

The right to die

William H. Colby, attorney for the family of Nancy Cruzan, takes a look at where we stand now in the national debate. Page 8.

Moot courts prove valuable in preparing arguments for the U.S. Supreme Court

■ Goddard and Cohen look back on *Hibbs v. Winn*

By Dan Kaplan
Maricopa Lawyer

Just as Arizona Attorney General Terry Goddard finished the fifth sentence of his oral argument before the United States Supreme Court in *Hibbs v. Winn*, Justice Ruth Ginsburg cut in with a tough question. Goddard heard ASU Professor Paul Bender, co-counsel for the respondent, stage whisper to lead counsel Marvin Cohen, "Now we've got 'em!" It looked to be a long morning.

If so, it wouldn't be for lack of preparation. Goddard had worked tirelessly through the Christmas and New Year's season on the case, as had a number of other attorneys in his office, drafting and editing the State's briefs and preparing for the argument.

The case involved the federal Tax Injunction Act, which generally bars federal district courts from enjoining, suspending, or restraining the "assessment, levy or collection" of state taxes — or, alternatively, principles of federal-state comity. At question was whether the Act requires federal district courts to dismiss constitutional challenges to state tax credits. An Arizona statute allows taxpayers to reduce their state income tax liability by claiming a credit for amounts paid for private school tuition.

The plaintiffs (respondents) challenged the Arizona statute on the ground that it violated the First and Fourteenth Amendments because it authorized the use of funds raised through state taxation

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Another reason to proofread
Pleadings foul of typos cost attorney big bucks. Page 5.

Gentle warrior for justice
Booker T. Evans is the first Arizona attorney honored with NAACP Image Award. Page 6.

UA students commemorate *Brown* anniversary with a semester of study

By Matthew B. Meaker & Kathleen E. Rapp
Special to Maricopa Lawyer

In the fall of 1950, Spottswood Bolling Jr. walked into John Phillip Sousa Middle School, a state-of-the-art facility that had just been built in Washington D.C.'s white neighborhood. At that time, the D.C. school system was legally segregated and Spottswood was denied entrance to the middle school. His mother, like the parents of many African-American school children, sued for her son to have equal access to education.

On May 17, 1954 the United States Supreme Court declared, in its decision in *Brown v. Board of Education of Topeka* that segregated schools were no longer the acceptable status quo in America. Later that same year, three African American students, including a boy named Fredrick Gregory, were admitted to ninth grade at Sousa Middle School. Gregory went on to become an astronaut while *Brown v. Board* went on to become the decision that changed the face of public education in this country.

This year, the entire legal community celebrates the 50th anniversary of this landmark decision. All over Arizona, special events are being planned to commemorate *Brown's* half-century mark. Meanwhile, the James E. Rogers College of Law at the University of Arizona is memorializing the decision in a rather unique way. Twelve students and three faculty members have been dedicating an entire semester to studying the history leading up to and surrounding *Brown*.

Professor Charles Ares, Dr. Willie Jordan-Curtis and Professor Suzanne Rabe began

work last year to create a course in which students could delve into the intricacies of education law, civil rights and the *Brown* decision. The class, "*Brown v. Board* at Fifty," gives students the chance to fulfill their substantial paper requirement for graduation by writing on a topic relating to *Brown*.

The professors brought their own unique perspectives to the table when planning this class. Ares, a former dean of the law school, clerked for the U.S. Supreme Court during the

time that *Brown* was first argued before the Court. Ares remembers driving out of Washington, D.C., at the end of his clerkship and thinking he could guess how *Brown* would be decided based on what he knew of the feelings of the justices. Then his car radio reported the news of Chief Justice Fred Vinson's death. Ares knew that *Brown* was facing a whole new ball game and he was proven right. Vinson was replaced by Earl Warren

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PHOTO COURTESY OF LINDSEY HUDOCK

MCBA Public Lawyers Division (PLD) President Jack Hudock reprises his role as the Easter Bunny at the Kids Street Park Eggstravaganza on Saturday, April 10. The party is a joint project of the Maricopa County Attorney's Office, the Westwood Neighborhood Association, and the City of Phoenix. Members of the PLD volunteer their time to make the event a success.

Litigants in the MIST: Court upholds verdict denouncing insurance company's trial tactics

By Daniel P. Schaack
Maricopa Lawyer

One insurance company that takes a strong proactive stance against certain types of automobile-accident claims has learned that its policy can backfire if carried too far. In *Crackel v. Allstate Insurance Co.*, No. 2 CA-CV 2002-0123 (Ariz. App. Apr. 1, 2004), Division Two of the Arizona Court of Appeals upheld a jury verdict finding that Allstate had committed abuse of legal process in implementing its hard-nosed policy.

According to the opinion, Allstate has a company policy to aggressively defend minor-impact, soft-tissue claims — also known as MIST claims. It applies this policy in automo-

bile-accident cases where property-damage claims are less than \$1,000 and the claimant is represented by an attorney. Allstate instructed its adjusters to take a "proactive stance on MIST cases" to "force the attorney and the claimant to think about the obstacles they must overcome to reach a realistic settlement."

Allstate personnel are told to do whatever it takes to discourage those claimants from hiring an attorney, including offering settlements in amounts that would be economically unacceptable to an attorney. Allstate tells them that one obstacle they should throw at claimants and attorneys is an increase in Allstate's trial activity.

Allstate used its MIST policy against Erika Guenther and Tammie Drannan, who were the victims of a rear-end collision with an Allstate-

COURT WATCH

insured driver. Although Guenther's car suffered little damage, both women experienced pain in the immediate aftermath of the accident. Guenther had pain in her neck and shoulder. Drannan, who was six months pregnant, had pain in her abdomen. Both women were examined at a hospital emergency room and then released.

Neither woman sought treatment beyond the initial evaluation, and neither made any

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COLUMNS



MCBA board members speak out on the value of their membership

Recently, in conjunction with efforts designed to grow our membership, the MCBA board of directors began a dialogue about the value of membership in the organization. It struck me that the reasons expressed by the board for being active in the MCBA share some common ground, like leader-

ship opportunities, ties to the legal community, giving back to the legal profession and CLE opportunities. However, some of our members expressed their reasons even more clearly than I.

This month, I thought you might enjoy hearing some of the reasons why your volunteer board of directors is active in the organization. I hope you will take a few moments to reflect upon why you are active and impress upon your friends the benefits of renewing an old membership or joining for the first time. As always, we look forward to hearing from you.

but when I was downsized from my last salaried job, I found myself wishing for a close, current connection to a network of local lawyers. Today, my involvement with the Corporate Counsel Division keeps me in regular contact with old friends. The CCD's monthly CLE luncheons give me a pleasant and economical way to keep my CLE obligation current while I socialize with lawyers who practice in areas I don't know much about. Plus, my involvement with the Public Lawyers Division lets me plan community service projects and give back to the community in ordinary, down-to-earth ways. It probably earns me more good karma than most lawyers can muster up in just a few hours!"

— Jack Hudock, Public Lawyers Division President

"The MCBA has been an important part of the county's legal world for over 75 years. The bar has been an important part of our judicial careers as well. Many of us have been members since we first came to the Arizona bar. We have participated in its many committees and sections. We have served on its board of directors. The strong relationship between the bench and county bar is certainly demonstrated by the fact that three sitting judges have served as its president.

In the past, the board has established a committee to quickly respond to unfair attacks on a judge in the press. For a number of us, that quick response was the only way we were able to get the full story about a judicial action or decision out to the general public — the bar was there when there was no one else to speak for us. More recently, the bar, with the help of the court, created the judicial profiles Web site. Without the efforts of the bar, there would have been no Web site and no opportunity to let the bar know what some of our preferences are."

— Hon. Rebecca Albrecht, MCBA Board Member

Think about the reasons you joined the MCBA in the first instance. We thank you for your continuing membership, and if you have recently left the county bar ranks, we wholeheartedly invite you back. Contact the MCBA's membership chair, Sonya Brant at 602-257-4200 ext. 128 with any questions you may have. ■

Paralegal Career Day draws record attendance

On Saturday, April 3, 2004, the MCBA Paralegal Division sponsored its 4th Annual Paralegal Career Day at Phoenix College. Ninety-one paralegal students from Everest College, Lamson College, Long Technical College, Phoenix College, Pima Community College and Yavapai College, as well as others interested in the paralegal profession, registered for the event.

The purpose of the event was threefold: (1) to provide a forum for encouragement and information concerning paralegal career development, career options and placement in an entry-level paralegal position; (2) to provide insight into a working attorney/paralegal team; and (3) information on voluntary paralegal certification.

Topics and presenters were: Career Development and Placement by Christina



Jones, president of Ninedegrees Incorporated, and Sonja Cotton of Sonja Cotton & Associates; Alternative Career Options for Paralegals by Aaron M. Smith, senior paralegal/administrative hearing officer for the State of Arizona, Appellant Services Administration; The Attorney-Paralegal Team by attorneys Timothy R. Grimm and Joseph W. Malka along with Tammy Chandler, a paralegal from Peterson Johnson; Developing Effective Organizational Skills by Lori L.

— See Pendleton on page 11

YLD offers important opportunities to get involved

As "young" lawyers and, hopefully, as members of the Maricopa County Bar Association, we should be taking advantage of the numerous benefits the MCBA and Young Lawyers Division offer us. At the same time, we should be helping to promote and foster the resources the MCBA and the YLD offer to our community.

The MCBA and YLD provide us with benefits such as social networking, professional development and leadership opportunities. From judicial receptions to post-CLE happy hours, the MCBA and YLD offer us opportunities to meet and interact with judges and our fellow lawyers. It is important to your career and your effectiveness as an attorney to cultivate relationships with other young lawyers and expand your resources in the legal community. Although thousands of lawyers practice in Maricopa County, our legal community falls within the "small



world" category. Please watch your mail and read your Friday Fax for more information regarding social events.

The many practice sections of the MCBA also promote networking and professional development. The purpose of each section is to educate and inform the section members on topics of interest and concern to attorneys in a particular field, to provide a forum for the exchange of ideas and information and to facilitate professional and social relationships among the section members. Check out the

— See Everroad on page 15

"Lawyers certainly receive enough mailings on continuing legal education to know that the MCBA is one of the most cost-effective and lawyer-friendly providers of CLE. We also have practice area sections, where members develop CLE and referral networks that provide us with valuable practice enhancement and leadership opportunities. The MCBA is a dynamic network to interact with other lawyers and judges, providing excellent social networking, professional development and leadership opportunities."

— Jay Zwieg, MCBA President-Elect

"I feel the most valuable aspect of membership is that participation serves to enhance the public perception of the legal profession, especially right now. Without the efforts of the local bar, including community outreach and educational programs such as the Lawyer Referral Service and Volunteer Lawyers Program, there would be very little to counterbalance the constant harangue of anti-lawyer sentiments."

— Glenn Davis, MCBA Board Member

"My MCBA membership gives me the opportunity to network with the movers and shakers in the local paralegal community on local paralegal issues. It gives me access to an online job bank and my division's monthly electronic newsletter. Plus, it gives me a chance to be involved in various charitable endeavors and get discounts on CLE programs, events and conferences."

— Clare Pendleton, Paralegal Division President

"I hadn't belonged to MCBA for years,



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Errors will be corrected in a subsequent issue. The MCBA does not necessarily endorse the views expressed by contributors and advertisers.

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Judges pro tem make big impact at Superior Court

By J. W. Brown
Maricopa Lawyer

Attorneys are setting an impressive pace for service as pro tem judges in Superior Court in Maricopa County.

So far this year, lawyers have provided nearly 1,500 hours performing many of the same duties as a Superior Court judge. Although they are not paid for their legal services to the court, the financial value of the work performed, if they were paid as a judge, totals \$86,300.

In 2003, more than 300 lawyers served temporarily as judges in Superior Court's criminal, probate, civil, family and juvenile departments. The value — based on a judge's hourly rate of \$58.08 — reflects over \$375,700 worth of attorneys' bench work.

Lawyers who make themselves available as pro tem judges serve as the need arises. They provide help when a judge is out sick for a day or more, when help is needed with a case backlog and to give a hand during pre and post holiday dates.

Perhaps the biggest need for pro tem judges occurs during the summer months — the most popular time for judicial vacationing. The week between Christmas and New

Year's also can be a challenge for court officials to find enough lawyers willing to fill in during a peak time for judicial time off.

Kip Micuda, who works with the State Bar, logged the most hours of any attorney providing the court with pro tem judicial work. Of his total of 167 hours' service, he worked 104 hours in civil court and another 62 hours in family court. The balance of hours was spent in probate court.

Gordon Goodnow was last year's second most prolific provider of judicial pro tem hours, focusing all of his work in the civil department. In total, he spent 113 hours assisting the court with civil cases.

Goodnow began doing pro tem judicial work in 1991, when he worked as a deputy county attorney, and has continued without interruption since. Now in-house counsel for Banner Health, he said he has enjoyed the perspective of being the neutral party.

"Seeing both sides gave me insights I could use in my practice," said Goodnow. He added that he likes to keep up his "lawyering skills" with pro tem work. He also enjoys meeting new people, renewing old acquaintances and keeping connected with what's going on in the legal community.

"It's rewarding service that I enjoy and plan to continue," he said. "When I first started doing pro tem service, I would take vacation time and hear a few cases. It's a great experience that kind of evolved into more and more hours. Now, I'm doing more settlement conferences and short trials and work them into my schedule."

While Goodnow clocked the most hours in civil court, Mark Zukowski with the Phoenix law firm of Jones, Skelton & Hochuli spent the most time in family court. In total, he provided 81 hours of his expertise to Superior Court.

Marlene Appel, a sole practitioner with a Phoenix office, provided her expertise to probate court, serving a total of 54 hours as a pro tem judge.

Former Superior Court judges and commissioners often are willing to return to help the court when needed. Former Commissioner John Trombino topped the lawyers who provided their services to criminal court. Trombino retired in January 2001 as a Superior Court commissioner and within a few months was back as an unpaid pro tem. Last year he worked 68 hours as a pro tem criminal court judge.

"Volunteer hours are my way of paying back to the court," Trombino said. Working

as a commissioner for 25 years gave him the means to retire, but not having to work made him realize that he was happy to come back and share his "free" time with the court. "When you are retired you have the flexibility to do more things that you want to do."

Most of Trombino's work in the regional court center involves handling probation violations, pleas and sentencing. Although he lives in Flagstaff, he comes to the Valley for volunteer work two to four days each month. But Superior Court isn't the only recipient of his generosity. He also is a volunteer with the Phoenix Museum of History.

Former Superior Court Judge James McDougall offered help in two areas — family and criminal. He provided pro tem judicial assistance for a total of 39 hours last year. Meanwhile, former Superior Court Commissioner Leah Pallin-Hill also provided 63 hours of her expertise in family law to serve as a pro tem judge. She also served 17 hours in the civil department.

Many lawyers spend 40, 50, 60 and 70 hours as pro tem Superior Court judges, providing an invaluable duty to Superior Court.

"We thank every lawyer who provides Superior Court with their time and expertise," said Presiding Judge Colin F. Campbell. "Obviously the court and community benefit from the services of seasoned lawyers who save hundreds of thousands of dollars each year with their volunteerism."

► J.W. Brown is communication director for trail courts in Maricopa County. ■

Duncan appointed to Superior Court bench

Gov. Janet Napolitano has appointed Sally Schneider Duncan to fill the vacancy created by the retirement of Judge Linda Scott from the Maricopa County Superior Court bench.

A partner in the law firm of Bryan Cave, Duncan has spent her 14-year law career specializing in federal criminal defense with an emphasis on white-collar crime. This was her first try for a seat on the bench.



Duncan

"I am honored for this chance to serve the people of the state of Arizona," Duncan said. "As an attorney, this is one of the best opportunities to make my skills count."

Duncan is a 1989 graduate of the University of Arizona College of Law as well as a member of the Association of Criminal Defense Lawyers, secretary of the Arizona Attorneys for Criminal Justice and member of the Arizona Women Lawyer's Association Steering Committee. ■

To place a Classified ad, call the MCBA at 602-257-4200

How you may apply as a judge pro tem

By Barbara Rodriguez Mundell
Special to Maricopa Lawyer

Maricopa County Superior Court depends on the assistance of over 200 attorneys who serve the court as judges *pro tempore*. These attorneys assist the court by encouraging the efficient resolution of a substantial number of cases in criminal, civil, juvenile, family and probate courts.

The court encourages all attorneys who meet the criteria of A.R.S. section 12-142 to apply to serve as a judge pro tem. Attorneys who currently serve as judges pro tem are required to re-apply annually. The deadline to submit both types of applications for the 2004-2005 year is August 6, 2004.

Application forms for both appointment and re-appointment may be obtained from Superior Court Administration, Attn: Ken Crenshaw, 201 West Jefferson, Central Court Building, Fourth Floor, Phoenix, AZ 85003 or by visiting our Web site at www.superiorcourt.maricopa.gov.

On the Web site, the applications can be found by finding the heading Superior Court and clicking on Superior Court of Arizona. When you reach the Site Index, scroll down to Judges Pro Tempore and you will find both applications.

► Barbara Rodriguez Mundell is the associate presiding judge for Maricopa County Superior Court. ■

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Courtwatch...

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claims for further medical treatment. They sued the other driver, Harvey Hamilton, seeking unspecified general damages. Guenther also sought \$720 in medical damages and Drannan, \$890.

In keeping with its MIST policy, Allstate assigned the claims to a single adjuster, Shirlee Kopin. Kopin, and Blaine Gaub, the attorney Allstate hired to defend Hamilton, then set about implementing the MIST policy.

Kopin knew Allstate had admitted that Hamilton was 100% at fault, and she had copies of the plaintiffs' medical bills. She nevertheless instructed Gaub to make a joint offer to confess judgment for only \$101. She hired a biomechanical expert to determine whether the plaintiffs' continuing occasional discomfort stemmed from the Hamilton accident, or from another accident they had previously suffered. And even though Kopin knew that neither woman had been treated in the more than nineteen months since the original emergency-room visit and did not suspect either woman of overtreatment, she nevertheless demanded that they submit to an independent medical examination.

When Kopin felt she had enough information to properly evaluate Guenther's and Drannan's claims, she recommended that Allstate offer them \$801 and \$1,001 respectively. Both women balked, in part because with the large amount of work Allstate had forced their attorney to do, the offer was not enough to fairly compensate him.

The case then went to mandatory arbitration. Gaub, Allstate's attorney, told the arbitrator that he thought that the plaintiffs

deserved nothing for their claims. After the hearing, the arbitrator awarded Guenther \$2,300 and Drannan, \$3,400. Kopin acknowledged that these awards were not bad, but she nevertheless directed Gaub to appeal because she believed that trials generally resulted in smaller awards than arbitrations.

With the case back in the court, the trial judge ordered a Rule 16 settlement conference. Gaub's and Allstate's failure to participate in good faith in the conference led the judge to impose sanctions against them. He struck the answer and ordered the case to trial on damages only. He also awarded the plaintiffs attorney's fees. The parties then settled for the \$2,300 and \$3,400 that the arbitrator had awarded.

Guenther and Drannan then turned their sights from Hamilton to Allstate and Gaub. They filed suit, claiming that their defense constituted abuse of legal proceedings. The jury agreed and awarded them \$7,500 apiece, though it exonerated attorney Gaub.

On appeal, Allstate argued that the case should never have gone to the jury. The court of appeals, in an opinion by Judge Peter J. Eckerstrom, disagreed. Eckerstrom first laid down the parameters for an abuse-of-process claim. He rejected the plaintiffs' argument that a generalized allegation that the defendant has misused the litigation process as a whole is sufficient. "[I]t must be based on something more than the opposing party's mere persistence in the litigation."

But Eckerstrom also rejected Allstate's attempt to limit the cause of action to those cases where a party has used court procedural authority to compel the opponent into an act or an act of forbearance. "[A]n abuse-of-process claim may be based on the full range

of court procedures provided by the civil litigation process," he held.

Eckerstrom also noted that the plaintiff must show that the defendant had an improper purpose, which "was the primary motivation for its actions, not merely an incidental motivation," and that so motivated, the defendant "used a court process in a fashion inconsistent with legitimate litigation goals." He then turned to the evidence against Allstate.

Eckerstrom held that there was sufficient evidence to support the jury's conclusion that Allstate had acted with an improper purpose. He had "little trouble concluding" that it would be improper as the plaintiffs had alleged for Allstate to have "used the prospect of sustained and expensive litigation as a 'club' in an attempt to coerce them, and other similarly situated claimants, to surrender those causes of action that sought only modest damages."

In holding that Guenther and Drannan had proved their case, Eckerstrom quoted the trial court's characterization of Allstate's MIST policy: "[Guenther and Drannan] allege that [Allstate's] actions are part of a policy regime designed to harass, intimidate and inflict excessive expense on plaintiffs. [Allstate's] own manual regarding Claim Core Processing Redesign (CCPR) and Minor Injury Soft Tissue (MIST) claims seems to support this argument." Although Allstate was entitled to argue the point, he held, its MIST policy "at a minimum created a factual question whether Allstate had intended to use court processes to achieve corporate goals inconsistent with the proper purpose of those court processes."

Eckerstrom also noted that Allstate's actual conduct in the underlying lawsuit was properly considered. He took particular note that Allstate had made a lowball \$101 offer of judgment: "It did so even though it conceded its insured had been one hundred percent negligent in the accident; it knew Guenther and Drannan initially were not seeking special damages beyond the costs of their precautionary emergency room visits and the isolated follow-up visits recommended by the emergency room physician; and it possessed the medical records corroborating the costs of the precautionary medical examinations." He also pointed out that Allstate's own IME

doctor had stated that he could not fault either plaintiff for seeking precautionary care immediately after the accident.

Eckerstrom also pointed to Allstate's and Gaub's actions in connection with the settlement conference. They had refused in violation of a local rule to give their settlement memorandum to the plaintiffs' attorney; they had told the settlement judge that nothing he said could change Allstate's negotiating position; and they had misrepresented what Allstate's experts had concluded about the reasonableness of the Drannan seeking medical attention after the accident. Gaub even testified that his refusal to serve the settlement-conference memorandum was motivated by the MIST policy's edict of drawing a line in the sand as a part of the strategy "to affirmatively communicate Allstate's resolve not to settle such cases."

Eckerstrom then held that there was sufficient evidence that Allstate, darkened with an improper motive, had improperly used court processes. The plaintiffs argued that many of its actions qualified, but Eckerstrom declined to address all but Allstate's conduct in the settlement conference, finding it sufficient of itself to support the verdict. "Allstate," he wrote, "conducted itself at that settlement conference in a manner contrary to serving the public policy purposes of the court procedure and did so to the detriment of Guenther and Drannan."

He acknowledged that a party cannot be held to have abused process merely by refusing to settle or make a settlement offer. But Allstate had done more: "[A] jury could have found that Allstate had abused that process because it had violated the court's orders, because it had failed to participate in good faith during that procedure, and because it had done so to the detriment of Guenther and Drannan, whom Allstate knew were equally duty-bound to comply with the court's instructions."

Finally, Eckerstrom rejected Allstate's argument that the jury's exoneration of Gaub mandated judgment as a matter of law in its favor. "The verdict," he wrote, "does no more than indicate the jury believed that Gaub had acted solely on Allstate's direction and that he had not acted with an improper purpose."

He continued, "[T]he verdict could have been based on no more than the jury's finding that only Allstate had acted with an ulterior purpose by adopting the MIST policy and by allowing that policy to direct Kopin's and Gaub's actions throughout the litigation." Joining Eckerstrom were Judges Philip G. Espinosa and John Pelander. ■

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Wireless Internet access at Superior Court downtown complex now available

Lawyers, litigants, jurors, and the general public can now access the Internet in the downtown Phoenix Superior Court complex.

Wi-Fi Arizona, in partnership with the Superior Court of Arizona in Maricopa County, now offers wireless Internet access in the Change of Venue cafeteria and jury assembly room. Only jurors are allowed to access the service available in the jury assembly Room.

Jurors can use their laptop with wireless access, plug in their laptop if they do not have a wireless card or use one of the two computers available in the jury assembly Room. Members of the public and lawyers may do the same in the Change of Venue.

There is a small charge to use the system,

either by the minute or by the day. The court chose not to receive any fees for the usage, making it possible for Wi-Fi Arizona to keep user charges to a minimum.

"This court has a history of finding ways to continue to improve the jury service experience," said Presiding Judge Colin E. Campbell. "We're pleased to offer this new service to our jurors, court visitors and court customers."

If the partnership is successful, the court and Wi-Fi Arizona will provide similar wireless "hotspots" at other Superior Court facilities throughout Maricopa County.

For additional information contact Bob James, director of jury management for trial courts in Maricopa County, 602-506-6314. ■

Typo-infested pleadings contribute to reduction in attorney's fee award

By Joan Dalton
Maricopa Lawyer

Can pleadings rife with typographical errors affect an attorney's bottom line? According to a magistrate judge for the Eastern District of Pennsylvania, the answer is "yes." In an order dated Feb. 20, 2004, United States Magistrate Judge Jacob P. Hart decreased a prevailing party's attorneys fee award relating to billed hours that plaintiff's attorney spent on written work that was "careless, to the point of disrespectful."

In response to an attack on the plaintiff's attorneys' fees petition by the defendants, who called the typographical errors in plaintiff's attorney Brian M. Puricelli's written work "epidemic," Puricelli replied:

"[H]ad the Defendants not tired to paper Plaintiff's counsel to death, some type would not have occurred. Furthermore, there have been omissions by the Defendants, thus they should not case stones."

"If these mistakes were purposeful,"

Hart wrote, "they would be brilliant. However, based on the history of the case and Mr. Puricelli's filings, we know otherwise."

Although defendants also objected to counsel billing for "participating in medication," Hart permitted the billing for "participating in mediation." Other typographical errors included the identity of the court's venue as the "EASTER DISTRICT OF PENNSYLVANIA," and misspelling the judge's first name.

In the end, Puricelli's hourly billing rate for his written work product was reduced from \$300 to \$150 per hour. Despite the fact that Hart found Puricelli's performance in the courtroom "well prepared" with his case proceeding "quite artfully and smoothly," the attorney's "complete lack of care in his written product shows disrespect for the court. His errors, not just typographical, caused the court a considerable amount of work. . . . Hence, a substantial reduction is in order. We believe that \$150 per hour is, in fact, generous."

The case was *Devore v. City of Philadelphia*. ■

E-courtroom training available to technologically-challenged

By Eric Ciminski
Special to Maricopa Lawyer

Increasingly, courtrooms in Maricopa County are equipped with technology which can present unique challenges to lawyers and litigants unfamiliar with the equipment. To take the uncertainty, discomfort or terror out of using e-courtroom equipment, free training sessions are available.

Courtroom technology can range from simple electronic audio recording to more sophisticated electronic video recording with evidence presentation systems and video conferencing. However, this technology is of little value if lawyers don't know how to use it.

Ever since training has been provided, the court's policy has been to hold training sessions for any and all sizes of groups, from a single attorney to groups of more than 40. During sessions, participants are given a review of the technology in the courtroom and demonstrations on how to

use the equipment. Often, the demonstrations can be done in the courtroom where the attorney or staff of attorneys will present their argument, testimony or other legal presentation.

The training and demonstrations are mutually beneficial to all participants. Those visiting the court are able to see and practice on the latest courtroom technology. And, the court receives valuable opinions on current operations as well as the needs and desires of the public.

The court's goal is to provide high tech equipment that allows for effective trials and a better courtroom experience for litigants, attorneys, court staff and juries.

For more information about e-courtroom technology, tours, demonstrations and training sessions, contact the E-Court Department at ciminski@superior-court.maricopa.gov, or call 602-506-3210.

► Eric Ciminski is director of courtroom technology for Trial Courts in Maricopa County. ■

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Evans honored with NAACP Image Award

By Sybil Taylor Aytch
Maricopa Lawyer

On April 16, 2004, at its annual Freedom Fund Dinner, the Maricopa County branch of the National Association for Colored People (NAACP) honored Booker Travis Evans Jr., a partner at Quarles & Brady Streich Lang, with its Legal Redress Image Award. He is the first attorney in Arizona to receive this award.

Each year, the NAACP, the oldest civil rights organization in the U.S., presents Image Awards to "outstanding individuals who have made a positive achievement toward human and civil rights in the community and who have created a path for others to follow to ensure that civil and human rights are achieved and economic justice prevails." Evans was one of seven honorees to receive 2004 Image Awards.

"I have been at this NAACP office since 1987 and for as long as I can remember, Booker Evans has been donating his time to provide legal advice whenever we needed it," said Rev. Oscar Tillman, president of the Maricopa County branch of the NAACP.

Kent Stevens, Managing Partner of

Quarles & Brady Streich Lang, called Evans "a role model to the entire legal profession regarding our professional stewardship to give back to the community. Booker has unselfishly given of his time, means and talents to support and advance a wide array of community and civic activities and organizations. This recognition is well deserved for an individual who lives his life looking for opportunities to serve others."

Brian Booker, another Quarles & Brady Streich Lang partner, said he could not think of a more deserving individual than Evans to receive the award.

"I have known him personally for the past 7 years, but I knew of him and his legacy of relentlessly pursuing justice and opportunity for African-Americans, and for all people, long before I had even considered going to law school," Booker said. He added that Evans is "a master of his craft who blazes the trail for those coming behind him, and who gives back to his community not only out of love, but also out of fervently embraced duty."

Evans was born in Hattiesburg, Mississippi, but growing up as a military dependent, he moved throughout the U.S., as well as France, Germany and Japan. While in his senior year of high school, his father was transferred to Fort Huachuca, Arizona. He matriculated at Northern Arizona University (NAU) and obtained a bachelor's degree in psychology at the age of 20, earning his master's degree in the same discipline the following year.

Evans' work in psychology prompted his legal career. As the director and counselor at a mental health facility in Nevada in the 1970s, he found that the problems exhibited by his patients were "not deep-seated psychological problems, they were more problems of need — not being able to access resources." In attempting to obtain concrete solutions to his patients' problems, he found that the lack of a law degree prevented him from fully unraveling the intricacies of a complicated system. He subsequently enrolled at St. Louis University and obtained his law degree in 1978. He then returned to Nevada.



Booker T. Evans celebrates his NAACP Image Award with his family. From left, daughter Tiana, wife Toni, Evans and daughter Raejon.

Obtaining a job as a lawyer was a challenge. Evans recalls that in 1978, "at least for a larger part of the country, African-American lawyers weren't sought out. We weren't recruited and law firms didn't have the kind of interest that they have now in diversity issues."

Evans began his law career as a deputy district attorney in Las Vegas and subsequently returned to Arizona as an assistant U.S. Attorney in Phoenix. He continued his career as corporate counsel at Arizona Public Service Company (APS), then eventually left for private practice. He practiced with Jones, Skelton & Hochuli for six years before returning to Nevada to open the Las Vegas office of the former Streich Lang (now Quarles & Brady Streich Lang).

In 1997, when Streich Lang decided to "grow the firm in a different way" and closed the Las Vegas office, Evans transferred to the firm's Phoenix office. He now practices in the area of White Collar Crime/Special Matters with experience in insurance defense, commercial litigation, products liability and criminal and civil RICO matters.

Having been born in the segregated South, Booker is well aware of the importance of the NAACP.

"My first memory of the NAACP is being a small kid in the South and having the local chapter involved in voting rights issues," Evans said. "I can recall now how fearful my grandparents were even going to cast a ballot or going to register to vote. My father would be away in Korea or Vietnam or some of the places where I was growing up, and it became more and more puzzling to me why he could expose himself or risk his life to support a country that wouldn't allow him the freedom to cast a ballot to determine who should lead the country."

This led to Booker's heightened awareness of issues that are important to the African-American community and to the country.

"The fact is that elections are won or lost in this country all the time because significant portions of minority groups don't register and don't vote," he said. He believes the NAACP plays a significant role in getting minority groups to the polls. He added that

he would like to see the NAACP "spread its wings" and take advantage of opportunities in the business and education communities. He also feels that the NAACP should address issues of inclusion that are relevant to immigrants and other people of color.

"Every group that has come to this country has come to work their way up and work their way towards a better way of life. Organizations like the NAACP need to take a leadership role and reach out," he said.

In 1903, W.E.B. DuBois, a founding member of the NAACP, advocated the notion of a Talented Tenth, the development of a group of highly educated African-Americans to foster social change. A century later, Evans believes that this notion may have been relevant when educational opportunities were not as pervasive or accessible as they now are. He thinks that working to achieve may be what DuBois meant by talent and that being bright is not the only barometer for success. According to Evans, morals, values and commitment to work through a process are just as important.

"When you look back at the people who led the civil rights movement, not only were they talented people, but they were committed to working in a way and in a fashion that [the result] would last," Evans said, "and that it would be something that ultimately society didn't feel that they took away, but something that they were entitled to."

Evans said he was shocked to learn he was to be honored by the NAACP with the Legal Redress Award because he does not view helping people who are unable to navigate the legal system themselves as something special but a part of his role.

He also emphasized that the support of his co-workers means a great deal to him and that being recognized with the award "means to me that my parents must have raised me in a way that I treat people well." Evans strongly believes that it is important to give back and leave a legacy of commitment for future generations.

► Sybil Taylor Aytch, RP, is a paralegal at Quarles & Brady Streich Lang. She was the first president of the MCBA Paralegal Division. ■

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The Maricopa County Bar Association's Bench Bar Committee invites you to attend a fundraiser for the Old Courthouse Museum Fund

**Thursday, May 13th
5:30 p.m. to 7:30 p.m.
Old Courthouse, Courtroom #309**

All proceeds will go to the Old Courthouse Museum Fund.

Cost: \$25.00

Wine and cheese hors d'oeuvres will be served.

RSVP to Mona Fontes at 602-257-4200 ext. 131 by Tuesday, May 11th.

Join us as we celebrate the restoration of the Old Courthouse. Hon. Colin Campbell and Hugh Gallagher will present some insider stories about the restoration project and tours of the future museum space and old jail cells will be offered.

Anoma Phanthourath driven to 'protect' her home community

By Kathleen Brieske
Maricopa Lawyer

Maricopa County Bar Association board member Anoma Phanthourath was recently selected as one of the Phoenix Business Journals "Forty Under 40." To Phanthourath, a successful commercial litigator at 31, this prestigious award represents more than the honoring of an ambitious leader. It means, through all her accomplishments, she has created a home here in Phoenix, complete with a large, supportive family.

Phoenix is not where Phanthourath was born (Laos), not where she was raised (a refugee camp in Thailand and in Amarillo), not where she went to school (University of Texas and University of Arizona Law School). Phoenix is where she chooses to be, to grow and experience life.

Currently evolving in her career, Phanthourath is making the move this month from Squire Sanders & Dempsey to Shugart, Thompson & Kilroy. As a commercial and real estate litigator, she represents a wide variety of clients, including hospitals, schools, insurance companies, financial institutions, contractors and real estate developers.

For all the time she devotes to maintaining a thriving legal career, she also is furthering her role as a driving force in the Phoenix community through volunteerism and by being active in legal and professional organizations. Among the many associations to which she donates time: the Arizona Fair Housing Center, the Junior League of Phoenix and Women in Senate and House (WISH), a group that seeks out and supports pro-choice female Republican candidates.

Phanthourath is just as active in the legal community. In addition to being elected to the 2004 board of directors for the MCBA, she is chair of the Membership Services Committee. She also serves on the Arizona Women Lawyers Association's Steering Committee and the board of the Arizona Asian American Bar Association.

With so much on her plate, she has to be inspired about each commitment she makes. What, then, is the value she attributes to being an active part of the Maricopa County Bar Association?

Phanthourath sees the MCBA as instrumental in blending the legal community with the local community. She says the MCBA establishes an environment where lawyers can build their careers at the same time they are joining together to serve the community. "I went to law school to be a do-gooder,"

MEMBER PROFILE



Anoma Phanthourath

she said. "People may question what being a lawyer is about, but I am grateful for what I do. The law is meant to protect, and I have an obligation to help my community."

Phanthourath added that she is dedicated to Phoenix and the MCBA because this is where she started, where she was a "baby lawyer" and where her friends and mentors are.

Good times are not left out of Phanthourath's busy life. As founder and president-elect of the Phoenix chapter of the "Texas Exes," a notoriously fun University of Texas-Austin alumni club, she makes sure she stays true to roots. Plus, she reserves one night a week for personal time, and she is always game for a weekend trip with her girlfriends. She also is about to embark on a three-week cross-country road trip with no company but her car.

Perhaps the best word to describe Phanthourath is supercharged. She acknowledges she is driven by passion and gives herself to causes that inspire her. She cares about her community and through that devotion has created a sense of belonging in an unfamiliar place. And what she has received in return is a place she can call home, where people recognize and support her as a member of their family. ■

ADR Week full of activities for attorneys and public

By Amy Lieberman
Special to Maricopa Lawyer

ADR CORNER

For the second year in a row, Gov. Janet Napolitano has proclaimed the second week of May as "Alternative Dispute Resolution Week."

The proclamation recognizes that ADR has gained acceptance throughout Arizona and the country, and encourages disputants to consider using mediation, arbitration and other forms of ADR to resolve disputes. The proclamation notes that the Arizona Supreme Court now requires all litigants to be advised by counsel of alternative methods of dispute resolution. Currently, at least 10 cities in Maricopa County have issued similar proclamations.

If you'd like to get involved, here are some of the ADR Week happenings:

■ ADR Marathon at the Superior Court

On May 12, 13, and 14, with the assistance of MADRA (Maricopa County ADR Association), the Superior Court is holding its "ADR Marathon" in an attempt to help litigants resolve their cases and reduce the court's docket. Most of the cases will be family matters, the rest will be civil and probate. If you are interested in participating, and have mediation experience or training or experience as a judge pro tem, contact James McDugald at 602-277-2010.

■ American Arbitration Association Breakfast CLE

On Tuesday, May 11, from 8 to 9 a.m. the American Arbitration Association will present a breakfast program entitled "Decision-Tree Risk Analysis in Arbitration and Mediation." The program will be held at the offices of the American Arbitration Association at 3200 N. Central Ave., Suite 2100.

■ Attorney General's Office Activities

The Attorney General's Office is participating in ADR Week by providing CLEs to

AG and state agency attorneys. There will also be outreach to heighten public awareness of the AG's mediation services and training programs.

■ Peer Mediation Conference

Attorney General Terry Goddard will keynote a conference for school peer mediation coordinators on Tuesday, May 11, from 8:30-1:30 p.m. at ASU West.

■ EEOC/Arizona Affirmative Action Panel Discussion

On Wednesday, May 12, from 2 to 4 p.m., the EEOC will participate in a joint effort with the Arizona Affirmative Action Association to present a panel discussion on Effective Mediation Advocacy Techniques for Employers. The discussion will be held at the EEOC offices, located at 3300 N. Central Ave, Phoenix.

■ MADRA Meeting

The Maricopa County ADR Association (MADRA) will hold its monthly meeting on Wednesday, May 12, from 4 to 6 p.m. at the Encanto Park clubhouse.

■ Speaker's Bureau

MADRA maintains a list of speakers willing and available to speak to any group about ADR. To arrange for a speaker, contact Levon Kasarjian at 480-443-1624.

For more information on any of the above events, contact me at Insight Employment Mediation, 602-404-6544 or amy@insightemployment.com. And in the coming weeks, look for billboards and buses promoting ADR!

► Amy Lieberman is the chair of the State Bar ADR Section. ■

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The right to die: Where does society stand now?

By Kathleen Brieske
Maricopa Lawyer

On Friday, May 7, the MCBA Estate Planning, Probate and Trust Section will welcome William H. Colby, author of *The Long Goodbye: The Deaths of Nancy Cruzan*, as the keynote speaker at its annual ethics seminar. Colby represented the family of Nancy Cruzan, who in 1990 was the central figure in the first and only right-to-die case ever heard by the U.S. Supreme Court.

Colby has appeared on *Good Morning America*,

Today, *CNN* with Wolf Blitzer, *CBS This Morning* and on MSNBC, and has spoken across the country about the legal and ethical issues we face at the end of life. He has handled cases in state and federal courts, and clerked at the U.S. Court of Appeals for the D.C. Circuit. Currently, he is a fellow at the Midwest Bioethics Center in Kansas City and has been teaching at the University of Kansas School of Law.

Since meeting the Cruzans in 1987, Colby has been involved nationally in issues surrounding appropriate medical treatment at the end of life. With the right-to-die issue back in the news with the Terry Schiavo case, Colby feels it is critical that we as a society commit

to talking about our plans in the event we can no longer make our own medical decisions. *Maricopa Lawyer* asked Colby a few questions about the lasting impact of the Cruzan case and how the seminar will affect attendees, both professionally and personally.

ML: As the first right-to-die case ever heard by the Supreme Court, what lasting impact did the Nancy Cruzan case have on similar cases?

Colby: The Supreme Court established that conscious individuals have the constitutional right to make decisions about medical treatment. The court also ruled that a feed-

ing tube is medical treatment. Most importantly, the case caused people to talk about issues—both on a legislative and moral level. People began to talk about the right-to-die more, forming their own opinions and making their own decisions.

ML: Is the “clear and convincing evidence” needed to prove that a patient would wish to be removed from a feeding tube if in a vegetative state easier to exhibit now than it was then?

Colby: [Clear and convincing evidence] is no longer the standard in Missouri as it was when the Cruzan case took place. Deciding how such a decision should be made has become clear over time. Today, we realize the

choice should be up to family members.

ML: What has been the impact of the recent right-to-die case, the Terry Schiavo case?

Colby: Similar to the Cruzan case, the Schiavo case causes people to talk and consider their own choices. For society, the impact of the discussions that ensue from this battle is more important than the legal rulings of the case.

ML: How have right-to-die cases, specifically the Cruzan case, led to the development of advance directives? Does appointing a patient advocate or proxy in a living will help make the right-to-die argument easier?

Colby: In many states, there are now health care power of attorneys. Additionally, a federal law was created called the Patient Self

Determination Act (PSDA), which allows for advanced health care planning in hospitals across the United States. (PSDA requires that most health care institutions give patients their health care decision-making rights as well as the facility's policies with respect to recognizing advance directives. They also ask if a patient has an advance directive and educate their staff about them.) If you do wish to use an advance directive, it is critical to appoint a health care proxy to display your wishes. Be sure to talk thoroughly with that designated person, as well as to family and your doctor, about what you do and don't want in the event you will be unable to make your own crucial medical decisions.

ML: From a legal standpoint, what will
— See *Die* on page 11

**Today, we realize
the choice should
be up to family
members.**

Hibbs...

Continued from page 1

to support religious education. They had sued the Director of the Arizona Department of Revenue in federal district court, but the district court agreed with the State's argument that the Tax Injunction Act, as well as principles of comity, required it to dismiss the case. The Ninth Circuit Court of Appeals then reversed, holding that no “assessment” covered by the Act was involved, and that principles of comity did not apply where federal court action did not interfere with a state's ability to collect a tax.

The Supreme Court granted the State's petition for certiorari on Sept. 30, 2003, and the State filed its opening brief on Nov. 14. Soon after, preparations for the Jan. 20 argument began in earnest.

Moot courts are a common method of preparing for Supreme Court arguments, and in preparing for *Hibbs v. Winn* Goddard made extensive use of them. He convened five moot courts in all, each of which involved a completely-different set of “justices” played by attorneys from his office as well as other prominent local advocates and judges. Goddard audiotaped each of the moot courts and listened to the tapes while jogging. The final moot court was videotaped, and although he found the critique of his videotaped performance “profoundly humiliating,” he also found it extremely valuable as a “learning tool,” and wished that he had begun videotaping earlier.

Goddard found each of the moot courts helpful in that each “took a different pass” at the issues in the case. But the most valuable preparation of all, Goddard believes, was the time spent nearer to the argument when he and his staff systematically worked through the likely questions and refined his answers in an effort to turn their weakest points into their strongest.

One reason this form of preparation turns out to be so valuable, Goddard stresses, is that in the Supreme Court “you're not really there to argue.” Instead, you're there “to answer some very pointed questions about what's troubling [the Justices].”

Still, to be prepared for the unlikely possibility that the Court would *not* pepper him with questions, Goddard drafted and memorized a fifteen-minute opening statement. Five sentences into it, as expected, he discovered that it wouldn't be necessary.

Marvin Cohen's preparations differed in a

few respects. Cohen convened only two moot courts, one at ASU and the second at Washington, D.C. law firm of Jenner & Block, and neither was recorded. In fact, Cohen believes that one moot court may be sufficient, provided the participants “really beat you up and pin you to the wall,” which he says the Jenner & Block lawyers did. The most valuable product of a punishing moot court, Cohen found, was that it drove him to go “back to the drawing board” and identify a “single thread” so integral to his argument that it could effectively answer any question the justices might ask.

Like Goddard, Cohen prepared an outline of a presentation in case the justices were slow in asking questions — and, like Goddard, he found that he didn't need it.

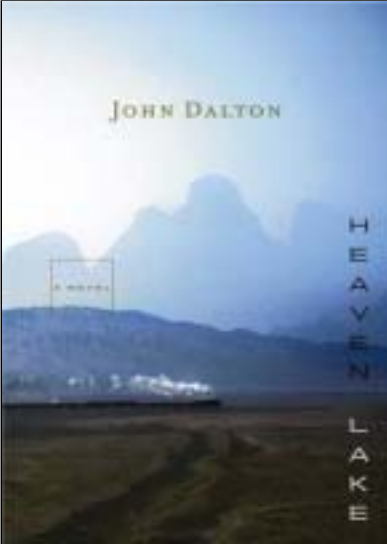
The two attorneys (and long-time friends) are largely in agreement on the nature of the preparation and argument process. Both found tough moot courts valuable in forcing them to construct tightly-focused answers that would stand up to the most penetrating questions while keeping their primary themes at the forefront.

Both also found the prospect of appearing before the Supreme Court somewhat nerve-racking. Neither slept more than a few hours the night before, and Goddard was glad he had taken the advice of a fellow attorney general and arranged to move the admission of another attorney to the Supreme Court Bar on the morning of the argument. The brief ceremony allowed him to “make sure [his] voice worked” and gave him something to do while waiting for the case to be called besides “sitting there silently going insane at the counsel table.”

While both sides faced tough questioning, both Goddard and Cohen had expected nothing less.

Now, although both attorneys have found themselves second-guessing their performances at the argument to some degree, each is concerned with the implications of the Court's ruling, whatever it may prove to be. Goddard believes that a win for the State would signal a proper respect for state courts, and fears that a loss could cause states to manipulate their tax systems in “arbitrary” ways in order to shield elements of their systems from federal-court review. Cohen, on the other hand, fears that a loss for the respondents could impair citizens' ability to secure relief for constitutional violations relating to state tax systems by depriving them of the ability to choose between a federal and a state forum.

A ruling is expected by the end of June. ■



JOHN DALTON

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Tues., May 11th, Burton Barr Central Library, Pulliam Auditorium, 1221 N. Central Ave., Phoenix, 7 p.m.

Wed., May 12th, Phoenix Public Library, Mesquite Branch, 4525 Paradise Valley Pkwy N., Phoenix, 7 p.m.

Thurs., May 13th, Borders Books, Biltmore Fashion Square, 2402 E. Camelback Rd., Suite 200, Phoenix, 7 p.m.

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Brown...

Continued from page 1

and, as many legal historians have noted, Warren was responsible for the shifting the court from deadlocked to history-making.

Ares' experience is complemented by his two counterparts. Dr. Willie Jordan-Curtis, the assistant dean of Student Affairs, grew up as a black child in the South and experienced discrimination first hand. She reminisced to the class about her father sending her to a Catholic school so that he could be satisfied that his children would be afforded an equal education. The law school's legal writing director, Professor Suzanne Rabe, a dedicated civil rights activist, began the semester as a part of the teaching team. While a family emergency has kept her from actively participating in teaching for much of this semester, her students say that her input was integral in the early stages of developing their paper topics and beginning the writing process.

In order to deepen the exploration of Brown, the class has been combined with community outreach efforts, including a panel convened to explore the desegregation order that still binds the Tucson Unified School District. The panel, moderated by Professor Barbara Atwood, included Arizona Court of Appeals Judge William Brammer, who represented TUSD in the desegregation litigation, and Dr. Anna Jolivet, a former Tucson Unified School District administrator, along with Ruben Salter Jr., Larry Hammond and Armand Salese, all attorneys in the TUSD desegregation litigation. Students from "Brown at Fifty" sat in on this panel to garner a more in-depth understanding of the desegregation litigation that has taken place here in Arizona. Students commented on their surprise that a number of school districts in Arizona are still under desegregation orders to this day.

In addition to public events and the expertise of their professors, the UA students have delved into the history of American civil rights, from the pre-Civil War slavery era to the recent decisions on affirmative action's place in higher education. The entire class prepared for the semester by reading Richard Kluger's *Simple Justice*, a definitive work on American civil rights. Students have also benefited from lectures given by University of Arizona experts on Southern history, attorneys who have been intimately involved in Arizona's own education litigation (from school finance to desegregation orders) and videos such as *Eye on the Prize*, which describes the human struggle of the American civil rights battle.

"The most enlightening part of the class has been learning more about the incredible struggle for civil rights in America and hearing the human stories behind that struggle," said Kathleen Hale, a third year law school student. "I knew about the civil rights movement in the abstract, but this class has added human faces, emotions and fears to that abstract knowledge."

As students have progressed through the class, they have been asked to engage in role reversal while watching a video segment detailing the struggles of white versus black

Southerners as the Little Rock Nine first attempted to attend Central High School in Little Rock, Arkansas. Taking the entire class out of its comfort zone, the professors asked minority students to discuss what it must have been like for white Southerners to be told their way of life was wrong and that their traditions must be changed immediately. White students were asked to discuss what it must have been like to be one of those first black students to break through barriers to achieve equality.

After looking at the issue from several different angles, students were given the opportunity to research and write a paper on an educational or civil rights topic of their choice. Topics include an in-depth look into the No Child Left Behind Act, a comparison of racially segregated education to the proposal of a separate charter school for gay, lesbian and transgender youth, an exploration into how schools are funded and a critical look at the reasoning that the Supreme Court used in *Brown v. Board*. Students are required to present their research to their classmates, opening the class up for discussion about race, ethnicity and equality in America.

"This whole experience — the reflection [on] *Brown* fifty years later — is an ideal time for the legal community and society to reflect on race relations in general," said Candice Pitcher, a student in the class. "While integration is legally mandated in schools, society itself is not integrated. *Brown* at fifty is a chance for all of us to first realize that we are socially segregated, second, to reflect on the values of integration, and then third, to try to come up with solutions to our social segregation."

Dean Toni Massaro agreed. "Knowing one's history is important to human progress," she said. "In the case of *Brown*, it is vital to an understanding of American race relations and politics. But it is also important for people to learn how much remains to be done, and why it matters."

The University of Arizona has taken the first step toward turning history into a learning lesson for its students. The law students who have participated in this one-time class have delved deeply into the history of American civil rights, slavery, education and integration. They have taken the experiences of their professors, the lawyers who litigated this historic case, and all of the courageous people who fought for equality and have made those experiences their own. It will make them better students, better lawyers and, more importantly, better people. ■

UA study group finds Jim Crow laws still on books in some states

By Matthew B. Meaker & Kathleen E. Rapp
Special to Maricopa Lawyer

In his 2004 African American History Month Proclamation, President George W. Bush hailed the U.S. Supreme Court's decision in *Brown v. Board of Education* as "a landmark decision [in which] the Supreme Court declared an end to the shameful and unconstitutional practice of legal segregation in schools." The 50th anniversary of this monumental decision has sparked numerous ceremonies and events to honor it. In addition to events recognizing what has been accomplished since this decision, a study group at the University of Arizona has recently issued a report identifying where progress still needs to be made.

The Jim Crow Study Group is an academic organization comprised of members of the faculty and the student body from both the University of Arizona's College of Law and School of Public Administration and Policy. According to Roger Hartley, a professor in the latter school, the group was formed to "allow faculty and students to learn together and to build knowledge on topics that can be beneficial to society."

While the *Brown* decision opened the doors for integrated education throughout the U.S., the group's report notes that the goal of complete school integration has not yet been achieved. In the years immediately following *Brown*, a number of state and federal leaders attempted to place legal roadblocks in the way of desegregation efforts. While one might assume that such laws could not still exist 50 years after *Brown*, the study group found otherwise.

According to the group's Feb. 23 report, segregation laws still are active in a number of states. In particular, they found that Alabama, Georgia, Louisiana, Mississippi, Missouri, South Carolina, Virginia and West Virginia all had laws on their books designed to impede the integration of schools or to support the practice of segregation.

The report provides a brief overview of the legal and political climate at the time of *Brown* and specifically highlights the creation of the *Southern Manifesto*, a document entered into the Congressional Record in 1956 by the Southern states. The majority of Southern representatives and senators signed this document. In it, the signatories stated that the difficulties faced by African-Americans were not caused by segregation, but instead caused by cases like *Brown*.

According to the *Manifesto*, such decisions planted hatred and suspicion, where before there had been friendship and understanding. These Southern political leaders stated that they commended "the motives of those States which have declared the intention to resist forced integration by any lawful means. We pledge ourselves to use all lawful means to bring about a reversal of this decision."

In general, the laws still in existence in these states can be placed in one of two categories: those designed to prevent public school integration and those designed to support segregated private schools. The findings regarding the existence and background of segregated private schools were shocking to faculty members.

"In many parts of the South, public funds were used to create segregated private schools systems attended by whites only," said Professor Jack Chin. "Private schools received public funds, donations of school buildings and public services such as school transportation." Not only do some of these schools still exist today, but they still receive public funding as well. In fact, some states, like Virginia, even pay teachers who have retired from private schools a state pension.

Another technique used to prevent the implementation of *Brown* was school closures. Although a statute permitting the governor of Louisiana to close schools in order to prevent integration was declared unconstitutional over 40 years ago by a district court judge and affirmed by the U.S. Supreme Court, the statute is still within the code. Similar statutes exist in the codes of the states of Georgia, Mississippi and South Carolina.

The Jim Crow Study Group report has been sent to every legislator in the eight states that were studied in hopes that action will be taken. In addition, the study group has been in contact with civil rights groups and others in a position to advocate for change in these states. Members of the group hope that in this time of celebration and reflection on the significance of the U.S. Supreme Court's decision in *Brown*, this report might provide an opportunity for reflection on the lingering remnants of a time in which the ideal of non-discrimination and equal opportunity were less widely accepted. The entire report may be accessed online via the University of Arizona College of Law Web site at www.law.arizona.edu. ■



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 <p>Amy Lieberman Esq.</p> <ul style="list-style-type: none"> • Advanced Practitioner, Ass'n for Conflict Resolution • Judge Pro Tem • Chair, AZ State Bar ADR Section • Executive Director, <i>Insight Employment Mediation</i> 	<p>40-HOUR MEDIATION TRAINING</p> <p><i>The Ross-Lieberman Training Center</i></p> <p>Phoenix, Arizona 800/940-0025</p> <p>www.mediation-training.net</p> <p>2004 Trainings: April - Sept - Oct - Dec Civil - Workplace - Family - Divorce</p> 	 <p>Oliver Ross J.D. Ph.D.</p> <ul style="list-style-type: none"> • Advanced Practitioner, Ass'n for Conflict Resolution • Member Maricopa Superior Court Family Mediation Roster • Director of Mediation Services, <i>Out-of-Court Solutions</i>
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To place a **classified ad**, call the MCBA, 602-257-4200

MAY 2004

May 3

- Maricopa Lawyer editorial board, 5:15 p.m.

May 5

- Family/Juvenile Law Section, 5:15 p.m., ASUD

May 6

- Construction Law Section, noon

Asset Protection Planning in Arizona

1:00 to 4:30 p.m., ASUD

Are your clients' assets protected in case of a lawsuit? Are you aware of the possible threats to your clients' assets due to divorce, litigation, catastrophic medical expenses or money judgment exceeding insurance coverage? This intermediate to advanced program will show you how to protect your clients' assets. This seminar is also designed to qualify you for specialization credit in bankruptcy law. Cost: MCBA member attorneys, \$75; member paralegals and public lawyers, \$55; non-member attorneys, \$105; non-member paralegals and public lawyers, \$75; same-day registrations/payments, \$15 additional. CLE: 3 hours with up to .5 hours ethics

May 7

- *From Nancy Cruzan to Terry Schiavo: What Have We Learned?*
1:00 to 4:30 p.m., ASUD
The Estate Planning, Probate and Trust section welcomes William H. Colby, author of *Long Goodbye: The Deaths of Nancy Cruzan* and the lawyer who represented the family of Nancy Cruzan in the first right-to-die case ever heard by the U.S. Supreme Court.
Cost: MCBA member attorneys, \$75; member paralegals and public lawyers, \$55; non-member attorneys, \$105; non-member paralegals and public lawyers, \$75; same-day registrations/payments, \$15 additional.
CLE: 3 hours ethics

May 10

- Task Force for Recruitment and Retention of Women and Minority Lawyers, noon
- YLD Board Meeting, noon

May 11

- VLP Advisory Committee Meeting, noon
- Hayzel B. Daniels Meeting, 5:30 p.m.

May 12

- MCBA Executive Committee, 7:30 a.m.
- Environmental Law Section, noon, Gammage & Burnham, 2 N. Central Ave., 18th Floor, Phoenix
- *Going Global: World-Wide Protection Of Your Client's Trademarks*
1:30 to 3:30 p.m., ASUD
Learn the important basics and the latest developments about trademark protection from an experienced, internationally recognized trademark attorney. Topics will include selection, clearances, filing and enforcement of trademarks domestically and worldwide.
Cost: MCBA member attorneys, \$50; member paralegals and public lawyers, \$35; non-member attorneys, \$70; non-member paralegals and public lawyers, \$50; same-day registrations/payments, \$15 additional.
CLE: 2 hours

- Paralegal Conference Committee, 5:30 p.m.

May 13

- Personal Injury/Negligence Section, noon

May 15

- CLA Review Course, 9 a.m.

May 17

- YLD Domestic Violence Committee, noon
- Paralegal board, 5:30 p.m.

May 18

- Corporate Counsel Division board, 4:30 p.m.
- Bankruptcy Law Section, 5 p.m.

May 19

- Litigation Section, 7:30 am
- Lawyer Referral Service Committee, noon
- Bench Bar, 12:15 pm, Central Courthouse

- *Computer Forensics: What you need to know about electronic evidence*
1:00 to 4:30 p.m., ASUD
Electronic evidence is becoming a core piece of discovery in cases today. This program will discuss electronic evidence and demonstrate computer forensics software in action. Topics will include e-mail (the new smoking gun), computer storage, why documents and fragments can be retrieved, sources of information (there are more than you think) and what to expect from your expert and his tools
Cost: MCBA member attorneys, \$75; member paralegals and public lawyers, \$55; non-member attorneys, \$105; non-member paralegals and public lawyers, \$75; same-day registrations/payments, \$15 additional.
CLE: 3 hours

May 20

- Paralegal Brown Bag It, noon
- *Jail, Bail or Bolivia Here I Come: Perspectives & Strategies on Pretrial Release in Felony Cases*
1:00 to 4:30 p.m.; ASUD
Recent changes in Arizona law regarding the holding of accused sex offenders has made non-bondability a hot button issue affecting prosecutors and defense attorneys alike. Our panel will discuss the process of formulating release conditions, as well as related ethical considerations, from both the attorney and judicial perspectives. This program will benefit both prosecutors and defense attorneys seeking to develop and refine their strategies for presenting the best possible case for or against pretrial release.
Cost: MCBA member attorneys, \$75; member paralegals and public lawyers, \$55; non-member attorneys, \$105; non-member paralegals and public lawyers, \$75; same-day registrations/payments, \$15 additional.
CLE: 3 hours with up to 1 hour of ethics

- MCBA board of directors, 4:30 p.m.

- Corporate Counsel Division social, 5:30 p.m., Greenberg Traurig, 2375 E. Camelback Rd., Suite 700, Phoenix

May 21

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

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

- *2004 Family Law Case Law & Legislative Update*
1:30 to 5:00 p.m., ASUD
This annual program will include a summary of all family law related cases; statutory changes; and practice tips.
Cost: MCBA member attorneys, \$75; member paralegals and public lawyers, \$55; non-member attorneys, \$105; non-member paralegals and public lawyers, \$75; same-day registrations/payments, \$15 additional.
CLE: 3 hours ethics

May 22

- CLA Review Course, 9 a.m.

May 24

- Employment Law Section, 11:30 a.m.

- *Construction Delay Claims and Analysis*
2:00 to 4:30 p.m., ASUD
Attendees will learn about the pitfalls of improper analyses and the difficulties involved with presentation of their case to a judge/jury. This advanced level seminar will cover the basics of critical path scheduling, schedule impacts, schedule manipulation, concurrent delays, calculation of damages and use of scheduling expert.
Cost: MCBA member attorneys, \$50; member paralegals and public lawyers, \$35; non-member attorneys, \$70; non-member paralegals and public lawyers, \$50; same-day registrations/payments, \$15 additional.
CLE: 2 hours

May 26

- Criminal Law Section, 7:30 a.m.
- Sole Practitioner Section, 11:30 a.m.

- *Hold Me Back! Restraint Systems & Their Impact on Litigation*
1:00 to 4:30 p.m., ASUD
This program will address critical issues in the litigation of cases involving restraint systems and provide answers to the questions such as: Do some restraints cause more harm than good? Are restraints reasonably safe? What injuries caused by or prevented by restraints? The seminar also will give you an overview of occupant safety basics, an overview of restraint systems including recent advancements for air bags and seat belts, how to identify and understand vehicle safety features and their role in a case, plus occupant kinematics and how to understand and analyze the opinions of opposing experts.

MAY 2004

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9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29

MCBA seminars, contact the MCBA at 602-257-4200 or visit www.maricopabar.org.

- Cost: MCBA member attorneys, \$75; member paralegals and public lawyers, \$55; non-member attorneys, \$105; non-member paralegals and public lawyers, \$75; same-day registrations/payments, \$15 additional.
CLE: 3 hours

May 27

- Estate Planning, Probate & Trust section executive committee, 7:30 a.m.

- *Bankruptcy & Divorce*
8:30 a.m. to 12:30 p.m., ASUD
What you don't know can hurt your client! Get practical advice on recognizing bankruptcy problems when litigating and negotiating divorce cases. Topics will include the interplay between bankruptcy and divorce, automatic stay and divorce litigation, dischargeability of marital related debts, drafting property settlement agreements with an eye toward possible bankruptcy, divorce as a fraudulent conveyance, conflicts of interest and attorneys fees.
Cost: MCBA member attorneys, \$75; member paralegals and public lawyers, \$55; non-member attorneys, \$105; non-member paralegals and public lawyers, \$75; same-day registrations/payments, \$15 additional.
CLE: 3 hours with up to 1 hour ethics

May 28

- CCD CLE Luncheon
Document Preparation & Retention: An Insiders View of How Documents Effected the Trial of Southern Union v. Southwest Gas, James Irvin, et al.
11:45 a.m. to 1:00 p.m., University Club
Our panel will discuss actual exhibits in the trial that unquestionably affected the outcome at the trial that resulted in a jury verdict against a sitting corporation commissioner which included a \$60 million punitive damage award.
Cost: CCD members, \$20; non-members, \$25 (price includes lunch)
CLE: 1 hour

May 31

- Memorial Day, MCBA offices closed.

PEOPLE IN LAW

■ Richard W. Tobin II has been appointed to serve as the private sector co-chair of the Arizona-Mexico Commission's Environmental Committee. Tobin previously served as the committee's public sector co-chair while he was acting director of the Arizona Department of Environmental Quality. Tobin practices with Lewis and Roca's environmental practice group as of counsel.

■ Osborn Maledon attorney Mark I. Harrison was selected by the Arizona Women's Political Caucus to receive a Good Guy Award. The award is given to men who champion the efforts to advance women's rights and causes. Harrison's practice focuses on ethics, professional liability and professional responsibility.

■ Krysten Sinema, a second year student at ASU's College of Law, has been awarded the Herman DeMund Memorial Fellowship, which carries a tuition waiver for the 2004-05 academic year and a \$2,000 fellowship. The fellowship is awarded each year to an ASU graduate student who demonstrates excellence in a number of areas, including contributions to the academic community.

■ James W. Ryan, a founding partner of the law firm of Frazer Ryan Goldberg Arnold & Gittler, has been named a fellow to the American College of Trust and Estate Counsel. The college is an association of approximately 2,700 estate planning and probate lawyers throughout the U.S.

■ Herbert Schenk partner Shawn K. Aiken has been selected for the National Arbitration Forum's Panel of Arbitrators and Mediators. The Minneapolis-based forum is one of the world's largest providers of alternative dispute resolution services and is composed of law professors, senior attorneys and retired judges.



Aiken



France



Harrison



Keller



Ryan



Schippel



Stokes



Tobin

■ Snell & Wilmer partner Bahar Schippel has been appointed as secretary to the board of governors of the Arizona Foundation for the Eye. The foundation works to identify and address unmet eye care needs of Arizona residents and to assist in saving the vision of the under and uninsured.

■ The Arizona Chapter of the Cystic Fibrosis Foundation has selected Quarles & Brady Streich Lang attorney Nicole France as one of its 2004 AZ's FINEST honorees. The award is given to businessmen and women who are active in volunteer roles while excelling in the business community. In return for her recognition, France has agreed to raise a minimum of \$2,000 on behalf of the foundation.

■ The National Utility Contractors Association of Arizona has awarded Snell & Wilmer attorney Chuck Keller with the 2003 Mark Dryer Safety Award for taking a proactive role to promote safety in the workplace. Keller, a labor and employment law attorney, focuses his practice in occupational safety and health matters for employers and contractors. He regularly presents on worksite safety issues to businesses and municipalities in Phoenix, Tucson and other cities throughout the state.

■ Randy Stokes, a partner with Lewis and Roca, has been named to the board of directors for the Arizona Chapter of the ALS Association. The association is the only national not-for-profit agency dedicated to fighting amyotrophic lateral sclerosis (ALS). Each year, over 5,000 Americans are diagnosed with ALS, also known as Lou Gehrig's disease. ■

Paralegal Division helps paralegals pursue certification

By Amy S. Davis
Special to Maricopa Lawyer

Recently, the Paralegal Division conducted an 8-week review course to help Maricopa County paralegals prepare for the Certified Legal Assistant (CLA) examination offered by the National Association of Legal Assistants (NALA).

The course was taught by CLA-certified division members who provided a comprehensive review of materials and additional insight into various topics. The classes were interactive and designed to encourage questions and answers. They provided a structured and time-committed path of study which was critical for the attendees.

The CLA examination requires successful completion of a 2-day examination, which leads to the CLA or CP designation. NALA also offers specialty examinations, which lead to the CLAS designation. The Paralegal Advanced Competency Examination (PACE) offered by the National Federation of Paralegal Associations (NFPA) requires successful completion of a 4-hour computerized test that is tailored for paralegals with more years of experience and leads to the Registered Paralegal (RP) designation. Both examinations are a measure of the knowledge and expertise of paralegal professionals, and symbolize competence and excellence in the profession to prospective employers.

For more information on the criteria necessary to qualify for the examinations, you can log on to NALA's website at www.nala.org or NFPA's website at www.paralegals.org. The next CLA examination is scheduled for July 23-24. The application deadline is May 15, 2004. The PACE examination is offered at a local testing center and can be scheduled at the applicant's convenience upon selection as a candidate to sit for the examination.

If your goal is to become part of the elite group of certified paralegals, the Paralegal Division can help you with either, or both, of the examinations. They offer the CLA Review Course as well as the PACE Review Course. The PACE Review Course also is taught by members of the Division who have attained the RP designation. Our successes are your success, so sign up and let us help you attain your certification today. The next CLA Review Course is scheduled to commence on Saturday, May 15, 2004. A PACE Review

Course will be offered in the fall.

For those who attended the recent CLA Review Course, congratulations on completing the course and examination and good luck with your results! Special thanks are due to our volunteer instructors for lending their time and expertise.

For more information on the Paralegal Division's review courses, please log on to our Web site at www.maricopaparalegals.org or contact me at adavis@aztriallaw.com. Maybe now is the time for you to validate your education and experience as a paralegal, and make yourself more marketable in the legal industry. You can enhance your credentials and distinguish yourself in the growing paralegal profession by pursuing paralegal certification today.

► Amy S. Davis, CLAS, RP, is a paralegal with Rake & Catanese and a Paralegal Division board member. ■

Pendleton...

Continued from page 2

Kissich, a paralegal instructor at Lamson College; and, Paralegal Certification by Clarisse S. Pendleton and Tricia A. Kramer. Heather V. Addis, the MCBA's Paralegal Division Resource Committee Chair, served as moderator.

All in attendance benefited from the presentations, the many questions regarding career development and the reality of working in a law office as well as the networking interaction between working paralegals and students. As one student put it, "The handouts were worth the cost of admission!"

One of the many benefits of Paralegal Division student membership is the Mentor Program. A paralegal student can request a working paralegal member to mentor and assist with questions. If you are a student or paralegal interested in the mentor/mentee program, please contact me at cpendleton@rlaw.com.

The MCBA Paralegal Division supports the paralegal community with a comprehensive Web site at www.maricopaparalegals.org. Please visit the site and check out the links. For more information about membership, please contact me at cpendleton@rlaw.com or Sonya Brant at the MCBA sbrant@mcbabar.org. ■

Die...

Continued from page 8

the attendees learn from this seminar? How will lawyers have a better understanding of the legal issues surrounding medical decisions, including the right-to-die debate?

Colby: Attendees will learn what the right-to-die laws are and why they are important. They will also learn the pitfalls in process. They will better understand the role of law in the decision making process, including how evolving technology continuously affects it. What lies ahead will be discussed, as medical technology is always increasing, and the law needs to keep up.

The Estate Planning, Probate and Trust annual ethics seminar will be held from 1 to 4:30 p.m. on Friday, May 7, at the ASU Downtown Center in Phoenix and may provide up to 3 hours CLE ethics credits. The MCBA member cost to attend is \$80 for attorneys and professionals and \$65 for paralegals and public lawyers. The self-study package for members is \$90. The non-member cost to attend is \$130 for attorneys and professionals and \$90 for paralegals and public lawyers. The self-study materials for non-members is \$130. Seating is limited to the first 50 registrants. Contact Geoff Cummings at (602) 257-4200 ext. 107 to register. ■

JENSEN & POLLITT
is pleased to announce that

KERRI KAMIS
has joined the firm as an associate

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LEGAL MOVES

■ Andrew C. Pacheco has joined Ryley Carlock & Applegate as an associate in the firm's litigation practice group. Prior to joining the firm, Pacheco (J.D. 1996, University of Houston) served as an assistant U.S. Attorney.

■ Jeffrey S. Leonard and Shannon M. Mason have joined Sacks Tierney. Leonard, a shareholder in the firm, practices in the areas of commercial litigation and appeals. Mason, an associate attorney, practices in corporate and business transaction law.

■ Robert C. Van Voorhees has joined Herbert Schenk as of counsel. Van Voorhees, formerly of counsel at Bryan Cave, practices in the areas of commercial litigation, bankruptcy and real estate transactions.

■ Nancy Lashnits, formerly an attorney with the Internal Revenue Service, has been made partner at Snell & Wilmer. Lashnits (J.D. 1980, Golden Gate University) will focus her practice on municipal and public finance and federal income taxation.

■ Carrie M. Gallagher has joined Lewis and Roca as an associate and will focus her practice on real estate finance. Prior to joining the firm, Gallagher (J.D. 2001, Washington University) was an associate at a Chicago firm.

■ Hector Diaz has joined Quarles & Brady Streich Lang's white collar/special matters criminal defense group as an associate. Prior to joining the firm, Diaz served as a deputy public defender for Maricopa County.

■ James Valletta has been named a member of the firm of Warner Angle Hallam Jackson & Formanek. Valletta (J.D. 1995, Gonzaga University) will continue to focus his practice in the areas of real estate and commercial transactions.

■ Edward M. Zachary and Stanton E. Johnson have joined the Phoenix office of Bryan Cave. Zachary (J.D. 1968, University of Chicago) joins the firm as of counsel in the bankruptcy, restructuring and creditor's rights client service group. He formerly practiced at Gallagher and Kennedy as of counsel. Johnson (J.D. 2002, University of Utah) joins the firm as an associate in the real estate development, construction and project finance client service group. He formerly practiced as an associate with Jennings Strouss & Salmon.

■ Bruce B. May has joined Jennings Strouss & Salmon as a partner. May (J.D. 1978, University of Oregon) will focus his practice on real estate law and the representation of national, regional and local developers, homebuilders and investors in all phases of real estate investment and development. Prior to joining the firm, May was a partner at Quarles & Brady Streich Lang.

■ Eric C. Wilhem and Matthew D. Bedwell have joined Gust Rosenfeld. Wilhelm (J.D. 1999, ASU) will focus his practice on commercial real estate transactions. Bedwell (J.D. 2003, UCLA) will practice in the area of civil litigation.

■ Denise McClain has joined Quarles & Brady Streich Lang as an associate in the firm's trusts and estates group. McClain (J.D., ASU), also a Certified Public Accountant, will focus her practice in estate planning, probate



Bedwell



Gallagher



Johnson



Lashnits



Leonard



Mason



May



McClain



Munns



Valletta



Wilhelm



Zachary

and trust administration, guardianships and conservatorships, general business and corporate transactions, as well as taxation.

■ Christopher A. Munns has joined the

litigation department of Brown & Bain as an associate. Munns (J.D., Baylor University) will concentrate his practice in intellectual property, trademarks and copyrights. ■

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LEGAL BRIEFS

ACJC names interim executive director

The Arizona Criminal Justice Commission has appointed John A. Blackburn as interim executive director of the agency. He will take over operations from outgoing director Michael D. Branham, who was appointed in March to head the Arizona Department of Juvenile Corrections.

Blackburn brings more than 24 years of criminal justice experience to the position. He retired in November 2000 from the Mesa Police Department as lieutenant over the Planning and Analysis Division. He has been with the ACJC since 2002 and has served in a number of leadership roles within the agency.

ABA will hold construction law forum in Scottsdale

Maricopa County attorneys are invited to attend the ABA Forum on the Construction Industry at the Scottsdale Hyatt Regency at Gainey Ranch on Friday May 7. The breakfast meeting will begin at 7:30 a.m. and run until 9 a.m. The cost is \$30.

The annual forum will focus on false claims from an owner's perspective, highlighting basic liability requirements and federal and state statutory frameworks. The presentation also will provide classic examples of false claim liability and include a discussion of the landmark false claim decision for the Los

Angeles County Metropolitan Transportation Authority.

The ABA Forum on the Construction Industry is one of the leading construction law educational programs and provides opportunities for construction lawyers to learn more about cutting edge topics that impact their practice.

Space for the May 7 forum is limited and pre-registration is required. You may register by email to sullivan@staff.abanet.org by phone at (312) 988-5579.

AFLSE names first executive director

The Arizona Foundation for Legal Services & Education (AFLSE) has named Kevin Ruegg its first executive director. Ruegg brings more than 20 years of experience working with non-profit agencies, most recently with the Nebraska/Iowa agency Family Housing Advisory Services.

Ruegg's education includes a B.A. in Business from Kansas Newman University and a master's degree in Human Resource Development from Webster University. She is currently finishing her doctoral degree in management from Walden University.

The AFLSE provides law related education programs to educate youth about the justice system and strengthen their participation in American democracy. In 2003, the foundation also awarded nearly \$2 million in grants to more than 20 non-profit organizations providing free legal services to those in need. ■



Ruegg

Classifieds

Maricopa Lawyer Classifieds now online. Visit www.maricopabar.org/classifieds

POSITIONS

ASSOCIATE ATTORNEY Dynamic AV-Rated law firm seeks associate with two to six years of commercial litigation experience. Applicants must be admitted to the Arizona Bar and have excellent academic and professional credentials. Please send resume to: John E. DeWulf, Roshka Heyman & DeWulf, 400 E. Van Buren, Suite 800, Phoenix, AZ 85004-3906

CONSTRUCTION ASSOCIATE Lewis and Roca LLP is seeking an associate with two to three years commercial litigation experience to join our construction litigation practice. The candidate will possess strong writing and analytical skills, an ability to pay attention to detail, and demonstrate skills to timely respond to the day-to-day needs of a construction industry-driven practice. The candidate must have a strong desire and willingness to develop business and enthusiastically attend construction industry-specific functions. The person will be mature and self-confident, and after training, be able to interact with our clientele in a productive manner. Superior academic credentials are required. We offer a competitive compensation package, including productivity and discretionary bonuses, and full benefits. We will pay relocation and bar exam expenses for a qualified candidate. If interested, please reply in confidence with resume, transcript and writing sample to: Julie Moy, Director of Lawyer Recruiting, jmoy@irlaw.com, or 602-734-3930.

CONTRACT ATTORNEY Construction defect law firm seeks contract attorney w/ min. 2 yrs. exp. to assist Phoenix office with appearances, etc. Please fax resume to 877-242-2674.

ROTHSTIEN DONATELLI LAW FIRM has an opening for a legal secretary in the Tempe office. The firm specializes in all areas of Tribal Law. The Tempe office includes 3 attorneys and 1 paralegal. Must be an experience legal secretary with strong typing/editing skills and be well organized. The position also serves as receptionist and includes frequent client contact. Contact: Administrator, P.O. Box 8180, Santa Fe, NM 87504 or email mpiotrowski@rothstienlaw.com Reference "AZ Secretary"

OFFICE SPACE

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Was Popevis Arizona's first class action construction defect trial?

An inside look at the six week trial

By Kenneth Januszewski
Special to Maricopa Lawyer

On Thursday, Feb. 5, 2004, citizens who answered the Jury Commissioner's summons were shepherded into a courtroom in the old courthouse in Phoenix for jury selection in the case of *Popevis v. Beazer*. In this class action construction defect case, homeowner Jay Popevis was the lead plaintiff in the suit against Beazer Homes. Maricopa County Superior Court Judge Janet Barton presided.

Twenty-five issues certified as class issues ultimately went to the jury.

Voir dire took place in another courtroom large enough to hold the necessary number of prospective jurors and the 14 lawyers representing the plaintiffs, defendant and eight subcontractors. When trial began in Barton's courtroom, the subcontractor lawyers found themselves seated at two rows of folding tables behind the bar where the spectator benches are usually found. One row of benches remained against the back wall for exhibit boxes and the occasional visitor.

Likely none of the prospective jurors suspected nine of them would end up hearing

one expert after another for the next six weeks. Closing arguments lasted another two days, and ended at 12:30 p.m. on March 12. The jurors deliberated until about 3:00 p.m. on Thursday, March 18, before reaching a verdict in what all who participated believe is the first class action construction defect trial in Arizona history.

The structure of this case was unique. The few homeowners who were permitted to testify were primarily used as filler for times when experts were not available.

Plaintiffs and Beazer gave their opening statements, as did a few subcontractors, at the beginning of trial. Most of the subcontractors took up the court's offer to wait until their portion of the case was tried before making their opening statements.

The case was tried by each professional discipline. Structural issues were tried first. Plaintiffs put on their expert. Then Beazer presented its structural case. Finally each subcontractor with structural issues (framing, drywall etc.) put on what is known as their person most knowledgeable (PMK) and their expert.

Next, architectural issues were tried (roofing, windows etc.). Then geotechnical issues began (primarily having to do with perimeter walls). Within minutes, however, new opinions from the stand caused those issues to be shelved pending during-trial discovery.

Instead, plumbing and HVAC issues were tried, as both often are the subject of testimony by the same mechanical engineering expert. I represented the plumber and gave my opening during the fourth week of trial, which I felt was an advantage.

My opening was made immediately before the issues were tried, unlike the openings made by plaintiffs and Beazer four weeks earlier, which by that time nearly qualified as ancient history. My opening was a combination of what was already in the record and what I expected the evidence would be, making it less plain vanilla because of the reduced chance of being contradicted, and because the expert testimony to come was easy to anticipate.

During trial, the court set briefing schedules for indemnity issues between Beazer and the subcontractors. These were to be tried toward the end of the case but were never tried. The judge let her "preliminary" thoughts on the matter be known. That guidance was sufficient for Beazer and the subcontractors to agree to a resolution of the indemnity issues, cutting out Beazer's witnesses on the issue and several subcontractor witnesses as well.

The court ordered counsel to meet to agree on jury instructions, but getting that many lawyers to agree was easier said than done. This was just about the time the weather turned hot and the air conditioning in the old courthouse gave out. The lack of cooling and the fact that we lawyers missed one deadline after another for completing the jury instructions caused a little heat. (The ever polite and courteous Judge Barton told us that while golfing on the weekend she thought of the lawyers in the case. We assumed it was while she was teeing off.)

The last two days of the trial consisted primarily of cost-of-repair experts. Because the case was a class action, the court faced repeated motions by Beazer to decertify the entire case and by the subcontractors to decertify the issues affecting them. Although Beazer never convinced the court to decertify the entire case, the court did decertify many issues ñ up to the day before the cost-of-repair experts testified. All of this led to considerable changes in opinions that could be offered. When the cost-of-repair experts testified, the new cost-of-repair reports were still warm to the touch.

Plaintiffs, Beazer and the subcontractors all rested their cases on the last day of trial. The procedure which allowed plaintiffs to put off resting their case was objected to by many lawyers, but so was just about every decision Barton made while piloting this case through uncharted waters.

Having survived the trial, each participant likely has a better understanding why "trial" also means a "test of faith, patience, or stamina through subjection to suffering or temptation." Barton undoubtedly will not soon forget the multiple linear feet of motions she had to read from the time she took over this case in August 2003 until the last day of trial. More than once, she had to work through a pile of motions over a foot thick. By the end of trial even the most unrepentant motion filers at least felt bad about it.

The jury turned out to be one of the reasons we may have faith in the jury system. Anyone who has tried even a two-day red-car/blue-car case has probably seen jurors nodding off. Six of the nine jurors on this panel were still taking notes through closing arguments. At least one juror had run out of paid jury leave before closing arguments started, yet she continued to perform her constitutional duties — presumably serving without her usual pay.

As in any case tried to a jury, what the lawyers think should happen and what the jury decides can be very different. The plaintiffs put "on the board" a cost to repair exceeding \$8 million. Beazer said that if defects existed, the amount to fix everything was not quite \$900,000. The jury awarded \$753,000.

Although insurance issues were not mentioned in this breach of contract case, the jurors, after the verdict, said they understood that many of the items they were being asked to decide could be affected by insurance issues. They said, however, that they had made a concerted effort to ignore any potential insurance issues in deciding the merits of the case. One juror said that they had a newfound respect for lawyers and were going to defend our profession in the face of any lawyer joke teller.

My client's part of the case is now over via a settlement with Beazer. Barton has, however, already granted one motion to exceed the page limit for one subcontractor's motion for new trial.

And the wheels of justice roll on. ■



Foreign journalists attend media law presentation at Jennings Strouss & Salmon

Jennings, Strouss & Salmon, in conjunction with the World Affairs Council of Arizona, hosted a media law presentation March 12 for fourteen journalists visiting from Algeria, Egypt, Gaza, Kuwait, Jordan, Lebanon, Morocco, Oman, Saudi Arabia, Tunisia and Yemen.

Douglas Gerlach, a Jennings Strouss partner, led the discussion, which focused on U.S. defamation and privacy law in the media. Meanwhile, Jennings Strouss partner Gerit Steenblik, who recently returned from a two year humanitarian mission in West Africa, served as moderator. The journalists were selected by the World Affairs Council to learn about media law in order to shape legal developments in their own countries.

In addition to a discussion of the principles underlying journalism and fair reporting in the U.S., the group engaged in an exchange of perspectives on the challenges faced by journalists in the Near East. Dialogue was exchanged on the fundamental principles necessary to balance the rights of journalists to report freely and the role of the law to protect privacy and guard against defamation.

"The journalists were intrigued to learn that an American journalist and publisher could be sued for money damages and that liability coverage existed for such claims."

"The journalists were intrigued to learn that an American journalist and publisher could be sued for money damages and that liability coverage existed for such claims," Steenblik said.

Gerlach added that he was hopeful that the presentation impressed the journalists with the extent to which Americans are willing to protect the right of free expression.

"Perhaps more than anything, I hope we were able to convey a strong sense of how much a free media is valued in the United States," he said. ■

Legal Brief

VLP offers free Consumer Law CLE

The Volunteer Lawyers Program and the State Bar Legal Services Committee is presenting a CLE program on Consumer Law and Motor Vehicles on Wednesday, May 19, noon to 1:30.

Presenters will include Hon. Hugh Hegyi, Hyung Choi, Veronika Fabian, and Negatu Molla. The program of up to 1.5 hours of CLE credit is free to attorneys who volunteer 2 hours with VLP. The cost is \$25 for all others. To register, call VLP at 602-258-3434 ext. 2840. ■

OPINION

Lawyer discipline focuses on problem solving, education

By Robert Van Wyck
Special to Maricopa Lawyer

Self-regulation can be challenging. Some people tell the State Bar that we're being too tough, and others say we're not tough enough.

A recent commentary published in *Maricopa Lawyer* (April 2004) about the State Bar's lawyer regulation system requires a response. I welcome this opportunity to better inform attorneys about the State Bar's lawyer regulation process.

More than ever, the State Bar's system focuses on proactively resolving minor lawyer-client disputes before any formal charge is made. We have learned that sometimes simply educating the client, or the lawyer, goes a long way to resolving conflicts. We often do it with a few phone calls and no time-consuming paperwork. This is part of the mission of our Attorney/Consumer Assistance Program (A/CAP). It acts as a front-end screening process to filter out what should never get into the system, including claims without merit. A/CAP also is able to more quickly identify serious problems and expedite their investigation.

Our system has checks and balances to ensure fairness. A probable cause panelist must decide whether to go forward with cases presented by bar counsel; hearing officers review evidence, listen to both sides and act as independent judges; the disciplinary commission acts as an appellate board and, of course, so does the Arizona Supreme Court. They are among many steps along the way to make sure due process is followed. And in Arizona, that process is one of the most visible in the country. For better or worse, our files are open for inspection once a case is dismissed or probable cause is found.

Bar members developed the lawyer regula-

tion system and continue to be involved every step of the way. The public has a role in oversight of lawyer conduct as well. Public members comprise three of the nine seats of the Disciplinary Commission. The Arizona Supreme Court mandates that we protect the public as well as the integrity of the legal profession.

Focus on Education

We've made a number of changes over the past few years and much of them focus on getting lawyers into self-improvement programs when necessary. While serious misconduct requires serious sanction, we recognize that many of the troubles are best resolved through assistance with law office management issues, conflict resolution and education. The State Bar has four diversion programs which focus on educating and assisting lawyers so the offending conduct is not repeated (see box at right). We don't swing heavy-handed hammers for minor infractions. However, we do use the full force of the system to pursue charges of egregious misconduct.

Meeting Time Standards

While doing the job well is important to the bar, so is doing it in a timely fashion. Currently, more than 90 percent of our caseload meets the Supreme Court time standards. The goal is to move each case from first contact to dismissal or filing of a formal complaint within 11 months. And many of our cases with minor infractions take much less time than that.

Future Improvements

Just as we seek to help attorneys, we also search for ways to improve the bar's lawyer regulation system. For the past six months we have been undergoing a thorough review of

our practices. We are looking at many potential changes including 1) improving the frequency and clarity of our communication with respondents and complainants as well as demystifying the process and; 2) focusing on ways we can assist lawyers who work alone or in small practice settings.

We recognize that one of the reasons lawyers in small or solo practice settings are prone to complaints is because they often don't have the support and systems of larger firms. Recognizing that, we are looking to put new programs in place that aim to better support those practitioners from the very beginning of their law practice all the way through the closing of their law office.

We seek to start by working more closely with the Arizona law schools and lawyers in the first year or two of practice. We know that if we help educate them about how to set up trust accounts and how to develop good business systems, it is much more likely that they will better serve their clients and avoid complaints.

For those attorneys in mid-career transition, the State Bar is looking at ways to identify when they start their own firm so we can proactively send out our specialized set-up packets containing practical information about running a law office. Of course, you can ask for one at any time. And when it's time to wind down a lawyer's practice, the bar may become involved by serving as a conservator. The bar helps lawyers who retire, pass away or become disabled by assisting in the smooth transition of their client files.

No system this complex is perfect and we work hard to improve any areas of weakness. But there is no doubt that the bar is committed to making our system better through early education, problem solving and rehabilitative programs.

Our processes are well documented, our system is open and our actions are accountable. Everything we do is in the interest of maintaining the highest ethical and professional standards, which is in the best interest of the public and all Arizona lawyers.

► Robert Van Wyck is chief bar counsel for the State Bar of Arizona. He can be reached by e-mail at robert.vanwyck@staff.azbar.org.

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

State Bar Diversion Programs for Attorneys

For minor infractions, the State Bar now has four diversion programs to which attorneys can be referred and a fifth program that provides counseling on prospective behavior.

■ **Trust Account Ethics Enhancement Program:** Since many trust account problems are the result of management issues or misunderstanding the requirements rather than intentional misconduct, our focus is getting attorneys the information necessary for the proper use and maintenance of the accounts.

■ **Ethics Enhancement Program:** A daylong session that focuses on teaching lawyers about the most common areas that trigger ethical violations. Those include diligence, communication, conflicts and scope of representation.

■ **Ethics Hotline:** Thousands of lawyers call our hotline each year. Our ethics counsel give attorneys free ethics advice *before* there's a problem. It's yet another solution aimed at assisting lawyers in avoiding unethical behavior and the resulting complaints.

■ **Law Office Management Assistance Program:** Since communication and office systems often are at the core of troubles, the State Bar's Law Office Management Assistance Program (LOMAP) is frequently in action. LOMAP assists attorneys with a wide range of issues including developing better case management systems, communication processes with clients and assisting in developing effective administrative procedures. LOMAP services are not only for lawyers facing disciplinary inquiries but also for any lawyer who wishes to improve his/her office systems.

■ **Member Assistance Program:** Stress in the legal profession can lead to personal problems. Perhaps that's why referrals to our Membership Assistance Program are on the rise. A mental health professional and fellow bar members are available to assist lawyers when their substance abuse or mental health problems interfere with their professional life. It's clear that assistance with these personal problems helps reduce potential harm to clients.

Hundreds of attorneys have participated in these diversion programs. Many of them go in skeptical, but often leave enlightened by the experience. The attorneys overwhelmingly give these bar programs high scores and positive comments. It's clear that attorneys and clients are served well through education and self-improvement. ■

Everroad...

Continued from page 2

MCBA's Web site at www.maricopabar.org for more information.

Sign up for one of the MCBA's fantastic CLEs. From "Bridging the Gap Between Law School and Private Practice" to tips for young lawyers to preparing cases in e-courtrooms, the YLD offered plenty of practical (and interesting) options for young lawyers in the last twelve months. If you have any recommendations or requests for a specific CLE topic, please feel free to contact one of us at the MCBA.

Consider running for a position on the board of the Young Lawyers Division during the next election. Or opt for a position on one of the many YLD committees. We can always use help on the Barristers Ball, Law Week, and Domestic Violence committees. In fact, my active involvement with the YLD began four short years ago when I offered to help with corporate sponsorship for the annual Barristers Ball.

While the MCBA and the YLD provide us with many social, networking, professional development and leadership opportunities, we need to reach out to the community as well. Through the Barristers Ball, the YLD raises thousands of dollars for wonderful charities. Law Week gives us an avenue to provide the community with free legal advice. The YLD's Domestic Violence committee is always successful at gathering food, clothes, money and other necessities for victims of domestic violence. The Volunteer Lawyers Program represents the MCBA's long-standing commitment to providing outstanding pro bono work to the community. Similarly, the Lawyer Referral Service provides affordable legal representation to those who do not qualify for pro bono assistance. Check out these opportunities and help us highlight the philanthropic side of our profession.

Read your *Maricopa Lawyer* and your Friday Faxes. Spend a few minutes on the MCBA Web site. Consider your options and get involved! ■

Write a letter!

We welcome letters to the editor. Letters generally should be no more than 300 words long. *Maricopa Lawyer* reserves the right to edit all letters for length. Letters to the editor can be e-mailed to maricopalawyer@mcbabar.org or mailed to: Editor, *Maricopa Lawyer*, Maricopa County Bar Association, 303 E. Palm Lane, Phoenix, 85004.

VLP attorney enjoys role as champion of the underdog

By Philip Zerbe
Special to Maricopa Lawyer

When a recent VLP client sought help for her problem, she was a single parent temporarily out of work. A lending company had promised to reduce her monthly mortgage payment, but the scheme actually increased her mortgage by \$300. Then the company tried to take her house.

John J. Nigorski, named VLP's Attorney of the Month, said the case was full of "twists and turns." But with the support of his firm, he helped the victimized homeowner come out on top.

Attorneys at Nigorski's firm, Mohr Hackett Pederson Blakley & Randolph, regularly assist VLP with intake evaluations for people seeking pro bono representation. While conducting intake evaluations at VLP during the summer of 2002, attorney Abbie Shindler interviewed the client, empathized, and took the case back to the firm as a pro bono assignment.

Nigorski agreed to represent the client and filed a lawsuit for predatory lending, but the lender declared bankruptcy in Illinois. Meanwhile, the lender was trying to foreclose on the client's home.

For a number of reasons, Nigorski advised the client to file Chapter 13 bankruptcy, giving the bankruptcy court in Arizona jurisdiction over the matter. He and Kevin McCoy, another Mohr Hackett volunteer, then raised the predatory lending claims in the bankruptcy. Eventually the loan was renegotiated to terms that favored the injured party.

Born in Milwaukee, Wisconsin, Nigorski's family moved to Arizona when he was very young. He attended Our Lady of Perpetual Help in Scottsdale, Brophy Preparatory school in Phoenix and obtained

an undergraduate degree in psychology from the University of Arizona. A psychology law course teacher encouraged him to pursue a legal career. While studying law at Arizona State University, he interned at Mohr Hackett and joined the firm when he graduated in 1987.

VLP has previously recognized Mohr Hackett Pederson Blakley & Randolph for outstanding community service. "Mohr Hackett encourages volunteerism. They are extraordinarily humanitarian," said Nigorski. Although he specializes in securities arbitration, his pro bono cases usually involve consumer law issues.

"I like helping the underdog," he added. "VLP clients are at a disadvantage in disputes with unreasonable landlords, con men, fraudulent brokers, loan sharks or bait 'n' switch auto dealers. VLP cases help round out my legal expertise. Aside from the ethical obligation, it's all about the simple notion of giving back to the community to help others."

Nigorski also commented that pro bono work exposes him to a "large divergence of people" and a more "realistic picture of life outside the comfort of an office." His appreciation for VLP work has made him especially helpful to people who may need advice and perspective even more than legal representation.

VLP staff members recall the day an elderly couple came to meet with Nigorski about a problem with city officials. The couple had been asked to move into a shelter so their house could be fumigated. Nigorski quickly grasped that their larger concern was their fear of being displaced from their home. He didn't skip a beat when an insect crawled from inside the woman's purse and another appeared from her coat pocket. When the interview concluded, the couple left with their fears allayed. Whether representing VLP clients or merely advising them, Nigorski is an outstanding advocate for those in need.

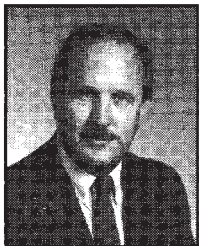
If you or members of your firm would like further information about pro bono opportunities through the Volunteer Lawyers Program, please contact director Patricia Gerrich at (602) 258-3434.

► Philip Zerbe is a paralegal volunteer with VLP. ■



Nigorski

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Volunteer Lawyers Program Thanks Attorneys

The Volunteer Lawyers Program thanks the following attorneys and firms who accepted cases to assist low-income clients during the past two months. Each attorney receives a certificate from the Maricopa County Bar Association for a CLE discount.

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James Condo, Snell & Wilmer
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