 02740 (508) 990-9700	Central Massachusetts: One Exchange Place Worcester, MA 01608 (508) 792-7600
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Immigrant Worker Outreach Project

Last year, Attorney General Tom Reilly initiated the Immigrant Worker Outreach Project which is aimed at educating immigrants about their rights in the workplace. For several reasons, schools are an important part of these outreach efforts.

Working immigrants interact with the school system in a myriad of roles: as students, as parents, and as employees. Immigrant students often work to help their families make ends meet. The state wage and hour laws, including the child labor laws and the educational certificate/work permit process, apply to all students *regardless* of their documentation status. Immigrant parents may approach the school with questions regarding workplace violations at their child's place of employment. Immigrant parents who are unfamiliar with or distrustful of governmental institutions may also approach school officials with questions or problems they experience in the workplace. In such instances, it is helpful if school officials are able to steer parents to available resources. Additionally, immigrant staff may have questions about their rights in the workplace.

The Fair Labor and Business Practices Division of the Attorney General's Office enforces the state wage and hour laws that include payment of wages, overtime, minimum wages, prevailing wage, workplace safety and child labor. Attorney General Reilly emphasizes the protection of *all* workers under the law of the Commonwealth. Because immigrant workers are particularly susceptible to abuse by unscrupulous employers, it is critical that the state's employment laws protect all Massachusetts workers regardless of immigration and documentation status.

The Attorney General's approach to law enforcement places high emphasis on outreach and education. During the past year, his staff conducted over fifty presentations and workshops on workers' rights to help benefit immigrants in the Commonwealth. Some of those presentations have taken place at schools. One presentation was given to high school students in the bilingual education program at South Boston High School. Another presentation was given to Boston Public School's Multilingual Communication and Placement Center staff so that they can help immigrant students and their parents if a workplace problem arises. Additionally, the Attorney General's central Massachusetts office sponsored a conference entitled *Educating, Empowering, and Protecting: A Symposium on Immigrant Issues in Central Massachusetts*.

The Attorney General's Office has a number of resources available that may be helpful should questions involving a workplace rights question or violation arises. First, information is available on the Attorney General's Web site at www.ago.state.ma.us. Second, the Fair Labor and Business Practices Division staffs a hotline (staff are fluent in English and Spanish) on weekdays from 9:00 am-5:00 pm to answer questions and requests for information. Third, the Attorney General's guide entitled "Employees' Guide to Workplace Rights" is available in Cape Verdean Creole, Chinese, English, Haitian Creole, Khmer, Portuguese, Russian, Spanish, and Vietnamese. To request a guide, please call the Fair Labor and Business Practices Division hotline at (617) 727-3465. The guide will be available to download in September.

Immigrants and their children face unique challenges. We are grateful to schools' participation in and support of our outreach efforts to this vital community. To schedule a presentation for your staff, students or parent organization, please call the Fair Labor and Business Practices hotline at (617) 727-3465.