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Minority writing program

The MCBA is helping to sponsor a program aimed at helping selected second-year law students hone their writing skills with private law firms. **Page 14.**

Storytelling: the anecdotal antidote

By Tom Galbraith
Special to Maricopa Lawyer

Storytelling, especially among lawyers, is a dying art.

The reasons lie both in our general culture and the petri dish of lawyer education. Spinning yarns is no longer a popular entertainment. Those electronic marvels, television and the VCR, have reduced most of us to a passive audience. If Chaucer attempted the *Canterbury Tales* today, he would have to stop at the end of his prologue. Instead of entertaining one another with tales, his pilgrims (now a tour group) retire each evening to their motel rooms to watch HBO.

Lawyer education is worse. It mounts an active campaign to stomp out the storytelling instinct.

It was not always this way. When my maternal great grandfather rode the circuit from one small Texas town to another prosecuting crimes one day and defending the next, lawyers were trained through an apprentice system, called "reading the law." In those days the young men who wanted to enter the practice spent years working with established lawyers, performing such paralegal tasks as existed before the invention of lots-of-documents. They went to court, sat through trials and watched their bosses and opposing counsel talk to jurors.

The emergence of law schools altered the scene. To the exclusion of nearly everything else, these institutions teach their inmates to "think like a lawyer" — analytically. Law students learn to hone in on the crucial facts, those that will determine the

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Law Week
is April 26 to May 2.

See page 2 for more information.

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Legal aid ADR

A new program will provide free ADR to people who qualify for legal aid services. **Page 13.**

Newest justice lauded for 'uncompromising' legal mind, service to public beyond law

By Teena Booth
Maricopa Lawyer

Hundreds of supporters from bench and bar filled Armstrong Hall at Arizona State University's College of Law on March 17 to witness the investiture of Andrew Hurwitz as the newest Arizona Supreme Court justice.

Just before Chief Justice Charles E. Jones swore in Hurwitz, Gov. Janet Napolitano took the podium to explain her first judicial appointment to the state high court.

"Andy is one of the most formidable adversaries I've ever faced," she said, "and one way to avoid having Andy as an adversary in the future is to give him a new day job."

Napolitano's remarks set the tone for an event in which high-profile speakers alternated praise for Hurwitz's wide-ranging legal and political career with what ASU President Emeritus Dr. Lattie Coor called a "bit of bedeviling."

ASU law Dean Patricia White opened the ceremony with a description of Hurwitz' "masterful performance" last spring before the U.S. Supreme Court in *Ring v. Arizona*.

"He turned the discussion instantly into one of substance," she said, and commanded the attention of the court like a "master teacher."

Napolitano, who was on the losing side of that argument as Arizona's attorney general, added her assessment of Hurwitz as "one of



PHOTO BY TEENA BOOTH

Arizona Supreme Court Chief Justice Charles E. Jones (right) swears in the state's newest justice, Andrew Hurwitz, at Hurwitz' investiture ceremony March 17 at the ASU College of Law.

the best attorneys in Arizona history." But it was more than his uncompromising legal mind that led her to choose him for the state's highest court, she said.

"Andy has distinguished himself beyond the law as a public servant," Naplitano said. For more than 25 years, "he has been leading Arizonans across the political spectrum...[with] wisdom and a sense of humor."

Coor continued in the same vein with anecdotes about Hurwitz' ability to bring opposing sides to agreement during his eight years as a member of the state Board Regents. "Magically, mystically... he would bring us to very important and high-quality decisions that served us well over time."

Coor added he expects Hurwitz to have the

— See **Hurwitz** on page 6

The lawyer did what? Take heed from those who didn't

By Brenda K. Warneka
Special to Maricopa Lawyer

Did you hear the one about the lawyer who refused to return a client's nude photos to her and then sued her for attorney's fees? What about the lawyer who "outed" his own client who was in the federal witness protection program? Or the lawyer who offered a frozen, dead rat as an exhibit at her deposition taken by a State Bar of Arizona disciplinary counsel?

If you think I'm telling lawyer jokes, think again. These were actual cases of attorneys whose unethical behavior was the subject of disciplinary action by the State Bar in cases that reached final resolution at the Arizona Supreme Court level in 2002.

Many of the 2002 cases had to do with trust account violations, all the way from an attorney who was arrested for the theft of about \$300,000 in client funds, which he admitted were gambled away (the attorney was disbarred) to the attorney with minor trust account violations that did not harm clients (the attorney was censured).

Transgressions meriting discipline in the family law area — an

area in which the State Bar receives a disproportionate number of complaints each year — included a dispute with a client over a \$1,200 non-refundable retainer, a failure to satisfy court-imposed sanctions for filing an improper motion to modify child support and the filing of a notice of appearance and a motion in a case while suspended from practice.

Some of the more noteworthy cases reported in 2002 follow— cases that cause one to ask incredulously, "The lawyer did what?" They're no joke, so take heed.

▶ A lawyer who represented an ex-wife, pro bono, in post-divorce proceedings was censured when, relying on information from his client, he filed a pleading asking that all post-decree orders be set aside based on allegations that two judicial officers and two attorneys — Maricopa County Superior Court Judge Mark Armstrong; Commissioner William D. Anderson; the child's court-appointed guardian ad litem, attorney Dan Saint III; and the client's previous attorney, Sheila Harmer — had paid off their home mortgages as a result of payoffs in the case. The lawyer also alleged that

— See **Lawyer** on page 4

COMMENTARY

Even with lots going on, enjoy little things in life

The Maricopa County Bar Association has a new and improved website! Thanks to the hard work of the MCBA staff, we are up and running with more ways to serve your needs. Check out your MCBA at www.maricopabar.org and note the new look. You will be impressed with the ease of finding out information about upcoming continuing education events, social/networking opportunities and a full list of membership benefits.

We hope to add the agendas for upcoming board meetings so you can have up-to-date information about the issues being addressed. We also are including information about how to contact MCBA board members. Let a board member know of your interests and concerns and, most important, ways the MCBA can serve you.

We have just completed the first in a series of continuing legal education opportunities called "Legends of Litigation." This is a six-part program in which some of the best litigators in Maricopa County share their skills and experience with those who earn a living in the trenches. If you have not signed up for the remaining seminars in the series, contact Mona Fontes at 602-257-4200 for more information or to make reservations.

The board has continued to rise to the challenge of serving MCBA members. We are planning receptions and other informal gatherings for you to meet judges and other legal



Yvonne R.
HUNTER
MCBA
PRESIDENT

professionals. Please check the website (did I mention that MCBA has a new and improved website?) for dates and places.

The Young Lawyers Division has started to gear up for Law Week, April 29 through May 2. For more information, see Lori Higuera's column, below, or visit our website.

Don't miss the 2003 Minority Bar Convention, April 4 and 5 at the San Marcos Sheraton Resort, Chandler. On-site registration and continental breakfast will be held from 8 a.m. to 9 a.m. April 4. All Arizona lawyers are welcome to attend. Arizona State University law Professor Paul Bender will discuss the pending U.S. Supreme Court case on the constitutionality of affirmative action in law school admissions. Other convention topics will include criminal jurisdiction in state, tribal and federal court and representing the minority plaintiff in a personal injury case. We'll also play "Ethical Jeopardy."

Despite being engaged in war and working

Law Week offers rewarding volunteer opportunities

Volunteering in the community is a rewarding experience. Although many of us agree with this statement as a general proposition, we may never get around to testing that proposition on ourselves. We certainly would like to and, indeed, intend to volunteer our time to the community...once our work schedule permits it...and the right cause comes along...and someone actually calls on us to help out. Law Week provides many volunteer opportunities that satisfy this tall order of prerequisites.

Law Week is a national event designed to remind Americans of our heritage of liberty under law and alert them to the role that they play as citizens in protecting and preserving our freedoms. As lawyers, we have a special role in explaining and defending the laws. It is, therefore, our challenge to help the public understand and appreciate our legal system so that the spirit of the law may remain strong and healthy.

This year, Law Week will be celebrated from April 26 to May 2. The Maricopa County Bar Association's Young Lawyers



Lori A.
HIGUERA
MCBA/YLD
PRESIDENT

Division has planned many activities to celebrate Law Week, including a student essay contest, a law fair, a continuing legal education seminar and mixer, and phone-a-lawyer. Lawyers can reach out to the public through the following volunteer opportunities without disrupting their work schedule:

- Student essays. We need volunteers to judge essays written by elementary school students based on a legal issue presented to them by the YLD. We need you to judge about 10 essays in early April.

- Community law fair at Metrocenter Mall. The fair will be held 11 a.m. to 2 p.m. Saturday, April 26. The public has an opportunity to consult with an attorney at no charge. Volunteers will talk with each person

— See **Higuera** on page 6

in a flailing economy, I encourage you to take a minute and enjoy the little things in life, like taking a day off with your children and go to the zoo, the park or anywhere you still can enjoy the weather without an umbrella. If you do not have children, find the school down the street from your office and offer to volunteer to read to kindergartners, or walk the halls in the high school and acknowledge some of the students as persons.

If you attended school in Arizona, plan a visit to your old school and say hello to the principal. Tell him or her about your school days or a teacher who made a difference, or just say hello. Maybe you could go to the senior center in your neighborhood and just sit and talk with someone who has not seen a family member or friend in a while.

What about that coworker who became a judge? Call him or her and invite yourself in for a coffee break. Talk about the good old

days. Call your mom, dad, daughter or son and just say, "I was thinking of you."

Take the day off and remember why you became an attorney. You deserve it. ■

Back issues of Maricopa Lawyer now online

Have you searched the piles of paper in your office for an article you saw in *Maricopa Lawyer*? Now that article is only a mouse click away on the MCBA website.

Back issues of *Maricopa Lawyer* from January 2002 to the present are indexed and available for viewing or printing using the Adobe Acrobat reader. The 2001 issues are not yet indexed but are available for viewing or printing. For more details, visit www.maricopabar.org and click on the *Maricopa Lawyer* link. ■

Volunteers: People putting the pieces together

Better to light a single candle than to curse the darkness; volunteer.

— Brady Thompson

On Feb. 14, the Volunteer Lawyers Program honored 44 individuals, several local law firms and businesses, and the Maricopa County Bar Association's Paralegal Division, which received VLP's 2002 Paralegal Recruitment Award.

At VLP's request, the Paralegal Division sent out flyers and notices to all division members about VLP's need for paralegal volunteers. Paralegals such as Tamarha Evert, Charlene Donat, Debbie Fike, Sharon Kauffman and Susan Kauffman, along with many others, answered the call. Evert, a graduate of the Arizona Paralegal Program, was honored as VLP's 2002 Paralegal of the Year. Her commitment to spend six to eight hours a week volunteering on numerous VLP projects was not swayed, even after she gave birth last summer to her second child. She told me that her time spent as a volunteer at VLP is so important to her that her husband, Keith, arranges his work schedule to be at home to take care of the children so that she can spend time on VLP projects.

Service to others is the rent you pay for your room here on earth.

— Mohammad Ali

Every professional association, nonprofit business, charity organization and city and



Garth
HARRIS
PARALEGAL DIV.
PRESIDENT

state government depends on volunteers. Without them, these entities would cease to exist. Volunteers are the lifeblood of citizenry. They are the consciousness that speaks out when something needs to be said, and they are the laborers who lay the foundation on which many great achievements are made. The citizens who volunteer today are the leaders of tomorrow. Many of our leaders were people who volunteered their time for something they believed in, including Martin Luther King, a minister who lived what he preached, and former President and Nobel Prize recipient Jimmy Carter, who even today volunteers many hours on charitable causes. Celebrities such as Jerry Lewis, Bob Hope, Cybill Shepherd and many others have donated countless hours of personal time for charitable causes. These people and hundreds of thousands of others across this Earth have paid and are paying their "rent."

A community is like a ship; everyone ought to be prepared to take the helm.

— Henrik Ibsen

How many times have we said to our-

— See **Harris** on page 7



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Errors will be corrected in a subsequent issue.

The MCBA does not necessarily endorse the views expressed by contributors and advertisers. The editorial policy is available upon request.

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Napolitano taps Chavez, Grant for trial openings

In her first two appointments to the Maricopa County Superior Court bench, Gov. Janet Napolitano selected a long-time court commissioner and public defender, both Democrats.

Harriett Chavez, 49, has served as a Superior Court commissioner since 1991 and previously served two years as a Phoenix Municipal Court judge. She was a prosecutor for 11 years with the cities of Mesa and Phoenix, the Maricopa County Attorney's office and the Attorney General's office.

Chavez received her law degree in 1978 from the University of Arizona.

Larry Grant, 52, is the chief deputy in the East Valley office of the Maricopa County Public Defender. He has been a public defender since 1989 and worked in the Maricopa County Attorney's Office prior to that.

Grant, the first African-American appointed to the Maricopa County Superior Court bench since 1999, received his law degree in 1982 from the Detroit College of Law.

Chavez and Grant fill vacancies created by the retirement of Judge Alan Kamin and the resignation of Judge Robert Myers.

In addition to Chavez and Grant, the Maricopa County Commission on Trial Court Appointments also nominated Elizabeth P. Arriola, a court commissioner; Nancy R.

Bodinet, a court hearing officer; James W. Evans, a partner with Holloway, Odegard, Sweeney & Evans; Peter B. Swann, a partner with Steptoe & Johnson; and Robert J. Weber, a sole practitioner.

The Arizona Commission on Appellate Court Appointments will interview 13 candidates for the vacancies on Court of Appeals, Division One, created by the retirements of judges E.G. Noyes Jr. and Edward C. Voss.

Noyes retired at the end of January. Voss, who retired effective March 31, has joined Gallagher & Kennedy, where he will practice general litigation with an emphasis on domestic relations and alternative dispute resolution.

The nominating commission met March 19 and decided to interview Louis A. Araneta, David R. Cole, Robert L. Ellman, Timothy R. Hyland, Diane M. Johnsen, Donn G. Kessler, Robert E. Miles, Patricia K. Norris, Donald M. Peters, Maurice Portley, Christina Urias, Eileen S. Willett and Marian M. Yim. A total of 18 lawyers and judges had applied.

The commission will take public comment at 8:30 a.m. and will begin the interviews at 9 a.m. on April 1. The meeting will take place at the Arizona State Courts Building, 1501 W. Washington St., Rom 345, Phoenix. ■

MCBA launches list servs

The Maricopa County Bar Association last month began providing its sections and divisions with a new communications tool popularly known as a list serv.

"Many of our members have let us know they are ready to move from paper communications to more efficient electronic methods," said Membership Director Sonya Brant. "With our new list serv system, members will have the option to electronically communicate with each other and with the MCBA."

Each section and division will have its own platform for posting questions and sharing knowledge, Brant added. The Membership Department plans to roll out two new list servs each week until all sections and divisions are online.

"This new list serv system is part of a

broad push toward Internet communications," Brant said.

The department has added a new membership communications coordinator who will develop areas of the website specifically for each section. Each section's list serv update will then be linked to more in-depth information on the section's web page.

While in the process of developing these new section-specific web pages, the Membership Department welcomes input from members on informational links and items they would like included. If you are willing to share your expertise in the form of legal tips, case reviews or other news, contact Teena Booth, membership communications coordinator, at tbooth@mcbar.org or 602-257-4200, ext. 105. ■

Looking for CLE? We've got it!

The Maricopa County Bar Association provides affordable, convenient and relevant continuing legal education seminars. April seminars are:

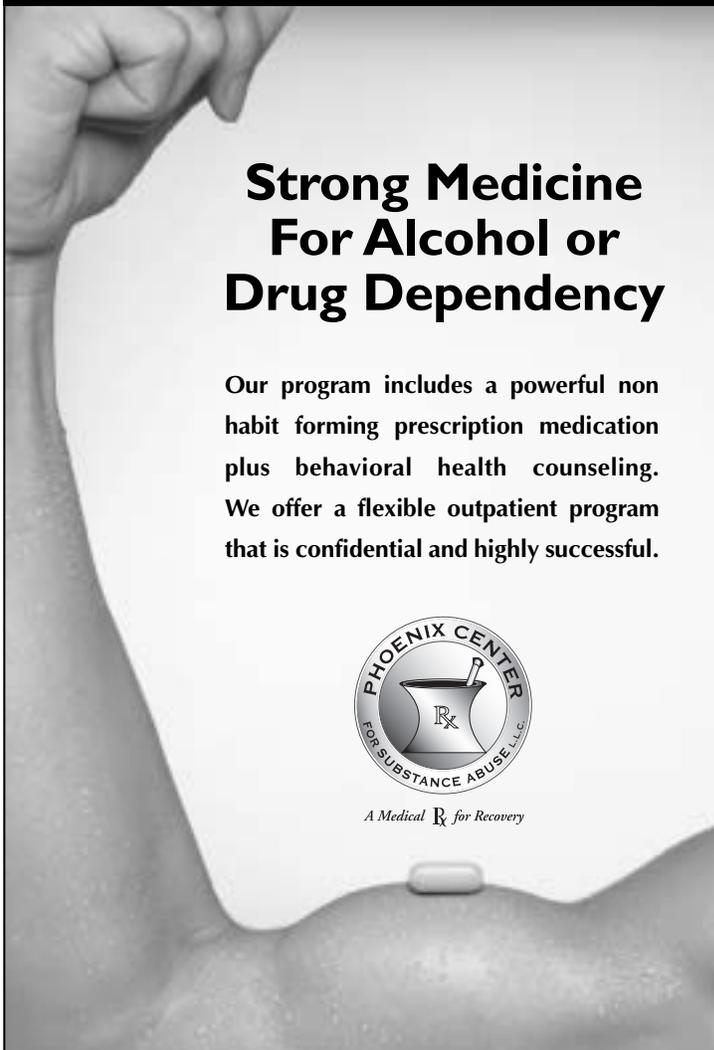
- April 2: Building A Product Liability Case: What You Don't Know Can Hurt You
- April 4: Leaders of Litigation, Part 5: Direct & Cross Examination
- April 9: 2003 Clean Air Act Update: Don't Let the Brown Sky Make You Blue
- April 11: Leaders of Litigation, Part 6: Closing Arguments
- April 16: Recent Developments in Labor and Employment Law
- April 17: Case Management: An Overview and Introduction to Timematters
- April 23: What Your Creditor Client

Can Do to Avoid Financial Disaster: Rights, Remedies & Liabilities Arising in the Days Before a Chapter 11 Bankruptcy Case

- April 25: Identifying and Protecting Your Company's Confidential Information
- April 25: Lobbying the People: the Initiative and Referendum Process
- April 29: Nuts and Bolts of Custody Issues (Part I of the 4-part Custody Issues brown-bag lunch series)
- April 30: The Sale of Our Business, Inc.: Negotiating and Drafting General Terms, Protecting Intellectual Property & Handling Ethical Issues When Selling a Business

For all the specifics — time, place, price and information about the content — see *Maricopa Lawyer's calendar*, page 11.

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Lawyer...

Continued from page 1

Pamela Wiens, an attorney associated with Saint, had paid off a federal tax lien. He did not conduct his own inquiry or investigation prior to filing the offending pleading, although he did call the State Bar to ask what his responsibility was as a result of coming into such information. (He was told he should bring it to the court's attention.) When the lawyer learned that the mortgage payoffs by Armstrong and Harmer resulted from ordinary and proper refinancing arrangements, he filed a supplemental pleading admitting this error. (Why the lawyer was representing the wife pro bono if he thought the husband was financially able to make hundreds of thousands of dollars in payoffs was not clear when we have the attorney's fee statute, A.R.S. § 25-324.) *In re Tim D. Coker, Attorney No. 7022, SB-02-0045-D, 2002 Ariz. LEXIS 33 (3/5/02).* The client subsequently filed a civil suit alleging civil rights violations arising out of the family law case against attorneys Saint and Wiens, but the attorneys were held to be immune from suit based on Saint's court appointment. *Widoff v. Wiens, 202 Ariz. 383, 45 P.3d 1232 (App. 2002).*

► A lawyer was censured for asking his family law client questions about "personal matters of a sexual nature" and embracing her when she arrived at or left his law office. After a settlement conference, the client asked the attorney if she could spend community funds for breast augmentation surgery. After advising her in the matter, the attorney asked her if he could see her breasts before and after the procedure. He asked additional questions of a sexual nature regarding the proposed surgery and made other inappropriate comments.

The client fired him. The Disciplinary Commission found that the attorney violated ER 1.7, Arizona. Rules of Supreme Court Rule 42, even if the client did not tell the attorney she was uncomfortable with his behavior. *In re John P. Moore, Attorney No. 3442, SB-02-0043-D, 2002 Ariz. LEXIS 36 (3/5/02).*

► A lawyer was censured and placed on probation for six months after he represented a husband and wife in a lawsuit related to renovations on their jointly-owned Paradise Valley home; leased the home from the husband, through the lawyer's limited liability company while the wife was in Italy; and then filed a forcible detainer action against the wife, through the LLC's lawyer, when she returned and refused to move. Opposing counsel warned the attorney of the conflict of interest, but was ignored. The lawsuit against the construction company and the eviction proceedings — the latter deemed frivolous because only the husband signed the lease — were in the court system simultaneously. *In re Joseph A. Herbert, Attorney No. 12493, SB-02-0041-D, 2002 Ariz. LEXIS 37 (3/5/02).*

► A suspended lawyer was disbarred as a result of the way he ran his law practice. He signed retainer agreements to represent clients at \$150 per hour and then assigned the cases to contract attorneys to whom he paid \$50 per hour. He told the contract attorneys to stop work as retainers ran out, and his staff threatened clients that no further services would be performed unless payment was made. He also did not return unearned retainers. The Disciplinary Commission found that the attorney had "unqualified and dangerous" persons managing and actively participating in his law firm; he failed to oversee and supervise both the non-lawyer staff and contract attorneys; and he knowingly allowed "unlawful drugs and other criminal activity to occur in his

office." In a concurring opinion, Disciplinary Commission member Peter J. Cahill characterized the attorney as a "menace" and called his law practice a "sham to lure clients into his clutches" who were then "often subjected to vicious, strong-arm tactics in a calculated scheme to extract more and more money from them." *In re Gary Peter Klahr, Attorney No. 2102, 2002 Ariz. LEXIS 71 (5/01/02).*

► A lawyer previously suspended from practicing law for two years was suspended again for six months after a client paid him \$750 to file a bankruptcy case and received copies of the client's bills and credit report, but never completed or filed the bankruptcy petition. A creditor garnished the client's wages for \$8,894. The attorney did not return the client's calls or tell him he had not filed the petition, did not inform him of his practice's new address and telephone number, did not tell him he had been suspended from practicing law, or return his original documents or his money. *In re Peter R. Ruiz Jr., Attorney No. 5834, 2002 Ariz. LEXIS 88 (5/24/2002).*

► A lawyer was suspended from practice for one year as reciprocal discipline after he was disbarred by U.S. District Court Senior Judge Richard M. Bilby from practicing law in the Arizona federal courts, a judgment affirmed by the Ninth Circuit Court of Appeals and on which the U.S. Supreme Court denied certiorari. The attorney was said to have "made a career" of unsuccessfully suing the U.S. Department of Transportation, the Federal Aviation Administration and the National Transportation Safety Board on baseless claims. He had monetary sanctions imposed on him numerous times, totaling about \$42,000, which he discharged in bankruptcy proceedings. Reciprocal disbarment was not imposed because reinstatement to practice is much more difficult in Arizona than in the federal courts, and there is no existing proportional case law that supports disbarment by the state for such conduct. *In re Lawrence B. Smith, Attorney No. 968 SB-02-0063-D, 2002 Ariz. LEXIS 113 (7/9/02).*

► An attorney was suspended from the practice of law for one year after being retained by a husband and wife to handle an amicable divorce, estimated to take 90 to 120 days. He failed to keep in contact with them, and the case went on the inactive calendar. A year and a half later, the clients found out the attorney had been suspended two months before they retained him. A really surprising aspect of this case is that the charges brought against the attorney by the State Bar did not include the conflict of interest that existed by representing both sides in the case. *In re James O. Kistler, Attorney No. 10653, SB-01-0189-D, 2002 Ariz. LEXIS 27 (2/26/02).*

► A lawyer was suspended from the practice of law for one year for multiple counts arising out of a failure to comply with mandatory continuing legal education requirements, including preparing a petition for review for a client, while suspended. The attorney testified that she purposely did not comply with the State Bar's compulsory legal education requirements because she believed that it was "functioning illegally, wrongfully, and against the spirit and intent of the power it had been granted by the Supreme Court of Arizona." During her deposition, the attorney handed bar counsel a paper bag indicating it was a hearing exhibit. Bar counsel opened the bag to find a frozen, dead rat. The attorney said the dead rat was meant to demonstrate that she "smelled a rat" in connection with her suspension for failing to meet continuing legal education requirements. *In re Naida B. Axford, Bar No. 6292, SB-02-0115-D, 2002 Ariz. LEXIS 189 (10/31/02).*

► A lawyer was suspended for one year for providing his client, who was diagnosed as seriously mentally ill and drug addicted, with thousands of dollars while she was on probation for possession of a narcotic drug for sale (a class 3 felony), subject to random drug testing and facing a prison sentence if she failed the drug testing. The money came from the client's parents for representing her in her criminal case. The State Bar admitted that it could not prove by clear and convincing evidence additional, very serious allegations against the attorney having to do with this particular client. The attorney also mishandled trust funds. *In re Edward P. Bolding, Bar No. 2532, SB-02-0134-D, 2002 Ariz. LEXIS 224 (12/5/02).*

► A lawyer was disbarred for, among other things, revealing the identity and whereabouts of his client who was in the federal witness protection program. He knew the client's identity was confidential. He had been previously disciplined, and required to seek treatment, for sexual misconduct, which involved exploitation, extortion and meeting vulnerable clients in his home. He had failed to return nude photos of a client, despite repeated requests to do so, and he offered to show them to bar counsel. He sued the same client for attorney fees. The Disciplinary Commission was convinced disbarment was necessary to protect the public. *In re William M. Piatt IV, Attorney No. 3836, SB-02-0107-D, 2002 Ariz. LEXIS 192 (10/31/02).*

Is it any wonder there are so many bad jokes about lawyers? Maybe there are just too many "bad" lawyers.

► Brenda K. Warneka practices family law with the Law Offices of Cox Warneka Redmon in Scottsdale. ■

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Getting ready for remote filing

Visioneer does it again

I had a really bad technology day last month.

Among other disasters, the sheet feeder on my Visioneer One Touch 8650 jammed and I could not get it unstuck. I was in the midst of an important document-scanning project and I had to finish that weekend. My trusty Hewlett Packard LaserJet 3100 would not run with Windows XP and I was in a bind. I rushed to the store and, in a moment of haste, purchased a Lexmark X125, a combination scanner, color printer, color copier and fax that had received mediocre reviews as a multi-purpose machine but great reviews for its scanning function. It was cheap (\$149) and I thought it would get me through the day until I could get my 8650 repaired.

I was wrong. The Lexmark reviews turned out to be a tad or more overstated. The company's online support was stupid or worse. The print quality was poor, the fax would not send more than one page and the sheet feeder would not take multiple pages. It went back to the store and fast. I recommend that you do not buy the Lexmark X125 multi-function machine.

I was out of options. I emailed the folks at Visioneer with my tale of woe and on Monday morning, I had a response offering to replace my trusty 8650 with the new Visioneer 9450 PDF. I was excited to review the scanner because the Adobe Portable Document Format (PDF) is becoming the standard for remote filing in courts around the country. Here was, I hoped, an inexpensive solution for the small law office that provided a way to turn paper directly into PDF files. Because the latest incarnations of Word and WordPerfect can convert documents directly to PDF, the major stumbling block for the small office is turning paper and other types of files into PDF.

I have in the past complained about the high price of the full product Adobe Acrobat 5.0 software, which is necessary to create PDF documents that then can be read with the free Acrobat Reader from www.adobe.com. The Visioneer solution bundles the Acrobat 5.0 full product with the scanner, optical character reader Text Bridge Pro 9.0, a simple photo-editing application and my all-time favorite image production software, PaperPort 8.0 from ScanSoft. The software bundle has a street value of around \$250. This package makes for a pretty complete hardware/software law office scanning operation for under \$500.

Winton WOODS
LAW OFFICE
COMPUTING



The scanner arrived in a couple of days. I was not disappointed. The Visioneer 9450 PDF scanner is the perfect tool to turn paper into electronic files and put them to work in a variety of ways. The scanning interface is greatly improved over the previous version. It is straightforward and very easy to use. The built-in automatic document feeder holds 25 pages and scans up to eight pages per minute in 200 dpi black and white mode. In my initial test it was easy to load and never jammed.

You can convert any document to Adobe PDF using the Adobe Acrobat 5.0 software included with the Visioneer 9450 PDF scanner. PDF is the emerging open standard for electronic document distribution worldwide because it is a universal file format that preserves all the fonts, formatting, graphics and color of any source document, regardless of the application and platform used to create it. Adobe PDF files are compact and can be shared, viewed, navigated and printed exactly as intended by anyone with the free Adobe Acrobat Reader software noted above.

PaperPort 8.0 automatically builds graphical links to a broad variety of applications. It will search your computer to see which of the linkable applications you have and then create an icon at the bottom of the page that allows you to drag and drop your document into the appropriate category. PaperPort runs over your network so it is easy to file your documents and images in the same way you would organize your paper documents.

One of the most useful pieces of software is called FormTyper, which automatically converts a scanned form into an electronic form that can be filled out on screen. Once filled out, it can be printed, faxed or even attached to an email by simply dragging the filled-out form down to the bar across where your various applications are stored.

I have documents that I need to file every year. I fill them out and then file them in PaperPort. Each year I change the date and other information and then print them out, up to date and professional in appearance. PaperPort allows

you to prepare exhibits and other annotated files for display in the courtroom. It has remarkable redaction capabilities and other tools that all lawyers will find very useful. It has a remarkably easy system for dealing with photographs that may become exhibits at trial.

If the PaperPort system is not enough, the Visioneer 9450 PDF bundle contains, in addition to Adobe Acrobat, a very simple photo-editing tool called PhotoImpression, which allows you to edit, retouch and enhance images simply and quickly. You can apply special effects with point-and-click ease. It includes templates for cards and calendars and access to a website that will give you even more templates and tools.

The Visioneer 9450 PDF scanner and software is priced at \$499 but can be purchased for considerably less over the Internet. If you do not care about Adobe Acrobat 5.0, the old standby 8650 One Touch Scanner can still be bought over the Internet for around \$160. It is a bit slower and lacks many features of the newer product, but it still remains a very powerful imaging tool for small jobs.

ScanSoft PaperPort Deluxe 8.0 is the easiest and best way I know of to visually manage scanned photos and images, as well as electronic documents, at low cost. All of the students in my law office and courtroom classes use and learn PaperPort and you should as well. PaperPort includes its Simple Search indexing tool, which indexes scanned and electronic documents in the background. You can search those files by content, title, keyword or even annotations. Unlike some other software solutions for document management, PaperPort shows where the word you search for appears in the document.

Visioneer 9450 PDF is not a high-speed

system for turning thousands of pages into electronic documents. If you are going to trial with fewer than 100 exhibits, it will certainly do the trick. But if you are in a case with hundreds of thousands of pages of documents, you either need to invest in a more substantial system or outsource the work. If you are in a case with millions of pages of documents, you need to call in a consultant who will advise you about the alternatives of using a service bureau or setting up your own in-house system. Since I have an obvious bias I will not comment further on that point!

► *Winton Woods is a lawyer, professor at the University of Arizona College of Law and director of the college's Courtroom of the Future project. He also serves as general counsel to Lex Solutio Corp. and as an electronic litigation consultant. He welcomes questions and comments by email at wintonwoods@mail.com or by phone at 520-881-6118. Visit him at www.wintonwoods.com or www.digitaltrial.net.*

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WE ARE PLEASED TO ANNOUNCE THAT

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HAS JOINED THE FIRM AS AN ASSOCIATE.

Ms. Schoeler received her Bachelor of Arts in Political Science from the University of Washington. She graduated from the University of Arizona's James E. Rogers College of Law, where she was a member of the Moot Court Board and received her Juris Doctor degree (Cum Laude).

Ms. Schoeler will be a valuable resource to our firm as we continue to serve our clients in the areas of complex business litigation; regulatory matters involving electric utilities and telecommunications; securities industry arbitrations and mediations, and SEC, NASDR, NYSE, and State agency enforcement proceedings.

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Hurwitz...

Continued from page 1

same impact in his new position.

"He will bring his intelligent, thoughtful set of principles to bear on complex issues...and construct well-reasoned outcomes."

Roxana Bacon, past president of the State Bar of Arizona, and Larry Hammond of

Osborn Maledon also took turns in offering their admiration along with some ribbing about Hurwitz' choice in clothes and his hoarding of his softball team's trophies, among other things.

Hurwitz then stood to acknowledge and thank friends, family and supporters.

"Together it is possible for lawyers to do good at the same time they do well," he said.

He continued by describing his experience as an attorney arguing before the state's Supreme Court.

"Arizona can be sure that this court plays no favorites," he added. "Arizona can be sure that this court will be fair."

After Hurwitz took his seat on the bench along with his fellow justices, Jones welcomed him to the court.

"I've seen Andy Hurwitz in action many times and he is the best," Jones said. "He has a unique and rare talent in expressing ideas without wasting a word."

"I believe he will add greatly to the value and substance of the court for many years to come."

Hurwitz, 55, has spent all of his time in private law practice — since 1974 — with the firm now known as Osborn Maledon. In the early 1980s, he spent several years as Gov. Bruce Babbitt's chief of staff and then several months in the same position in 1988 on Gov. Rose Mofford's transition team. He also has frequently taught at the ASU law college, and took a sabbatical from Osborn Maledon to teach full time during the 1994-95 school year.

He actually began work on the court in early March. ■

Higuera...

Continued from page 2

for 10 to 15 minutes and advise the person whether the problem warrants securing legal representation.

➤ Phone-a-lawyer at KAET studios. The phone-a-lawyer event will be held from 7 p.m. to 9 p.m. on Tuesday, April 29, and Wednesday, April 30. This event allows individuals the opportunity to consult with an attorney at no charge over the phone. Volunteers will consult with each caller for 10 to 15 minutes and advise the caller whether the problem warrants securing legal representation.

➤ Publicity. Volunteers are needed to publicize the law fair and phone-a-lawyer events.

If any of these opportunities interest you, please contact Maxine Polomski, this year's Law Week chair, at maxine.polomski@mvmf.com. We hope you will donate a few hours of your time and discover that, in fact, volunteering is a rewarding experience. ■

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Paralegal Division at the ready to help develop profession

By **Clarisse S. Pendleton**
Special to Maricopa Lawyer

In June 1981, I returned to full-time work after a 10-year absence. My children, then 7 and 9, were feeling a bit insecure in allowing me to spread my wings in the job market.

I often joked, "I came out of my kitchen." It was so much more than that. I spent considerable time in college finding a career I could manage well with my family responsibilities and, more importantly, be challenged by.

As a senior paralegal in the Motorola Law Department, I am pleased to report that paralegals are central to the legal practice at Motorola. Supervised by senior counsel, paralegals work as project managers, allowing attorneys to leverage their skills across the vast

breadth and depth of responsibilities synonymous with in-house representation. A paralegal is assigned to every new litigation matter that comes into the office. Given the workload, paralegals can be much more efficient and get quicker results if day-to-day questions are first presented to the assigned Motorola paralegal. Motorola paralegals also attend strategy discussions, allowing for continuity that enables the attorneys to give more attention to larger events of each case and to better coordinate the entire legal portfolio.

This is an exciting time for paralegals. The American Bar Association is considering a draft definition of the practice of law. The Arizona Supreme Court recently adopted definitions of the unauthorized practice of law and the practice of law, and mandated certifi-

cation for document preparers. Attorneys, paralegals, legal assistant managers and paralegal educators frequently discuss topics such as mandatory paralegal certification versus voluntary paralegal certification. One current hot debate is over the title "paralegal" versus "legal assistant." Often in the topic mix is the use of paralegals, paralegal professionalism and ethics, continuing paralegal education and how much, as well as networking.

This year, the Paralegal Division will continue to support paralegal CLE at its quarterly meetings as well as provide CLE seminars. We have plans for a Paralegal Advanced Certification Exam seminar. We sponsored another Paralegal Career Day on March 8 and will sponsor the Arizona Paralegal Conference on Sept. 19. We continue to

sponsor paralegal students with paralegal scholarships. We provide paralegal mentors for paralegal students and entry-level paralegals. As good citizens in the Maricopa County community, we also support the William K. Eaton School as well as various MCBA outreach programs.

The key to developing great paralegals is mentoring and challenge. If this is what you want in order to go forward in your career, please come and join us. For more information, contact Sharon Frye, the MCBA's Paralegal Division director, or me. Contact and other information is available on the Paralegal Division website, www.maricopa.paralegals.org.

► Clarisse S. Pendleton is president-elect of the MCBA Paralegal Division. ■

Third Paralegal Career Day a success

By **Amy S. Davis**
Special to Maricopa Lawyer

The Maricopa County Bar Association's Paralegal Division hosted its third Paralegal Career Day on March 8 at Phoenix College. The event attracted about 80 people interested in the paralegal profession, including students from various paralegal programs, recent graduates and practicing paralegals.

The event provided information on the benefits of getting involved in paralegal associations, such as networking and professional growth. It also provided information on career development, including résumé and interviewing tips and techniques, and the importance of organizational skills for the practicing paralegal. Finally, important information on the topic of paralegal certification was provided for both the Certified Legal Assistant examination and the Paralegal Advanced Competency Examination.

Robert H. McKirgan, an attorney, and his paralegal, Linda Dominguez, of Lewis and Roca, discussed the dynamics of the attorney

and paralegal working together from the inception of a case to its conclusion. Their discussion was thorough and enlightening.

The overall consensus from all those attending was that the event was well organized, professional, interesting and informative, making it another success.

The Paralegal Division wishes to thank Phoenix College for the facility; Jennings, Strouss & Salmon and Lewis and Roca for their generous donations that paid for catering; and Quick and Confidential for copying event materials. Their support contributed to the event's success and the continued success of the Paralegal Division.

For those who were unable to attend this worthwhile event, the materials are still available through the MCBA Paralegal Division. Contact Sharon Frye at sfrye@mcbar.org or 602-257-4200, ext. 136.

► Amy S. Davis, a paralegal at Rake & Catanes, serves on the Paralegal Division's board of directors and was the liaison for Paralegal Career Day. ■

Harris...

Continued from page 2

selves, "I would volunteer, but I just don't have the time"? We have the time. We are jealously protective of any free time we have as though we are trying to save it or bank it. What are we saving it for? Are we banking it against a rainy day? Accumulating it for a vacation? Or do we just want some down time to relieve the stress of our normal existence?

A week has 168 hours. Subtract 56 hours for sleep (7 x 8) and another 40 hours for work (5 x 8) and that still leaves 72 hours. If you spent on an average of two hours a week as a volunteer, you would still have 70 hours left. If 100 people volunteered just two hours a week, that would mean that an average of 200 hours a week would be spent performing volunteer work. Multiply that by 10 and you would have a 1,000 people performing an average of 2,000 hours of volunteer work a week. Multiply that by another 10 and, well, you get the picture. There just doesn't seem to be enough hours in a week for all those volunteers, does it?

Volunteering can be an exciting, growing, enjoyable experience. It is truly gratifying to serve a cause, practice one's ideals, work with people, solve problems, see ben-

efits and know one had a hand in them.

— Harriet Naylor

Speak with Evert or Sybil Taylor Aytch, recently honored by National Association of Professional Paralegals for her efforts on behalf of the paralegal profession, or the lawyers and staff at Quarles & Brady Streich Lang, who received three honors at this year's VLP luncheon. Better yet, speak with VLP Director Pat Gerrich, who depends so much on volunteers, or Brenda Thomson, director of the Maricopa County Bar Association, which depends on volunteers in leadership and other roles. They can tell you what volunteering is about and what volunteers mean to them.

Volunteers are not paid — not because they are worthless, but because they are priceless.

— Unknown ■

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Storytelling...

Continued from page 1

outcome under competing legal theories. In the process, they develop a habitual disregard for what is legally irrelevant. Law classes discuss whether the security interest was properly perfected without considering the plight of the family whose sole means of transportation has just been repossessed. Classroom debates about compensation for pain and suffering are conducted without an empathetic appreciation of either. Law faculties are staffed with keen-witted professors who excel at abstract thinking and constructing tight, logical arguments. In this way, the virtues that the law school community embodies subtly imbue students with a limited definition of human intelligence. In the most extreme cases, students leave law school with an ingrained belief that the natural order is reflected in class ranking or selection for law review.

When the law grad emerges into actual practice, she will find that the apprentice system is still around, but the opportunities it provides for talking to real people such as jurors are few. Cost-conscious clients will not pay to have extra lawyers in the courtroom, and the staggering salaries young associates command and their increased propensity for lateral movement discourage their employers from giving these novices jury learning experience at the expense of billable hours. Through mediation, more cases settle. In the monster cases, there is less client concern about the number of lawyers in the courtroom, but in most of them, younger lawyers are put to work on discrete issues, and are rarely in the courtroom as the pageant unfolds. And so it can happen that bright young litigators become partners in major firms without ever having once beheld a live human being in the jury box, much less having pled a client's case to a panel of his peers. Holding themselves out as All Stars, but knowing they have never really played the game, these bonus babies involuntarily shudder when an opponent draws the hackneyed phrase, "I'm just a country lawyer."

As a result of their law education, or rather its limitations, lawyers of this new generation dread the day of reckoning when at last they must perform before eight or 12 regular people. The young lawyer's discomfort is increased by a sense of social as well as educational isolation. With the growing disparity in Americans' income levels, the educated elite cluster more among their own kind in gated communities, upscale suburban enclaves, country clubs and private school PTAs. Fearing they are out of touch, inexperienced lawyers belittle the people who will decide their cases. I once heard a disappointed junior partner advise his supporting associates to watch Jerry Springer and read the *National Enquirer* if they wanted to learn how to communicate with jurors.

The law industry, like nature, abhors a vacuum. The hole created by the decline of apprenticeship is too gaping for it to ignore, and so it has created a variety of curative measures. Like much of what our profession does, these tend to be costly, cumbersome and not immune from pretense. We hire specialists. During the last 15 years, litigators increasingly have employed doctors of psychology and focus groups to tell them how to talk to jurors. Law firms host in-house CLE programs on the effective use of computer graphics. Our bar associations sponsor programs on trial presentation and encourage attendance by compulsory professional education

requirements. Flyers encourage us to read books that were unavailable to my great grandfather, dealing with such vital subjects as body language and the impressions created by different styles and colors of courtroom dress. For their most promising neophyte litigators, law firms invest in clinical training programs, such as those sponsored by the National Institute on Trial Advocacy. To attend, the young lawyer must shut down billable production for a full week, check in at a resort hotel and devote 14-hour days to preparing and presenting mock trial exercises under the watchful eyes of insightful, experienced practitioners. This is a hydroponics hothouse substitute for natural growth in the field.

Despite their shortcomings, I am in favor of all of these devices. My purpose is to suggest that young lawyers should supplement them by trying something I did just to have fun.

The storytelling class

In 1997, I signed up for a storytelling class offered at South Mountain Community College. Since then, I have attended the National Storyteller's Association Festival held each October in Jonesboro, Tenn., and participated in storytelling workshops I have learned about through the National Storytelling Network, www.storynet.org.

I am now convinced that the benefits of storytelling go well beyond assisting lawyers in overcoming the isolation imposed on them by their training. Storytelling is an antidote to the harmful side effects of a law school education. It provides a completely different way of looking at a case (storytellers do not say "paradigm") that can restore much of the value that the dissecting legal mind cuts away.

My storytelling class met for four hours each Saturday morning for one semester. Our group was comprised of people of diverse ages, ethnicity, occupations and income levels. There were slightly more women than men, and an above average number of people who, at one stage of their lives, had worked in the field of education. I was the only lawyer.

The course materials had instructed each of us to bring some object that had a special personal meaning to the first class session. After some reflection, I gathered up the battered Shakespeare volumes that my immigrant paternal grandfather had used to supplement a formal education that ended at fourth reader. I arrived at class with the books in hand and a mental outline of my family's Irish immigrant myth to present. Our teacher, the head storyteller, told us to place our precious objects on the table, and then inspect them all. "Pick one you did not bring" she said, "and tell us a story about it."

A plump, plainly dressed woman of indeterminate age went first. She picked a gnarled wooden walking stick adorned by small white flags imprinted with red Japanese characters and five cylindrical bells. As we learned later, this was a souvenir of a hike its owner had made to the top of Mt. Fuji. It reminded our first teller of something else. Several years before, she had traveled to Indonesia in search of the site of the Japanese prisoner of war camp where she was born. The trip had taken her and her companion far from the usual tourist routes, deep into the interior, where they narrowly escaped being captured

by a band of anti-government rebels. She told us what it felt like to lie sweating on damp jungle ground behind a fallen tree as four young men, carrying machetes and AK-47s, paused on the other side to drink from their canteens and smoke.

Another woman picked up a tarnished, gold-plated trophy, and told us about the greatest triumph of her years as a struggling real estate agent. At the moment she was about to close the most important sale of her career, the phone rang. Her only child had been shot in a drive-by shooting and lay hovering near death in the emergency room.

Our next teller was Bobby, the adored youngest of 11 children who had been raised on a Missouri red dirt farm. The object he picked was a bag of marbles. Rolling one between his thumb and forefinger, Bobby told us that his father had lost his left eye in a childhood accident, and grew up wearing a patch covering the injured socket. Bobby's parents worked hard to squeeze a living from their small acreage to feed and clothe their large family. Although they somehow always managed to provide for their children's needs, Bobby's parents rarely had even a slight surplus. Once, however, due to some freezes in the north and lucky crop timing, Bobby's parents accumulated several thousand dollars in savings. For the first and only time in his life, Bobby's father indulged in a luxury for himself. He purchased a glass eye. It was first rate, custom made to perfectly match his good right

Storytelling is an antidote to the harmful side effects of a law school education.

eye. After living most of his life with the patch, Bobby's father felt a surprising degree of pleasure when his appearance no longer provoked averted eyes or sideways glances.

Every night, Bobby's father took the glass eye out, rinsed it and placed it in a china cup next to his bed. As it happened, one of Bobby's brothers, Freddy, the ninth child, had a passion for playing marbles. He was champion of every playground and back alley where children scratched circles in the dirt. He was a curious child, too. One night the temptation was too much and, after his father was asleep, Freddy scooped out the glass eye, took it out to the porch and gave it a try.

"The glass eye was not made to collide with hard objects," Bobby said. "It shattered."

The next morning Bobby's father awoke and found that his glass eye was gone. After hunting for it in his bedroom, he put the black patch back on and went to work. "I'm sure my dad knew what had happened," Bobby said, "but he never said a word about it. He wore the patch the rest of his life."

After each story there was class discussion. It always began with an exploration of the story's strong features and the emotional response the story had produced. Later, we discussed how both the tale and presentation might be improved. There was never any competition. We each tried to help our classmates find their unique voices and tell what was meaningful to them. In this respect, more than any other, the storytelling class was different from any lawyer CLE I have ever attended.

Common humanity

Lawyers are great pouncers. It is their job to tear arguments and, for that matter, witnesses apart. While simultaneously exuding collegiality, our CLE presenters preen to

enhance or sustain their position in an ill-defined lawyer pecking order.

Among those who hold forth about trial practice, there are at times discernible signs of demagoguery, and a vainglorious tendency to clothe the trial lawyer in an intimidating, warrior mystique. As a law student, I witnessed this phenomenon in its hyperbolic extreme when, aided by beverage consumption, a famous lawyer explained what it takes to be a real trial lawyer.

"In deference to the ladies present, I will not say what it is," he said, "but they come in pairs."

Such bizarre strutting, even in far less offensive forms, is antithetical to the storytelling ethos. If the stereotype fits, storytelling is a good way to break out of it. Privileged intellectuals and sheltered workaholics will find that a storytelling class can cure their subconscious alienation and defensive snobbery.

The unspoken assumptions of my storytelling class were that we all partake of the same humanity, that we all have our own stories to tell about it and that our exchange should be entertaining, as well as enlightening. These ideas find expression less prominently in trial practice workshops, if at all. Storytelling offers these advantages:

- ✦ Storytelling is a good way to get in touch with real people.
- ✦ Storytelling is play.
- ✦ Storytelling will break your dependence on the written word.
- ✦ Storytelling will teach you to communicate effectively.
- ✦ Storytelling will help you to understand your own client and opposing witnesses.

If you participate in the exchange of stories, you will hear with your own ears what matters to and moves the people who may be your next jurors. You will respect them, I guarantee.

Storytelling is the oldest, most basic art form. It will take you to our common human core. Storytelling began when our primitive ancestors first used rudimentary words for purposes other than assisting one another to survive. The subject matter of stories is as broad as human experience and imagination. Its range includes the sacred, the profane, the grand and the trivial, everything from elemental creation myths to the travails of a diminutive arachnid ascending a waterspout.

But there are limitations as well. A broad description of troop movements, logistics and battles in Napoleon's invasion of Russia is not a story. What happens when Private Beauchamp finds a three-year-old Russian girl trapped amid the rubble of war is.

Storytelling is never pompous. Critics and academics debate what constitutes "serious fiction." But nobody talks about storytelling that way. "Serious" storytelling? Yet, stories deal with the most profound human concerns. The Bible, in both Testaments, is largely a collection of stories.

Through stories, my classmates and I told each other what was important to us. Without the angst, jargon or nearly so much vulnerability, my storytelling class took on some of the trappings of a support group. We achieved that elusive contemporary goal, Community. When, after five months, the class ended, I knew and appreciated my class members better than most of the lawyers at the large firm where at that time I had practiced for 22 years.

A word of caution. In preparing your stories, you must necessarily consider what is important to communicate to your classmates. I doubt you will decide that a story

about amassing billable hours or purchasing a luxury SUV is one you will tell. In attempting to sharpen your professional skills, you may risk examining your values and even adding balance to your life.

Storytelling by its nature is a goof-off activity. Nothing is at stake. You might as well loosen up, and when you do, you will be surprised how much more easily the words will flow. I once attended a workshop called "Theater Technics for Lawyers" in which the instructor told all the participants to begin simultaneously reciting an opening statement from a recent case; and then, without warning, instructed them to change midstream to telling how they met their spouse, boyfriend or girlfriend. The difference was striking and immediate. The speakers' postures, voices and gestures changed instantly. As though by the flick of a switch, a small room full of stiff speakers became relaxed, individualistic and animated.

Like a mantra, speakers at trial practice workshops repeat that each litigator must find a style that fits her personality and most of the listeners dutifully jot this down in their notes, and then consciously strain to attain this elusive, vaunted goal. If you tell stories about things that matter to you, the start may be a little awkward, but your own voice will come tumbling out. Storytelling is a release. If you set your imagination free, your voice will follow.

Most lawyers have trained themselves to be visual learners. During seven years of higher education, they translated the oral lectures of their professors into written notes that simultaneously emphasized the message, and later served as the basis of study for final exams. As a result, many young lawyers are not only dependent on, but insecure without, the written words they hope will assure that they make no mistakes. They become so focused on following the details of their outline that they become insensitive to the reactions their questions provoke. In extreme cases, the lawyer is so riveted to the outline that she completely fails to follow up on unexpected answers that may provide alternative ways of impeaching a witness or gathering helpful admissions.

In his classic *Ten Commandments of Cross Examination*, the late Irving Younger illustrated this propensity with a parody of questions asked by one member of the Senate Watergate Committee:

Senator: Mr. Witness, did you then go into the Oval Office?

Witness: Yes sir.

Senator: What did you see?

Witness: Well, I walked into the Oval Office, and there was President Nixon, naked as a baboon on all fours with the gemstone file in his mouth.

Senator: Ah, and when did you next see President Nixon?

Loosen the mind

At the beginning of the first class, our teacher made it clear that we would be engaged in story telling not story reading. She said she carries around in her head at least 70 stories that she can draw on whenever the occasion arises. She knows the stories, but has not exactly memorized them. She can recall the characters, plot, critical facts and important dramatic phrases.

"This way" she said, "every time I tell a story, it will be the same, but a little bit different."

And so it should be. If this approach risks inexactitude on unimportant detail, it more than compensates by the sense of immediacy that spontaneity infuses.

The quality I most enjoy in co-counsel or

an opponent is the ability to make quick adjustments of trial strategy as unexpected circumstances dictate. I see less and less of it. It is exhilarating when a lawyer is able to look at an impeaching letter that has surprised his client and make it boomerang, based on the date or place of the postmark. I will never forget when, in a similar situation, my mentor, an extraordinary lawyer named John Flynn, made a case turn on the initials of a secretary who had typed a key letter.

Some of my favorite fast footwork came in response to unexpected impeachment. Once while waiting to get an order signed, I watched Jack Cavness rebound from the testimony of an insurance company's investigator who had photographed Jack's whiplash plaintiff in the act of bowling. Without batting an eye, Jack established that the poor woman's injury had forced her to drop two of her three bowling leagues and reduced her average score by a devastating 20 points.

Storytelling exercises, such as the precious object game, and the process itself are liberating. They both loosen the mind and encourage concentration.

Storytelling is the art of selecting and presenting facts in a way that moves an audience. It is beyond the scope of this article to catalogue and illustrate all of the techniques that are available. Instead, I will float a few basic thoughts.

First, be entertaining. This is not a call to put a top hat on your head and taps on your toes, or to start cracking jokes. Obviously, the storyteller's tone will be appropriate to the story. People are entertained by biographies, tear jerkers, mysteries and horror stories. You owe it to the jurors to present evidence in an orderly fashion with a story line that they can easily follow and understand. At a minimum, this requires organization. Fumbling with documents or conducting an aimless, cross-examination are bad storytelling techniques. Think about not only how each witness fits in proving the elements of your case, but also what their role is in telling your client's story. Know where you are going and get there without distraction.

Second, be consistent. Law school teaches us how to make alternative arguments, but storytelling demands consistency. A story with a gaping hole in the plot line or a serious inconsistency is unsatisfying to its audience. It violates a fundamental storytelling rule to say simultaneously, "I did not violate the restrictive covenant by recruiting key employees from my former employer" and "my former employer knew about my recruiting efforts and waived its objections."

When, as a young lawyer, I practiced some divorce law, I saw two cases in which lawyers for doctors' wives simultaneously argued that their clients should receive large amounts of alimony to cover high, ongoing expenses for psychiatric help but also should receive custody of their children. In both cases, the clients got neither.

Third, use plot devices that will cause the jury to identify with your client. Consider this first version of a practice opening statement:

This case is about breast cancer. In it, you will learn how the different types of cancerous tissue appear on a pathologist's slide. With your own eyes, you

will see how at the very time the defendants diagnosed the plaintiff, Cynthia Aubock, as being cancer free, the tumors that will ultimately kill her were growing in her breast.

This approach goes directly to the point, and seizes its audience's attention. It is not the way a storyteller would do it. Instead:

This case is about Cindy Aubock, her husband, Paul, and their two little girls, six-year-old Sarah and four-year-old Anita. Cindy and Paul both grew up here in Plainsville. They met when they were freshmen at Northview High School in 1984....

This opening statement starts more slowly, but by the time it gets to the misdiagnosis of Ms. Aubock's breast cancer, the jury members will feel that they know each member of the family, how they relate to one another and what they had hoped and planned for in the future. Through time-honored storytelling techniques, the jury will come to see the world through the family members' eyes, experience their horror and feel their loss.

The importance of telling the plaintiff's story, particularly in personal injury cases, has become an accepted tenet of trial practice. It is on the defense side, I think, that storytelling techniques are under used. More often than not, a defendant's opening statement focuses on poking holes in the plaintiff's case. There is a tendency to overlook the fact that defendants, too, have their own stories to tell. The story of the pathologist, who is alleged to have committed the misdiagnosis, includes painstaking training, the use of accepted protocols, disciplined work habits and a profound desire to perform his vital job with perfect excellence. Similarly, the stockbroker who is accused of encouraging improvident trading did not set out to lose 40 percent of the widow's money.

He, too, trained for his job, took licensing tests and believed he had his client's best interests at heart when he made his investment recommendations. Even if the pathologist or the stockbroker erred, if the jurors believe he tried his best, they may take this into account in the amount of their verdict.

There is a well-known prohibition against the use of argument in opening statements. The rationale for the rule is that lawyers should not have an opportunity to inflame the passions of the jury in a way that may prejudice its later consideration of the evidence. Embrace this rule, but for a different reason. A good storyteller lives by the maxim, "Show, don't tell." Give the facts and let the jury react. The story of Bobby's father's glass eye would lose much of its power if the person telling it didactically explained that the story defines the highest level of human dignity. Do not use argument in an opening statement. Reciting the facts through a well-organized story is more effective.

Fourth, marshal factual details imaginatively. In *The Stranger*, Albert Camus accomplishes a remarkable feat. By his description of his protagonist's pleasure at small sensual details, such as drying his hands on fresh towels and his whimsical observations about others around him, Camus causes us to identify with a man who is without remorse at his mother's death and indifferent about his own act of murder. From a wealth of information,

a storyteller lawyer will pick out the simple facts that humanize his clients and emphasize their stories.

The importance of the art of fact selection was indelibly impressed on me by a mock cross examination exercise, drawn from a real case, in which the witness was an emergency room nurse who had provided preliminary care to an uninsured patient whom the hospital refused to treat and sent, instead, to the county hospital. The patient had died while en route. To further complicate the exercise, the nurse was having an affair with the doctor who decided not to admit the patient.

Three lawyers conducted mock cross-examinations. The first one was what I call a "checklist lawyer." In no particular order, he meticulously brought out all that the nurse had seen and, at the end, the existence of the affair. The second lawyer began by establishing the existence and nature of the "personal relationship" through polite questions. When he then probed about the observations the nurse had offered on direct, her answers came to us, the juror surrogates, through the filter of her obvious bias.

The third lawyer, magnificent Walter Cheifetz, had a different approach:

Q: You first saw the patient, Mr. Beardsley, at the entry of the emergency room at approximately 4:30 p.m.?

A: Yes.

Q: Was he walking towards you under his own power at the time?

A: No.

Q: Was he walking while leaning on someone else?

A: No.

Q: Was he on crutches?

A: No.

Q: Was he in a wheelchair?

A: No.

Q: How did he get into the emergency room?

A: He was on a stretcher.

Q: Did you think, then, that there might be something seriously wrong with him?

The two previous questioners, both of whom were experienced, competent lawyers, had covered the same information, but Walter Cheifetz best understood how to break down a case into the simple select facts that told his client's story.

Fifth, consider using an evocative theme or images to anchor your story. Biblical parables, Aesop's fables, folk tales, common aphorisms and slogans retain their currency because they speak to basic truths about recurring patterns of human behavior or for some reason seize our attention. A lawsuit can be about sour grapes, greener grass on the other side of the fence, Pontius Pilate washing his hands or Bre'r Bear punching a tar baby. Popular culture provides other shared norms and images that resonate. If your judge permits an opponent to make an unruly, volcanic opening statement, you might politely suggest that your name is not Darth Vader, and that the evidence will show your client is not the Evil Empire.

Spend time thinking through alternative approaches, and try them out in discussions with others. Be sure that your reference is not too obscure. The 1961 film, *The Children's Hour*, based on a Lillian Hellman play, is about a boarding school girl who, for thrills, makes false sexual accusations against her teachers. But it will not be an effective reference for jurors in a molestation case who have not seen the film, no matter how helpful the analogy may be.

Advertising provides a wealth of catchy

— See *Storytelling* on page 10

Storytelling is the art of selecting and presenting facts in a way that moves the audience.

Storytelling...

Continued from page 9

phrases. "When E.F. Hutton speaks, it takes the Fifth," was an ad slogan I adapted years ago when a Hutton broker invoked his privilege against self-incrimination. Sadly, this and variations on the same theme are unavailable now, because Hutton inconveniently was absorbed by another brokerage. On the other hand, there is still a lot you can do with the "good hands" of a major insurer.

It is worth the effort when you find a theme that clicks. Consider a case in which a highly sophisticated businessman seeks to recover for his stock losses on the grounds that his broker's recommendations had been "unsuitable" for his investment goals. This disappointed investor is attempting to fit his case into a theory of recovery designed to protect widows and other financially unsophisticated people from unprincipled, commission-hungry brokers. For a closing argument to securities arbitrators: Like the ugly stepsisters in Walt Disney's "Cinderella," the businessman is trying to squeeze his huge foot into a glass slipper designed for a delicate creature. Recall that after much prying and pushing, in one scene Disney's animators make it look as though a step-sister's foot fits in the slipper. This is the direct examination. Then a courtier lifts the hem of the step-sister's dress to reveal that half of her foot is sticking out behind. This is the cross-examination. There is also a flexible, transparent shoehorn — the businessman's expert witness. Even with such elaborate, expensive help, no matter how he twists and turns it, the businessman cannot cram his great big hairy foot into that little glass slipper.

For motion practice in a case in which he represented reporters for the then fledgling *New Times* in a suit brought by *The Arizona Republic*, Phil Goldstein invented my all-time favorite. Sticking with terms he defined in his introduction, throughout Phil referred to the opposing party as "Goliath" and his ragtag journalists as "Munchkins."

It is important, of course, to consider the uses your opponent might make of an analogy you are considering and also to be sure that it does not risk providing offense. I will never forget a case one of my partners tried a decade ago, in which plaintiff's counsel, who represented a Chinese doctor in a business dispute, repeatedly denounced the defendant for not giving his client "a Chinaman's chance."

Sixth, use refrains. Repetition, trial practice gurus tell us, is an important tool in making our points stick. Although this may be true to some extent, inappropriate use of this device can bore or insult jurors. Storytellers use repetition as a grounding point, as a chorus. Here is an example from a closing argument in a wrongful attachment case:

Armed with a writ of attachment based on false information, and accompanied by uniformed sheriff's deputies, they forced their way into Billy Danford's home, waking his girlfriend, Celia, from an afternoon nap.

They broke into his home and destroyed its tranquility. And he did not owe them any money.

They showed him the writ in front of Celia and proceeded in her presence to carry away his television set and the stereo Celia had given him for Christmas.

They humiliated Billy Danford in his own home. They took away his enter-

tainment and his dignity. And he did not owe them any money.

They went into his den, opened his desk, and rifled through his personal papers.

They invaded his personal life, and he did not owe them any money.

They went into his bedroom and searched the drawers. They took the antique railroad watch his grandfather had given him, and the coins he had collected since he was a boy of six.

They took away his history, and he did not owe them any money.

They took the art from Billy Danford's wall. Art is a sacred thing. It has no practical value. Billy bought his art because it spoke to his soul. It is a part of who he is.

They took his art and he did not owe them any money.

It is now the stuff of legend how, when arguing in *Arizona v. California*, Mark Wilmer managed to repeat this simple rebuttal to various elaborate legal arguments advanced for our neighbor state: "Yes, that may be, but Arizona still has not received its water."

Listen and absorb

A lawyer is a special kind of storyteller. She tells someone else's story. To do this job properly, a lawyer needs to learn to listen carefully and completely, so that she absorbs not only the facts that invoke various legal theories, but also those that will help her understand her client's story. Reading facts from reported cases as students does not prepare us for this task. Whether driven by impatience, a desire to display our own brilliance or an intention to alert the client to legal perils, all too often lawyers attempt to speed up client interviews by "cutting to the chase." Based on a client's initial, thumbnail sketch of the problem, we jump in to explain what is good or bad about the story and how it relates to the various legal theories that, we say, will ultimately decide the case. Whether we do it consciously or not, the client will at times perceive what we say as "guidance" about what the facts should or should not be. This tempts the client who wants to please the lawyer and to help his case at the same time. In his eagerness to give the "right answer," the client may describe the cell phone message that he had meant to leave, but did not, while forgetting that cell phone billing records memorialize even local telephone calls.

We have all had the frustrating experience of having a client mention "something I forgot to tell you" or "a thing that *could* be important," just before trial or the client's deposition. When this happens, almost always the lawyer later expresses her frustration to other lawyers, who nod sympathetically and chime in with their own anecdotes about clients who have let them down. I am not sure that these incidents are always the client's fault. Such embarrassments happen less frequently to lawyers who, like good storytellers, strive to understand fully the background and motivations of the people who inhabit their cases.

John Flynn's ability to listen to and absorb stories of his clients was in a class by itself. Although I missed the first two-thirds of John's career, I know of three cases in which his ability to make jurors see the world through his client's eyes resulted in verdicts of not guilty by reason of temporary insanity,

even though there had been credible witnesses to each of the shootings.

There is another reason to learn your client's whole story. It may be of primal origin, but clients often feel a need to have their story told and to experience the catharsis this produces. In one case, I negotiated such a miraculously favorable settlement that I felt compelled to browbeat a recalcitrant client into accepting it. The same month I passionately urged a different client's cause in court, and suffered a crushing defeat. The first client, notwithstanding his ill-deserved success, hated me; the second remains a fan.

The client has a story to tell, and he will feel better about his lawyer and himself if he knows that the lawyer has understood and presented his story in human terms, as well as on legal grounds. This is why, even at the risk of further stirring antagonistic feelings, most mediators begin that process with a largely ceremonial joint session in which each party tells its side of the case.

Opposing parties present their own surprises. At deposition, we learn that the executives whom our complaint accuses of engaging in a vicious scheme to commit diabolical acts are instead a collection of maladroit bumbling who could not successfully conspire to have breakfast together. At the next deposition, the little old lady turns out to be a dominating shrew.

Starting from the same place, some lawyers have better insights about what the other side's witnesses will say or do. At a CLE gathering, Maricopa County Superior Court Judge Roger Kaufman described his first opportunity to assist in a jury trial. It was a will contest, and the senior lawyer in charge had given his young charge an apparently minor witness to cross-examine. The witness, a gardener, surprised everyone by testifying that on the very evening the will was signed he had just happened to speak to the testator, who, the gardener said, was eminently sane. The lawyer in charge of the case handed his young colleague a note that said, "Ask him if he saw a lawyer and the will there at the same time." The question was asked, and the gardener, visibly embarrassed, admitted that he had. With a few follow-up questions, it became apparent that the gardener's testimony was not the result of happenstance, as it had been first portrayed. Instead, it was part of an elaborate plan contrived by the testator's mistress, who was the sole beneficiary, and her good friend, the probate lawyer. Judge Kaufman told this story without mentioning the name of the lawyer who passed him the note. He did not have to. I knew it had to be John Flynn.

All of the lawyers who worked with John have similar stories. Twenty-three years after his death, we are still amazed at his uncanny intuitions, and the way they could break open a case. We attribute it variously to John's devout Catholic childhood and later apostasy; his outsider upbringing; his zestful, tumultuous way of living; or just plain genius. It was probably a combination of all these.

On reflection, I am of the opinion that those of us who lived life with more restraint have a chance to duplicate a few of John Flynn's lesser feats if we will make it a habit to look at the other side's case from the perspective of a storyteller. Any storyteller who has made up characters knows that sometimes the characters take on a life of their own. When this happens, the storyteller's preconceived ideas get pushed away. The characters drive the plot, often to unanticipated places.

If a lawyer can learn enough about the character of the other side's witnesses, she can anticipate strange plot twists. I offer this vignette, child's play by John Flynn's standards, as an illustration:

A large East Coast firm is defending a securities class action, somewhere out in the Square States. It is time to take the depositions of class representatives in the hope of finding evidence that there is inadequate commonality among them to justify class certification. The associate assigned to take the depositions has only practiced for eight years, so local counsel

has been asked to sit in as the associate takes the third deposition of his career. The associate has prepared a thoughtful, detailed outline and a list of carefully crafted, key questions predicated on the assumption that each deponent will shade the truth whenever possible if doing so will aid the plaintiffs' case.

The deponent is a well-dressed woman in her early 60s. She had grown up in comfortable surroundings, attended good schools, married well, participated in numerous charitable activities, raised successful children and remained a pleasant, attractive lady. She is impeccably polite. Local counsel has time to assess her character. It is clear that this witness is not inclined to think, much less speak, ill of anyone. "Ask her if she was defrauded," the local lawyer whispers to the associate. The associate glances up from his outline with something approaching horror in his eyes. Local counsel nods. The associate gulps and asks the question. With a serenity not shared by class counsel, madam witness responds, "No, I was not."

Success in litigation revolves around two questions: What is legally important, and what is emotionally persuasive? The difference is that of the head and the heart. Law school and, increasingly apprenticeship, instruct the head and ignore the heart. As an antidote, I offer this suggestion: Come back to the oldest art form. Storytelling will teach you how to move an audience. It will help you to connect with your clients, as well as jurors. A storyteller's imagination can help you to understand your opponents and anticipate what they will say. A complete litigator must be a storyteller.

► Tom Galbraith is a shareholder in Meyer, Hendricks & Bivens. An earlier version of this article appeared in the *American Bar Association* magazine *Litigation* and an abbreviated version was republished in "The Best Articles Published" by the ABA, *GP Solo*, September 2002. ■

The client has a story to tell, and he will feel better about his lawyer and himself if he knows that the lawyer has understood and presented his story in human terms, as well as on legal grounds.

MCBA CALENDAR

APRIL

April 2

Building A Product Liability Case: What You Don't Know Can Hurt You
1 p.m. to 4:30 p.m., ASUD
Learn how to construct a product liability case (from both sides), including current developments in Arizona law affecting defense and prosecution. Topics will include investigation, claims/defenses, damages, discovery and Restatement 3rd Torts.
Cost: Member attorneys, \$75; member paralegals and public attorneys, \$55; member self-study \$75; non-member attorney, \$105; non-member paralegals and public attorneys, \$75; non-member self-study \$105; same-day registration, \$15 additional. CLE: 3 hours

Family Law Section, 5:15 p.m., University Club

April 3

ADR Committee, 5:15 p.m., Starbucks, southwest corner of 24th Street and Camelback Road

April 4

Minority Bar Convention, San Marcos Sheraton Resort

Leaders of Litigation, Part 5: Direct & Cross Examination

1:30 p.m. to 5:00 p.m., ASUD
Part five of a six-part series. An updated version of the popular 1996 series, "Legends of Litigation." Leading litigators Leroy W. Hofmann and Roxana C. Bacon and Maricopa County Superior Court Judge Rebecca A. Albrecht will share their knowledge, insight and experience about direct and cross-examination. Cost: Member attorneys, \$75; member paralegals and public attorneys, \$55; member self-study \$75; non-member attorney, \$105; non-member paralegals and public attorneys, \$75; non-member self-study \$105; same-day registration, \$15 additional. CLE: 3 hours

April 5

Minority Bar Convention, San Marcos Sheraton Resort

April 7

Paralegal Division Executive Committee, noon, conference call
Maricopa Lawyer editorial board, 5 p.m.

April 8

VLP Advisory Committee, noon
Scottsdale Bar Association lunch meeting, noon, Scottsdale Athletic Club, 8225 E. Indian Bend Rd., Scottsdale. Speaker: To be announced. Cost: \$15 with advance payment (send checks payable to Scottsdale Bar Association to P.O. Box 2087, Scottsdale, 85252-2087); \$18 at the door. Information/reservations: Jill Miller, 480-481-3047.

April 9

Executive Committee, 7:15 a.m.
Environmental Law Section, noon

2003 Clean Air Act Update: Don't Let the Brown Sky Make You Blue

1 p.m. to 4:30 p.m., ASUD
Join our panel of air quality experts representing regulators, the environmental community and industry as they address recently proposed initiatives. Topics include meeting requirements under the Clean Air Act and how ongoing litigation will affect our attainment status; how new Maricopa County initiatives will affect industries in Arizona, including construction, agriculture, mining and real estate industries; how the new Bush administration proposals affect your clients; how new ozone stan-

dards, regional haze requirements and other federal and state initiatives affect air quality and what do they mean for businesses; and whether the proposals help business and industry at the expense of our air quality, and the industries affected. Cost: Member attorneys, \$75; member paralegals and public attorneys, \$55; member self-study \$75; non-member attorney, \$105; non-member paralegals and public attorneys, \$75; non-member self-study \$105; same-day registration, \$15 additional. CLE: 3 hours

Hayzel B. Daniels Bar Association, 5:30 p.m.

April 10

West Valley Bar Association lunch, noon, conference room at Glen Harbor, the Glendale municipal airport, 6801 N. Glen Harbor Blvd. Program: "Ethical Considerations in Representations of Multiple Entities." Speaker: Kenneth W. Reeves III, Northern Trust Bank. Cost: free this month. Reservations/meal orders (required): David Brnilovich, dbr@jss-law.com, or Patty, 623-878-2222.

April 11

Leaders of Litigation, Part 6: Closing Arguments

1:30 p.m. to 5:00 p.m., ASUD
The final part of a six-part series. An updated version of the popular 1996 series, "Legends of Litigation." Leading litigators Richard T. Treon and Thomas L. Toone and Maricopa County Superior Court Judge Linda A. Akers will share their knowledge, insight and experience about closing arguments. Cost: Member attorneys, \$75; member paralegals and public attorneys, \$55; member self-study \$75; non-member attorney, \$105; non-member paralegals and public attorneys, \$75; non-member self-study \$105; same-day registration, \$15 additional. CLE: 3 hours

April 14

YLD board, noon
Paralegal Division board, 5:30 p.m.

April 15

Estate Planning & Probate Section Executive Committee, 7:30 a.m.
Bankruptcy Law Section, 5 p.m.

April 16

Litigation Section, 7:30 a.m.
Bench Bar Committee, 12:15 p.m., fourth floor conference room, Central Court Building, Phoenix

Recent Developments in Labor and Employment Law

1 p.m. to 4:30 p.m., ASUD
Learn about recent developments in labor and employment law, including sexual harassment, workplace violence, discrimination, wage and hour issues, Internet use and privacy, and NLRA developments for union and non-union workplaces. Cost: Member attorneys, \$75; member paralegals and public attorneys, \$55; member self-study \$75; non-member attorney, \$105; non-member paralegals and public attorneys, \$75; non-member self-study \$105; same-day registration, \$15 additional. CLE: 3 hours

April 17

Sole Practitioners Section, 11:30 a.m.
Public Lawyers Division board, noon
Membership Communications Committee, noon
Phoenix chapter of the Federal Bar Association luncheon, noon, Arizona Club. Speaker: Chief Arizona U.S. District Court Judge Stephen M.

This calendar includes all CLE seminars presented by MCBA as well as MCBA meetings, luncheons and events and those of other voluntary bar associations and law-related organizations. The divisions, sections and committees listed here are those of the MCBA, unless noted otherwise. Everything takes place at the MCBA office, 303 E. Palm Lane, Phoenix, unless noted otherwise. Other frequent venues include the University Club, 39 E. Monte Vista, Phoenix; Arizona State University Downtown (ASUD), 502 E. Monroe, Phoenix; and the Arizona Club, 38th floor, Bank One Building, 201 N. Central, Phoenix. For information about MCBA events or to register for any of the MCBA seminars, contact the MCBA at 602-257-4200 or visit www.maricopabar.org.

APR. 2003

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McNamee. Program: "State of the District." Reservations (required) by April 15. Information/reservations: Diana Celeste, 602-916-5118 or dceleste@fclaw.com.

Case Management: An Overview and Introduction to Timematters

1 p.m. to 4:30 p.m., ASUD
This program is for anyone interested in learning how to use Timematters software to manage their caseload or for those who already use Timematters and are looking for an in-depth review of the product. Topics include document assembly; built-in document management system; PDA and remote office synchronization; group scheduling; conflict-of-interest checks; email integration; and billable time capture and linking to billing systems. Cost: Member attorneys, \$75; member paralegals and public attorneys, \$55; member self-study \$75; non-member attorney, \$105; non-member paralegals and public attorneys, \$75; non-member self-study \$105; same-day registration, \$15 additional. CLE: 3 hours

MCBA board, 4:30 p.m.

April 18

Maricopa County Bar Foundation board of trustees, 7:30 a.m.

April 21

YLD Domestic Violence Committee, noon

April 22

Juvenile Practice Section, noon, southeast court facility, Mesa
Corporate Counsel Division board, 4:30 p.m.

April 23

What Your Creditor Client Can Do to Avoid Financial Disaster: Rights, Remedies & Liabilities Arising in the Days Before a Chapter 11 Bankruptcy Case

1 p.m. to 4:30 p.m., ASUD
Bankruptcy law may appear to be a mysterious and often impossible-to-navigate world for the businessperson or attorney who does not practice in the area. The filing of a bankruptcy by a company owing your client money will cause financial distress for your creditor-client. Topics include preferences, set-off, reclamation, right to stop shipment of goods under UCC, turnover of property belonging to the bankruptcy estate, application of the automatic stay to property seized by the creditor pre-emption and terminating leases and executory contracts. Cost: Member attorneys, \$75; mem-

ber paralegals and public attorneys, \$55; member self-study \$75; non-member attorney, \$105; non-member paralegals and public attorneys, \$75; non-member self-study \$105; same-day registration, \$15 additional. CLE: 3 hours

April 24

Technology Section, 7:30 a.m.
Los Abogados, noon, Matador Restaurant, First Street and Adams, Phoenix. Speaker: to be announced. Reservations (by April 22): 602-253-0547. Cost: \$15 with reservation; \$20 without.

April 25

Identifying and Protecting Your Company's Confidential Information
Corporate Counsel Division lunch CLE
11:45 a.m. to 1 p.m., University Club
Speaker: Sean Garrison, Lewis & Roca
CLE: 1 hour

Lobbying the People: the Initiative and Referendum Process

12:30 p.m. to 2:30 p.m., ASUD
Corporations impacted by governmental action or inaction at the state, county or municipal level may propose legislation by initiative or by referring legislative actions to voters. This program will provide the legal know-how needed to avoid legal pitfalls in the legislative process. Cost: Member attorneys, \$50; member paralegals and public attorneys, \$35; member self-study \$50; non-member attorney, \$70; non-member paralegals and public attorneys, \$50; non-member self-study \$70; same-day registration, \$15 additional. CLE: 2 hours

April 29

Nuts and Bolts of Custody Issues Part 1 of the 4-part Custody Issues brown-bag lunch series

12:30 p.m. to 2:30 p.m., ASUD
This four-part series will cover a wide range of important custody issues. Join us for one of all of the sessions. Future sessions: International Custody Issues (May 6); Interstate Custody Issues (May 13); and Grandparents Rights (May 20).
Cost per session: Member attorneys, \$50; member paralegals and public attorneys, \$35; member self-study \$50; non-member attorney, \$70; non-member paralegals and public attorneys, \$50; non-member self-study \$70; same-day registration, \$15 additional. CLE per session: 2 hours

April 30

Arizona Women Lawyers Association lunch meeting, noon, Arizona Club. Speaker and program to be announced. Program begins at 12:30 p.m. Cost: AWLA members, \$15; non-members, \$20. Reservations (required): 602-863-7678 or luncheons@awla-maricopa.org by noon April 28. Information: Amy Schwartz, 602-956-4438.

The Sale of Our Business, Inc.: Negotiating and Drafting General Terms, Protecting Intellectual Property & Handling Ethical Issues When Selling a Business

1 p.m. to 4:30 p.m., ASUD
This seminar will benefit the general business practitioner representing clients who are selling small to mid-size businesses. Topics will include the issues a lawyer faces depending on the structure of the transaction, the major issues that arise in drafting and negotiating a purchase and sale agreement, protecting the business through non-competition agreements and intellectual property issues. Cost: Member attorneys, \$75; member paralegals and public attorneys, \$55; member self-study \$75; non-member attorney, \$105; non-member paralegals and public attorneys, \$75; non-member self-study \$105; same-day registration, \$15 additional. CLE: 3 hours

Local lawyer volunteers for 9/11 victims

By Ronald W. Collett
Special to Maricopa Lawyer

Maricopa County may be a long way from Manhattan, but one local attorney is volunteering his legal skills to help victims of the Sept. 11, 2001, terrorist attacks. Mark O'Connor, of Herzog and O'Connor in Scottsdale, epitomizes the proposition that the law means more than just making a living.

After the terrorist attacks, the Association of Trial Lawyers of America created Trial Lawyers Care, or TLC for short, a non-profit organization providing free legal representation for victims of the tragedy who file claims with the Federal Victim Compensation Fund. The fund is part of the "Airline Bailout Bill" Congress amended shortly after Sept. 11.

Eligible claimants must be either court-appointed personal representatives of deceased victims or survivors physically injured in the attacks.

Attorneys volunteering to participate in TLC must have been licensed to practice law for a minimum of five years, be a member in good standing with the licensing authority in the state of practice and have tried or settled any combination of at least 15 personal injury, death or other significant cases. More importantly, TLC requires volunteers to agree that neither the volunteer nor the volunteer's law firm will solicit or accept any fee on any personal injury case against any person or any entity causing such personal injury or wrongful death or insurance companies insuring against such injury or death.

Many attorneys, mostly in the greater New York area, have volunteered to participate in TLC. Despite the distance from New York, O'Connor — a certified injury and wrongful death specialist — is representing eight separate victims/families before the fund in New York. All of his time is donated and although his firm pays his expenses, it is a distinction without a difference.

Let's you believe that TLC volunteers need only show up for a hearing in New York, you overlook the peculiarities of dealing with the federal government and this particular fund. Volunteer attorneys receive a handbook including the fund's rules, claims forms, checklists for claims and a database of volunteer experts who may be necessary in presenting claims. There are client interviews, case preparation and, in keeping with the spirit of the federal government, paper work, paper work, paper work.

Fortunately, the law is about more than making a living. It's about helping others when the need arises. O'Connor is one of those attorneys who cares enough to do so.

► Ronald W. Collett practices with Jones, Skelton & Hochuli. ■

DOING GOOD

■ The Phoenix office of Bryan Cave has received a certificate of appreciation for its support of legal assistant Cynthia Breitbach's volunteer efforts with the U.S. Army's Family Readiness Group. The FRG is a group of volunteers who plan family activities, assemble information and provide emotional support for battalion soldiers and their families. Breitbach serves as chief volunteer of the FRG for the 2nd Battalion, 363rd Regiment. Prior to the battalion's activation in January, the FRG disseminated information to the affected families about procedures for accessing additional benefits. The battalion's commander, Lt. Col. Anthony Alvarado Jr., and Sgt. Maj. Harold Bodenschatz presented a certificate of appreciation to Bryan Cave's resident manager, Luke Narducci, at a March 4 reception. ■



Breitbach

Asian bar installs leaders



PHOTO BY TERRI ZAMMERMAN

The Arizona Asian American Bar Association held its seventh annual installation banquet March 6 at the Sampan Restaurant in the Chinese Cultural Center. The banquet, the group's major fundraising event, raises funds for scholarships for Arizona State University and University of Arizona law students as well as to support its other community outreach programs.

Highlights of this year's event included a keynote speech by Gov. Janet Napolitano, the awarding of scholarships and the swearing-in

of this year's officers and board members. The event was filmed by KAET for a special on Chinese Americans in Arizona that was to be aired on March 27.

Pictured above are 2003 officers and board members. (Standing, left to right) George Chen, Teresita Mercado (president), Emily Chang, Lisa Loo, Catherine Parker-Williams (vice president), Rosa Mroz (treasurer), Anoma Phanthourath and Randy Aoyama. (Seated, left to right) JoAnn Garcia, Eileen Lanterman, Leezie Kim (secretary) and Eleanor Satuito. ■

PEOPLE IN LAW

■ The American College of Trust and Estate Counsel elected Robert J. Rosepink, Rosepink & Estes, as president-elect at its annual meeting in Puerto Rico.

■ Lydia A. Jones, a partner with Jennings, Strouss & Salmon, has been named to the advisory board of the Center for the Study of Law, Science and Technology at the ASU College of Law. Jones chairs Jennings, Strouss & Salmon's Internet law practice section.

■ Bruce E. Meyerson has been named chair of the American Bar Association's Section of Dispute Resolution. In addition to his full-time practice in ADR, Meyerson teaches the subject at the ASU College of Law and has been a visiting professor at the Pepperdine University Institute for Dispute Resolution. He has resolved successfully



Jones



Meyerson

more than 1,500 cases involving disputes of up to \$1.5 billion through mediation, and is one of a small number of neutral parties selected by the Equal Employment Opportunity Commission to mediate EEOC charges in Arizona.

■ ASU law Professor Ira Mark Ellman was to be invested last month as a Willard H. Pedrick Distinguished Research Scholar.

■ Kathy Sieckman, Squires, Sanders & Dempsey, has received the Phoenix Legal Support Association's 2002 Mentor Award. ■

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Pro bono ADR program helps indigent clients

Funded by county, state bar foundation grants

By Marc Kalish
Special to Maricopa Lawyer

ADR CORNER

The Maricopa County Bar Foundation recently awarded Community Legal Services \$2,000 to help fund a program to provide alternative dispute resolution services at no charge to those who qualify financially for legal aid.

The Arizona Community Foundation awarded an additional \$3,000, which will be used to pay for a toll-free telephone number, postage, office supplies and a part-time administrator.

Although CLS serves five Arizona counties, the pro bono mediation program is so far only available in Maricopa and Yavapai counties. As of Jan. 31, 53 disputes have been referred to the program. Thirteen have been mediated. Nine settled as a result of the mediation in the program, four by mediation in another program and four as a result of the program administrator providing telephone conciliation.

The pro bono ADR program first was proposed as a project for the State Bar ADR Section. A committee of ADR section members (Joan Tobin, Jeremy Butler, Levon Kasarjian, Ernie Modewleski and me) developed an outline of how the program would function. The emphasis would be on mediation. The target population was divided into two groups: those who were directly represented by CLS or attorneys volunteering through the Volunteer Lawyers Program, and those who qualified financially for legal aid but could not be directly represented, either because their dispute fell outside the limitations on the types of cases CLS and VLP can handle or because those agencies lacked the resources (that is, had no available attorneys) to accept the representation.

For cases in which direct representation is provided, the assigned attorney is responsible for deciding if and when the case is appropriate for mediation and to obtain the consent of the other party to participate.

The process for identifying disputes amenable to mediation for those people who

were not directly represented was a bit more difficult to establish.

The early model for identifying appropriate disputes involved having the CLS attorneys who screen requests for representation identify matters for which representation was declined that would be appropriate. To that end, Tobin trained CLS attorneys on how to identify cases that would be appropriate. However, that model quickly proved to be ineffective, primarily because CLS instituted a phone bank for client inquiries that increased the number of requests for representation to about 2,000 per week, which was well beyond the capability of the already overworked CLS staff attorneys to screen for mediation.

With the help of what is now the Maricopa County Bar Association's Paralegal Division, the model was changed to elicit the help of paralegal interns to screen matters rejected for direct representation. That new model is being expanded to include ASU law students involved in the Lodestar Mediation Clinic. The interns and students will review the intake forms generated by the phone-bank operators and identify cases that appear appropriate for mediation. They then will contact the party who called CLS to explain the mediation process and the program. If that person agrees to submit the dispute to mediation, a one-page form is submitted to the administrator, who is, and has been since the program's inception, Tobin, who formerly headed the Maricopa County Superior Court's ADR office. She sends a letter to the other party to the dispute, explaining mediation and the program, and then follows up with a call to answer any questions and encourage participation.

Once the parties agree to mediate, Tobin finds a pair of mediators, one experienced and one not, to conduct the mediation. She schedules the mediation and locates a site for it, usually using conference rooms made available by a number of law firms. She provides the participants with evaluation forms so that the quality of the administrative ser-

vices and mediators can be monitored and any problems corrected immediately.

The program uses both lawyer and non-lawyer mediators who have volunteered to provide pro bono services. Mediators must receive training about the program and special problems that may arise in conducting mediations for indigents. Volunteer mediators who do not meet the program's minimum experience requirements can obtain that experience by serving as a co-mediator with highly experienced mentor mediators. For family law disputes, mediators also must have specialized training in that area of practice. A select few also are qualified to conduct mediations involving claims of domestic violence. Some mediators are bilingual, and several of the mediations have involved non-English-speaking parties.

The next step in this evolving program is to elicit the help of volunteer lawyers who, while unable to accept clients for full representation through the VLP, would be willing to provide limited representation for program participants during the mediation. Lawyers in Maricopa County willing to do so should contact VLP Director Pat Gerrich at 602-254-4714. Training on mediation advocacy, including issues peculiar to representing low-income people in mediations, will be provided to those who volunteer.

The ABA Dispute Resolution Section recently formed a pro bono committee, which I chair, and adopted a resolution encouraging the development of pro bono ADR programs in all jurisdictions. I hope that CLS' pro bono mediation program will be a template for similar programs around the country and will provide access to an important resource that is currently unavailable to a large segment of our society.

► Marc Kalish practices ADR and appellate litigation at Meyer, Hendricks & Bivens. He is a board member and the treasurer of Community Legal Services, and also serves as chair of CLS' ADR Committee. He is chair of the American Bar Association Dispute Resolution Section's Pro Bono Committee and its liaison to the ABA's Pro Bono Committee. ■

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LEGAL MOVES

■ **Maureen P. Henry** has become a shareholder in Leonard, Collins & Gillespie. Henry (J.D. 1988, ASU) practices creditor's rights and bankruptcy litigation.

■ **Christopher J. Baier** has been named assistant dean for institutional operations at the Arizona State University College of Law. Baier has been deputy director of the state Commerce Department since January 2001. Baier (J.D. 1992) also is a CPA and will assume the duties generally assigned to a chief financial officer of a corporation.

■ **Mary Grace McNear** has been named a partner in Sacks Tierney, McNear (J.D. 1993, NYU) practices commercial and civil litigation

with an emphasis on construction law.

■ **Begam, Lewis, Marks & Wolfe** has elected **Scott A. Sahlman** to membership. Sahlman (J.D. 1990, New England School of Law), who joined the firm in 2000, will continue to concentrate his practice in plaintiffs' tort litigation, with particular emphasis on medical negligence.

■ **Fennemore Craig** has expanded its immigration practice with the addition of **Nancy-Jo Merritt** as a shareholder. Merritt (M.A. English and J.D., ASU) has practiced immigration law for more than two decades. She previously practiced with Little Mendelson.

■ **Snell & Wilmer** has launched a retail services group to handle "every legal issue that may arise in the industry," the firm said in a press release.

■ **Jaburg & Wilk** has created what it calls the "in-house counsel program," which, it



Elbogen



Malm



Merritt



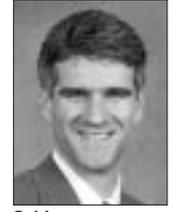
Murphy

said, gives its business clients unlimited telephone access to the firm's attorneys as well as collection and demand letters and document reviews for a set monthly fee.

■ **Burch & Cracchiolo** has selected **Bryan Murphy** to its five-person executive committee, which is the firm's governing board. Among the officers of the firm, which are selected from the executive committee, Ed



Noyes



Sahlman

Law firms help enhance students legal writing skills

By **Cynthia R. Estrella**
Special to Maricopa Lawyer

Sixteen Valley law firms have taken steps to enhance the education of Arizona State University minority law students by participating in a writing program that includes weekly classes taught by attorneys and scholarships.

The program is sponsored by the Maricopa County Bar Association's Task Force to Promote the Recruitment and Retention of Women and Minority Lawyers, the State Bar of Arizona's Committee on Minorities and Women in the Law, and the ASU law college. After months of planning

and recruiting law firms, the Minority Writing Program is in full swing this spring semester with six students.

The program complements the legal writing program offered at the law school by providing second-year law students opportunities to hone their writing skills with private law firms. Interested students submitted applications to the program, and participating law firms then interviewed and selected candidates.

The students work 10 to 20 hours each week at a designated firm for 12 weeks. Attorney mentors assign and supervise writing projects and provide feedback. Each student also attends attorney-taught classes held

once a week on topics such as legal research and writing, practical tips for practicing law and strategies for success in private law firms.

In recognition of the students' hard work in the program, participating law firms have established scholarships for the students' ongoing legal education, which total \$5,000.

The law firms that are sponsoring and have donated scholarship money are Bowman and Brooke, DeConcini McDonald Yetwin & Lacy, Lewis and Roca, Osborn Maledon and Quarles & Brady Streich Lang.

A dozen additional law firms provide attorneys to teach weekly classes: Mariscal Weeks McIntyre & Friedlander, Sacks Tierney, Snell & Wilmer, Jennings Strouss & Salmon, Fennemore Craig, Lewis and Roca, Brown & Bain, Jones Skelton & Hochuli, Steptoe & Johnson, Squire Sanders & Dempsey, Bryan Cave and Stinson Morrison Hecker.

The MCBA, the State Bar and the ASU College of Law thank these firms for their valuable and generous contributions, which are certain to reap rewards for both the students involved and our legal community.

If you have any questions or you would like to participate in the Minority Writing Program next spring, contact Jo Ellen McBride at 602-273-4012, or Ilona DeRemer, ASU College of Law, at 480-965-6758.

► *Cynthia R. Estrella, Mann, Berens & Wisner, is a member of the MCBA's Task Force to Promote the Recruitment and Retention of Women and Minority Lawyers.*

Bull continues as president and **Don Lindholm** has been appointed vice president.

■ **Luis Ochoa** and **Steve Heeley** have joined Quarles & Brady Streich Lang as partners in the firm's newly established federal Indian and gaming law practice group. Formerly a partner in a Tucson-based firm, Ochoa (J.D., UA) focuses on gaming, Indian and corporate law. He lives in Tucson and will have offices in both Phoenix and Tucson. Heeley (J.D., University of California at Berkeley) is a member of the Potawatomi Tribe from the Walpole Island Reserve in Ontario, Canada. He has served as deputy general counsel for the Gila River Indian Community and as staff director and chief counsel to the U.S. Senate Committee on Indian Affairs.

■ **Kimberly C. Page** has joined Bonnett, Fairbourn, Friedman & Balint as an associate.

■ **Gust Rosenfeld** has elected three new partners. **Gary S. Elbogen** (M.B.A. 1983, University of California at Irvine; J.D. *magna cum laude* 1989, Southwestern University) practices real estate law. **Scott A. Malm** (M.B.A. 1993, University of Wales; J.D. *cum laude* 1997, UA) practices real estate, employment and commercial litigation. **Christina M. Noyes** (J.D. *cum laude* 1996, ASU) focuses her practice on franchise law.

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Volunteer helps every week of the year

By **Patricia Gerrich**
Special to Maricopa Lawyer

Some attorneys accept a pro bono case from the Volunteer Lawyers Program once a year and make a significant difference for a low-income family who otherwise would not have access to civil justice.

Other attorneys volunteer once a month at a clinic at VLP or Community Legal Services and help a number of clients who need advice about their legal rights or remedies.

But for volunteering to help low-income families every week for six years, Stephanie Lee Tang was chosen for recognition as VLP's

Volunteer Attorney of the Month.

Tang contacted VLP in 1997 to volunteer. She offered to assist "for a few months" at Community Legal Services in an area of law that was different from her usual areas of practice, advising clients with landlord-tenant issues. Once she started working with CLS housing attorneys and represented a number of families, she quickly realized just how important it is to help people avoid homelessness. She sees that some landlords take advantage of low-income tenants who cannot afford to hire attorneys and don't know how to protect their rights.

Tang volunteers every week at the CLS office in Mesa and even has her own phone extension there. She finds her pro bono service rewarding because many people want to learn how to help themselves and improve their lives. Her goal is to arm clients with information and advice to help them stabilize their living conditions. She gives advice to help people avoid being evicted and becoming homeless. She also helps many people get repairs. Others get their security deposits returned or resolve other issues with their landlords.

Tang also provides information about their rights as tenants to help empower them to avoid legal problems in the future.

Lisa Moore Melton, managing attorney of CLS' East Valley office, urged VLP to recognize Tang because "she has been such a ded-

icated and consistent volunteer and has helped so many people in the past six years."

"Stephanie's clients are so grateful because she does legal research for them, keeps in contact with them, and follows through to give additional advice or connect them with a CLS housing attorney if they need representation," said Juliana Gradillas of the CLS staff.

As a law student at the University of Arizona, Tang was a member of the student chapter of the Christian Legal Society. She cites that organization's theme verse from Isaiah 1:17 as a summary of her personal commitment to assist those who cannot afford legal services: "Learn to do good; Seek justice, Reprove the ruthless;

Defend the orphan, Plead for the widow."

Tang credits her employer with being very supportive of her regular pro bono service. She is a transactional attorney with McFletcher Corp., a research and consulting firm.

Tang encourages other attorneys to get involved in pro bono service.

"I believe they will find it more gratifying than they expect," she said. "I am very happy when I can help a family avoid homelessness and stabilize their lives."

► Patricia Gerrich is VLP director. For more information about pro bono opportunities through VLP, contact her at 602-254-4714. ■



Tang

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HLAP to honor volunteers

The Homeless Legal Assistance Project will honor outstanding attorney volunteers and law students for providing exceptional pro bono legal services to the Valley's homeless at an April 2 awards ceremony.

HLAP, a student-run organization that operates in conjunction with a board of directors of practicing attorneys, judges and Arizona State University law faculty members, was founded in 1989 to provide accessible legal services to the homeless. With more than 100 student and 75 attorney volunteers, the organization provides free legal services to residents of five homeless shelters: Central Arizona Shelter Services, East Valley Men's Center, United Methodist Outreach Ministries, La Mesita and Homebase Youth Services.

The awards ceremony will be held 6 p.m. to 7:30 p.m. at Heritage Square, Seventh Street and Monroe, Phoenix, Arizona

Supreme Court Justice Rebecca White Berch will give remarks.

Awards for outstanding volunteer work will be presented to the following attorneys:

- Most Shelter Visits for a New Attorney Volunteer: Corey Babington
- Outstanding Representation: Andy Defusco
- Outstanding Representation: Jennifer Stewart
- Most Overall Shelter Visits: Shirley Baum
- Most Overall Shelter Visits: Edward Kinney

Awards for outstanding volunteer work will be presented to law students Michael Schon, Hannah Auckland, Jesse Cooke, Marsha Gregory, Suzanne Rollier, Nikolai Schnupp and TJ Striipe.

For more information, contact Wana Reyes at 602-257-5214. ■

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