

# MARICOPA Lawyer

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**Meet MCBA's 2005 leadership team**

Presenting MCBA's new officers and board members. Page 3.

## Mundell to take over as presiding judge

By J. W. Brown  
Maricopa Lawyer

When Arizona Supreme Court Chief Justice Charles Jones announced Barbara Rodriguez Mundell as presiding judge of Superior Court in Maricopa County, he noted that the path she will be traveling is one that is neither smooth nor easy.



Mundell

"The appointment presents an enormous challenge," he noted, while presenting her to the media, fellow justices and judges, court officials, lawyers and court staff at the Dec. 8 news conference.

She responded to the warning with a faint smile. As she glanced toward family members seated in the audience, the smile widened into a confident grin that appeared to say a challenge doesn't intimidate her.

Mundell's appointment becomes effective on July 1, when she assumes the responsibilities of current Presiding Judge Colin F. Campbell, who has served in the leadership role since July 1, 2000. The state's Supreme Court justices select and appoint the Maricopa County presiding judge to a five-year term.

"We are pleased that Judge Mundell has agreed to accept this important assignment," says Chief Justice Charles E. Jones.

For the past two years, Mundell has served with Campbell as associate presiding judge, while also presiding over the probate/mental health court. Starting immediately upon the Supreme Court's

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## A new year, a new county attorney: introducing Andrew Thomas

By Jennifer Green  
Special to Maricopa Lawyer

Maricopa County Attorney Andrew Thomas sat down with MCBA Young Lawyers Division President Jennifer E. Green to share some thoughts on his life and what he'd like to do as Maricopa County's new prosecutor-in-chief.

Most recently, Thomas was an associate at Wilenchik and Bartness. Prior to that, he was deputy county attorney for Maricopa County. He received his juris doctorate from Harvard Law School and an undergraduate degree in political science from the University of Missouri. Thomas is married with four children.

JG: What did you learn by working at MCAO as a line attorney in juvenile?

AT: I was impressed with the quality of attorneys there. Many are top-notch attorneys who could have made 3-4 times their salaries in the private sector. They've given over their lives and careers to a calling that gets overlooked. Prosecutors perform very important work that's usually personally rewarding but sometimes hard to disengage from entirely at the end of the day. It was very helpful to experience what prosecutors experience on a daily basis.

JG: What changes will you make?

AT: Attorneys perform too much clerical work. Preliminary hearings can be conducted more efficiently. I hope to offer part-time and flex-time work opportunities. Telecommuting might work in some situations. The rest of state government has gone that way. We penalize some of the best workers who want to cut back hours

because of life situations but want to retain a foothold in the workforce. And voicemail.

JG: I'm sure you hear frequent complaints about attorney salaries. What to do?

AT: I will make it a significant priority because salaries are driving the turnover. Prosecutors deserve a fair wage, should get steady raises, and I intend to pursue that. There is a disparity in the average salaries of deputy county attorneys and assistant city prosecutors. It doesn't make sense. We have a relatively high turnover rate, but we should work to keep the best people.



Thomas

JG: What are your other goals?

AT: We have an explosion of identity theft and forgery cases. They're usually related to drug trade or drug addiction. We need to protect kids by getting tougher pleas for serious violent crimes and crimes against kids. I want to have a review process to come up with solutions. I want to bring our percentage of pleas, about 98 percent, down closer to Pima County Attorney's Office, about 85-90 percent.

JG: Any specific examples?

AT: When I worked in training at the county attorney's office, I was surprised at some of the plea offers. In one instance, a woman's boyfriend broke her nose when she told him that she was pregnant. The recommended plea offer was a class six (least serious felony) undesignated (can be reduced to

a misdemeanor) plea. That's somebody who should go to prison.

JG: You clearly support stopping illegal immigration. How will you do that?

AT: There are some things at the local level to break up coyote networks. We need to focus on some of the crimes attendant to illegal immigration. To gain focus, we may create a specialized unit like Special Crimes. The group may specialize in prosecutions for coyote smuggling and defendants who commit other crimes that are part of the case-in-chief. We want to consolidate the effort among ourselves, the U.S. Attorney, police, Border Patrol, INS, and sheriff.

JG: Ah, the sheriff. What will your relationship be like with Sheriff Joe?

AT: As part of the changing of the guard, there will be a natural clearing of the air.

JG: You wrote "prison is a place for lost souls to rediscover their Maker, and to reassess one's priorities before the sands of life are poured out." Still agree with that?

AT: Yes. There is a chance afforded by DOC to look within and try to live a better life. It was the original ultimate goal. We want inmates to be encouraged to change their lives so they won't come back. I'm an advocate of faith-based ministries (along with President Bush) as effective tools of fighting recidivism. We should explore alternative forms of punishment effective in deterring future criminal behavior. It needs to be punishment that stings. I'm not wedded to incarceration as solution to every felony, but we can't give slaps on wrists.

JG: What advice did outgoing County Attorney Romley give you?

AT: He shared his thoughts on how to deal with other actors in our criminal justice system. We talked about the office and current makeup and structure. Personnel. He has made the transition smooth and I'm grateful. We're making progress. (Editor's note: Thomas appointed a chief deputy and a chief executive county attorney on Dec. 6th. See page 6.)

JG: Finally, how will you measure your success as county attorney?

AT: My goal is to leave our community safer than when I began. I hope to do justice. I want to make sure that victims feel that justice was served in their cases.

► Green, who was newly appointed YLD president, is a deputy county attorney with the Maricopa County Attorney's Office. She received her law degree from ASU College of Law. ■

## Tribal officers win right to display and use emergency lights

By Daniel P. Schaack  
Maricopa Lawyer

In Arizona, relations between the Indian Tribes and state and local governments are not always rosy: roads have been blocked in boundary disputes and sharp words exchanged over gaming issues. But could relations possibly get as weird as they have in California between Riverside County and the Cabazon Band of Mission Indians? Not likely.

The tribe recently won a ruling from the 9th U.S. Circuit Court of Appeals holding that the vehicles operated by officers of its Department of Public Safety are officially

## COURT WATCH

authorized to display and use emergency lights while traveling on public roads, on and off its reservation. *Cabazon Band of Mission Indians v. Smith*, No. 02-56943 (9th Cir. Nov. 3, 2004).

The tribe had to go to court because of a dispute with Riverside County Sheriff Larry D. Smith. Smith had taken the position that

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## COLUMNS

## MCBA 2005: from Adams to the Beatles

"The mere title of lawyer is sufficient to deprive a man of the public confidence... The most innocent and irreproachable life cannot guard a lawyer against the hatred of his fellow citizens." Even with this caution from lawyer John Quincy Adams, the sixth U.S. President, I look forward to representing the MCBA in 2005. Based on the good works of prior MCBA leaders, we have a solid base to enhance camaraderie within our membership and the profession and to serve our judicial system and the community. To quote four statesmen from Liverpool, I'll get by "with a little help from my friends."

And you, my friend, thought that you were just signing up (or being signed up by your firm) for discounted CLE. Yes, the MCBA does CLE, with more than 60 courses offered annually. You can attend courses, earn credits through self-study, and even volunteer to coordinate or speak at a seminar.



Don't wait until June — call Mona Fontes at (602) 257-4200 x131.

President Adams likely believed that CLE itself would not be enough to build public confidence in lawyers. So we do more through your voluntary MCBA membership.

Our Lawyer Referral Service promotes access to a fair, effective and affordable system of justice, by matching attorneys willing to have a half-hour meeting with a member of our community with a legal problem. Sometimes this results in a new client for the lawyer. Always it allows a fellow citizen the opportunity to explain her legal issue to a member of our profession. And for all MCBA members, LRS provides a resource to refer people who call you with legal problems outside of your area of practice. When you have someone to refer or want to hear more about joining the diverse panel of LRS lawyers, contact the MCBA Lawyer Referral Service at (602) 257-4484.

But there is more to the MCBA than CLE and lawyer referrals. We build professional connections between attorneys, judges, and MCBA staff, and champion projects of community importance. For example, this year, through the leadership of our Young Lawyers Division, we have joined forces with the

Justice Learning Center and Museum to raise funds toward completing this unique learning center atop the Old Courthouse. There we will help develop the next generation's leaders for improving the law and protecting our justice system. You can help: proceeds from the MCBA Barristers Ball, being held on Feb. 26, 2005, at the Arizona Biltmore, will be donated to the Justice Museum.

The Barristers Ball promises to be a lawyer-friendly environment. Dinner, dancing, and a silent auction. A chance to "Twist and Shout" with colleagues over dessert rather than a deposition. So whether or not you take CLE or refer cases to LRS, how about joining us for a night out to benefit the Justice Museum? We are drafting table captains to bring their friends to this event. Call me at 602-530-8407, before I call you.

Even Adams, "Old Man Eloquent," wouldn't have begrudged us a night at the Biltmore for a just cause. ■

## Let your voice be heard

The MCBA Paralegal Division has established itself as the primary clearinghouse for information and activities that support Arizona paralegals. This is the direct result of tireless efforts over the years by many division members and paralegal supporters. I am thankful to be starting my presidency with such a strong foundation and I look forward to working with our 2005 leaders to build on the current level of success.

The division's undertakings are numerous and ever growing. For instance, we offer continuing legal education in many forms. We hold quarterly CLE seminars geared towards paralegals, offer ongoing CLA and PACE certification review courses, and this year will even provide the added benefit of holding review courses for CLAS specialty exams. We are preparing for our annual Career Day conference for students and new paralegals. And, of course, the division presents annual conferences for working paralegals.

Our outreach activities are as diverse as our membership. We make continuous efforts to raise money for the William K. Eaton School. We hold annual charity softball tournaments. We work on the well known Toys for Tots Drive each year. We also reach out to paralegal students by offering mentoring



services and providing a number of scholarships.

Additionally, the paralegal division presents members with networking and information sharing opportunities through our list-serve, brown bag luncheons, quarterly meetings and committee work. For a complete listing of our committees and events, please access another outstanding source of information, our website, at [www.maricopaparalegals.org](http://www.maricopaparalegals.org).

In 2005, we will continue to provide these events and services. First and foremost for the new year, we will confirm that our members and those considering joining are aware of the full range of benefits available through the MCBA and the division itself. We do not merely want a list of members. We want happy, interested and involved members who demonstrate achievement as professionals and as people. Please plan to let your voice be heard. This will make for a fun and productive 2005! ■

## YLD offers something for everyone

Get involved. You heard it in high school, from an orientation leader in college, and now you're getting the same message as you now through the beginning of your legal career. By the time you read this, you've taken down your tree, blown out the menorah candles, and tossed the last champagne bottle in the recycle box. Why not resolve to help out our profession and our community? The MCBA Young Lawyers Division provides a host of opportunities for young lawyers (age 36 or younger, or lawyers in the first five years of their careers) to roll up their sleeves and pitch in. We've really got something for everyone — planning our annual Barristers Ball, speaking to students through Lawyers in the Classroom, assisting local shelters with our Domestic Violence Committee, and grading student essays for Law Week. It's also a great way to meet folks outside of your practice area — your 2004 Board had several big firm and small firm associates, an Arizona Department of Water Resources attorney, a

prosecutor, and an attorney for Cold Stone Creamery.

If you're looking to volunteer a few hours a month, or maybe just for one event during the year, please contact the YLD by e-mailing Geoff Cummings at [gcummings@mcbabar.org](mailto:gcummings@mcbabar.org). Contact us if you'd like to find out more about what we do — you can arrange to attend one of our monthly board meetings (MCBA offices at noon, second Monday of every month). And contact us with any suggestions or ideas you have for our Young Lawyers Division. We want to earn your return membership and look forward to you helping us help others.

Right now, we're excited for our first big event of 2005 — the MCBA Barristers Ball & Silent Auction, which is right around the corner on Saturday, Feb. 26th. Buy your tickets now and come bid, drink, bid, eat, bid again, and dance with us at the Arizona Biltmore.

Happy New Year! ■

Your comments are welcomed and encouraged.

E-mail letters to:

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# Debate over 9th Circuit split falls on party lines

By Joan Dalton  
Maricopa Lawyer

Shortly before last November's election, the United States House of Representatives amended Senate Bill 878, a measure that the Senate had constructed to increase the number of judgeships in certain states. Although the House amendment provided for a greater number of judgeships than had been provided for by the Senate, the amendment also sought to amend the federal judicial code and divide the 9th U.S. Circuit Court of Appeals into three smaller circuit courts.

By the terms of the amendment, a new 9th Circuit would be comprised of California, Guam, Hawaii, and the Northern Mariana Islands, while a new 12th Circuit would house Arizona, Nevada, Idaho, and Montana. A new 13th Circuit would contain the states of Alaska, Oregon, and Washington.

As Rep. Simpson (R-Idaho) introduced the amendment to the bill on Oct. 5, 2004, he testified that factors such as administrative inefficiencies should be considered when splitting the circuit court, but whether one is inclined to agree or disagree with the decisions emanating from the court should not.

"[I]n the past there has been much debate about the liberal decisions of the 9th Circuit . . . and people have wanted to get out of the 9th Circuit for that reason. That is not my intention," he said.

Yet disdain for the opinions issued by the 9th Circuit seemed forefront in the minds of many Republican representatives testifying at the hearing that day. For example, Rep. Dennis Rehberg (R-Mont.) stated that he was not going to make the point that he doesn't like the decisions that the 9th Circuit makes, because "[t]he U.S. Supreme Court made the argument when they overturned 24 or 25 [of their] cases."

"[T]he state of California would love nothing more than to create the Supreme Court West," remarked Rehberg.

In fact, any sentiment at all directed toward the 9th Circuit appeared driven by party lines. As Republicans made assertions that the court was inefficient, Democrats countered with testimony that the court was administratively efficient, and that the estimated costs of splitting the 9th Circuit and creating three largely duplicative administra-

tive structures would surpass the costs of authorizing new judgeships to handle an increase in judicial caseloads.

"With an estimated start up cost of about \$131 million and an estimated annual recurring cost of about \$22 million, this is a costly expenditure" stated Rep. Jackson-Lee (D-Tex). "I would much rather spend dollars on making sure we have enough federal [ ] district judges, so that all of the petitioners and defendants can get a fair hearing in our courts."

Rep. Howard Berman (D-Calif.) challenged the wisdom of the amendment.

"If we do this," commented Berman, "we are doing something unprecedented with significant adverse budgetary consequences in a fashion that will not distribute the caseload in any sense equally, that is opposed by the judges, that is opposed by the lawyers who practice in this court and, to the extent that it is ideologically motivated, foists on our poor California Republicans a circuit [court] that they think will not serve their interests."

While Rep. Rick Renzi (R-Ariz.-1st District) identified some of the circuit court's administrative inefficiencies resulting from a southwest population explosion, the motivation for his support of the amendment was linked to a desire to be free of judges whom he perceives to legislate from the bench.

"In 2002, the 9th Circuit Court had more cases pending for more than a year than all other circuit courts combined. In addition, the circuit court is too big for judges to track the opinion of other judges, which results in inconsistencies and unfairness in the judicial process," asserted the congressman during the floor debate.

Renzi then asked his colleagues to support the amendment in order to "release [Arizona] from the 9th Circuit Court." "[The 9th Circuit judges] forgot to find the simplicity, they forgot to find the clarity you need in seeking the truth, those who continue to legislate from the bench, who now fight to struggle and protect the empire they have built to themselves."

Although the other Arizona congressmen did not testify, the votes cast in support of the amendment were as follows:

Republican Reps. Trent Franks, Rick Renzi, John Shadegg, J. D. Hayworth, Jeff Flake, and Jim Kolbe voted in support of the amendment, while Democratic Reps. Ed Pastor and Raul Grijalva voted against the measure. ■

# MCBA welcomes the year's new officers and board members

The Maricopa County Bar Association has appointed three new officers and five new board members to its 2005 governing body.

President-elect Jo Ana Saint-George, Judge Louis Araneta, treasurer, and Superior Court Commissioner Glenn Davis, secretary, join Jay Zwiag, MCBA president and Jerome Elwell, immediate past president, as 2005's newly elected officers. Saint-George is a civil litigation attorney at Bowman and Brooke, Araneta, a judge for Maricopa County Superior Court's juvenile department, and Davis, a Superior Court commissioner.

The terms of the elected officers are automatically extended an additional year.

The newly selected board members are Faith Klepper, Julie Ashworth LaFave, Kevin Quigley, Commissioner Brian Rees, and Andrew Turk. By receiving the largest number of votes, each will serve a two-year term on the organization's board of directors. Klepper is a public attorney, practicing criminal appellate law at the Maricopa County Attorney's Office. LaFave, of Beer & Toone, P.C., practices insurance and product liability defense litigation and aviation claims. Quigley practices in commercial litigation and administrative law Quarles & Brady Streich Lang, LLP, while Rees is a commissioner at the juvenile division of the Maricopa County Superior Court. Turk is an attorney at Jennings, Strauss & Salmon, P.L.C., where he practices in the litigation department and construction industry practice group.

The MCBA board is composed of 19



Araneta



LaFave



Rees



Turk



Quigley

active, voting members and 10 ex-officio members. Four of the 19 active members are the presidents of the Young Lawyers, Public Lawyers, Corporate Counsel and Paralegal divisions. The other 15 members are elected by the MCBA general membership. Each year five seats are open for election. ■

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## Courtwatch...

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under California law, the tribe's law enforcement vehicles were not "authorized emergency vehicles" and thus were prohibited from displaying and using emergency lights. His deputies had therefore stopped and cited tribal law enforcement officers while driving their patrol cars — equipped with emergency light bars — on public roads off the reservation.

To avoid further occurrences of the embarrassment of having its law enforcement officers pulled over by county officers, the tribe provided each patrol car with a canvas cover for the light bar. When officers reached the reservation boundary, they would have to stop the vehicle, get the cover out of the trunk, place it over the light bar, and then proceed on their way. When they re-entered reservation land, they would stop and uncover the light bar.

An additional twist made this already cumbersome procedure even more of a burden. The Cabazon Band's reservation consists of four *noncontiguous* parcels of land. To travel from one section of the reservation to another, tribal officers had to traverse miles of off-reservation roads. One can imagine the spectacle of a tribal officer responding to an emergency call: racing to a distant part of the reservation with lights flashing and siren wailing, but having to stop at the edge of county land to cover up the emergency bar and proceed silently at normal speed to the next section of the reservation, there to reverse the process.

The 9th Circuit's opinion noted that this ritual was unsatisfactory because of the increased response time. There was one incident where

## Four Superior Court commissioners sworn in



Four new Superior Court Commissioners were presented with gift gavels from the Maricopa County Bar Association during investiture ceremonies on Dec. 9. From left to right are Civil and Probate Commissioner Dean Fink, MCBA President Jay Zweig, Special Assignment Commissioner Glenn Davis, Juvenile Court Commissioner Mina Mendez and Initial Appearance Court Commissioner David Palmer.

a deputy sheriff stopped a tribal officer who was operating the emergency lights en route to a life-threatening emergency call. The stop added 12 minutes to the tribal officer's response time, and the individual died. The tribe's DPS director eventually directed that the emergency light bars be removed from the patrol cars to avoid further hassles. But having emergency vehicles with no emergency lights was also an unsatisfactory situation.

So the tribe sued for a declaration that its officers could display emergency lights and for an injunction against the sheriff from stopping and arresting its police officers. The district court denied the injunction, determining that the sheriff's actions did not create an undue or excess burden on the tribe's law-enforcement functions. At first, the 9th Circuit affirmed but then reconsidered.

On reconsideration, the 9th Circuit ruled that California law on which the sheriff relied was preempted by federal law. Under applicable authority, tribes are subject to state laws of general applicability if those laws are nondiscriminatory. Writing for the court, Judge Harry Pregerson held that it was clear that the California law was discriminatory.

Pregerson pointed out that the law

allowed all state, county, and city law enforcement officials to display and use emergency light bars on public roads. Private security companies are allowed to display — but not use — emergency light bars on public roads. And officials from the neighboring states of Arizona, Nevada, and Oregon are allowed to display and use the emergency lights, as are federal officials. Even officers of the Washoe Tribe — whose reservation rests in both California and Nevada — are allowed to display and use their emergency lights on California roads.

Pregerson concluded: "Prohibiting the tribe's police vehicles from simply displaying emergency light bars while permitting similarly situated law enforcement agencies much wider latitude to display and to use such bars discriminates against the tribe and unduly burdens its ability to effectively perform its onreservation law enforcement functions, thus frustrating the federal policy supporting tribal self-government." Judge William A. Fletcher and 3rd Circuit Judge Robert E. Cowen joined in the opinion.

Two questions may pop into the reader's mind: "Is there an Arizona connection to this case?" and "What the heck is going on here?"

The Arizona connection is that the Cabazon Band was represented by Phoenix attorney Glenn M. Feldman of Mariscal, Weeks, McIntyre & Friedlander. He said that at the heart of the dispute was a 1950s vintage Congressional policy that attempted to limit the power of tribes. A 1953 law allowed some states, including California, to exercise law-enforcement functions on the reservations. The Bureau of Indian Affairs had broadly interpreted the law as extinguishing those tribes' law enforcement authority.

When the Cabazon Band created its police department, it found itself in a constant dispute with the sheriff, who maintained — like the BIA — that the tribe lacked law enforcement authority. In fact, one component of the tribe's suit was a declaration that the 1953 law did not prevent it from creating a police department. The tribe won that count, and Sheriff Smith did not appeal.

— See *Courtwatch* on page 14

# ARE YOU MISSING NURSING HOME NEGLECT & ABUSE CASES?

Nursing home residents are neglected and abused more often than we think. Poor outcomes in the care of the elderly may be a signal of neglect or abuse. However, the investigation and analysis of liability are complex and labor intensive.

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# New Year's resolution number one: upgrade to a smoother system

Microsoft recently came out with a major upgrade to Windows XP. The new upgrade, Service Pack 2 (SP2), is something that you will want to have on your computer if you use Windows XP. Installing the service pack, however, is not without problems.

## Challenges

In the first place, there is a great deal of older software and hardware that simply will not work with SP2. To combat this problem, Microsoft has put up a list on its web site that allows you to check whether or not your peripherals and software will run on the upgraded version of Windows XP.

The second thing that you need to be aware of is that the upgrading your operating system will cause your existing Windows XP install disk to become nonfunctional. That usually is not a problem but if you have a computer crash, you will not be able to reinstall Windows XP from your desk. If you don't have a functional backup, you will be in a complicated situation that will require consultation with the support people at Microsoft. That is not a consummation devoutly to be wished, and you are better of protecting yourself in advance by having a fully functional backup of your computer.

Finally, make sure that you have at least 500MB of RAM installed. SP2 seems to use more RAM memory and certainly will operate more smoothly when you add more RAM.

## Backup

There are numerous backup programs, including the one that is built into a Windows XP. Those programs vary in their usefulness. Suffice it to say that if you have a complete backup, including your system files, you will be pretty safe. But the safest thing that you can do is to create a cloned image of your hard drive on a blank disk that you can store someplace in your office or at home.

For many reasons, a clone of your operating system hard drive is one of the best ways to back up both your system and other critical material on your system disk. Hard drives are very cheap and the process of creating a cloned image of your drive is very easy. The easiest software to create a cloned image is called Casper Expedite. You can download a trial version of Casper at their website and purchase the full software for less than \$50. I strongly recommend you do that before embarking upon upgrading your Windows XP system.

If you have a clone hard drive, all you have to do is to replace the existing drive in the computer with a clone to be up and running again. To create the clone, simply install a clean formatted hard drive into one of the open hard drive bays in your computer. You can then clone your new drive from the existing drive with a few hours processing time.

Another option is to use one of the complete backup external hard drives from major companies such as Western Digital, Seagate or Maxtor. That is much easier but double or triple the cost of buying a blank hard drive.

Whichever route you take, I emphasize the importance having a full system backup before you attempt the upgrade. In 95 percent



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of the cases, there will be no problems. In a small number, however, there will be little and weird but fixable problems, and in a few cases the upgrade may trash your existing hard drive's system software. Forewarned is forearmed!

## Results

The SP2 upgrade to Windows XP is well worth the effort. The system will operate much smoother and faster. The security enhancements that are built into SP2, when coupled with the hardware firewall built in to modern network routers, can make your system very difficult to hack and very discouraging to potential hackers. And if you add on the free ZoneAlarm software (<http://www.zonelabs.com>), you will be even more protected. For that reason alone, SP2 is worth downloading and installing. To download the software free, just go to the Microsoft website at <http://support.microsoft.com/ph/6794> or <http://tinyurl.com/3w667>. Better yet, an easier way is to get the free SP2 CD from Microsoft at the above website or at <http://tinyurl.com/6g675>. Your CD will take a few weeks to arrive but is worth the wait and nice to have in any case.

Once you have installed Windows XP SP2, you will notice a number of significant changes in the way your operating system works. The changes will be most obvious when using Internet Explorer. The popups that have driven you crazy will almost disappear, and if you continue to run whatever popup blockers you have been using, they will be a thing of the past. I cannot even remember the last time I got a popup ad! The software will tell you when it is blocking a popup and if you want to see it, just click on the warning bar to allow the popup through.

If you use Microsoft Office version 2003 or newer, you will notice a number of improvements in the way it operates. The thing I like best is a little window that pops up and then fades away in the bottom quarter of your screen whenever Outlook gets a new message. There are other changes in the way Outlook operates including greatly improved

control over spam and junk mail. I am still a strong believer in the use of the Qurb software (<http://www.qurb.com>) that I have written about before. The combination of the two tools is very powerful.

The improved Internet Explorer will alert you to any download that is being made to your computer and require you to authorize it in advance. That is an important protection because some of the worst worms and viruses come from hidden downloads to your hard drive. The SP2 upgrade will block them.

Finally, if you have put off setting up a wireless network, now is the time to do it. Windows XP SP2 makes access to a wireless network much easier. And, if you have ever had trouble finding or connecting to wireless networks while traveling, the improvements SP2 makes in the way Outlook and Internet Explorer search for and connect to wireless networks will make travel much easier. Check out the improvements at <http://tinyurl.com/4mg35>.

## Worthwhile effort

There are literally hundreds of other subtle and undocumentated changes that you will notice over time. For example, if you use the task manager to close down a frozen program or to check the use of system resources on your computer, you know it's difficult to shut down when you're done. Instead of allowing you to click on the little X in the upper right hand corner of system resources screen, you have to right click on the task manager symbol which appears in your task bar or system tray window at the bottom right hand corner of the screen. The symbol looks like a green window shade that is being rolled up and down. If you want to close the task manager, right click on the green window shade and

choose "close". That's just one example of little things that you will discover as you use the enhanced operating system. Whatever minor distractions these little changes may cause, the big changes are wonderful and will make your computing much safer and smoother. With the caveats above, I strongly recommend Windows XP SP2.

► 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 an electronic-litigation consultant. He welcomes questions and comments by e-mail at [wintonwoods@mail.com](mailto:wintonwoods@mail.com) or by phone at 520-881-6118. Visit him at [www.wintonwoods.com](http://www.wintonwoods.com) or [www.digitaltrial.net](http://www.digitaltrial.net). ■



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## Mundell...

Continued from page 1

announcement, Mundell and Campbell have been working closely together for a seamless transfer of the presiding assignment.

"Her recent administrative work with judges and court administrators will play a vital role in the quality of court services at all levels of the judiciary within Maricopa County," Chief Justice Jones said.

In addition to presiding over Superior Court, Mundell's duties encompass oversight responsibility for all courts of limited jurisdiction, which includes 23 justice of the peace courts and 23 municipal courts.

Record-setting population growth, increasing caseloads, minimal budget increases and an expanding demand for more court services are among the challenges that face Mundell. Perennial concerns about providing equal access to justice and timely resolution of cases are expected to also demand her attention.

"Judge Mundell has a significant depth of understanding of this court, its needs and its

future," said Campbell in commending the Supreme Court's selection of her as presiding judge. "We are working closely together for a smooth transition of responsibility over the courts' operation, budget, technology, security and staff issues."

The Superior Court presiding judge in Maricopa County oversees an annual budget of more than \$192 million and is responsible for managing court programs which include education and training of judicial officers, various administrative initiatives, and a wide range of court services.

Mundell has served on the Superior Court bench for 15 years. She worked two years as a commissioner beginning in 1989 and in 1991, was appointed to a judgeship by then-Gov. Fife Symington.

As a judge, she has been assigned to civil, juvenile, family court, probate/mental health and special assignment criminal cases. Her leadership experience includes associate presiding judge of the court, associate presiding judge of juvenile court and presiding judge of the probate/mental health department.

After earning her law degree from Arizona State University 1981, she was hired as asso-

ciate counsel with Swensen's Ice Cream Company's corporate headquarters. She then moved to private practice for three years before becoming an administrative law judge with the Industrial Commission of Arizona.

She became a Superior Court judge 10 years after receiving her law degree.

Mundell has been actively involved in the community. Among her volunteer work, she helps train Court Appointed Special Advocates (CASAs) who advocate for the needs of children in the juvenile justice system; mentors female law students at ASU through the Los Abogados Mentor/Chicano Latino Law Students Association; and has spent lunch hours teaching Spanish-speaking to first and second graders at schools in South Phoenix, Guadalupe and Chandler.

She is a member and past president of Los Abogados Hispanic Bar Association; is a member of the Maricopa County Bar Association; serves on the Supreme Court Commission on Minorities; and is chairperson of the Arizona Judicial Conduct Commission.

She has also served on several state bar committees, and co-chaired its Gender Bias Task Force.

In childhood, Mundell's parents instilled in her a respect for education as a priceless tool for achieving success. Both her mom and dad had to forego high school diplomas in favor of jobs that helped support their parents and siblings.

Mundell attained her first educational goal by graduating from South Mountain High School. She then attended ASU, earning a bachelor's degree in political science, and proceeded to law school, earning her juris doctorate in 1981. Within 10 years, she became a Superior Court judge. And on July 1, she moves to another plateau — becoming the first female and first Hispanic presiding judge.

"If there is an honor to holding this position, it is for my father, Frank Rodriguez," she said during the news conference, locking her gaze on him in the spectator's section of the Supreme Court's grand courtroom.

"The judicial branch, the justice system and the community are well served by her vision, expertise and intelligence," Campbell said.

Mundell and her husband, Bill, have two daughters, one in elementary school and the other attending the University of Arizona. ■

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## Thomas names chief deputy county and chief assistant county attorney

Incoming County Attorney Andrew Thomas appointed Philip MacDonnell as chief deputy county attorney and Sally Wells as chief assistant county attorney. Both appointments became effective on Jan. 1.

MacDonnell formerly was a partner at the law firm of Jennings, Strouss & Salmon. Prior to that, he was an assistant U.S. attorney for Arizona, where he acted as superintendent of the Department of Liquor Licenses and Control and oversaw the enforcement of the state's liquor statutes. He has also worked at

the Arizona Attorney General's Office, serving in the administrations of former Attorneys General Bruce Babbitt, Jack LaSota and Bob Corbin. As chief of the Attorney General's Special Prosecutions Division, Phil prosecuted high-profile cases and supervised numerous complex grand jury investigations. MacDonnell received his law degree from Harvard Law School in 1974.

"Phil brings to our office wide experience and skill as both prosecutor and administrator. I'm gratified he has agreed to serve as chief deputy, and I'm confident he will be a great asset to our office," Thomas said.

Wells was formerly the chief of MCAO's Pretrial Division and brings a wide range of experience to her new position. During her 18-year career at MCAO, she has served as a trial attorney in MCAO's downtown and southeast offices, prosecuting vehicular, narcotic, and white collar crimes and also worked in the office's Gang/ROP bureau. Wells' supervisory experience includes assignments as bureau chief in MCAO's Juvenile and Pretrial Divisions. Since 2000, Sally has administered the office's Pretrial Division. She also has represented the office in important dealings with the state and county judiciary, the county Board of Supervisors, and the State Bar of Arizona. Wells graduated from ASU School of Law and has practiced law since 1984.

"I'm confident that in her new position, Sally will continue her stellar public service and will work to further enhance the reputation of our office," Thomas said.

MacDonnell and Wells, second and third in command, respectively, will aid Thomas in administering the office and together will supervise all county attorney employees. The current position of chief executive will not be filled.

Thomas will be announcing additional appointments and personnel changes in the coming month, as well as longer range policy changes and other initiatives over the next few months. ■

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# Holiday spirits go out with a splash in 1914

New Year's Day 1915 was both wet and dry. The rain started on Wednesday, December 16, 1914, and didn't stop until Christmas Day. Christmas and Boxing Day were bright and clear, but then the rain came again on Sunday and continued intermittently through New Year's Eve and into a cloudy, damp New Year's Day morning. It was as wet a holiday season as anyone could remember. The washes all flooded. The streets of Phoenix were a deep, muddy mess. During the week between Christmas and New Year's, only one car, a Buick, made the sloppy road trip from San Diego to Phoenix. What was normally an easy one or two day trip, took these adventuresome motorists a grueling five days. The main railroad tracks from the east coast washed out and Christmas mail did not arrive until December 27.

In spite of these damp holiday conditions, the Maricopa County legal community kept busy. In the November election, voters had adopted a raft of controversial initiatives, including an amendment to the state constitution pro-



**Stan WATTS**  
HISTORY & HEARSAY

hibiting importation, distribution and sale of alcoholic beverages. Some of the community's most able litigators were enlisted to establish the constitutionality of the new law. Unless delayed by judicial intervention, the new provision required all trafficking in alcoholic beverages in Arizona to cease on January 1, 1915.

The fate of the prohibition amendment was placed in the hands of a three-judge panel of the federal court convened on December 21 in Los Angeles. The court, consisting of Arizona's first federal district court judge, William H. Sawtelle, and two federal judges from California, heard arguments in actions by saloon owners seeking a preliminary

injunction to prevent enforcement of the new constitutional amendment. Lawyers for the "wets" included: George Purdy Bullard, the state's former attorney general and noted automobile racing enthusiast; Richard Elihu Sloan, former territorial governor; and Reese M. Ling, renowned trial attorney and one of the founders of the Maricopa County Bar Association. Counsel representing the state and the Arizona Temperance Federation included: Attorney General Wiley Jones, former Chief Justice and trial lawyer A.C. Baker; former Judge John Campbell; and young Assistant A.G. Leslie C. Hardy. The Arizona delegation of more than 50 lawyers and officials interested in the important case arrived in Los Angeles on December 20.

Counsel for the various interests opposed to the amendment, including saloon operators, pharmacists and the Catholic Church, argued that the measure would unconstitutionally deprive purveyors of their livelihoods, disallow sale of medicines containing alcohol and prohibit the use of wine in church sacraments. The "drys" countered that liquor distributors were not being deprived of any property — they could own their various forms of liquid refreshment, just not sell them. They also denied that the law would be enforced in a manner to interfere with either valid medical treatments or established religious ceremonies. In the end, both sides "cover[ed] themselves with glory" in the packed L.A. courtroom. The young Assistant A.G. Hardy received special praise from opposing counsel and the court. The judges were "impressed alike by the youthful appearance of Mr. Hardy and the force of his argument." Hardy had been responsible for answering the claims of the Catholic Church.

The legal pilgrims who had attended the hearing before the special tribunal in Los Angeles were back in Phoenix in time to finish their holiday shopping, participate in holiday events and await the court's ruling. Advertisers like Goldwater's and Boston Store encouraged shoppers to brave the rainy weather and muddy streets to purchase neck ties (nine out of ten American men would receive a tie for a holiday gift) for between 25 cents and \$2, handkerchiefs for either 5 or 10 cents, silk sweaters for \$16.50 and fountain pens for \$2.50. A Victrola music machine could be purchased by the more affluent shoppers for between \$17.25 and \$207.50, depending on the model and number of recordings included. Donofrio's Confection Co. offered holiday candy decorations for trees for 5 cents and up. They also offered gift boxes of their famous Camelback chocolates and Cactus hard candy for \$1 each.

About a week before Christmas, Santa

Claus was hosted by Phoenix's kindergartners in the basement of the Goldwater's store and the local Boy Scouts were out in force selling Red Cross Seals to fund the fight to cure tuberculosis and support St. Luke's hospital.

Community celebrations in Phoenix centered around the 30-foot Christmas tree set up in the lobby of the Hotel Adams and the Municipal Christmas Tree in the city hall plaza. In Chandler, the festivities were focused at the San Marcos Hotel and its big fir tree. For weeks, the charitable citizens of Maricopa County had been dropping off donations of merchandise, clothes, toys and food for the community's poor children and their families. More than \$5,000 worth of gifts were contributed at the Hotel Adams. The Salvation Army was responsible for distributions.

According to one reporter present at the holiday festivities surrounding the Municipal Tree on the crystal clear afternoon of Christmas Day, "[t]he tower, the deep toned bells, the brilliantly lighted tree, the Christmas greens transforming a busy city street, the happy crowd, spoke straight to the heart of every person present, whether seven or 70." Another recalled that "[n]ever before in the history of the city has the great heart of Phoenix been shown as it was yesterday," when thousands of citizens participated in the festivities and gifts of "candy, nuts, fruit and toys of every description" were handed out to the community's children and "Christmas wagons" visited the poorer parts of town. To complete a memorable day, the poor children were given the opportunity to attend the Columbia Theatre for free matinee runs of the

— See *History* on page 10

# Court advisories alert foreign nationals

By J. W. Brown  
Maricopa Lawyer

A new court procedure is in place to alert suspected felons who are not U.S. citizens that there are unique rights and repercussions impacting their cases.

Court officials implemented a two-prong notification process to maximize foreign nationals' understanding of their rights and responsibilities in making crucial decisions about criminal allegations they face.

"Criminal convictions of legal or illegal immigrants can have consequences beyond those provided for under Arizona law," explains Judge Eddward Ballinger, presiding criminal department judge.

This concern led court officials to seek an efficient way to educate defendants on issues that may impact their rights and freedom.

The first step in the court's notification process occurs within 24 hours of an individual's arrest, when he or she appears in Initial Appearance (IA) Court.

Large signs in English and Spanish have been posted since last fall in each of the two courtrooms in the new Fourth Avenue Jail where initial appearance hearings are conducted. Posters are also in the Early Disposition courtrooms and regional court centers.

The posters advise foreign nationals that they have the right to have their consular officials notified of their arrest and detention. Responsibility for such notification lies with law enforcement officers who arrest or detain such individuals. However, court officials decided to augment notification efforts by law enforcement by posting the bilingual advisories in courtrooms where foreign nationals may experience their first contact with the court system.

Court staff take the responsibility of contacting appropriate consular offices for defendants who wish to have a consular rep-

resentative notified.

The second prong of the notification procedure is mandatory and occurs later yet in the case process. The Arizona Supreme Court made a change to Rule 17.2, Rules of Criminal Procedure, effective on Dec. 1, 2004, to require judicial officers to give a specific advisement about immigration consequences to each defendant during a change of plea proceeding.

"When conducting a plea hearing, many believe that it is incumbent upon the court to generally warn defendants of this fact in order to insure that the plea is entered into with full knowledge of plea ramifications," noted Ballinger. "The purpose of the new rule is to highlight to defendants that entering into a plea agreement could affect their ability to remain in this country."

To make that point clear, judicial officers advise foreign nationals that deportation is possible when they are released from custody. The court states the following, on the record, in compliance with the rule:

*"If you are not a citizen of the United States, pleading guilty or no contest to a crime may affect your immigration status. Admitting guilt may result in deportation even if the charge is later dismissed. Your plea or admission of guilt could result in your deportation or removal, could prevent you from ever being able to get legal status in the United States, or could prevent you from becoming a United States citizen."*

The rule also protects a defendant from having to discuss or disclose his or her legal status in the United States to the court.

To read the rule change in its entirety, go to the Arizona Supreme Court's Website at: <http://www.supreme.state.az.us/rules/>. Then go to the "recent amendments" section.

► J.W. Brown is the communications director for Superior Court in Maricopa County. ■

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# Restoring our roots: going back to a grandeur time

By Karin Philips and Gordy Griller  
Special to Maricopa Lawyer

In 1928, Phoenix was moving from its beginnings as a small agricultural village to a dominant urban center in Arizona. The population swelled from a modest 11,000 residents in 1910 to nearly 48,000 by 1930 and the skyline of the central business district was changing with the construction of high-rise buildings.

This population growth brought increasing demands on city and county services and in response, the county Board of Supervisors passed a resolution in 1927 declaring the existing downtown courthouse, built in 1884, as inadequate. A new courthouse would be built.

## Separate space

Construction of a new, larger facility began as a collaborative effort for Maricopa County government and the city of Phoenix, leading to a joint city hall and county courthouse. Throughout the design and construction phases, however, city and county officials disagreed. Consequently, two separate buildings were consolidated under one roof with separate heating and air-conditioning systems and a property line, literally, running through the building. To this very day, there is no connecting hallway or doorway. Crowning the \$1.2 million building was a "penthouse" county/city jail on the fifth and sixth floors of the building; one-third was operated by the city and two-thirds by the county. Due to the depressed economy in the late 1920s, county and city officials purchased pre-fabricated jail cells destined for a Central American country that had ordered them, but then refused to pay.

## Room for improvement

In 1929, U.S. Senator Carl Hayden officially dedicated the building. Col. John Philip Sousa conducted the Marine Corps Band on the corner of First Avenue and Washington Street as part of the celebration.

The county and city jail had a capacity of 225 prisoners, but in the 1950s and early 1960s, it was very overcrowded, holding

close to 700 inmates. There was no air-conditioning above the third floor in the Old Courthouse until modern times, meaning that open, barred windows in the summer often exposed the public on the street below to shouts and whistles. In 1963, a riot broke out; prisoners burned mattresses and blankets to call attention to their dismal conditions. Finally, in 1964, county prisoners were moved to a new lock-up on First Avenue next to the West Court Building. In the 1970s, city inmates were transferred to the county lock-up as the city abandoned its jail operations and contracted with the county sheriff to house prisoners.

Since its construction, the inside of the Old Courthouse was redesigned numerous times, although the outside of the building was left virtually untouched. New court buildings were built immediately to the south in the 1960s (East Court Building) and 1970s (Central Court Building). When Maricopa County offices moved to their new headquarters building at Third Avenue and Jefferson in the 1990s, the six-story office they left behind was renamed the West Court Building; a number of court offices moving into it. In the midst of this multiyear expansion, the Old Courthouse literally fell into disrepair. Finally, in 1986, a countywide bond election provided money to begin a more concerted effort at upgrading the building. The courthouse was closed from August 1993 through January 1995 during a \$3 million restoration of the first floor and building-wide improvements to the electrical, heating, cooling and plumbing systems.

## Educational value

The fifth and sixth floors were still neglected but an idea was taking shape in the minds of court policymakers on how to restore the Old Courthouse to its 1929 grandeur while reconfiguring space in the building for modern-day court functions. A key component of the plan was to reconfigure the upper floors as usable office and conference space, and remake a portion of the jail into an educational exhibit that could



complement the very successful Courthouse Experience Program, a joint project of the Superior Court and Maricopa County Bar Association bringing more than 75,000 primary and secondary students to courthouses in the valley on guided field trips led by over 2,600 volunteer lawyers in the last 15 years.

Concurrent with these plans, U.S. District Court leaders were exploring ways to create educational exhibits in the newly opened Sandra Day O'Connor United States Courthouse two blocks to the west of the Old Courthouse. John Driggs, former mayor of Phoenix, and longtime friend of Justice O'Connor, began to transform these two concepts into the idea of a justice museum and learning center. As discussions ensued among city, state and federal court leaders, all concluded that such a project was not only worthwhile, but could nicely tie a number of downtown courthouses together in a joint educational project for both children and adults who may want to learn more about the Rule of Law, famous cases, judicial decision-making, and the roles of law enforcement officers, lawyers, judges, the public (witnesses, jurors) and correctional agencies. What better place to offer these insights than an active, historic court building? The help of the American Bar Association's Law Museum experts were solicited to formulate a museum concept, and Maricopa County Bar Association leaders embraced the idea. Tom Irvine, a Phoenix lawyer, and Gordy Griller, former court administrator in Maricopa County,

were appointed by Presiding Judge Colin Campbell to oversee the project, initially a \$200,000 effort for an interactive museum and set of exhibits in and around a restored cellblock on the sixth floor of the Old Courthouse. Among the first to step forward to raise funds for the effort has been the Maricopa Bar Association through its young lawyers and bar foundation groups.

## A captivating lesson

The museum will be a unique experience. As the elevator doors open, visitors will be confronted with a stark metal wall containing a few rough, hand drawn graphics scratched years ago by jail inmates. Down a narrow corridor, steel bars of several cramped and dingy cells will be seen. Walking down the hallway, they will notice a huge metal mechanism used for opening and closing the cell doors. In the cells, they will see cramped, stacked, metal bunk beds, a small exposed toilet and basin, and feel the limited room for movement.

Once in the cellblock, a 5-7 minute multi-media presentation reviews how our justice system works in words, sounds and images. The program will end somewhat abruptly, with the visitors "free" to proceed into a more open, comfortable setting—an adjacent meeting room where their tour guide will debrief their experience and lead a discussion about the justice system. Wall displays on such topics as the *Miranda*, *Winnie Ruth Judd*, *Gault*, and *Ring* cases, famous jurists, and interesting facts about Arizona law will serve as informative adjuncts to the presentation.

Two other courts in the downtown area, the Phoenix Municipal Court and the United States District Court, are teaming with Maricopa County officials to create exhibits in their respective courthouses about celebrated cases, distinguished jurists and information about their work. Planners hope the educational effort for both young people and adults will take on a "Justice Trail" motif, similar to the "Freedom Trail" in downtown Boston leading from one historic site to another.

## Head of the class

The Justice Learning Center and Museum will be the first of its kind in any active courthouse in America. Although the centerpiece will be a restored cellblock, the experience will target the converse of incarceration — freedom — and the day-to-day work of those in the trial courts (lawyers, judges, and court staff) devoted to protecting rights and liberties in a democratic and free society. Lastly, the Old Courthouse and its educational museum will also provide a model to other state and local governments

— See *Roots* on page 14

 <p><b>MARICOPA COUNTY BAR ASSOCIATION</b></p>	<p><b>MCBA Young Lawyers Division</b>  <b>2005 Barristers Ball</b>          Benefiting: The Justice Learning Center and Museum</p>
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# Making the case for an expert witness

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Preber addresses the issue of when attorneys should use an expert witness along with how to select the right testifier. The selection of an expert witness is a key part of successfully resolving a dispute for clients in both criminal and civil matters.

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Preber

### Q How do I find a good expert?

**A** Experience has led me to believe that attorneys generally find an expert through informal networking and referrals, although a formal process is sometime used. A typical starting point is to consider using in-house technical personnel of your client. Of course, any issues of bias, conflict of interest and discovery, for example, should be evaluated carefully.

If a client expert is not acceptable, there are several sources for other experts. Referrals from colleagues, other attorneys and professionals, like bankers, doctors and CPAs, are a reliable resource. Locating an expert that has testified on a similar matter in the past is often fruitful. Many attorneys also use experts that have opposed them and that have testified effectively. In addition, you could look to trade associations, universities, books, publications, directories, advertisements, and the many firms that specialize in litigation support services.

### Q How do I know if I need an expert witness for a case?

**A** Formally, this is defined by the Federal Rules of Evidence. Rule 702 state that "if scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine the fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of opinion or otherwise." From a practical standpoint, an expert witness helps the judge or jury understand certain complex evidence or facts necessary to make an informed decision.

## Dedicated attorney will be missed by many



Udall

Attorney Calvin Hunt Udall passed away Nov. 28 at the age of 81. Udall was a longtime attorney at Fennemore Craig and a devoted member of the Maricopa County Bar Association.

Udall earned his juris doctor degree from the University of Arizona in 1948. He then served as Arizona Assistant Attorney General from 1949 through 1951 before leaving to join the firm that would later include his name, Fennemore, Craig, von Ammon, Udall & Powers, and is now Fennemore Craig.

Udall was also a longstanding member of the Maricopa County Bar Association. He was a member of the MCBA board of directors, serving as president in 1957. He won the Maricopa County Bar Association Distinguished Public Service Award in 1986.

Among Mr. Udall's many career accomplishments was his service as Arizona special counsel in the trial of *Arizona v. California, et al.*, which went to the U.S. Supreme Court. He served as lead counsel in over 125 cases between 1950 and 1989. Additionally, he was

director of the board of governors of the State Bar of Arizona; member of the board of editors for the Arizona Bar Journal; and Benefactor Fellow and chairman of the Fellows of the American Bar Foundation. Udall was also the founding president and served as a director of the Boys Clubs of Phoenix from 1956 until 1978.

Udall is survived by his wife and five children, as well as nine grandchildren and five great-grandchildren. ■

### Q Once I find an expert, how do I select the right one?

**A** Apply the Rule 702 guidance first and foremost. Then do some spade work. Obtain and read the expert's resume or curriculum vitae, publications, prior reports and testimony. Do a web search on the expert and see what pops up. Get references from attorneys that have worked with the person in the past.

I then suggest interviewing the expert to see if they have the appropriate demeanor, communication skills and expertise for your case. Of course, fees are often a major consideration too. Don't forget to have your client meet the expert because they will likely be paying the bills and getting buy-in early will be helpful later. After the interview, confirm the expert's credentials, certifications, references and degrees.

### Q Am I now ready to hire the expert?

**A** Not yet... prior to disclosure of any material facts about your case, provide the names of the interested parties to the expert and ask him/her to determine whether a conflict of interest may exist. That may be a legal or business conflict, or a statutory restriction as a result of federal, state or local laws, such as the Sarbanes Oxley Act of 2002. Once it is confirmed that no conflict exists, you are ready to move forward.

### Q What are the top ten things to look for when selecting an expert?

- A** 10. Knows the difference between an "avocado" and an "abogado".
9. Understands that a "rebuttal" does not require plastic surgery.
8. Doesn't believe that "ESOP" stands for "European Store of Pancakes", a competitor of IHOP.
7. When you pass the "bar", doesn't ask you if you ordered a scotch on the rocks.
6. Doesn't believe that "una parte" means a table for one.
5. Understands that a "going concern" does not mean leaving the scene worried.
4. Doesn't claim to be the world's largest fan of the rock band "TRO".
3. Knows that a "regression analysis" does not involve the study of hair loss.
2. Hasn't tried to exchange his/her child's trumpet in the school band for a trombone because it was a "negotiable instrument".
1. Doesn't refuse to take a "bifurcated" case because he/she doesn't believe in killing 59 "furry little animals".

► Brad Preber can be reached at (602) 387-5341 or [brad.preber@gt.com](mailto:brad.preber@gt.com). Grant Thornton's web site address is [www.GrantThornton.com](http://www.GrantThornton.com). ■

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## 2004 Paralegal Conference

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### Tell us!

Have you won an award? Is your law firm involved in an interesting community project? Send information for our People in Law column to *Maricopa Lawyer*, MCBA, 303 E. Palm Lane, Phoenix, AZ 85004; fax to 602-257-0522; or email to: [kbrieske@mcbabar.org](mailto:kbrieske@mcbabar.org).

# MCBA CALENDAR

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

JAN. 2005	S	M	T	W	T	F	S
							1
	2	3	4	5	6	7	8
	9	10	11	12	13	14	15
	16	17	18	19	20	21	22
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MCBA seminars, contact the MCBA at 602-257-4200 or visit [www.maricopabar.org](http://www.maricopabar.org).

## JANUARY 2005

### January 10

- Young Lawyer Board Meeting, noon

### January 11

- Scottsdale Bar (Scottsdale Athletic Club), noon
- Paralegal Board Meeting, 5:30 p.m.

### January 12

- MBCA EC Meeting, 7:30a.m.

### January 17

- MCBA Closed — Martin Luther King Day

### January 18

- *New Cases on Probate Trusts and Estates* 7:15-8:30 a.m., ASU Downtown  
Can an owner revoke a POD beneficiary designation on a bank account by means of a trust? Are life insurance proceeds that are payable to a spouse exempt from creditor claims? Do posthumously conceived children qualify as children? Join the Estate Planning, Probate and Trust Section as it kicks off its 2005 Breakfast CLE Series. Get the answers to these questions, and cover other recent cases, as Marlene Appel and Robert Feldman review significant recent opinions.  
Cost: MCBA member attorneys, \$30.00; member paralegals and public lawyers, \$25.00; non-member attorneys, \$40.00; non-member paralegals and public lawyers, \$30.00; same-day registrations/payments, \$10 additional. (Price includes continental breakfast)

- Bank Section Meeting, 5:00p.m.

### January 19

- LRS Committee, noon

### January 20

- PLD Board Meeting, noon
- MCBA Board Meeting, 4:30p.m.
- Paralegal Conference Committee Wrap-up Meeting, 5:30p.m.

### January 21

- MCBF Board Meeting, 7:30a.m.

### January 24

- Task Force Minority & Women, noon

### January 25

- Employment Law Board Meeting, 11:30a.m.
- Criminal Law Study Group (Central Courts Bldg, Table 1 at Change of Venue), noon
- VLP Advisor Committee, noon
- CCD Board Meeting, 4:30p.m.

### January 26

- Criminal Law Section, 7:30a.m.
- *Retirement Plans for Attorneys* 2 to 4:30 p.m., ASU Downtown  
Cost: MCBA member attorneys, \$50.00; member paralegals and public lawyers, \$35.00; non-member attorneys, \$70.00; non-member paralegals and public lawyers, \$50.00; same-day registrations/payments, \$15 additional.

## January 27

- *Construction Law Section Presents "Popevis v. Beazer Homes": What worked? What didn't?* Followed by a Beer Tasting Reception 4 to 5 p.m. — 1 hour CLE  
5 to 7 p.m. — Construction Law's 2005 Board Welcome Reception and Beer Tasting.  
Join the distinguished and knowledgeable panel for a discussion on what did, and didn't, work on the *Popevis v. Beazer Homes* case. The construction law section's 2005 kick off will follow the panel discussion. Mix and mingle with the newly appointed construction law section board and sample beer from around the world.  
Cost for CLE: MCBA member attorneys, \$25.00; member paralegals and public lawyers, \$20.00; non-member attorneys, \$35.00; non-member paralegals and public lawyers, \$25.00; same-day registrations/payments, \$10 additional.  
No Cost for attending welcome reception, but pre-registration is required.  
*At press time location had not been decided. Location of event will be announced via a flyer mailing.*

## Environmental Law Brown Bag CLE:

- *AZPDES Storm Water* 12 to 4:30 p.m., ASU Downtown  
This seminar will include an eight panel member discussion on the "Defenders of the Wildlife v. U.S. Environmental Protection Agency No. 03-71479 (9th Circuit)" and support of the AZPDES application for Stormwater General Permit for the Construction Industry. Other topics will include: a consultant that completes the Storm Water Pollution Prevention Plan, Filing of the N.O.I./N.O.T., and Legal issues with the AZPDES program.  
Cost: MCBA member attorneys, \$100.00; member paralegals and public lawyers, \$80.00; non-member attorneys, \$130.00; non-member paralegals and public lawyers, \$100.00; same-day registrations/payments, \$10 additional.

## January 28

- *Task Force Brown Bag: Rising Through the Ranks of the Legal Community in the Greater Phoenix Area as a Minority Attorney* noon, MCBA offices (A)  
Join the Honorable Maurice Portley of the Arizona Court of Appeals, as he leads an informal discussion with room for plenty of questions. First in a three-part brown bag series put on by the Task Force on the Recruitment and Retention of Minority and Women Lawyers.

## February 7

- *Public Lawyers Division Luncheon: The Ethics of Sexual Encounters* 12 to 1:00 p.m., University Club  
Ethics? Sex? Judges? Lunch? Have we got your attention yet?  
Please join the Public Lawyers Division for their February Luncheon Seminar "Ethics of Sexual Encounters." Some of the topics to be discussed include: sex with clients, sex with opposing counsel, sex with counsel who work for the same agency/firm as opposing counsel, and judges presiding over cases, when the spouse works for the agency/firm representing one of the litigants.  
Cost: MCBA Division member, \$25.00; MCBA members, \$30.00; non-members, \$35.00; same-day registrations/payments, \$5 additional. (Price includes lunch).

## History...

Continued from page 7

moving pictures.

The one note that may have dampened the holiday cheer for a few was the Christmas Eve announcement by the tribunal in Los Angeles declining to issue the requested injunction to prevent enforcement of the prohibition amendment. On Christmas Day, the people of Arizona learned that the New Year's Eve celebration of 1914 would be their last opportunity to publicly lubricate their social interactions with soon to be banned alcoholic beverages. The news was met by most with either enthusiasm or quiet acceptance. Sales of bottled beverages were brisk through the following week as citizens attempted to build their private stocks.

Exceptionally large crowds of pleasure seekers celebrated the new year and the demise of "King Liquor" rather tamely with the traditional "horns, cowbells, squawkers and similar makers of noise." Judge Sloan, chief spokesman for the "wet" advocates, presided over the elaborate New Year's Eve burial rite for "Monsieur Champagne." The interment was held at the Phoenix Country Club and was attended by "many prominent in the business, professional and social world," including more than a few Maricopa County lawyers. As Judge Sloan completed his testimonial, the men and women in attendance stood silent with heads bowed as the club choir sang "Down Where the Budweiser Flows." Elsewhere, it was reported that "[a] good percentage of Phoenix was on the streets. Theatres, cafes and those several public places which usually form the nuclei of New Year's gatherings were frequented to a huge extent."

New Year's Day dawned on a "dry," but optimistic Arizona. The rainy holiday season left Roosevelt Lake full, and the Maricopa County community looked forward to a prosperous 1915. As they sat down to their New Year's Day dinner, local lawyers like Judge Sloan and George Purdy Bullard were putting the finishing touches on their speeches for the January 2 "Going Up" Prosperity Parade and Festival. They may have even dined at the New Palace Cafeteria at 128 West Adams where patrons were treated to an ostrich dinner. The cafeteria offered a main course of ostrich with game dressing and ostrich gravy for 25 cents. Other menu items included: prime rib with mashed potatoes for 20 cents; macaroni and cheese, sweet potatoes, garden peas or fried eggplant for a nickel each; lettuce hearts with French dressing or fresh fruit salad for a dime; beverages for a nickel; and dessert of apple pie, velvet ice cream, chocolate cake or salted almonds for a nickel.

The "Going Up" celebration drew large crowds wearing their "I'm for Phoenix" buttons and cheering along with the "lustiest lunged rooters" from the Phoenix high schools. The high schoolers led the crowd in the official yell:

"Cowboys, Copper, Cactus, Jam!  
This is the state of the Ton-to-Dam!  
Sunshine, Sunshine Every Day!  
Melons, Fruit, Alfalfa Hay!  
Ari-Zo-Na U.-S.-A.!!!!!"

The celebrants enjoyed band concerts, parades (with marching bands and floats) and rallies, topped off by a "dollar dinner" at the Hotel Adams where the lawyers and some of their civic-minded clients waxed eloquent on their visions for Maricopa County in 1915. As the wet holiday season wound down and the "dry" era of prohibition began, lawyers of Maricopa County likely looked forward with a mixture of anticipation and regret to the new year and the promises of sunshine, prosperity and more limited refreshment options. ■

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# The world of difference a little fun can make

By Kathleen Brieske  
Maricopa Lawyer

If you have ever wondered what it actually takes to be a Big Brother or Big Sister, the answer is: not much. Just ask attorney Louis Lopez — he quickly realized the powerful impact of simply spending time with a child.

Lopez grew up in Tustin, California and stayed in state to receive an undergraduate degree from California State Fullerton University and a juris doctorate degree from the University of Southern California. Following law school, he moved to Phoenix to take a litigation associate position at Fennemore Craig, P.C., where he has been practicing commercial and tort litigation for the last three years.

Lopez's family played an integral role in his decision to practice law. He grew up in a law enforcement family — his father, mother, stepfather and uncle are all retired law enforcement officers. With this exposure, he knew he wanted to "be part of the legal system, albeit in a different context." By attending law school and becoming an attorney, he chose a path that has provided him with the "best of both worlds."

His respect for public service also drives Lopez to take on an active community service role. As a volunteer in many capacities since college, he first coached youth baseball throughout college. The experience led him to join Big Brother and Big Sisters of Central Arizona. Currently, Lopez is a board member for the Arizona Kidney Foundation.

Being a Big Brother has been especially rewarding for Lopez. The program matches positive adult role models with children who are looking to spend time with someone. The program fosters friendships that promote and build character, integrity and personal responsibility.

Lopez began volunteering in November 2002 — a decision he credits to his past involvement as a youth baseball coach, which brought him fulfillment working with kids in a mentor-mentee capacity.

Spending time with his Little Brother allowed him to give back to the community and have fun at the same time. Some of their activities included eating out, going to the movies and video arcades, and taking in spring training games.

"By spending a few hours with my Little Brother doing things I enjoyed in the first place, I was able to provide a positive influence in his life. I always had someone to take me to a baseball game, movie, etc., and I wanted to do the same for someone else."

Lopez stopped mentoring when his Little Brother moved to a school without a Big Brother Big Sister program, but he is looking to get involved again at the beginning of this year. He values the school-based program for its positive influence on children. Lopez saw firsthand how the impact it made on his Little Brother to have someone there to listen to him talk excitedly about his day. More than just spending time having fun, it creates a meaningful — and necessary — relationship where a child can open up.

If it seems like you don't enough time to mentor someone, Lopez said the balancing act between work, community involvement and family requires no secret formula. "If it is important to you, you make time for it."

## MCBA MEMBER PROFILE



Lopez

Lopez also stresses that being able to communicate with others is so important in the practice of law — and community service lends itself to the practice of law by furthering "the communication skills needed to be a successful attorney."

Lopez has been a member of the Maricopa County Bar Association since he began practicing in 2001. He feels MCBA provides him access to other young professionals in the community that are experiencing the same ups and downs in the practice of law. It also provides good resources for younger attorneys looking to develop their practice.

Because of his dedication to community service, Lopez also values the MCBA as a great way to get involved in the community, either in the legal or non-legal context. Its Young Lawyers Division, which he is part of, puts on three annual community service events: the Barristers Ball, a fundraising black-tie event; Law Week, which educates and informs the public about the practice of law and also offers free legal advice; and Domestic Violence Week, which provides women and children at Valley shelters with toiletries and other necessary items.

The future holds the same goals for Lopez as today, both in his career and his community involvement—he wants to continue developing his practice at Fennemore Craig and keep up with Big Brothers Big Sisters and the Arizona Kidney Foundation.

Oh, and to those who are interested in becoming a Big Brother or Big Sister, or any type of volunteer for that matter, Lopez said it is as simple as picking up the telephone and letting them know you want to get involved!

► *Editor's note: To volunteer with the Big Brother Big Sisters of Central Arizona, visit [www.bbbsaz.org](http://www.bbbsaz.org).* ■

## Got an itch to write more than motions?

Maricopa Lawyer welcomes contributions, from news and feature articles to humor and opinion pieces, that are law-related or of special interest to the legal profession.

For example, consider writing an editorial about a current legal issue that piques your interest, or a feature article about an interesting lawyer or judge.

The Maricopa Lawyer editorial board reserves the right to reject articles and to edit contributions for length or content. Submit articles to Editor, Maricopa Lawyer, Maricopa County Bar Association, 303 E. Palm Lane, Phoenix, 85004 or e-mail submissions to [kbrieske@mcbabar.org](mailto:kbrieske@mcbabar.org)

Even if you don't want to write the article, the editorial board welcomes story ideas as well as information for our Legal Moves and People in Law columns. ■

## New presiding judge for probate-mental health department

Judge Barbara Rodriguez Mundell has named Karen O'Connor as her replacement to the position of probate-mental health department presiding judge, effective Jan. 1.

O'Connor moves to her new post from her assignment with the criminal department. She was appointed to the bench four years ago and was assigned to the family court, where she worked for two years.

In June, 2003, she moved to the criminal department.

O'Connor spent the first two years of her legal career in private practice, specializing in civil and municipal law. She joined the Maricopa County Attorney's Office in 1986, where she remained until her appointment to the bench and tried many high-profile cases.

She received her law degree from the John Marshall Law School in 1984. ■

## LEGAL MOVES

■ Janet G. Betts has joined Jennings, Strouss & Salmon, P.L.C. as a corporate and real estate attorney. Betts (J.D., 1979, Illinois Institute of Technology School of Law) previously was of counsel with Kutak Rock LLP.

Jennings, Strouss & Salmon also welcomed five new associates: Geoffrey Butzine (J.D., 2003, UA), Christopher M. Goodman (J.D., 2004, UA), Mia Jaksic (J.D., 2004, University of Iowa), Danelle Kelling (J.D., 2004, ASU) and Jennifer Knapp (J.D., 2004, University of Kansas).

■ Carlo Mercaldo has joined the law firm of Burch & Cracchiolo, P.A. as an associate attorney. Mercaldo (J.D., 2004, ASU) will practice in the firm's litigation area, primarily focusing on personal injury litigation.

■ Quarles & Brady Streich Lang LLP has chosen James A. Ryan as chair of its Arizona Commercial Litigation Group. In this position, Ryan (J.D., 1982, University of Maryland) is responsible for the leadership and direction of the practice group for the firm's Arizona offices.

Ryan practices in the area of complex commercial litigation, focusing on securities litigation, civil racketeering litigation and class actions. He has been a member of the Quarles & Brady Streich Lang team for 21 years.

■ Bryan Cave LLP welcomed Kerry Martin, Catherine Lockard, Andrew Christensen, Alison Rossman, Peter Sanz and Steven Yeager to its Phoenix Office.

Martin (J.D., 2001, Indiana University) and Lockard (J.D., 2004, Notre Dame) will practice in the firm's labor and employment client service group. Christensen (J.D., 2000, Northwestern) will practice in the corporate



Betts



Palaniappan



Ryan

finance and securities; transactions; and entrepreneurial, technology and commercial practice client service groups. Rossman (J.D., 1999, Loyola) and Sanz (J.D., 2004, UA) will practice in the real estate, construction and project finance client service group.† Yeager (J.D., 2004, Cornell) will practice in the class and derivative actions and commercial litigation client service groups.

■ Metchi Palaniappan has joined the law firm of Snell & Wilmer in its business and finance practice. Palaniappan (J.D., 1987, University of Malaya) brings with her more than 12 years of experience in the general practice of law in Malaysia.

■ Jones, Skelton & Hochuli, P.L.C. welcomed four new associates: Eric Cook, Susanne Gardner, Katherine Pitts and Sean Plunkett.

Cook (J.D., 1997, University of the Pacific) will focus his practice on insurance defense. Gardner (J.D., 2000, UA) will practice general civil litigation including insurance defense. Pitts (J.D., 2004, George Mason School of Law) will concentrate her practice on business law and real estate and Plunkett (J.D., 1993, Creighton University School of Law) will practice insurance defense, bad faith, construction defect and general civil litigation. ■

Volunteer Lawyers Program

*For Love of Justice*

Pro Bono Awards Luncheon

February 18, 2005  
Phoenix Hyatt Regency  
11:30 a.m. – 1:30 p.m.

Keynote Address  
**Grant Woods, Esq.**  
Arizona Attorney General 1991-1999

Reservations: (602) 258-3434, Ext. 2840

# Innovative CLE seminars lead way into new year

With the start of a new season of CLE seminars at the Maricopa County Bar Association, January proves to kick off a year of unique seminars worth attending. Below is a preview of the month's offered CLEs.

## New Cases on Probate Trusts and Estates Tuesday, January 18, 2005 7:15-8:30 a.m. One hour CLE credit

This breakfast seminar, put on by MCBA's estate planning, probate and trust section, will answer questions such as:

- Can an owner revoke a POD beneficiary designation on a bank account by means of a trust?
- Are life insurance proceeds that are payable to a spouse exempt from creditor claims?
- Do posthumously conceived children qualify as children?
- Can a bankruptcy trustee claim the assets of the spend thrift trust to pay a debtor's creditors?
- Is an arbitration clause in a trust binding on the beneficiaries?

Join attorneys Marlene Appel and Robert Feldman as they review 2004 opinions and give the answers to these and other questions.

## Neurology for the Practicing Lawyer Friday, January 21, 2005 9 a.m.-12 p.m. Three hours CLE credit

Attend this seminar, which will merge law with medicine to explain neurology. Topics include:

- Functional neurology: how the brain works
- The clinical neurological examination
- The forensic neurological examination
- Head trauma: direct injury effects and secondary effects and complications
- Presenting neurological evidence at trial.

Join attorney Larry Cohen and Michael Epstein, M.D., a clinical neurologist, as they present a simple and effective way of understanding neurology.

## The Impact of Media and What You Can Do About It Friday, January 28, 2005 1-4:30 p.m. Three hours CLE credit

This unique seminar is targeted towards trial, mediation and corporate attorneys who maneuver in an environment filled with blurred lines between the boardroom, courtroom, media and community. Attorneys will understand the impact of media and how to leverage it for the benefits of their clients.

Topics covered:

- How pop culture has changed the key legal "audience" — whether it be a judge, jury, the public, investors or employees
- How to leverage professional communications services in the corporate legal environment
- What it takes to win: evaluating what is at stake, clarifying who your "audience" truly is and evaluating your legal team.

Join Cheryl Walsh and Deborah Johnson of WALSHCOMM as they present an

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# Free seminar and CLE credit

## Court sponsors event about complex civil litigation program

Civil trial attorneys are invited to a court-sponsored event, from noon to 1:30 p.m. Thursday, Feb. 3, introducing the legal community to a statewide complex litigation Program.

The 90-minute session includes an overview of the new state program specializing in efficient case management of complex civil cases and the advantages of this program over other alternatives. The session includes credit for 1.5 CLE hours.

Faculty includes judges, attorneys and e-filing specialists. Participating jurists

include Maricopa County Superior Court Judges Margaret Downie, Rebecca Albrecht, Kenneth Fields and Pendleton Gaines. Attorneys Stephen J. Craig, Andrew Federhar, Mark Larson and William Maledon are also participating in the program.

The program is free, but advance registration is required because of limited seating. The session, which begins at noon, is at Table One, a meeting room inside the Change of Venue Café in the Superior Court Complex, 201 W. Jefferson, Phoenix.

You must register no later than January 28 by calling: (602) 542-9555 or going online at: [www.supreme.state.az.us/court/serv/ComplexLit/CLE.htm](http://www.supreme.state.az.us/court/serv/ComplexLit/CLE.htm) ■

approach to law that reflects today's current climate. Video clips will be incorporated into this seminar to illustrate media's impact.

Other upcoming topics include a panel discussion about the Popevis case and retirement plans for attorneys. All seminars will be held at

ASU Downtown unless otherwise noted. There is a \$35 charge per CLE credit. MCBA members save \$10 per CLE credit, and special rates apply for public attorneys, judges and paralegals. For more information on these and other upcoming CLE seminars, contact Mona Fontes at (602) 256-4200 x131 or [mfontes@mcbabar.org](mailto:mfontes@mcbabar.org) ■

## PEOPLE IN LAW



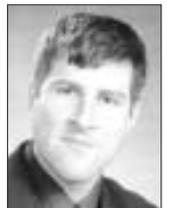
Carpenter



Foster



Jacobs



Weinzwieg

■ Gerald L. Jacobs, CRE, an attorney at Greenberg Traurig LLP, has been awarded the CRE (Counselor of Real Estate) designation by The Counselors of Real Estate, an international group of high profile real estate practitioners who provide expert advisory services to clients on complex real estate property and land-related matters.

Jacobs (LL.B., 1963, UA) specializes in investment and international real estate transactions. He regularly handles all aspects of the acquisition, financing and development of commercial, multifamily residential and mixed-use real estate projects worldwide.

Membership in The Councilors of Real Estate is selective and all members receive the CRE designation in recognition of superior problem-solving ability in his respective specializations such as acquisitions/dispositions and general analysis, and structuring of real estate matters.

■ Laura A. Carpenter, a healthcare attorney at Quarles & Brady Streich Lang LLP, was recently elected to the Waste Not Board of Directors.

The Waste Not mission is to feed the hungry by salvaging surplus food from a variety of vendors and delivering it to the needy.

As an associate for the Phoenix office of Quarles & Brady Streich Lang, Carpenter (J.D., 1997, Ohio State) advises clients such as pharmacies and health care providers in matters affecting the regulation of pharmacies to assisting clients in HIPAA compliance.

■ David D. Weinzwieg, an associate with Lewis and Roca LLP, has been elected as chairman of the Antitrust Section of the State Bar of Arizona.

Weinzwieg (J.D., 1997, ASU) concentrates

his practice primarily in antitrust and securities fraud. Prior to joining Lewis and Roca, Weinzwieg was an Assistant Attorney General for Arizona in the antitrust unit. He also served as state lead counsel in several multi-state antitrust investigations and lawsuits involving the pharmaceutical industry, music industry, and the contact lens industry.

■ Troy Foster, a partner with Lewis and Roca LLP, has been appointed by the Arizona Supreme Court to a seven-year term on the Court's Committee on Character and Fitness.

The Supreme Court Committee on Character and Fitness is responsible for reviewing all applicants' backgrounds, conducting qualifying hearings when necessary, and making recommendations to the Court for admissions to the State Bar of Arizona.

Foster (J.D., 1996, ASU) practices with Lewis and Roca's employment group. He previously served as a law clerk to the Honorable Barry Silverman of the 9th Circuit Court of Appeals and to the Honorable Edward C. Voss of the Arizona Court of Appeals. ■

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The *Maricopa Lawyer* editorial board reserves the right to reject articles and to edit contributions for length or content. Submit articles to Editor, *Maricopa Lawyer*, Maricopa County Bar Association, 303 E. Palm Lane, Phoenix, 85004 or e-mail submissions to [kbrieske@mcbabar.org](mailto:kbrieske@mcbabar.org)

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# A cause for celebration

By Peggi Cornelius  
Volunteer Lawyers Program

For 23 years, hundreds of civic-minded lawyers have provided pro bono assistance to thousands of low income residents of Maricopa County through the Volunteer Lawyers Program. Co-sponsored by the Maricopa County Bar Association and Community Legal Services, VLP is an organization consisting of many private attorneys who join as a way to serve their community. As a result, VLP is a place where many people who would otherwise have no counsel find help with their civil legal problems. What better cause for celebration?

On Feb. 18, 2005, VLP will celebrate with its annual pro bono awards luncheon,

"For Love of Justice." The event will honor more than 900 attorneys and other volunteers who donated their time and talents during 2004. The event's featured speaker will be distinguished attorney and former Arizona Attorney General Grant Woods.

Woods recently appeared on the cover of *Phoenix Magazine* as Arizona's top lawyer. His work as a trial lawyer emphasizes complex litigation, plaintiff's personal injury, and government relations. As the founder of the Mesa Boys & Girls Club and the Mesa Education Foundation, he is also clearly a leader in the non-profit community. Awards presented to him by the American Cancer Society, American Lung Association, the Salvation Army and the Children's Action

Alliance display the scope of his personal volunteer endeavors.

The outstanding community service of 37 VLP award recipients will be recognized by Woods in his keynote address. Among members of the judiciary presenting awards will be Frank X. Gordon Jr., former chief justice of the Arizona Supreme Court.

The 2004 law firms selected for outstanding service to VLP clients are Jennings Haug and Cunningham, Mead & Associates, Quarles & Brady Streich Lang, and Snell & Wilmer. Kenneth L. Abrams will be one of

the recognized attorneys, being honored as Sole Practitioner of the Year. Abrams has been providing pro bono assistance to VLP clients for eight years. In 2004, he completed successful representation of four persons with disabilities whose home had been sold in an improper trustee's sale.

The gala event will be held at the Hyatt Regency, 122 North Second Street in Phoenix. For further information regarding the luncheon and awards program, contact VLP Programs Coordinator Peggi Cornelius at (602) 258-3434, Ext. 2550. ■

## LEGAL BRIEFS

### New Congressional session begins

The first regular session of the One Hundred Ninth Congress of the United States will convene at noon on Tuesday, January 4, 2005.

### Public intellectuals to blog

7th Circuit Judge Richard Posner and Nobel Laureate Gary Becker will soon be blogging on the internet. While Judge Posner has previously blogged as a guest at his former clerk (now Stanford Law School Professor) Lawrence Lessig's blog (see <http://www.lessig.org/blog/archives/posner.shtm>), it now appears that Judge Posner and Gary Becker, both conservative economists, have decided to blog on their own. The pair's new blogsite is located at: <http://www.becker-posner-blog.com/index.html>.

Three years ago, 7th Circuit Judge Richard Posner's book *Public Intellectuals: A Study of Decline* was released. In his book, Judge Posner ascribed an increase in the specialization of academic life and the media's insatiable need for pundits as reasons for a decreasing reliability in the breadth of knowledge possessed by this country's intelligentsia. Additionally, the book provided an informal directory of close to six hundred public intellectuals in America, including Posner and Gary Becker.

In 1992, Gary Becker, a Hoover fellow and professor of economics and sociology at the University of Chicago, was the recipient of the

Nobel Memorial Prize in economic sciences. Becker has pioneered new areas in economics, some of which include the economics of marriage and fertility, crime and punishment, education and training, discrimination, and the formation of habits. He was cited by the Swedish Academy for extending "the sphere of economic analysis to new areas of human behavior and relations."

Although Becker's early work was met with skepticism and distrust, he didn't seem to mind. He told reporters in 1992 that he "get[s] a little bit uncomfortable" when identified with conventional wisdom.

While conservative economics groupies might eagerly await the first glimpse of these public intellectuals as bloggers, as of this writing the blog is under construction and does not indicate when intellectualizing will begin.

### Former British choirboys don't need no education in new copyright laws

A change in British copyright law has inspired a group of former British choirboys to claim royalties 25 years after lending their voices to Pink Floyd's *Another Brick in the Wall*. The 23 students, at the time "fourth-formers" in London's Islington Green School, were sneaked to a Pink Floyd recording session in 1979, and provided the vocals to the infamous lyrics: "We don't need no education." Although the school received a platinum record and a check for one thousand pounds, the children, who sang anonymously, were not paid. ■

## Courtwatch...

Continued from page 4

So, in the end, it boils down to an old fashioned turf war. But there are further twists. The Cabazon Band also operates a fire department and has a cooperative agreement with Riverside County to provide off-reservation services.

And more ironic still, Sheriff Smith has a contract to provide dispatching services to the very same Cabazon Band police department that he refuses to recognize on county roads. Go figure.

Religious law crossed swords with secular law recently in the Arizona Court of Appeals when the Fundamentalist Church of Jesus Christ of Latter-Day Saints tried to force wayward members out of their home because they had crossed swords with church leaders. The result was that the couple got to keep their home ... for now.

Under the church's United Order of Heaven, members must give their property to "the Lord and the Church" to demonstrate their devotion and faithfulness. The church bishop, in turn, gives the members an "inher-

itance" or "stewardship," based on an assessment of the members' wants and needs. Members who break church commandments, fail to support church leaders, or abandon their faith may lose their stewardship.

To accomplish the goals of the United Order of Heaven, the church created the United Effort Plan Trust, to which members are encouraged to give their property. The bishop and church president allow worthy members to build homes on UEP land. Those members must commit themselves and their families to follow the principles of UEP and the church, and must agree to be governed by the leaders of the priesthood.

Almost 20 years ago, Milton Holm was given permission to build a family home on UEP land in Colorado City. Holm understood that he would always have a place for his family and would not have to worry about losing his home. He also expected an inheritance in UEP property because his father had donated a large amount of money and time to UEP.

Holm built a large house, performing much of the work himself. He paid his share of property taxes, both in cash and by labor for the church. There was no tenancy contract. Milton Later married Lenore, who began working on the home and buying materials for it with her own money.

In January of 2000, Church leaders Rulan and Warren Jeffs informed the Holms that 39-year-old Wynn Jessop wanted to marry Lenore's 15-year-old daughter. Lenore agreed and the wedding was scheduled for the next day. But Lenore then revoked her consent, leading the Jeffs to revoke Milton Holm's priesthood, kick him out of the church, and order him to leave his home.

The Holms refused to vacate, rejecting UEP's written demand for possession. UEP then filed a forcible detainer action, claiming that Milton Holm was a tenant at will whose tenancy had been terminated. After a trial, the Superior Court dismissed the action. It ruled that UEP owned the property but was not entitled to possession because Holm had a life interest in the estate. It ordered that Holm be allowed to remain on the property for his lifetime or be paid just compensation for his investment.

The Court of Appeals affirmed only the dismissal. *United Effort Plan Trust*, No. 1 CA-CV 04-0175 (Ariz. App. Nov. 30, 2004). Writing for the court, Judge Susan A. Ehrlich held that the forcible detainer action was inappropriate because the parties disputed whether they had a landlord-tenant relationship. She held that forcible entry and detainer — being a summary and speedy procedure — is inappropriate to determine complicated issues such as the existence of that relationship. She left the parties to try that issue in a regular civil proceeding. Joining her was Court of Appeals Judge Lawrence F. Winthrop and Superior Court Judge Mark F. Aceto. ■

## Roots...

Continued from page 8

throughout America on how a beautiful, historic courthouse can be reinvented as a more vibrant part of today's world.

The Maricopa County Bar Association and its Young Lawyers Division have selected the Justice Museum and Learning Center as the 2005 Barristers Ball beneficiary. A silent auction, held in conjunction with the Ball, will help raise money for the completion of the Museum.

For additional information on the Barristers Ball, which will take place on Feb. 26, 2005, please contact Jennifer Ratcliff at 602.530.8191 or visit [www.maricopabar.org](http://www.maricopabar.org) to register online.

► Karin Philips is the community outreach director for the Trial Courts of Maricopa County. She is also the program coordinator for The Courthouse Experience. Gordy Griller is vice president of justice practice for ACS, Inc. (Affiliated Computer Systems). Prior to joining ACS, Griller was the administrator for the trial courts of Arizona in the greater Phoenix area and also served as the court executive for the Maricopa County Superior Court. ■

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**OPINION**

*Maricopa Lawyer and the MCBA do not necessarily endorse the views expressed by contributors*

# New Year's wish list

**By Jack Levine**  
Maricopa Lawyer

With 2004 gone, here is my lawyer wish list for the new year:

**Security bypasses**

The recent decision by judges to withdraw lawyer security bypasses and require that lawyers be subjected to search on entering the courthouse continues to be a source of discontent, viewed by many lawyers as insulting and demeaning. It is hard to imagine how such a measure is justified in view of the historical statistics that demonstrates that from the time that courts were first established in the Arizona Territory up to the present time, not a single judge has ever been assaulted by a lawyer, either with or without a dangerous weapon.

Not that judging is entirely without risk. Some nonlawyer litigants have shown the potential for violent behavior and, to be sure, some specific threats have been made from time to time against particular judges. However, if the truth be known, the average lawyer actually lives in dread of even offending a judge's sensibilities, never mind doing bodily harm to one. What possible justification can there be for targeting lawyers as potential threats to judges? If anything, given the propensities of some judges to occasionally vent their spleen in the courtroom, it is the lawyers who often feel threatened and intimidated. After all, judges could be concealing dangerous weapons beneath their loose fitting black robes and lawyers would be helpless to protect themselves.

On the other hand, it is the lawyers who have historically been assaulted, shot and killed by clients. Perhaps security check points should be established at each lawyer's office at county expense so that they can feel more secure. I suspect that this is not done because of the recognition that some risk is part of a lawyer's job. So should it be for judges!

**Judicial rotation**

The Arizona Supreme Court recently paid hundreds of thousands of dollars for a study evaluating the functioning of the divisions of the family court. Chief among the study's recommendations was to eliminate the rotation of judges. The study's findings confirmed what lawyers have always known—the rotation of judges severely compromises the quality of judicial decision making. At the same time, judges look on an assignment to the family court as a temporary sentence to purgatory until they achieve a more heavenly assignment to a civil or criminal division.

Having to deal with emotionally charged issues and mainly pro per litigants on a daily basis and still maintain one's sanity is no small achievement. However, there are many present family law practitioners who would be eager to take on this challenge in return for the generous salary, benefits, and retirement package that judges receive. Judicial applicants who wish to be family court judges should be given the opportunity to do so. A shift in policy by the Commission on Trial Court Appointments to appoint more family law practitioners could result in an environ-

ment which would permit judges to remain in their assignments for at least five years, with some assurance that they will thereby gain a measure of competence in their assigned area of specialty.

**Improvements to merit selection and retention of judges**

Until we have more permanent assignments of judges, there is a need for greater assurance that judicial applicants are knowledgeable in all areas of the common law, the Rules of Civil and Criminal Procedure and the Rules of Evidence. In the past, judicial appointments have been made largely on the basis of personality, character, reputation, political influence, and the ability to maintain one's composure during the all important interview with Trial Court Appointment Commission members. These qualifications, although necessary, tend to overshadow the importance of selecting a balanced, well-rounded and knowledgeable legal scholar. If we require a bar examination for law school graduates who have just recently spent three years studying the law, why shouldn't we require competitive legal examinations for judicial applicants whose decisions carry far greater consequences for society than those of fledgling lawyers?

Similar improvements are needed on the retention side of merit selection. Judges are rated by lawyers, litigants, jurors and others in the various categories of legal ability, integrity, communication skills and judicial temperament. The rating choices are either "superior," "very good," "satisfactory," "poor," or "unacceptable." These ratings equate to the "A," "B," "C," "D," and "F" that we are all familiar with from our grade school days. Every two years before the judicial retention elections, many judges score in the "satisfactory" or "C" category and are uniformly recommended for retention. Since the present judicial retention rating system was adopted in 1992, not a single judge has ever received a "not recommended" rating.

The promise of merit selection was that the best and the brightest judges would be

selected and retained under careful scrutiny of their qualifications and records. Should judges who earn no better than a "C" remain on the bench when there are potential judicial applicants who are capable of performing at

## Shouldn't we require competitive legal examinations for judicial applicants?

an "A" or "B" level? Perhaps this will be the year that retention standards are raised to redeem the pledge made to the public when it voted to approve merit selection.

**Jackets away**

For many years, there used to be a standing order issued by the Superior Court's presiding judge that no jackets were

to be allowed in the courthouse from the day after Memorial Day until the day after Labor Day. This was a humanitarian order that was annually welcomed by members of the bar. Sometime in the far distant past, perhaps during the reign of Judges Kimball Rose or Robert Broomfield this dispensation was disallowed. Now, during the summer months, sweltering lawyers trudge toward the Courthouse in 115 degree heat, with heavy brief cases in hand, often too disoriented when they arrive to cogently argue their client's cause. Now that Judge Barbara Mundell will be assuming the office of presiding judge, perhaps we can look forward to the restoration of this welcome amenity from her.

➤ *Jack Levine is a sole practitioner and practices in the areas of personal injury, employment law, and family law. He is a past chairman of the State Bar's Trial Practice Section, a past president of the Arizona Trial Lawyers Association and a past member of the Maricopa County Bar Association Judicial Evaluation Poll Committee. ■*

# Actual number of sitting justices hired differs from article

Dear Editor,

I read Joan Dalton's article entitled "Insiders reveal possible Bush nominees to fill potential chief justice vacancy". I was recently engaged in a conversation on the same topic and the subject of how many chiefs were appointed from within (i.e. sitting justices) came up. I looked it up and counted three: Edward Douglas White, Harlan Fiske Stone and William H. Rehnquist.

I noticed Dalton wrote that five have been appointed from within. I was wondering if she was counting Hughes and Rutledge, as I do not think that they were promoted from within.

Charles Evans Hughes' service as a jus-

## LETTER TO THE EDITOR

tice terminated on June 10, 1916—he was not sworn in as chief justice until Feb. 24, 1930; and John Rutledge's service as a justice terminated on March 5, 1791, but he was not sworn in as chief justice until August 12, 1795.

Thanks for your time.  
Sincerely,  
Bryan Cafferelli ■

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# United States Senate takes action on bills concerning Indian tribes

By Joan Dalton  
Maricopa Lawyer

On November 19, 2004, the United States Senate considered several measures relating to American Indian tribes. A short summary of the bills considered and their status follow.

Senate Bill 1438 would provide equitable compensation to the Spokane Tribe of Indians for the use of tribal land for the production of hydropower by the Grand Coulee Dam. The bill passed through the Senate with an amendment that clarifies that land transferred under the bill remains part of the Lake Roosevelt National Recreation Area. After passing in the Senate, the bill was referred to

the House, where it will be heard by the Committee on Resources.

Senate Bill 1996 would provide specified benefits of the Pick-Sloan Missouri River basin program to the Oglala Sioux Tribe and Angostura Irrigation Project. After passing in the Senate, the bill was referred to the House, where it was assigned to the Committee on Resources for action.

Senate Bill 1530 would provide compensation to the Lower Brule and Crow Creek Sioux Tribes of South Dakota for damage to tribal land caused by Pick-Sloan projects along the Missouri River. After passing in the Senate, the bill was referred to the House,

where it was assigned to the Committee on Resources for action.

Senate Bill 2605 would direct the Secretary of the Interior and the heads of other federal agencies to carry out an agreement resolving major issues relating to the adjudication of water rights in the Snake River Basin in Idaho. After passing in the Senate, the bill was referred to the House and assigned to the Committee on Resources.

Senate Bill 519 would determine the feasibility of establishing an Indian Tribal Development Corporation. After passing in the Senate, the bill was referred to the House and assigned to the Committee on Resources.

House Resolution 2912 passed in the Senate and was presented to President Bush on November 23, 2004. H.R. 2912 reaffirms the inherent sovereign rights of the Osage tribe to determine its membership and form of government. The act requires the Secretary of the Interior, at the tribe's request, to provide assistance in conducting elections and referenda. ■

## Got an itch to write more than motions?

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Even if you don't want to write the article, the editorial board welcomes story ideas as well as information for our Legal Moves and People in Law columns. ■

## TIFFANY & BOSCO P.A.

Attorneys at Law

Is Pleased to Announce That

**RICHARD E. ONEY**

Has Joined the Firm as a Shareholder

and

**D. MATTHEW CONTI**  
**CHRISTINA A. KINNEAR**  
**MARIO A. MICHELI**  
**BRENT J. OENNING**  
**GREG W. SEIBT**

Have Joined the Firm as Associates

MR. ONEY WILL CONTINUE TO PRACTICE IN THE AREA OF  
INTELLECTUAL PROPERTY

MR. CONTI WILL PRACTICE IN THE AREA OF CIVIL LITIGATION WITH AN  
EMPHASIS IN INSURANCE REGULATION AND EMPLOYMENT/LABOR LAW

MS. KINNEAR WILL ASSIST IN SEVERAL PRACTICE AREAS  
WITH AN EMPHASIS IN CIVIL LITIGATION

MR. MICHELI WILL PRACTICE IN THE AREA OF REAL ESTATE  
AND COMMERCIAL TRANSACTIONS

MR. OENNING, WHO IS ALSO A CERTIFIED PUBLIC ACCOUNTANT, WILL PRACTICE  
IN THE AREAS OF REAL ESTATE, TAXATION AND COMMERCIAL TRANSACTIONS

MR. SEIBT WILL PRACTICE IN THE AREA OF COMMERCIAL BANKRUPTCY, CREDITORS' RIGHTS,  
COMMERCIAL LITIGATION AND COMMERCIAL TRANSACTIONS

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