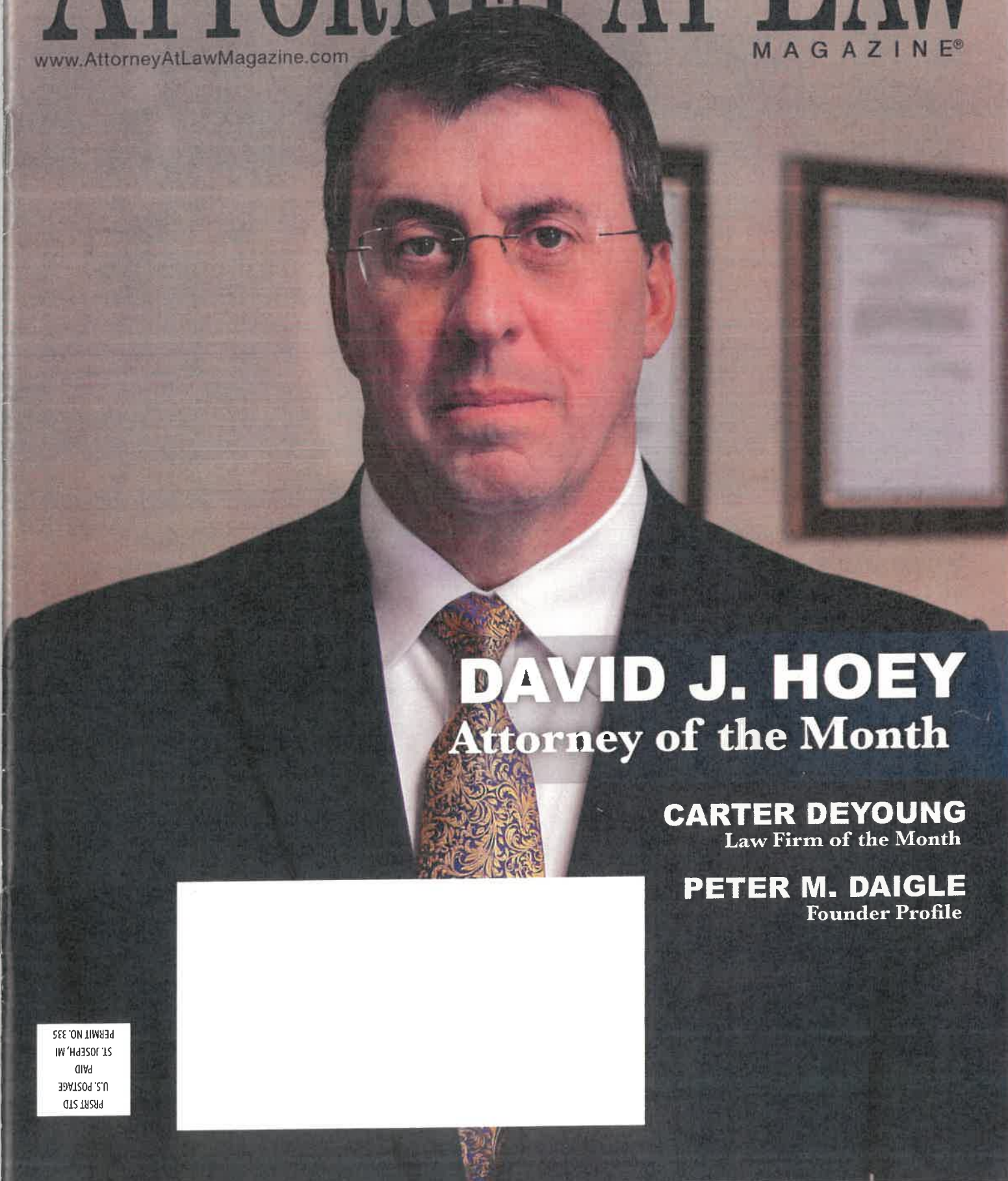


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# ATTORNEY AT LAW

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## DAVID J. HOEY

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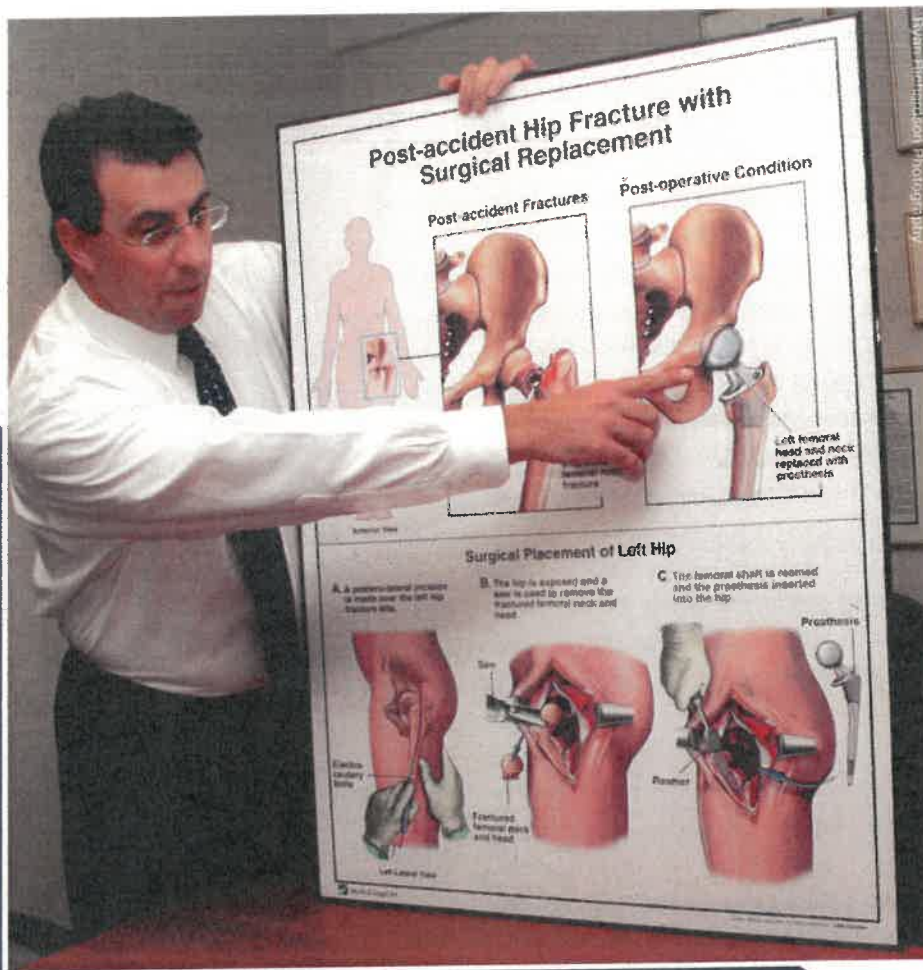
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# DAVID J. HOEY

## — Lawyer on a Mission —

By John Cunningham

**D**avid J. Hoey has enjoyed a string of noteworthy successes in hard-fought battles for his clients, but he remains grounded by his small-town roots, and remembers the lean times not so long ago. The trial college instructor has plenty of advice for lawyers looking for their own paths to greater success.



David J. Hoey says the best advice he ever got came from a renowned Boston lawyer with whom he interned in the '90s. The advice was: "Look for an area that nobody is doing, do it, get good at it, and then tell everyone you're good at it."

Back then, Hoey saw a lack of representation for the elderly, tracing it to an archaic perception that old people aren't worth anything under wrongful death statutes. "You were not likely to get much in the way of lost wages or life expectancy, and nobody put a value on lost dignity," Hoey recalls.

But he knew from his mother, a director of nursing with geriatric care certification, that corporations were gobbling up family-run nursing homes, and transforming them into cost-cutting operations. Patients were becoming just "heads in the beds." Hoey had a glimpse of the legal issues that would be created by shrinking staff and resources, and seized on becoming "the nursing home neglect lawyer."

Now, after some lean years at the start, Hoey's seven-day workweeks are more than paying the bills. He has a national reputation, is called upon to try cases in other states, and is a dean and instructor at the highly-esteemed Keenan Ball Trial College.

During the last two years, Hoey has won some hard-fought victories for his clients, attaining four of the goals he originally set for himself as a trial lawyer – to argue and

win a case before the Massachusetts Supreme Judicial Court; to change the law to protect victims; to win a punitive damage award; and to capture an eight-figure compensation verdict for a client.

When asked the key to his success, the tall trial lawyer says, "I am on a mission to care for and protect the vulnerable, and I can't live with failure. I am not a good loser."

Harkening back to his days as a high school and college wrestler, he says he relies on dedication, determination and discipline to succeed.

It also helps that he believes in what he is doing. "Preserving dignity and respect for the elderly is what motivates me. I love educating judges and juries to what is happening. And I learn more about history from my elders in nursing homes than I do from books. It is an honor to represent the family of a World War II vet .... My wife and kids will always come first, but this work is my passion."

### Three Noteworthy Cases

It seems that this work is also what he was meant to do. Three of Hoey's recent



## Three Noteworthy Cases

### ***Calandro v. Sedgwick Claims Management Services, Inc.***

**Court:** Middlesex County Superior Court

**Background:** Two sons, as next of kin to a deceased nursing home patient, brought suit for neglect and abuse of their mother. The plaintiffs contended that she died of heart failure following acute renal failure due to being unattended for days at a time; and furthermore, that she suffered with bed sores, splenic abscess, septic shock, untreated urinary tract infections, and fecal impaction related to neglect before she died.

**Verdict:** \$14, 447,905, including punitive damages

### ***Wahlstrom v. JPA Management Company, Inc., et al.***

**Court:** Suffolk County Superior Court

**Background:** A young woman was viciously attacked and raped in a Boston hotel parking garage by an attacker who pulled her into a dark stairwell. The plaintiff argued that the six-floor garage had a reputation for criminal and drug-related activities, that it did not have security cameras or adequate security personnel, and

was otherwise unsafe due to poor management.  
**Verdict:** \$6,650,829.50, including accrued interest

### ***Johnson v. Kindred Healthcare, Inc., et al.***

**Court:** MA Supreme Judicial Court

**Background:** The plaintiffs, as next of kin to a deceased nursing home patient, originally brought suit in Plymouth Superior Court, alleging that the decedent, Dalton Johnson, fell against a baseboard heater in his room and remained there until he sustained second and third degree burns on his back. The plaintiffs asserted that the patient consequently developed pressure ulcers, infection and dehydration, leading to renal failure and death. The defense moved for arbitration, contending that the patient's wife signed a binding arbitration agreement as part of a health care proxy. The plaintiffs argued on appeal that health care proxies are intended by statute to cover only "health care decisions" and that a power of attorney would be required to execute any binding arbitration contract.

**SJC Decision:** The MA Supreme Judicial Court agreed with the plaintiffs, remanding the case to Plymouth Superior Court for trial on the merits.



Despite recent high-profile successes, Hoey and his team still work at a professionally modest first-floor suburban office suite.

cases demonstrate this, representing the pinnacle of his well-deserved success in advocating for the vulnerable. See box entitled, “Three Noteworthy Cases” on page 17.

In *Calandro v. Sedgwick Claims Management Services, Inc.*, Hoey represented the sons of a woman who died in a nursing home, arguing to a jury that she suffered a protracted and painful death due to injuries from neglect. The jury agreed, sending a message about staffing and quality of care to the defendant and to the nursing home community with a \$14.4 million verdict, including punitive damages of \$12 million.

Hoey recalls that the defense focused on her life expectancy and other logical limitations on damages.

“Some lawyers don’t consider how the facts look in context at trial. Jurors care more about what kind of care they want in their community than actuarial statistics,” he says, adding that he found opportunity in the legalistic defense arguments depicting the victim as “knocking on death’s door” when she was moved from Michigan to Massachusetts to be closer to her sons.

Like a wrestler, using an opponent’s aggressive force to throw him, Hoey took the defense strengths and made them his own.

“We said that age does not matter when a person’s dignity is at stake. The patient was not a statistic. She was the mother of a police officer who was shot in the line of duty, and she was moved here because of the value of her life to her sons.”

Last year, Hoey also won a precedent-setting ruling from the Massachusetts Supreme Judicial Court in *Johnson v. Kindred Healthcare, Inc., et al.*, successfully arguing that the nursing home practice of including a binding arbitration agreement in a health care proxy form was unacceptable.

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***“I am on a mission to care for and protect the vulnerable, and I can’t live with failure. I am not a good loser.”***

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As a result, his clients will be able to present their case to a jury, seeking compensation for alleged neglect of a father and husband suffering from dementia.

In his appellate victory, Hoey credits the advice and counsel of John Vail at the Constitutional Law Center in Washington, D.C., calling him a “brilliant” collaborator who can shape the best appellate presentation for a trial lawyer’s case.

Hoey’s reputation as a trial advocate is growing so fast that victims in premises

liability, malpractice and wrongful death cases now seek his help even though he restricts this work to five percent of his caseload.

In *Wahlstrom v. JPA Management Company, Inc., et al.*, Hoey spent five weeks at trial living in a Boston hotel and shedding 14 pounds from anxiety and stress to obtain a \$6.6 million verdict for a young woman who was raped in a parking garage.

Taking on a defendant that argued the rape was not preventable, Hoey pointed to prior criminal acts at the garage, making an

opening statement that focused on one crime in particular. “The simple truth is when a rape occurs, a second rape on the same property committed by the same rapist within 12 days is preventable.”

This was the first case in which Hoey was permitted to talk to jurors under new Massachusetts rules that permit such discussion but prohibit inquiry about deliberations. He says the discussions with jurors reaffirmed the value of focus groups he conducts prior to his cases. “We found that jurors really do want to learn about the issues, such as parking garage safety plans, security measures and operations, and that’s consistent with what we found in our focus group.”



Hoey has discovered that his blue-collar roots and his desire to learn and teach are assets at trial. "You have to be a good teacher to be a great trial lawyer."

There is a motion for a new trial in the case, but Hoey says that garage operators and municipalities have already taken steps to improve parking security because of this case.

### Grounded by His Roots

Capturing more than \$20 million in two verdicts, and setting new precedent at the Massachusetts Supreme Judicial Court has not affected Hoey's style. He still works in a professionally modest, first-floor suburban office, surrounded by trial exhibits and posters, volumes of transcripts, and wall-hangings that depict his family history and local heritage (including a photo of his great grandfather, Jack Hoey, who played with Cy Young for the Red Sox and wore Ted Williams' No. 9 prior to 1910).

"At one time, I was a garbage man. I never thought I was going to be a lawyer," he recalls, noting that he was not a natural scholar. But he later discovered that his blue-collar roots and his desire to learn and teach are assets at trial.

"I have learned that you can be too smart for the courtroom. If you can't speak with common sense and simplicity a jury will turn you off. Using too many legal terms or medical terms will put people to sleep. I speak to jurors with common sense and simplicity" he says, noting that he comes from simple, humble roots.

Hoey grew up in Naugatuck, Connecticut, a blue-collar town where a Uniroyal plant was the biggest employer, and his parents and grandparents were his role models. His father, Jack, was Uniroyal's director of electrical maintenance, descended from Irish immigrants who arrived just a few generations earlier. His mother, Rita, a registered nurse, is of Italian heritage and still insists on cooking family dinners when she comes to visit.

His grandfather, John Hoey, was a World War II pilot in the Army Air Corp with his wife, Mary, acting as a public health nurse. His other grandfather, John Celello never missed a day of work in more than 40 years, according to Hoey. His grandmother, Ann, was a "little worker bee, always on her feet and busy."

Like his role models, Hoey was a hard worker, cutting grass, shoveling snow, planting flowers, and cleaning gutters for his family, neighbors and the nursing home where his mother worked.

But he says he was not even thinking about college until a recruiter from his alma mater attended a high school wrestling match to scout his nemesis, Mark Ackerman. The recruiter was so impressed with Hoey's performance against Ackerman that he sold the youngster on the school's wrestling program.

## Building a Trial Practice: Lessons Learned

David J. Hoey says he loves teaching and helping others to succeed. The instructor and dean of students at the nationally recognized Keenan Ball Trial College offers up the following tips on trial work and practice management for success.

- It is malpractice not to focus group a case now. We use focus groups because they tell you what a jury wants to hear. You have to know what people in the jury pool will think about critical parts of your case before going to trial.
- Juries want to learn about all of the issues in a case. They want someone to walk them through it. You have to be a good teacher to be a great trial lawyer.
- Use only the most credible witnesses, and never use an expert who is a prostitute.
- Be 100 percent honest, and tell the jury everything. We told the jury in one case why we sued a defendant with a weak connection to the victim's harm. We explained that we had to sue them or the other defendants could "blame the empty chair."
- It's hard to manage a law practice. Insurance, marketing, rent and other costs go up every year. One of the best decisions I ever made was to hire a great bookkeeper and manager who told me, "Pay yourself first each month or you will never get paid."
- You can't be all things to all people, so find your niche and become the expert.
- I invest a lot of time and money in not taking bad cases. You have to look at all of the legal, medical and factual issues of a case before deciding to take it. Less is more and quality is far better than quantity in work because if you lose, you and your client both get zip.
- There are a lot of decisions to make in running a practice – decisions about finance, office management, policies, hiring and staffing. No matter what you do, 50 percent of the business decisions you make will be wrong. Just learn from the ones you get wrong and you'll succeed.

There, Hoey was tutored by Coach Robert Skelton, who often scheduled meets against larger schools, telling his students "you only get better by going up against better competition." Skelton helped Hoey form habits that made him an academic All-American wrestler, but the student never thought law school was an option.

It was only after Hoey's uncle Gary Woodfield offered to pay for the LSAT exam and a prep course that Hoey considered the law. "My uncle, who played first base in the college world series, was a pretty successful lawyer. I guess he saw something in me, and that's the reason I'm here today," Hoey says gratefully.

## From Hungry to Heavyweight

Reflecting back on some lean years after law school, Hoey says, "I can't forget the role my wife played too. She waited many years for my success. She suffered with my losses and celebrated in my victories, and we rode her financial coattails for a while when she was an executive for a big company."

In fact, when Hoey graduated law school, he sent out more than 1,000 resumes without getting a nibble at a job. So he opened an office in the basement of his house, handling basic real estate work, wills and soft-tissue injury cases while looking for that undeserved "niche."

Then he saw an ad for a Las-Vegas seminar sponsored by the American Trial Lawyers Association on representing the elderly in abuse and neglect cases. "Litigation was picking up in states with elderly populations, such as California, Texas, Arizona and Florida where jurors were starting to make a difference, holding nursing home operators accountable for neglect."

Hoey opened a new credit card with a \$2,000 limit to attend the seminar, and placed a bet on himself when he returned, positioning himself as the "nursing home neglect lawyer" of Massachusetts, having been the only Bay State lawyer at the seminar.

He no longer operates on a shoe-string, but laughs when asked if he feels like he has "arrived" with a string of victories in recent years. "This is still a crazy business," he says. "You advance all the costs, and if you lose, you can eat them. You wait years to get paid an unknown sum, and you frequently have to chase people to collect. It's one of the hardest businesses in the world."

## At a Glance

Law Offices of David J. Hoey, PC  
352 Park Street, Suite 105  
N. Reading, MA 01864  
(978) 664-3633  
www.hoeylaw.com

### Practice Areas

Elder Abuse & Neglect  
Medical Malpractice  
Premises Liability  
Wrongful Death

### Education

Juris Doctor, Massachusetts School of Law, 1994  
Bachelor of Arts, Western New England College,  
1989

### Family

Wife: Deborah Hoey, former V.P. of Finance for  
a global company in the foreign exchange  
education field  
Children: Kayla, a journalism and communications  
major at Elon University  
Emma, a high school senior, figure skater and artist

### Role Models

Parents, Jack and Rita Hoey of Naugatuck, CT  
Grandparents, John and Mary Hoey, John and Ann  
Cefello  
High school wrestling coach, James Cunningham  
College wrestling coach, Robert Skelton

### Hobbies

Hanging with Deb and kids  
Having a beer with dad, brother and friends  
Music and travel  
Watching the Red Sox and Notre Dame football

### Law Practice "Likes" and "Dislikes"

Likes: teaching, trying and winning cases, legal  
marketing  
Dislikes: practice management, last minute trial  
demands, losing



Hoey believes that it is "basically malpractice" not to use focus groups to prepare for a case now and feels they give him crucial insights into what a jury wants to hear.