

Going solo?

The MCBA presents a comprehensive CLE series on the business end of starting your own firm. **Page 3.**

Clerks' candor stirs debate over secrecy shrouding Supreme Court decisions

By Joan Dalton
Maricopa Lawyer

At 10 p.m. on Dec. 12, 2000, two hours before the deadline that would subject Florida's electors to congressional challenge, the United States Supreme Court issued its decision in *Bush v. Gore*. The branch of government with no explicit constitutional role in elections had, in effect, chosen the nation's next president.

The *per curiam* opinion relayed that the majority justices felt justified in stopping Florida's court-ordered recount, which they perceived as an unconstitutional displacement of a role reserved for that state's legislature. Using what seemed to some legal scholars to be an intellectually weak equal protection analysis, the majority asserted that the Florida Supreme Court's contest provision was "not well calculated to sustain the confidence that all citizens must have in the outcome of elections."

In the *New York Times*, Ethan Bronner wrote: "[t]he majority justices claimed to have sliced the nation's Gordian knot of a succession crisis. We were expected to be grateful." The election decision will notably be among the most controversial ever made by the United States Supreme Court.

Indeed, John Paul Justice Stevens immediately spoke out on the December 12 decision by penning a piercing dissent:

Although we may never know with complete certainty the identity of the winner of [the 2000] Presidential election, the identity of the loser is perfectly clear. It is the Nation's confidence in the judge as an impartial guardian of the rule of law.

— See *Clerks* on page 6

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INSIDE

Information explosion

Winton Woods explains why the delete button can be a lawyer's best friend. **Page 5.**

To no longer be continued

This month's commentary bids a not-so-fond farewell to the Superior Court's continuance panel. **Page 15.**

Superior Court unveils new master space plan

By Jack Levine
Maricopa Lawyer

If you think it's difficult to keep track of all the new judges and court commissioners appointed in recent years, just wait until the year 2015. According to the new Master

Space Plan for Maricopa County courts, recently unveiled by Court Administrator Marcus W. Reinkensmeyer, there will be approximately 190 judicial officers needed in 2015 at five locations to handle 450,000 projected yearly court filings. Today, there are 120 judges and commissioners at three locations.

The Master Space Plan has been in development for the past 18 months and is largely the work of the prominent architectural firm of Hunt Jacobs in collaboration with Daniel H. Straub, Ph.D., a former USC Professor and a nationally recognized authority on court management. Several local work groups and committees consisting of judges, court administration, clerks office, county attorney and public defender personnel also were heavily involved in working with Hunt Jacobs and Dr. Straub on the plan's development.

"The primary objective of the Master Space Plan is to evaluate existing court facilities and future needs and to develop criteria for optimal delivery of court services for all Maricopa residents," Reinkensmeyer said.

He also pointed out that when the Old Courthouse at 125 W. Washington was built in 1929, Maricopa County had only 150,970 people. At that time, there were only 3,268 court filings which were handled by just three Superior Court judges. Since that time the county's population has swelled to over 3.2 million, with 128,373 yearly court filings handled by 91 Superior Court judges and 42 court commissioners. Currently, there are 52 judicial officers assigned to criminal cases, 30 to family law cases, 25 to civil cases, 17 to juvenile, three to probate, and one to mental health matters.

In addition to judges and commissioners, the Superior Court employs 1,592 support staff, while justice courts employ 205 in support staff. In addition, there are a total of 1,906 staffers in adult and juvenile probation and a combined total of 1,499 presently employed in

— See *Master Plan* on page 12



The MCBA thanked its board, section and division leadership with a wine tasting on Sept. 30. The event was presented by the Village Wine Cellar, while Orchid Fine China Bistro provided the hors d'oeuvres. Pictured from left: Village Wine Cellar proprietor Gregg Peron, MCBA Executive Director Leandra Lewis and YLD President Andy Everroad.

Appellate courts help shape election with rulings on what voters may decide

By Daniel P. Schaack
Maricopa Lawyer

As this issue of *Maricopa Lawyer* makes its way to your office around election day, Arizona's appellate courts have been wrestling with various elections cases. In the past month or so, they have decided issues regarding financial contributions to political parties, having the state refuse to place a candidate's name on the ballot, and keeping constitutional initiatives off the ballot. We turn to the latter case first.

In *Clean Elections Institute, Inc. v. Brewer*, No CV-04-0263-AP/EL, (Ariz. Oct. 7, 2004), the Arizona Supreme Court upheld a trial court's ruling that keeps Proposition 106 off the November ballot. Prop. 106 was an attempt to limit the effects of the Citizens' Clean Elections Act, itself the result of a 1998 citizens' initiative. The Act set up a system of

public financing of elections and established the Clean Elections Commission to oversee it. The commission's operating funds, as well as campaign funds for participating candidates, comes not from the state's general fund but from the Clean Elections Fund. This fund receives money from several sources, including taxpayer contributions and a surcharge on criminal and civil fines and penalties.

In addition to running publicly financed elections, the commission has other elections-related duties, including administering a voter-education program and running candidate debates. It also administers and enforces some elections laws.

A group known as No Taxpayer Money for Politicians sought to place Proposition 106 on the 2004 ballot. If passed, Section A of Prop. 106 would amend the Constitution to prohibit public financing of elections. Section C would require the Commission turn all money

COURT WATCH

in the Clean Elections Fund to the state's general fund and make the commission dependent on the Arizona Legislature for all of its funding. The combination of Sections A and C ran Prop. 106 afoul of the Arizona Constitution in a challenge filed by the Clean Elections Institute.

Article 21, § 1 of the Constitution provides that "[i]f more than one proposed amendment shall be submitted at any election, such proposed amendments shall be submitted in such manner that the electors may vote for or against such proposed amendments separately." According to Vice Chief Justice Ruth V.

— See *Courtwatch* on page 4

COLUMNS

MCBA cultivating new image, developing new programs



Jerome
ELWELL
MCBA PRESIDENT

As you may have noticed when you received your 2005 membership renewal, the MCBA look has changed. Hopefully the membership materials caught your eye. The new logo and colors are reflective of our goal of mixing longstanding traditions with new and exciting innovations. Look closely and you will see the exciting changes occurring at the MCBA.

Our new logo gives the MCBA a fresh look that embraces change. Our goal is to stay current with the needs of our members. Accordingly, the logo isn't all that is changing. You will see enhancements at the bar designed to improve member benefits and

values, like the promotion of community partnerships to strengthen our programming. The partnerships we have already formed as a result of the first and second county attorney debates and the panel of business experts involved with the upcoming Going Solo business series and Leadership Institute are great first steps. We are excited about becoming even more interactive with business leaders about prominent community issues.

Simultaneous with our new look is a new and stronger emphasis on membership opportunities and benefits. Our focus, demonstrated recently with the leadership wine tasting and the Barrister's Ball kickoff fundraiser wine tasting events, is just a start. These events, and others like them, give members the chance to mingle with friends and get acquainted with other professionals one-on-one in a small venue. With events like this, you will have the opportunity to build relationships for both your benefit and that of the MCBA. An old tradition with a new twist.

Continuing Legal Education, another mainstay for the MCBA, is likewise getting a renewed emphasis. We are focusing on broader CLE opportunities for our members with programs like the upcoming Going Solo business series and the Leadership Institute. These programs reflect the innovative ways we are incorporating continuing legal educa-

tion into areas that are somewhat outside of the box for the everyday practice of law.

Lawyer Referral Service, too, has embraced the concept of mixing the old with the new by planning mini-law fairs on a quarterly basis. These law fairs will provide the public with free legal advice from volunteer panel members. Each fair will feature a specific practice area. The first, a family law legal fair, is tentatively set for Nov. 20 (feel free to contact the MCBA to volunteer as a panelist — your energy is welcome).

By creating these law fairs, LRS will utilize and strengthen community partnerships, demonstrating that the MCBA can effectively benefit many diverse groups at once.

The MCBA also is laying the groundwork for longstanding partnerships with both the media and the community. Media relations build credibility and recognition for the MCBA, both in the business community and with the public while allowing us the medium to reach other organizations to spread the word about the value of the MCBA, its programs and its volunteer base.

This column is too short to list all of the changes and enhancements under way at the MCBA. We are excited about each and every one of them and, of course, they would be unattainable without the drive and ambition of our great staff support and the service of our members. ■

Cutting E-dge Success theme of paralegal conference

On Monday, Nov. 8, at the Arizona Historical Society Museum, paralegals will gather to attend the MCBA Paralegal Division's fifth annual Arizona Paralegal Conference, 2004. Given the rising attendance from the past four years, this conference has become the premier event for paralegals in Arizona.

Gov. Janet Napolitano has proclaimed Nov. 8 Arizona Paralegal Day. This day is an opportunity to honor the paralegals in your firm, your corporation, or your governmental agency by sending them to the Arizona Paralegal Conference.

This year's theme, Cutting E-dge Success, includes the following five topics: Electronic Filing in Various Venues; Entertainment and Sports Law; Ethics: Emerging Technology Issues; Electronic Management Tools and Exhale: Stress-Free Career Management. The conference offers six hours of continuing legal education, networking opportunities with other paralegals and vendors, a continental breakfast, a buffet lunch, a museum tour and many wonderful door prizes, including a laptop computer, a PDA and a Go Video VCR/DVD Player.

The Paralegal Division will be awarding five paralegal scholarships to students enrolled in an ABA-approved paralegal program in Maricopa County. A fifth scholarship, recently established by Snell and Wilmer in memory of division founding member Marilyn Benesch, will be awarded to a paralegal student with an emphasis on volunteering and community service.

The Paralegal Division will honor two paralegals with the establishment of two awards: Paralegal of the Year and Paralegal Member of



Clare
PENDLETON
PARALEGAL DIV.
PRESIDENT

the Year. Nominations have been gathered and the selection of the two candidates will be made by a three-member panel from the MCBA board of directors.

This price is a bargain for all that is included, the six hours CLE credit, networking, food, museum tour, and the experience. Paralegal Division members will pay \$150; non-members \$200, student members \$50 and student non-members \$65. Sign up early, registrations at the door will be assessed an additional \$25. For more information and a conference registration form, please go to www.maricopaparalegals.org or telephone Kim Carolan at the MCBA offices (602) 257-4200, ext. 138.

The MCBA Paralegal Division supports the paralegal community with a comprehensive web site at www.maricopaparalegals.org. For more information about the Paralegal Division, contact Clare Pendleton at president@maricopaparalegals.org. ■

Correction

In the October issue of *Maricopa Lawyer*, Arizona Paralegal conference speaker Tricia Schafer's personal training business was incorrectly identified. The correct name of her business is Starting Now Fitness. ■

2005 Barrister's Ball to benefit Justice Learning Center

The Young Lawyers Division is pleased to announce the 2005 Barrister's Ball, which will be held on Saturday, Feb. 26, 2005 at the Arizona Biltmore Resort. This annual event will feature both a live and silent auction to benefit the Justice Learning Center and Museum.

The Justice Learning Center and Museum is a project aimed at giving its visitors a sense of the history of Maricopa County, its courts, cases, and important role of law in our society. Upon completion, which is scheduled for late 2005, it will be housed in and around a restored cellblock on the sixth floor of Maricopa County's Historic Old Courthouse.

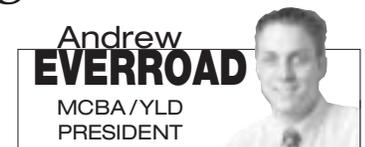
The museum's target population is all ages, from young school children to adults. Young visitors will be able to see first hand what it was like to be incarcerated in a jail from the early 1920s. The adult population will be provided with a historical review of

the criminal justice system.

The centerpiece of the museum will be a five to seven minute multi-media display presenting the justice system in words, sounds, and images, including the roles and functions of law enforcement, courts and corrections. Adjacent conference rooms on the sixth floor will host a diorama of displays depicting some of Arizona's most famous cases and the evolution of the court system in Maricopa County and throughout Arizona.

Two other courts in the downtown area, the Phoenix Municipal Court and the United

— See *Andy* on page 11



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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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'Going Solo' series will offer cutting edge business expertise

On Friday, Nov. 5, and Saturday, Nov. 6, the Maricopa County Bar Association will present a business series seminar for attorneys interested in starting their own practices and for those who already have one.

"Going Solo" will center on the business side of running a law firm, focusing on topics such as: finance and accounting; business development and marketing; human resources and payroll; and professionalism and risk management

The series will feature business experts from a diverse group of organizations, including Alliance Bank, Paychex, Vista Productions, CBIZ Miller Wagner, Inc. and the Law Office of Ralph Adams.

Several of Going Solo's faculty members shared some of their expertise as a preview of the upcoming series. Donna Gandre, Vice President of Alliance Bank; Ralph Adams, Esq., of the Law Office of Ralph Adams; and Sheila Martin, President of Vista Productions, all provided *Maricopa Lawyer* with a question and answer that will be covered at the seminar.

Donna Gandre, VP, Alliance Bank of Arizona:

Q: *Since I'm just starting out, how can I get financing for my new firm? I thought that financial institutions wanted to see three years of business financial statements before they will consider any type of financing.*

A: There are several potential financing options for "going solo." A home equity credit line is an excellent funding source if your

home value supports it. Other alternatives are SBA 7-A financing from a local bank and lease financing from equipment vendors. While caution is warranted here, one shouldn't overlook the unsecured credit often available through credit cards as a "back up" source of liquidity. The important thing is to plan realistically for what you'll need to spend to set up your office, what your minimum ongoing overhead will be and realistically determine how long it will take to translate "billable hours" into collected fees. Local CPA firms have experience advising professional clients and a good banker can also help you assess your start up and overhead costs, as well as potential financing resources.

Ralph Adams, Law Offices of Ralph Adams:

Q: *What can be done to ensure that no client will ever file a bar complaint?*

A: The only way to guarantee that no client will ever file a bar complaint is to never take on clients. Of course that doesn't ensure that a non-client, including the courts or even the State Bar, will not file one. The unfortunate truth in this profession is that there are no guarantees against bar complaints whether meritorious or frivolous. However, a wise practitioner can minimize the likelihood of a complaint.

First suggestion: Communicate with your client. By far the vast majority of complaints about attorneys regard communication issues. The client may not understand the fee agreement, the scope of representation or the

progress (or lack of progress). It appears to be the lack of information which leads to complaints. By that I mean that clients are less likely to complain about a result which did not meet expectations if the attorney has communicated with the client about the matter.

Second: Say no sometimes. Remember that attorneys are not bus drivers. We are not obligated to take on every person who opens the door. If a potential client has already been fired by other attorneys, be cautious. If a client is unwilling (as opposed to unable) to pay a reasonable fee, that might indicate a lack of commitment on the client's part. In any event, be careful and choose your clients wisely.

Third: Stay away from domestic relations law. This may appear facetious. Unfortunately, it is not. Bar complaints are almost a cost of doing business in certain areas of the law. This results from many factors including the volatile nature of the dispute in which the client may be embroiled. Clients tend to have high expectations which may not be realized. When the goal is not achieved, the attorney is, of course, to blame.

Considering the relative "costs" of defending a bar complaint such as the time away from billable hours allotted to responding to the complaint, the stress involved in the challenge to your reputation and livelihood, and the monetary costs of defense, a little prevention may well prove worth the effort.

Sheila Martin, Vista Productions:

Q: *How does my community involvement impact the marketing of my firm?*

A: Never, never underestimate the importance of building the presence of your firm in your community. Serving on the board of a non-profit, participating in the fundraising efforts of an organization and generally

volunteering your time opens the way for increased exposure professionally and personally as well!

There is no substitute for the power of positive personal contact. Yes, it is time consuming and you are probably already working an exhausting schedule. However, it is vitally important to schedule time every week into your calendar for expressly the purpose of marketing. If you do not, you'll be surprised how quickly the weeks slip by without the benefit of an activity, which takes you out of the office. Making new contacts and expanding your network must be an ongoing, regular priority. It is equally important that you "choose well" your community service commitments. Find an organization that is or personal interest to you and were you feel you can truly bring benefit to the group.

And remember... Have FUN! Bring your life and energy to an organization with the spirit of camaraderie and see the positive benefits your firm and your partners will receive.

"Going Solo" will take place on Friday, November 5 and Saturday, November 6, 2004. The first two seminars take place on Friday. The first one runs from 9 a.m.-12:20 p.m. and the second from 1:30-4:45 p.m. The final seminar takes place from 9 a.m.-12:20 p.m. on Saturday. The cost to attend the entire series as an MCBA member attorney is \$190; MCBA member public attorney \$130; non-member attorney \$295; and non-member public attorney \$195. Individual sessions for MCBA member attorneys are \$75 each; \$55 each for MCBA member public attorneys; \$105 for non-member attorneys; and non-member public attorneys \$75 each. A total of 9 CLE credits can be earned, of which 9 hours can be ethics credits. For more information or to register, please contact Mona Fontes at (602) 257-4200 ext.131. ■

Rea appointed to Superior Court bench

Newly appointed Superior Court Judge John Rea will be sworn-in on Mon., Nov. 8, at 12:30 p.m. in the Board of Supervisors Auditorium, 205 W. Jefferson, Phoenix.

Rea, appointed in August by Gov. Janet Napolitano, is assigned to the family court department at the Southeast Facility in Mesa.

Prior to his judicial appointment he served as vice chief staff attorney at the Arizona Supreme Court, where he researched and evaluated cases appealed

to the court. Rea also spent six years in private practice handling personal injury defense and commercial litigation and served as an adjunct professor in the Arizona State University Law School Clinic.

He earned his law degree from the University of Arizona in 1977. Rea also has a B.S. in psychology and Christian service from Manhattan Christian College, as well as a B.S. in psychology and history from Kansas State University. ■

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Courtwatch...

Continued from page 1

McGregor, "[t]he clear import of this provision is that voters must be allowed to express their separate opinion as to each proposed constitutional amendment." Prop. 106 did not comply.

According to McGregor, there is no facial relationship between the two provisions of Prop. 106, and they do not advance a common purpose or principle.

"The purpose of section C, unlike that of section A, cannot be to eliminate public funding of political campaigns," she wrote.

"Section A accomplishes that purpose," she explained.

She noted that Section C was not meant simply to return to the general fund the money that would no longer be used for public funding of political campaigns. "One purpose of section C must be to deprive the Commission of its authority to make independent budgeting decisions by changing the funding source for the Commission and, concomitantly, to increase the amount of monies that go into the general fund."

Thus, McGregor and a unanimous Supreme Court concluded that Prop. 106 failed to propose a single amendment to the Constitution: "The question posed by section

C, whether Arizona's voters would choose to change the funding source for the Commission and make the Commission dependent upon a legislative appropriation to carry out its remaining duties, involves a principle quite different from the question posed by section A, whether the voters would choose to end public funding for political campaigns."

Also kept off the November ballot was independent presidential candidate Ralph Nader. He filed a federal action challenging the constitutionality of the laws that kept him off the ballot and seeking a preliminary injunction placing him on the ballot. The district court denied the injunction and he appealed.

The Ninth Circuit upheld the district court. *Nader v. Brewer*, No. 04-16880 (9th Cir. Oct. 15, 2004). Circuit Judges Andrew J. Kleinfeld, A. Wallace Tashima and Ronald M. Gould considered the case and issued a short per curiam opinion the day after considering the case at conference. The court found not need to address the merits because early voting had begun in Arizona on Sept. 30. "Regardless of [Nader's] probability of success on the merits, [his] delay in bringing this action and the balance of hardships in favor of the Appellees were so great that the district court did not abuse its discretion in deciding that [he was] not entitled to relief."

In a split decision, Division One of the Court of Appeals has held that political parties may not accept contributions from corporations and trade unions even if the funds are not used in political campaigns but are used for operating expenses. *Arizona Democratic Party v. Arizona*, No. 1 CA-CV 02-0180 (Ariz. App. Sep. 30, 2004).

Both the Arizona Constitution and state statutes prohibit unions and corporations from donating money to political parties "for the purpose of influencing any election." Shortly before the 1998 election, then Attorney General Grant Woods learned that the state Democratic party was using corporate donations to pay overhead and administrative expenses. His office conducted an investigation. When Janet Napolitano took over the office after the election, the case was referred to the Mohave County Attorney.

When the state ordered the party to return the donations, the party filed suit to challenge the order, although it voluntarily agreed to stop soliciting donations from corporations and unions. The superior court upheld the order and the party appealed.

In a split decision, the court of appeals held that parties are precluded from using corporate and union contributions for overhead and administrative expenses. Judge Daniel A. Barker, writing for himself and Judge William F. Garbarino, avoided basing his decision on the constitutional provision, Article 14, § 18. The question was the proper interpretation of the phrase, "for the purpose of influencing any election," and whether it applied to overhead and administration.

Barker determined that the phrase was ambiguous. Scanning the records of the constitutional convention, he also determined that this may have been intentional. The delegates, he found, had decided to leave it up to the legislature to determine the scope of that phrase. Barker preferred not make a judicial pronouncement on the constitutional issue: "When the courts make a decision on constitutional grounds, they necessarily limit the legislature from rejecting that interpretation. The courts effectively preclude the people's ability to act through their elected representatives."

Barker therefore turned to the legislative efforts on the subject. It turned out that the legislature used the same phrase but did not define it in A.R.S. § 16-919(A). He therefore conducted a complex analysis of the statutory structure and determined that the legislature had intended to bar political parties from using corporate and union donations for overhead and administrative expenses: "It seems clear to us that a political party is the very type of entity that the legislature had in mind when it provided that corporations and labor organizations must use a separate mechanism to make contributions for 'political purposes.'" He and Garbarino also determined that the statute did not violate the First Amendment.

Judge Anne A. Scott Timmer dissented. She concluded that the statute only prevents corporations and labor parties from making contributions "to prospective candidates, candidates, or their campaign representatives for the purpose of influencing elections involving those candidates."

"Because the corporate contributions to the Party at issue in this case were not made for this prohibited purpose," she concluded, "I would reverse the summary judgment and remand to the trial court with directions to enter judgment in favor of the Party." ■

Legal community mourns loss of an accomplished attorney

On October 18, 2004, the Maricopa County Bar Association unexpectedly lost a valuable member, Mary J. Leader.

Leader left behind an impressive legal career. Up until the time of her death, she was senior vice president of external affairs and chief legal officer at TriWest Healthcare Alliance. Among her many responsibilities, she was in charge of the day-to-day operations of TriWest's legal division in addition to overseeing its external affairs division and playing a central role in policy formation within the company.

Previously, Leader served as policy advisor for Health and Human Services to former Arizona Governor Fife Symington, advising on



Leader

all health and human service policy matters. Additionally, Leader worked with state budgetary and legislative issues; served as the governor's liaison to the Arizona Health Care Cost Containment System

(AHCCCS), Department of Economic Security and Department of Health Services and was involved at the federal level on behalf of the state of Arizona regarding issues such as Medicaid, Welfare and workplace-development block grants. Leader was also a partner with the law firm of Snell & Wilmer for 15 years. ■

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Electronic information explosion creates new demands on attorneys

Just a few years ago, the concept of electronic or digital discovery was unknown as a general topic of conversation. But a critical phenomenon has been taking place in the last few years. While the numbers are hard to pin down, the total number of electronic documents is growing at an exponential rate. Personal email, as one example, now exceeds 40 billion messages a day and is expected to grow to 60 billion in the next two years.

We are obviously in the grasp of an information revolution that is having a tremendous impact upon the legal profession. If you are a trial lawyer you now have to be aware of the fact that 95 percent of all documents created today are originally in digital form and are kept and stored in digital form. In the health care industry for example, there is a rapid movement toward keeping medical records only in digital form. For hospitals and doctors, that change means reduced record keeping costs and better access to patient information. For lawyers engaged in personal injury cases, the switch to digital records changes many aspects of case management.

For any lawyer involved in commercial litigation, the fact that most commercial records now exist only in digital form changes many other things as well. Today, cases with more than 500,000 pages of discovery information are commonplace. Cases like Enron, with 50 million pages or more, are no longer unusual and are called "megacases." Fifty million pieces of paper will fill 20,000 bankers' boxes and pose a tremendous burden on the lawyers who must process that information.

However, the burdens posed by the infor-



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mation explosion are not limited to litigation. Any business lawyer who advises clients large and small must now be aware of the existence of massive amounts of information stored on various desktop computers and servers controlled by those clients. That information serves many purposes and may be the subject of a document production request. It is vital, therefore, that special attention be paid to how those documents are kept and how and when they will be destroyed.

Document Retention and Destruction Policies

For a variety of reasons not limited to the potential for litigation, every business must direct careful attention to the development of a written document retention and destruction policy. The necessity for such a policy arises not only in the context potential litigation but also in the regulatory context. The passage of the Sarbanes-Oxley act has imposed special obligations on many kinds of businesses. The long and short of it is that your clients must be aware of the critical need for the development and enforcement of written document retention and destruction policy.

Until recently, it was common for businesses of all kinds to keep every electronic document they had ever created or received because it is easier to keep everything than to be selective. In larger businesses, those documents get moved to backup servers and eventually to tapes or other storage media, but they are all there and can be accessed with a little effort. However, the vast bulk of that information is useless and some of it may be downright dangerous.

For example, it has now become a common practice in litigation to produce massive amounts of electronic information in native

electronic form in response to some discovery demands or regulatory actions. Because the amount of information is so voluminous, the effort to sift through all of it prior to production may be monumental. The failure to undertake that task, however, may result in the inadvertent production of confidential or privileged information. A number of recent cases have held that in some circumstances even the inadvertent release of privileged information as a part of a massive electronic document production can result in a waiver of the privilege. That is simply one example of the danger of continuing to keep electronic information without following a document retention and destruction policy.

Developing a Policy

The development of a written document retention and destruction policy must look at many things. Specific attention must be directed to things such as tax records, personnel records, board meetings, press releases and marketing and sales documents. Particular attention must be paid to the need to segregate privileged documents and various types of intellectual property in order to avoid inadvertent release. It goes without saying that the development of such a policy is a difficult and time-consuming effort on the part of both the client and a lawyer who advises that client.

When a document retention and destruction policy has been adopted, evenhanded enforcement of the policy is critical. Who can forget the hapless Arthur Anderson lawyer who sent out an email reminding everybody in the Enron case of the need to follow a document destruction policy that had apparently been ignored or forgotten?

Of course, the email was widely viewed as a request on the part of the lawyer to make sure that dangerous information got purged from the company files. That may or may not have been the intent, but the fact that the document destruction policy had not automatically segregated privileged or important documents and destroyed the remainder pursuant to an established schedule was the source of the problem.

There are many sample policies available on the Internet but they must be tailored to the specific needs of your firm or client. An excellent review of the many dimensions of the development of such a policy can be found at <http://tinyurl.com/7ysrt>. A quick review of the details of the content of a basic policy will convince you that development will require focused attention and a lot of work! But it is a task that you must not put off until somebody asks to see your client's hard drives in their search for electronic information!

Next month I will discuss the new upgrade (SP2) to Windows XP. I would appreciate any comments that any of you have on problems and issues that have come up in your installation of the upgrade. Just drop me a note at wintonwoods@mail.com. Thanks!

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

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Lawyer Referral Service helps firms build diverse client base

By Kathleen Brieske
Maricopa Lawyer

While the Maricopa County Bar Association's Lawyer Referral Service (LRS) is often thought of as a successful way for an individual attorney to build his or her clientele, MCBA member firm Wilcox & Wilcox shows how the program can be just as valuable to an entire firm.

Wilcox & Wilcox is a small Phoenix-based firm that aims to provide aggressive and affordable representation in several areas of law, including business formation and disputes, creditor rights/collections, employment, personal injuries, and family law. The firm opened in September 1996, and shortly after, managing partner Trent Wilcox took some advice from friends—he signed up for the MCBA Lawyer Referral Service Program and has been involved ever since.

Currently, each member of Wilcox & Wilcox's seven attorneys is signed up with LRS. According to lead litigation partner Carrie Wilcox, the firm encourages all of their attorneys to join as LRS is a "good way to provide a little bit of help to people who oftentimes just need 30 minutes of time with an attorney to feel better."

Wilcox & Wilcox attorneys also use the program to fulfill their marketing requirements. Wilcox called LRS "one of the most efficient ways for an attorney to market his/her practice. It is very helpful in building and maintaining caseloads." By signing up with LRS, she sees the attorneys "getting their name out in the community and bringing in some cases when they might otherwise be slow."

LRS can benefit an entire firm just as it does an individual attorney. In the case of Wilcox & Wilcox, it helps the firm balance the business cycle by adding a small but steady inflow of new clients. Wilcox views LRS as an "effective, negligible-cost marketing method—the low cost makes it a no-brainer." She also touched upon the common misperception people have about those who use LRS.

"The quality of clients is probably better than people might assume. LRS brings us out-of-state clients needing assistance in a wide variety of practice areas who use the

service because they have no other Arizona legal contacts."

Finally, Wilcox feels that a firm gains credibility by using a bar association's lawyer referral service program. Organizations like the Maricopa County Bar Association "may enjoy a higher degree of credibility with the public," Wilcox said, "so clients going through them to find an attorney don't feel like they're selecting an attorney at random. When a client trusts his attorney, the case moves along better."

On an individual attorney basis, the firm sees LRS as an opportunity for lawyers to "improve the public's occasional poor perception of them," she added. LRS provides the opportunity to show everyone has the opportunity to access an attorney, even those who

could not normally afford one.

The program also acts as a networking opportunity for Wilcox & Wilcox, both as an avenue for its attorneys to work closer with colleagues as well as work with outside attorneys in similar practice areas. According to Wilcox, "LRS provides our firm with a reliable place to refer clients who have cases falling outside our practice areas."

Professional opportunities also exist for attorneys through LRS. In addition to serving as a marketing tool for a larger client base, attorneys are able to use the program to vary their practice areas. At Wilcox & Wilcox, many of the attorneys have a variety of legal experiences and would like to balance those practice areas. Wilcox said that LRS provides an "effective means to bring in different case

types without investing in more costly marketing techniques. Some attorneys like a variety of cases, some want to move into other practice areas. LRS can provide clients during the transition and afford the attorney another avenue for professional growth."

When asked what advice this firm would give to small to mid-sized firms about the benefits of using the Lawyer Referral Service, Wilcox recommended trying the program for a year or two. "Because it's almost free, why would you forego the opportunity?" she asked. "If your practice doesn't benefit, what have you lost?"

She also recommended remaining flexible. "Not all cases are easily pigeon-holed into nice neat practice areas and potential clients often cannot even tell you what type of attorney they need."

When asked if the advice her firm was given eight years ago has proven successful, Wilcox answered, "Absolutely. Here is an opportunity to hear some interesting stories and grow your firm."

And from the looks of it, Wilcox & Wilcox did just that with the looks of the MCBA Lawyer Referral Service. ■

Clerks...

Continued from page 1

Four years later, the internal deliberations that took place over the court's 20-day odyssey remain a topic of fascination. *Vanity Fair's* October 2004 issue presents an exposé, from the perspective of judicial clerks willing to talk to the magazine's contributing editor David Margolick, of the behind-the-scenes political maneuvering undertaken by some of the Supreme Court justices forming the majority opinion in *Bush v. Gore*. The article is titled "The Path to Florida," and the group of law clerks that were willing to talk to Margolick are described in the article as primarily clerks who worked for the justices making up the dissent, and an occasional clerk who worked for one of the justices in the majority.

As the *Vanity Fair* article hit the stands, seven or eight other Supreme Court clerks, maddened by the idea of former colleagues disclosing what they viewed to be confidential information, circulated a statement signed by an entourage made up mostly of prominent conservatives and ex-clerks to conservative justices. The statement's message was that "it is inappropriate for a Supreme Court clerk to disclose confidential information,

received in the course of the law clerk's duties."

The willingness of former Supreme Court clerks to speak to *Vanity Fair* also raised the ire of Republican Senators Cornyn (Texas), Chambliss (Georgia), and Graham (South Carolina) so much that they asked Republican Senators Hatch (Judiciary Committee Chair) and Sessions (Subcommittee on Administrative Oversight and the Courts Chair) to "consider hearings or other measures to determine whether there has been misconduct by employees of the United States Supreme Court."

In the *Vanity Fair* article, Margolick admits that "[t]he Court's proceedings are shrouded in secrecy, and the law clerks . . . are normally notoriously, maddeningly discreet."

"Rehnquist makes them all sign confidentiality agreements, then reiterates the point to them in person," states Margolick.

But is such secrecy warranted? While Senators Cornyn, Chambliss, and Graham state that "the judiciary as we know it simply could not function" if the judiciary cannot rely on its law clerks to keep deliberations and discussions confidential, others might disagree.

Edward Lazarus, a Justice Blackmun ex-clerk and author of *Closed Chambers: The First Eyewitness Account of the Epic Struggles Inside the Supreme Court*, believes that the court's need for secrecy is exaggerated beyond any real necessity. "[T]he Supreme Court demands far greater secrecy than that enjoyed by the elected branches of our government—when, given its unelected, life-tenured personnel, it ought to demand far less," says Lazarus, pointing out that: "[t]here is no Freedom of Information Act for the Supreme Court. There are no open sessions when it comes to actual decision-making. There are no 'Government in the Sunshine' laws for the Court." Lazarus says he can't think why

advice-giving or the exchange of ideas is somehow more fragile or more in need of protection in the judicial branch than advice-giving in the executive branch of government.

Defenders of the court's secrecy, say Lazarus, believe that court opinions provide reasons for their decisions thereby negating the need for further openness, but "[t]he question of whether the Supreme Court is properly performing the function assigned it in our democracy cannot be answered solely by reference to the court's public statements." "If we think that the court should be accountable in any way—even accountable for only the very worst breaches one can imagine—then we cannot live with a cloak of total secrecy over [the Court's] decision-making."

Adding to the problem, according to *Vanity Fair's* Margolick, is the fact that "[j]ournalists and academics who follow the Court rarely venture beyond its written opinions, as if there is almost something impertinent about doing so."

"The kind of investigative reporting that makes newspapers proud—and famous—is virtually unknown on the Supreme Court beat," says Lazarus. "Merely attending oral arguments and the Justice's public speeches is not investigative reportage. Merely asking law professors what given decisions mean, and why they are important, is not investigative reportage. Nor is chronicling which Justices enjoy the opera, and which prefer the symphony."

Lazarus warns that "it is law clerks who are the sole sources reporters can turn to for the actual facts about how this immensely powerful branch of a supposedly democratic government makes its decisions. We ignore these facts at our peril. And we should not be vilifying those brave enough to provide these crucial facts. If law clerks do not speak, we will never know."

As for the justices, Margolick states that "[e]ventually—one scholar put it at around 2019—historians will dip into the paper of the [*Bush v. Gore*] justices, but until then it's unclear how much of what they did they committed to paper." Even though the accounts given by the clerks who talked to *Vanity Fair* "may at times be lopsided, partisan, speculative, and incomplete," defends the magazine, "it's by far the most informative we have." ■



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Identity theft a growing problem for clients

By Kathleen Brieske
Maricopa Lawyer

Identity theft is a topic a little too familiar for the state of Arizona. In the past year, over seven million people have been victims of identity theft in the United States, and Arizona places behind only Washington, D.C. and California in identity theft complaints, per capita. Arizona also has the highest employment fraud and theft of existing credit cards and electronic funds transfer.

On Friday, Nov. 12, the Maricopa County Bar Association will present a CLE seminar that explains how identity theft occurs, what Arizona and its local agencies are doing to stop the problem, and how attorneys can protect themselves and their clients.

Brad Astrowsky, an attorney at the Maricopa County Attorney's Office, will serve as part of the faculty for the seminar. He pro-

vided further insight into identity theft in the state of Arizona.

Maricopa Lawyer: *What are the reasons that identity theft has become so prevalent?*

Astrowsky: Identity theft has been on the rise for several reasons. First, the Internet and other new technologies allow criminals to commit identity theft without ever leaving their home. They may order items online or sign up for credit accounts using the personal identifying information of others. In addition, computer technology allows criminals to make more professional looking forged documents and identifications. The easy access and relative cheap cost of Photoshop types of software and high quality printers allows criminals to make fake identifications with ease. Next, businesses and individuals have not been as vigilant about protecting account information and other personal identifying information. Often, they do not properly dispose of documents that contain all of

the requisite information that one would need in order to steal another's identity. Finally, the increase in illegal immigration has also increased the level of identity theft. Those whom are here illegally need to obtain a legal identification in order to obtain lawful employment and other benefits. In order for them to do this, they often use the social security numbers of victim U.S. citizens.

ML: *What are the most important preventative measures to protect oneself from becoming a victim of identity theft?*

A: Preventative measures include shredding all documents containing your personal identifying information before you dispose of them, vigilantly checking your credit in order to search for irregularities, protecting your credit cards and forms of identification by not leaving them in your car and not responding to spam e-mail or to telemarketers asking for your personal information.

ML: *How has Arizona landed in the third place as the state with the most identity theft complaints per capita? What factors contribute to this ranking? How can Arizona as a state better protect itself?*

A: As a border state, the need for illegal immigrants to obtain legitimate identification has increased the level of identity theft in Arizona. In addition, there appears to be a link between methamphetamine usage and identity theft. Methamphetamine users commit identity theft in order to fund their habit. Arizona has one of the highest incidences of methamphetamine arrests as well. The state of Arizona needs to help consumers and businesses better protect information. In addition, retail businesses need to do a better job of preventing forged information to be used in order to make purchases.

ML: *Whose responsibility is it to prevent identity theft crimes from happening?*

A: Law enforcement, consumers and businesses need to work together in order to prevent identity theft. Education for consumers and businesses concerning best practices in order to prevent fraud and theft will help. There is no one way to prevent identity theft; only a cultural change for both businesses and individuals will help prevent this area of crime. The Maricopa County Attorney's Office has established the FITE (Fraud and Identity Theft) Bureau in order to tackle this problem and aggressively prosecute those who commit these crimes.

ML: *What do attorneys need to know about identity theft in order to protect their clients?*

A: Private practitioners often will have much personal identifying information concerning their clients in their files and offices. Lawyers need to protect their clients' information as if it were their own. They should protect their files in secure locations and limit the access to these files to only necessary personnel. They also should meet with their clients in order to establish best business practices in order to prevent internal theft.

"Identity Theft: What's Been Done? How Do You Protect Yourself?" will be held from 12-1 p.m. on Friday, Nov. 12, at the MCBA Offices. The MCBA member cost to attend is \$25 for attorneys and professionals and \$20 for paralegals and public lawyers. The non-member cost to attend is \$35 for attorneys and professionals and \$25 for paralegals and public lawyers. One CLE credit is offered for this seminar. To register, contact Geoff Cummings at (602) 257-4200 ext 107 or visit the MCBA Web site at www.maricopabar.org. ■

Mais sees 'big picture' in law practice

By Kathleen Brieske
Maricopa Lawyer

Joseph Mais proved the power of imagination with his decision to go into law after reading two books, *Anatomy of a Murder* and *Inherit the Wind*. Both books had an intriguing influence on him regarding trials. In each, the protagonists were attorneys required to solve problems that were basically analytic in nature, but also required other skills, like advocacy, creativity and judgment. The opportunity and challenge of creative problem solving lured Mais in, and practicing law has kept him fulfilled now that it is not lived vicariously.



Mais

After receiving an undergraduate degree from the University of Illinois, Mais graduated with a law degree from Stanford University and was admitted to practice in the state of Arizona in 1978. For the last twenty years, he has been a member of Brown and Bain, which has recently become Perkins Coie Brown and Bain after merging with the Seattle-based law firm. He is managing partner of the Phoenix office.

Like many others, Mais was drawn to Phoenix for its "big city livability." His first taste of Phoenix was as a summer clerk at Brown and Bain in 1977. For Mais, the law firm had an atmosphere similar to the city.

"The firm was so ambitious and optimistic when I joined, and it retains that spirit today," Mais said. Having now worked there for two decades, Mais has learned the critical importance of colleagues who are committed to the the organization, both in serving clients and supporting each other. The recent merger has not changed those dynamics but it has added new resources to the firm.

When asked what change in the practice of law has affected him the most in the last 25 years, Mais said "the proliferation of email has greatly increased the velocity of written communications, and has made the practice

MCBA MEMBER PROFILE

more demanding than when I started. I miss the days when mail came in a cart and no more frequently than three times a day."

Mais considers continuing legal education programs an important element of practicing law. Whether he is attending a seminar or teaching one, CLE seminars are "opportunities to step back from the day-to-day problem solving and think about the big picture."

He also finds value in seeking out a mentor to provide experience and insight. He found his own guide in Paul Eckstein, a longtime colleague and chairman at Brown & Bain. Eckstein taught many things to Mais over the years, including a piece of knowledge that Mais now passes along to others: "The most effective advocate is the one who masters the issues, and conveys a passion for his client's cause, but never shades the truth to make a point."

Outside of the legal community, Mais focuses his time on organizations that help the disabled and their families. Having a child with a disability, he and his family make it a priority to give time and energy to supporting such causes. Currently, he is on the Board of the Southwest Autism Research and Resource Center. Perkins Coie Brown & Bain recently hosted the 25th anniversary celebration of Raising Special Kids, an Arizona-based organization that serves the families of children with disabilities and special health care needs.

Mais sees himself doing the same thing in next ten years that he has been doing for the past: "Building a firm and tackling challenging legal problems for clients who understand, and demand, excellence." The single most important piece of advice he gives for being successful as an attorney: "Always do your best."

And to think it was the power of good fiction that propelled him to become an attorney. ■

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Sports provided 1914 legal community with distraction and drama

Many of the Phoenix-area lawyers who formed the new Maricopa County Bar Association in early June, 1914, shared a common interest in the diverse sporting pastimes of their day. In addition to the fervent election season, the fall of 1914 presented these barristers with extracurricular sporting activities galore. Whether as participants, spectators, gamblers or financiers, many local attorneys were avid sportsmen. Among the most prominent fixtures on the local sports scene were a judge with strong ties to major league baseball and an attorney general who promoted auto racing.

Of course, a number of judges and lawyers were among thousands of cheering fans who watched their local ball-playing heroes' pre-game automobile parade past the courthouse. Later many gathered at Riverside Park to watch their team compete in the semi-professional and loosely organized Desert Baseball League. The 1914 Desert League consisted of the Tucson Regulars and the Tucson Royals, the Mesa Jewels, the Phoenix Senators and the Silver City, New Mexico Speed Boys. On September 28, the Senators and Jewels met in what many thought was the greatest game ever pitched in Maricopa County (until Randy Johnson arrived!). Phoenix's pitcher, "Smokey Joe" Smiley, pitched an 18 strike out shut-out and the Senators won 5-0.

A week later, the Phoenix team played head-to-head with a superior Silver City team in an epic series that left the sports writers searching for superlatives. The second game of the series was another pitcher's duel that the press called, "the Hottest Fight Ever Seen on Local Diamond." In the bottom of the eleventh inning, just as the crowd was worried the game would have to be called due to darkness, Eddie Scott performed the humanitarian service of knocking a line drive past third base to score Art Halm from second, winning the game for the Senators 1-0. That same week, two local Native American teams, the Salt Rivers and the Town Team battled in a high scoring affair with the Town Team winning 11-9.

These local exploits added to a frenzied focus on that season's Fall Classic. The 1914 World Series capped what some had called "baseball's most thrilling season." With the likes of Ty Cobb, Walter Johnson and Christie Mathewson dominating the major leagues, and a tight National League race, local fans, including denizens of the local courts, were following the national pastime closely. The New York Giants, Pittsburgh Pirates, Brooklyn Dodgers, Philadelphia Phillies, Chicago Cubs and St. Louis Cardinals were locked in a tight battle for the league lead well into July. The Boston Braves, hopelessly in last place in the National League in early July, finally began to play and in an unprecedented six-week assault catapulted themselves into the league lead. The Braves held off a late charge by the Giants to win the pennant. Meanwhile, in the American League, Connie Mack's



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Philadelphia Athletics dominated and won their league title for the fourth time in five years. The heavily favored Athletics welcomed the "beanaters" from Boston to the City of Brotherly Love on Oct. 9.

The federal grand jury in Phoenix began its fall session on Monday, Oct. 5, and under the auspices of federal judge William H. Sawtelle, the grand jurors insisted on telephone bulletins as the game was played on Friday (play by play of the games were telegraphed live pursuant to a licensing agreement in which Western Union paid each team \$17,000 per year for the broadcast rights; newspapers then subscribed to the wire service and reissued bulletins to their subscribers). The grand jurors were as surprised as other fans when the Braves drubbed the As in Game One by a score of 7 to 1.

One local judge (and former owner of the *Phoenix Gazette*), C.W. Johnstone, was more pleased than most in this unexpected outcome. Johnstone, a Maricopa County justice of the peace and a 25-year resident of Phoenix, had strong reasons to root for the National League champs.

In the early 1870s, Johnstone was well known in baseball circles as a financial supporter of the sport and an excellent judge of ballplayers. William Hulbert, owner of the Chicago White Stockings (later the Cubs) conceived of a league of equally matched baseball teams in the east and Midwest that could set regular schedules and combat the influence of gamblers and drunken, rowdy players. He also envisioned a more business-like sport in which owners could make a profit (the league set a relatively high standard admission price of fifty cents and took aggressive steps to control player salaries). Hulbert consulted early with Johnstone and together they met several times with a group of owners in 1875. Johnstone represented both Cincinnati and the Louisville Colonels in these meetings. In 1876, the National League, the first real "Major League," was born. Johnstone had played a key role in the birth of the new enterprise and was an important sponsor of its early growth.

In 1914, much to the judge's delight, the unfortunate American League Philadelphia team lost the World Series to Boston in four straight games — no team had previously suffered such humiliation. For their sensational rise from the cellar of their league to the merciless drubbing of the mighty Athletics, each Braves player was rewarded with his average salary of about \$2,300 and a share of the gate amounting to a bonus of



\$2,708.86. The Boston team captain, Johnny Evers, must have had a great agent if he had a \$10,000 salary, a \$25,000 signing bonus, a \$3,000 first place bonus and his \$2,700 share of the World Series gate receipts. By contrast, members of Congress in 1914 were paid \$7,500 per year; annual pay nationally averaged under \$800; miners in Arizona and the U of A Athletic Director Pop McKale made around \$1,700; and Ziegfeld Girls earned \$3,900.

As the baseball season wound down, another Maricopa County lawyer, George Purdy Bullard was throttling up his efforts to finalize plans for several races that would be held in conjunction with the November Arizona State Fair. Bullard, Arizona's first attorney general, was an automobile racing enthusiast and was responsible for two cross-country races, one starting in Los Angeles and one in El Paso, that would both conclude at the State Fair. The 700 mile endurance test from L.A. to Phoenix passed through Needles, Kingman, Seligman and Prescott before the dusty drivers rolled into the fairgrounds. The drivers included many big names in racing, led by Barney Oldfield, considered the fastest man on wheels after he reached 131.25 miles per hour in a 1910 race. Oldfield, originally a bicycle racer, was first hired by a little known auto-maker in Detroit, Henry Ford, to drive his race car, the 999. On the day of his first race, Oldfield admitted that he had never driven a car and learned the controls that morning. Later that day, he beat what was thought to be the world's fastest car, the Winton Bullet, by a half mile, putting Ford on the map.

Besides the L.A. race, Attorney General Bullard was also responsible for the El Paso to Phoenix run through Douglas and Tucson. In addition to the auto jockeys, motorcycle drivers and their "benzene machines," chugging along at 35 miles per hour, were to be included in the historic race

from Texas. To round out the racing scene at the State Fair, a full slate of horse races was planned. The highlight being a grudge match between Roxie D and Maydella, two fillies whose owners had finished their last neck and neck contest with a spirited boxing match.

Then as now, autumn was football season and local club and high school teams were pounding each other with abandon. Tempe Normal School (now ASU) was said to have an excellent football coach, but the faculty opposed adoption of the game by the school. According to sports writers, "[t]he institution has always been troubled with a scarcity of athletic material."

That fall in 1914 also saw the reorganization of the Salt River Valley Bowling League.

George Purdy Bullard, Arizona's first attorney general, was an automobile racing enthusiast and was responsible for two cross-country races.

Although Phoenix was said to be "to the bad on alleys," a proposal to have the League matches at Langowsky's in Mesa was adopted. The Mesa bowling lane proprietor proposed half price alley rental and assistance in arranging auto stage transportation for

Phoenix teams at reasonable rates. Other diversions, including trap shooting, boxing and tennis rounded out the busy sporting season.

In mid-October that year, one young Phoenix lawyer was reported to have attempted a novel variation on harness racing. Apparently, the unnamed attorney and a female companion had taken a long October drive up to Camelback. In the distraction of events related to their picnic, the couple's horse wandered away, leaving "one perfectly good harness, one carriage and one girl, nine miles from civilization." The lawyer reluctantly "donned the harness, placed himself between the shafts and started for town." Fortunately for the young barrister, the horse was captured by another party on its way out for similar diversions and returned when the "legally" propelled carriage was sighted.

Lucky for today's Maricopa County lawyers, that particular form of legal harness racing never really caught on. ■

Candidates for MCBA board of directors ready to serve legal community

Ralph Adams

Law Office of Ralph Adams



Adams

Practice concentrated in defense of lawyers against bar complaints. Admitted in Arizona and Utah. Former Senior Counsel, Utah State Bar. Former Assistant Attorney General, Litigation Division, Utah. Former Senior Staff Counsel, State Bar of Arizona. Current chair MCBA's Solo and Small Firm section. Current member Advisory Committee Metropolitan College paralegal program. Member Arizona Association of Defense Counsel. University of Idaho, 1989.

Julie Ashworth LaFave

Beer & Toone



LaFave

Practices insurance defense litigation, aviation claims and product liability defense litigation. Serves as Treasurer of the MCBA Young Lawyers Division and is chairperson of the 2005 Barrister's Ball silent auction. Adjunct English Professor, Phoenix College. Also works with ACE Program, encouraging underprivileged high school students to continue their education. Volunteers with the American Cancer Society's Relay for Life. Member of AWLA, and AACD. ASU, J.D., 2000.

Thomas G. Asimou

Thomas G. Asimou, Esq.



Asimou

Sole practitioner in area of probate litigation, trust administration and tax., MCBA, serves on editorial board, contributor to *Maricopa Lawyer*. Serves on Arizona Community Foundation CLE planning committee. Desires to ensure that MCBA is responsive to members needs by providing services to members, increasing member written contributions to *Maricopa Lawyer* to promote dialogue in the profession and to continue MCBA's pursuit of fiscal responsibility.

John D. Burnside

Bryan Cave



Burnside

Practice areas include environmental law and litigation. Active member of MCBA environmental law section, including current service on committee to update and rewrite MCBA treatise on environmental law. Volunteer for MCBA/CLS Volunteer Lawyers Program. Engaged in community service as Past Board Member and Secretary of Rotary Club in Tempe. Member of Arizona State Bar and ABA environmental law sections. ASU, J.D. 1997.

Ten candidates are running for five seats on the Maricopa County Bar Association Board of Directors.

Ballots were mailed on Nov. 1 to all MCBA members, who may vote for up to five candidates. Write-in votes are permitted. Ballots must be returned to the MCBA by Nov. 25.

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

The terms of the board members who are elected to the five officer positions each year are extended automatically for an additional year to allow them to serve as officers during that time.

The 10 candidates for the five open seats provided the following biographical information about themselves to the MCBA.

Faith C. Klepper

Maricopa County Attorney's Office

Practices criminal appellate law. Member of MCBA; chair and founding board member of Criminal Law Section; member of Bench/Bar committee. DNA-People's Legal Services board member and former vice-president. Arizona Attorney editorial board member. State Bar Minority Bar Convention planning committee member and former chair. Arizona State University J.D. 1997.

Michael F. Patterson

Titus, Brueckner & Berry



Patterson

Business, securities and cross-border transactions. Co-presenter with President Vicente Fox, March 27, 2001 for 1200 Mexican exporters; J.D., A.S.U. 1995; Univ. of Houston Mexican Legal Studies Program, 1993; Instituto de Lengua Española, Costa Rica, 1998. 2003 Chairman, MCBA International Law Section; Current V.P., Scottsdale Bar Association; member Arizona International Lawyers Group, Governor's Arizona-Mexico Commission, Phoenix Committee on Foreign Relations, Alzheimer Association's Regional Leadership Council.

Hank E. Pearson

Mann, Berens & Wisner



Pearson

Practices commercial, construction and appellate litigation. Serves on Board of Directors of Maricopa County Bar Association Construction Section; Vice Chair 2003 and Chair 2004. Member, Construction Section, State Bar of Arizona. Former Member, Lorna Lockwood Inn of Court. Former instructor, University of Phoenix. Former law clerk, Vice Chief Justice James Moeller, Arizona Supreme Court. JD, Magna Cum Laude, ASU 1992.

Brian S. Rees

Commissioner, Juvenile Division, Maricopa County Superior Court



Rees

Juvenile Court Practices comm.; MCBA Family and Juvenile Law Section; Volunteer Lawyers Program Advisory Board; named in Arizona's top 50 volunteer lawyers by Arizona Bar Foundation; U.S.A. Swimming Official (Arizona Board of Review); UA College of Law, J.D., 1983.

Andrew B. Turk

Jennings, Strauss & Salmon



Turk

Member of the firm's Litigation Department and Construction Industry Practice Group. Judge pro tem for Maricopa County Superior Court, Phoenix Justice Court and Gilbert Municipal Court. Member, State Bar Civil Practice and Procedure Committee since 1998. Past President of the Maricopa County Bar Association's Young Lawyers Division, currently MCBA Director. University of Washington School of Law, J.D., 1992.

Kevin D. Quigley

Quarles & Brady Streich Lang



Quigley

Practices in commercial litigation and administrative law, including real property and lease disputes, defamation, and civil RICO matters. State Bar of Arizona, Administrative Law Section, Instructor-Professionalism Course. Member ABA, MCBA, Arizona Association of Defense Council, former AACD YLD Executive Committee. Founding Board Member, Arizona Celtic Bar Association. Admitted 1994 to State Bar and U.S. District Court, Arizona. ASU Law, J.D., 1994.

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

NOV. 2004	S	M	T	W	T	F	S
		1	2	3	4	5	6
	7	8	9	10	11	12	13
	14	15	16	17	18	19	20
	21	22	23	24	25	26	27
	28	29	30				

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

NOVEMBER 2004

November 1

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

November 3

- *The Green Building Workshop*
8:25 a.m. to noon, Pueblo Grande Museum & Archeological Park
Join us for presentation and discussion that will focus on the following topics: Introduction to Green Building, Residential LEED Certification, Scottsdale Green Building Program, Green Homebuilder & Legal perspective on Green Building. Registration includes breakfast, presentation, CLE credit, and admittance to the museum exhibits for the day.
Cost: MCBA member attorneys, \$85; member paralegals and public lawyers, \$65; non-member attorneys, \$115; non-member paralegals and public lawyers, \$85; same-day registrations/payments, \$15 additional.
CLE: 3 hours

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

November 4

- Construction Law Section, noon
- *Protection on the Home Front*
1 to 4:30 p.m., ASUD
Understanding the legal impact of returning soldiers extends beyond the newly updated Servicemembers Civil Relief Act (SCRA) to include provisions of the Uniformed Services Employment and Reemployment Rights Act, COBRA and HIPAA. Don't miss this timely and informative program. Topics to be discussed include: Stay of proceedings, Creditor/debtor issues, tax and employment issues including benefits, plus evictions and leases.
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

November 5

- *Going Solo, Part 1 & 2*
9 a.m. to 4:45 p.m.
A comprehensive 3-part seminar designed to help those considering a solo practice. (See full description on page 3)
Cost: MCBA member, entire 3-part series, series \$190 (3 part); non-member, entire 3-

part series, \$295; MCBA member, individual session, \$75; non-member individual session, \$105; For further pricing for public lawyers, students, etc., please see article on page 3. CLE: 9 hours (all may qualify as Ethics credits)

■ *Legal Ethics: Fees, Fee Agreements and Communication* 1 to 4:30 p.m. ASUD

Are you wondering how to set your fees? More importantly, are you struggling with how to communicate your fee to your clients? Are you following the requirements of the new ethical standards mandated by the state? Join us as we explore the ethical obligations a lawyer is under in setting, and communicating, legal fees.
Cost: MCBA member attorneys, \$75; member paralegals and public lawyers, \$50; non-member attorneys, \$105; non-member paralegals and public lawyers, \$75; same-day registrations/payments, \$15 additional.
CLE: 3 hours Ethics

November 6

- *Going Solo, Part 3*
9 a.m. to 12:20 p.m., ASUD
Final part of a comprehensive 3-part seminar designed to help those considering a solo practice. (See full description on page 3)
Cost: MCBA member, entire 3-part series, series \$190 (3 part); non-member, entire 3-part series, \$295; MCBA member, individual session, \$75; non-member individual session, \$105; For further pricing for public lawyers, students, etc., please see article on page 3.
CLE: 9 hours (all may qualify as Ethics credits)

- CLA Review Course, 9 a.m., Phoenix College

November 8

- *2004 Arizona Paralegal Conference*
8 a.m. to 4:30 p.m., The Arizona Historical Society Museum
Topics will include: Electronic filing an various venues, entertainment and sports law, Ethics and emerging technology issues, electronic management tools and stress-free career management. Price includes continental breakfast and buffet lunch, door prizes, vendors serving legal professionals and admission to Museum Exhibits
Cost: MCBA Paralegal member, \$150; paralegal non-member, \$200; student member, \$50 student non-member, \$65
CLE: 6 hours (1 hour ethics)

- Task Force on Recruitment and Retention of Women and Minority Lawyers, noon
- Young Lawyers Division board, noon

November 9

- VLP Advisory Committee, noon

November 10

- MCBA executive committee, 7:15 a.m.
- Environmental Section, noon

■ *Preparing Your Client for Life After Personal Injury Settlement* Noon to 2 p.m., ASUD

What do you do after your client has received a settlement from a personal injury case? Say "thanks" and move onto the next case? Or, give that client some guidance on how to invest the money and protect their public benefits? Topics will include the advantages and disadvantages of structured settlement annuities versus lump sum payments as damage awards, recommendations for investment of personal injury damages to optimize victims' recovery and limit attorney liability, the impact of the personal injury settlement on public benefits eligibility and when probate court involvement is necessary.
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

- Personal Injury/Negligence Section judicial reception, 5:30 p.m.

November 11

- Personal Injury, Negligence Section, noon

November 12

- *Identity Theft: What's Been Done? How Do You Protect Yourself?*
11:45 a.m. to 1 p.m., MCBA
More than 7 million people in the United States have become victims of identity theft in the past year. What are you doing to prevent you or your clients against identity theft? Join our panel as they discuss how identity theft occurs, what their agencies are doing to curb the problem, what to do to protect yourself and your clients, and what to do if you or your client has become a victim.
Cost: MCBA member attorneys, \$25; member paralegals and public lawyers, \$20; non-member attorneys, \$35; non-member paralegals and public lawyers, \$25; same-day registrations/payments, \$15 additional.
CLE: 1 hour

■ *Forensic Psychiatry to Document Examiners: How to detect fraud on the page and in the mind* 1 to 4:30 p.m., ASUD

In this intermediate seminar, attendees will learn about the psychiatry of dealing with criminal law and estate planning cases, and the common types of forgery in documents. Join us as our panel discusses how mental capacity and competence assessment affects both criminal and estate planning law practices, and how elder financial abuse occurs. This seminar also will cover the common types of forgery techniques seen on documents and how to identify counterfeit documents and signs of alterations to documents.
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

November 13

- CLA Review Course, Phoenix College

November 15

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

November 16

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

November 17

- Litigation Section, 7:30 a.m.
- Lawyer Referral Service Committee, noon
- Bench Bar Committee, noon, Central Courthouse

November 18

- Personal Injury/Negligence Section, noon

November 19

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

■ *Email: The Silent Killer of Companies* CCD CLE Luncheon

11:45a.m. to 1 p.m., University Club
This presentation will address the growing danger to companies caused by employees' unmanaged use of email, and what can be done to stop it.
Cost: CCD member, \$22.50; non member, \$32
CLE: 1 hours

■ *Labor and Employment Law Eye for Non-Labor and Employment Law Guy* 1 to 4:30 p.m., ASU

This program is geared toward attorneys who do not regularly practice labor and employment law and those attorneys who are relatively new to the practice. Topics will include how to recognize labor and employment issues when practicing in seemingly unrelated areas of law, federal and state preemption issues, perfecting claims through proper administrative and contractual exhaustion, claims, defenses and their requisite elements and recognizing and avoiding common mistakes in labor and employment matters.
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

November 20

- CLA Review Course, Phoenix College

November 23

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

November 24

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

November 25

- Thanksgiving, MCBA office closed

November 26

- MCBA office closed

Superior Court suspends continuance panel

By J.W. Brown
Maricopa Lawyer

The "continuance panel" in Maricopa County Superior Court — created more than four years ago to change the "deeply embedded culture of delay for criminal cases" — has been suspended, perhaps permanently.

"The continuance panel, for all its controversy, has broken the culture of delay that was deeply engrained into the criminal case culture in Maricopa County," said Presiding Judge Colin F. Campbell. "It is now time to assess whether we can return to our historic preference for individual, rather than master calendars, for criminal case management."

The continuance panel was created in June, 2000, in response to the observation

of then Arizona Supreme Court Chief Justice Thomas Zlacket that "Maricopa County is not even close to meeting acceptable time standards in its handling of felony criminal cases."

When then Presiding Judge Robert Myers and Campbell jointly issued the administrative order to address the concern, they noted that the judges in the criminal department concluded "the best procedure to ensure a fair and uniform trial continuance policy, would be to assign such motions to a small group of judges to be chosen by the presiding judge."

Attorneys who wanted oral argument on the motion were required to submit a written request and the matter was set on a master calendar. Each afternoon a judge

assigned to the panel heard oral argument on those motions.

Many lawyers objected to the process and complained about the hearings, which required them to detail reasons for needing a continuance.

The panel ended the practice that the trial judge assigned to the case handled all continuance requests. Upon implementation of the panel, the trial judge heard only motions to continue requesting a trial continuance for five court business days or less and no more than one trial continuance in a particular case.

"A substantial impediment to felony criminal case processing in Maricopa County was a deeply embedded culture of delay for criminal cases," Campbell noted. "Although Rule 8 explicitly states that criminal cases will be continued for only extraordinary circumstances, in 1999 the ordinary had become extraordinary. Continuances were routinely requested on the grounds that the trial date was the first trial setting, or that counsel had not prepared the case."

He said now that "those days are past."

Pointing to statistics, Campbell sees significant improvement.

"Routinely in Maricopa County, 93 to 94 percent of felony criminal cases are now brought to trial or change of plea within 180 days of arraignment, more or less," he noted.

Over the next few months, court administration will monitor criminal trial continuances and gather data to compare the master calendar system of granting continuances with the individual calendar system.

"It is now time to test whether the Maricopa County Superior Court's traditional preference for individual calendar management, rather than master calendars, can meet the Arizona Supreme Court's case management standards of bringing to trial or disposition all in-custody cases within 150 days, and out-of-custody criminal cases within 180 days," Campbell said.

The results may determine the return of the continuance panel — or its demise.

► J.W. Brown is communications director for trial courts in Maricopa County. ■

Foundation seeks board applicants

The Maricopa County Bar Foundation is working to fill several openings on its board of trustees. The board is seeking applicants with the desire to "get involved" and helping serve the legal needs of the community.

"It's really been remarkable to be able to see the results of the work we do," said Bruce Brown, now in his second year as a trustee. As a family law attorney, Brown noted that he is familiar with most of the organizations that apply to the foundation for grants.

"I get the chance to see how our grant dollars have a direct impact on local families," he added.

Another trustee, R.J. Suzuki, says he finds satisfaction in working on special fundraising projects. He recently co-chaired the commit-

tee that organized the foundation's annual golf tournament for the benefit of VLP.

"I enjoy the opportunity to work with others that share the same passion," Suzuki said. "We work hard on events such as Golf Classic to help enhance the rule of law and system of justice in Arizona."

Patricia Nolan, president of the board, said she is impressed with the level of commitment displayed by trustees, past and present, and hopes to see a number of applicants ready to go work on furthering the foundation's mission. The term of service is three years.

Letters of interest should be sent to Nolan's attention at the Maricopa County Bar Foundation, 303 E. Palm Lane, Phoenix, AZ, 85004. ■

Lawyer produces compact disc of tunes for 'Legal Holiday'

If you have been adding the names of fellow attorneys to your Christmas shopping list and want to buy a gift that highlights the humorous side of the practice of law, you might want to take a look at a recently-released compact disc called "Legal Holidayze."

Produced by New York attorney Lawrence Savell, the disc features nine original law-related holiday songs.

"This disc reflects my strong personal belief that lawyers' zealous representation of clients and furtherance of the public good can only be enhanced by a healthy willingness to poke fun at ourselves appropriately on accession," Savell said.

"Legal Holidayze" is follow up to the songwriter's 1998 release, "The Lawyer's Holiday Humor Album," and it includes songs with titles such as "Surfin For an Expert Late on Christmas Eve" and "Bill Those Hours," a parody of Jingle Bells. Savell records and mixes the music at his home, using a computer system specially designed for audio recording and mixing.

"I think it's important that lawyers take the time to pursue their after hours dreams, despite the increasing pressures, longer hours and other factors that make them think it is impossible," Savell said.

He admits to his "musical limitations" but says other lawyers have been finding many uses for his songs.

"A colleague in Atlanta told me he played one of the songs at a seminar on discovery where he was speaking," Savell added, "and kindly reported that it made an usually very dry subject appreciably more palatable to the audience."

The CDs are sold on Savell's Web site at www.LawTunes.com. ■

Andy...

Continued from page 2

States District Court, are teaming with Maricopa County officials to create complementary exhibits in their respective courthouses about celebrated cases, distinguished judges, and information about their work. Planners hope the education effort for both young people and adults will take on a "Justice Trail" motif, similar to the "Freedom Trail" in downtown Boston leading from one courthouse to another.

I encourage you to show your support for this important venture by attending and sponsoring the 2005 Barristers Ball. For further information about the ball, please contact committee chairs Jennifer Ratcliff at (602) 530-8191 and Erin McGuinness at (480) 429-3026. Also, please look for updates about the ball and the museum in upcoming editions of *Maricopa Lawyer*. ■

Judicial retention resources

If you would like factual information about the retention issues that have arisen, please visit the Web sites below.

1) The Judicial Performance Review Commission (<http://www.supreme.state.az.us/jpr/>), a 30 (recently expanded to 34) member commission made up of 18 public members, six lawyers, and six judges (four legislators were recently added and did not take part in the current reviews), surveys the opinions of persons who have knowledge of a judge's or justice's performance (jurors, attorneys, litigants, witnesses, court staff, and persons representing themselves) and provides additional opportunities for the public to participate in the evaluation process through public input and written comments. Evaluation results are widely distributed throughout the state via media reports and the Secretary of State voter information pamphlet mailed to households prior to general elections.

Judge Kenneth Fields, a Civil Court judge, received high scores from survey respondents (Attorneys, Litigants/Witnesses/ProPers, and Jurors) in all areas (legal ability, integrity, communications skills, judicial temperament, administrative performance and settlement activities) and Judge William Sargeant, a Juvenile Court received extremely good scores from sur-

vey respondents (Attorneys and Litigants/Witnesses/ProPers) in all areas (legal ability, integrity, communications skills, judicial temperament, administrative performance and settlement activities). See the election pamphlet provided to all voters — <http://www.supreme.state.az.us/jpr/Voter%20Pamphlets/2004VOTERINFORMATIONGUIDE.pdf>

2) The Center for Arizona Policy ("The Center") urged legislators in March 2004 to support bills to a) remove merit selection for judges in the Ct of Appeals and Supreme Court and b) to give the legislature and people authority to enact and/or repeal rules of court (see attached PDF of flyer distributed to legislators).

3) Len Munsil is the President of The Center. <http://www.azpolicy.org/>

4) Len Munsil is the Chairman of a Political Action Committee (PAC) (http://www.azsos.gov/scripts/cfs_committee.dll/CommitteeDetail) that is seeking to remove (through retention election) Judge Kenneth Fields and Judge William Sargeant (www.nobadjudges.com), targeting them as "judicial activists" for specific decisions they have made. They are currently seeking funding to run TV ads to remove the 2 judges (see the previously mentioned site). ■

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Master Plan...

Continued from page 1

the County Attorney and Public Defender offices. These staff needs are projected to increase by approximately 45 percent by 2015.

An essential part of the proposed Master Space Plan is to eventually have in place five regional court centers. The present downtown location and the Durango location will be designated as the Unified Downtown Court Center and the Southeast court center will remain in Mesa. There will be a greatly expanded Northwest court center in Surprise and a new Northeast center in North Scottsdale, presently under construction at Union Hills and State Route 51. The new Northeast facility is expected to be completed in July and will have room for 12 Superior Court judges consisting of family law, civil and probate divisions. Three justice of the peace courts also are planned for the Northeast facility. The West court center will be the fifth and final facility in the regional plan and will be located in Avondale. This facility is still in the early planning stages.

Another feature of the Master Space Plan is the incorporation of the county's justice courts and, in some cases, municipal courts of those cities who elect to join the regional court centers concept. This is designed to eliminate the duplication of costs in construction and maintenance and to satisfy the public's demand for "one stop shopping" by providing full service courts. Also, according to Reinkensmeyer, Superior Court Judges serving at the same location can be a valuable resource for justices of the peace who are not required to be lawyers and may not have adequate experience in resolving some legal issues.

The Master Plan projects an increasing trend in family law cases because of expected population growth, intensified stress on the family and a continuing increase in domestic violence. Pro se litigants also are projected to show an above average increase in growth in future years. Other trends identified in the Master Space Plan study are increases in probate matters due to a large projected increase

in the aging population. Increasing drug use, criminal cases and gang related issues are also factors that are predicted to heavily utilize court resources in the future. Also recognized in the Plan is a large increase in the Hispanic population in the County which, according to the Plan's consultants, is expected to bring about the hiring of more bilingual staff, more interpreters, and increased diversity training for the Court system.

The plan includes a mammoth 10 to 12 story criminal court building downtown between the existing East court and central court buildings and containing between 32 and 40 courtrooms. This new construction would be built over the large expanse of open space fronting on Jefferson Street, between the two existing court buildings and over the long indoor hallway presently connecting the two buildings. Also on the drawing board is extensive remodeling of the courtrooms in the East court building into high tech units and the construction of a unified justice of the peace court system on the north side of Jackson Street between 6th and 7th Avenue.

The plan also proposes a major face lift for the Southeast court with the addition of a new connecting court building immediately northeast of the existing building, and an eight-story parking garage capable of accommodating 1,200 vehicles. The size of the new building will depend on whether the Southeast court will have criminal divisions or whether criminal cases originating in the East Valley will continue to be handled at the Unified Downtown Complex. The construction of the new Northwest court center in Surprise is not scheduled to begin for another three to four years. When completed, it will initially have four Superior Court judges and four justices of the peace, but the new facility will have room for as many as eight Superior Court Judges, if needed.

The downtown consolidation of the justice courts have already been approved by the Maricopa County Board of Supervisors. The remaining part of the Master Plan is expected to be presented to the board in the coming months.

Reinkensmeyer stated that it is his hope "that the creation of the regional Court centers will result in enhanced convenience for Court users, shortened commuting times for litigants and jurors, reduced pollution and traffic congestion downtown, strengthened public trust and confidence in the justice system, cost efficiencies and improved customer service." Reinkensmeyer projects the cost of the total project encompassed by the Master Space Plan to be approximately \$327 million. ■

PEOPLE IN LAW

■ **Scott Bales**, a partner with Lewis and Roca, has been reappointed to a three-year term on the Advisory Committee on Rules and Internal Operating Procedures for the U.S. Court of Appeals for the Ninth Circuit. The committee includes judges and lawyers from throughout the Ninth Circuit and is the recommending body for changes to court rules and procedures.

Bales is a partner with Lewis and Roca's commercial litigation section and leads the firm's appellate practice. Prior to joining the firm, Bales was Arizona's Solicitor General.

■ **Heidi Staudenmaier**, a partner with Snell & Wilmer, has been elected to a six year term on the Iowa Law School Foundation Board of Directors. ILSF was established in



Bales



Reed

1952 to solicit and manage gifts of money and property or both, for the sole purpose of granting these gifts to the University of Iowa, College of Law. Staudenmaier earned her B.A. in Journalism and Broadcasting at the University of Iowa in 1981 and followed that with her Juris Doctor also, from the University of Iowa, in 1985.



Staudenmaier

■ **James B. Reed**, partner in the law firm of Jaburg & Wilk, has been honored with a distinguished achievement award by the ASU College of Law, for work regarding polling place accessibility for voters with disabilities. Reed has been active in public health issues for twenty years, and has been involved in polling place issues for the past eight years. During the 2000 Florida presidential election, Reed served as an observation team leader for Washington County, Florida, and advised the Gore Lieberman recount litigation team in Tallahassee on state and federal election rights for voters with disabilities.

■ **Loren Molever**, a partner with Hymson & Goldstein, was recently re-elected as chair of the National Conference for Community and Justice, Arizona Region. ■

LEGAL MOVES

■ **Gallagher & Kennedy** has elected **James G. Busby Jr.** as a shareholder in the state and local tax law practice. Prior to joining the firm, Busby (J.D., ASU) was the chief auditor and principal tax analyst for the transaction privilege and use tax division of the Arizona Department of Revenue. ■



Busby

LEGAL BRIEFS

U.S. Supreme Court to drop justice anonymity in oral argument transcripts

Beginning this term, the United States Supreme Court will drop the anonymity of the justices posing questions to counsel during oral argument. The practice is said to have originated in 1968, when transcripts were first provided to the court on a regular basis. Previously, instead of identifying the justices engaging in an exchange with counsel, the transcripts simply read: "Question."

The transcripts will now reflect the identity of the justice participating in the exchange. Oral arguments are available at the court's Web site 10 to 15 days after they are completed by the reporting company. ■

Ninth Circuit Web site posts memoranda opinions

The Ninth Circuit began posting its memoranda opinions on its Web site September 28, 2004. The opinions will be removed after 30 days. The court is quick to remind readers, however, that the posting of these memoranda dispositions does not mean that they may be cited in violation of Circuit Rule 36-3. Memoranda dispositions issued by the court's screening panels are not currently included in the postings. The opinions can be accessed at: <http://www.ca9.uscourts.gov/>. ■

To place a **classified ad**, call the MCBA, 602-257-4200

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

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BURCH & CRACCHIOLO, P.A., seeks an associate with 3-5 years experience in Arizona for insurance defense litigation to include motion practice, depositions and trials in State and Federal courts. Excellent writing ability is necessary and experience in civil rights litigation is helpful. Please e-mail resumes to ineale@bcattorneys.com.

THE TRANSLATIONAL GENOMICS RESEARCH INSTITUTE (TGEN), the rapidly growing biotechnology Institute located in the heart of downtown Phoenix seeks an experienced in-house attorney. This position is responsible for identifying and analyzing legal issues, drafting key documents, and assuring legal compliance. Must have demonstrated experience in drafting and negotiating various contracts including intellectual property, research and development, collaborative, and regulatory. This position must operate as a strategic business partner to the executive team offering legal solutions to the challenges facing rapidly growing organizations. Experience in start-up and spin-offs valuable. Five years large law firm exp. is req. Arizona Bar. Biotechnology/Life Science industry strongly preferred. Salary commensurate with experience.

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as "library." And, if you're paying by the word, the word's length doesn't matter.

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- Use bold-faced type sparingly, such as for your name, your e-mail address or your telephone number. Not every letter in your 25-word ad.

- Don't be cute for the sake of being cute, especially in a professional publication. Nobody cares if you can rhyme, or tell a joke, or pun. Your reader does not want to be entertained. Your reader only wants information.

- Capitalize only appropriate words, such as names of people and trademarked products. Examples: Westlaw, Lexis.

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IOLTA accounts need careful attention

The featured expert this month is Kelly Conner, vice president of Alliance Bank of Arizona. Alliance Bank of Arizona is a community business bank with local decision-making, focused on small and middle market businesses, real estate developers and homebuilders, as well as professional service firms, and their owners.

Conner provides some insight on "Interest on Lawyers' Trust Accounts," commonly referred to as IOLTA accounts, which require lawyers and law firms to establish interest-bearing accounts for client deposits which are small in amount or expected to be short-term.

Q How do I determine if client funds should be placed in an IOLTA account or in a separate trust account?

A Lawyers have a fiduciary responsibility for handling funds received from clients. Supreme Court Rule 44 "requires all attorneys who receive client funds in Arizona, or in connection with representation of clients in Arizona, to maintain an interest-bearing trust account to pool client funds of minimal amounts." Generally, if the funds can generate positive net interest after taking into account reasonable costs to set up a depository account, then a separate trust account should be opened for the client — usually titled as follows: XYZ Law Firm For Benefit of John Smith, with John Smith's SSN used for

ASK THE EXPERT

1099 purposes. If costs exceed the interest income earned, then funds should be placed in an IOLTA account. The account is set up using the Arizona Foundation for Legal Services and Education's Tax ID number and the bank statement and checks will state that the account is an IOLTA account. Financial institutions are then responsible for remitting interest earnings to the foundation on either a monthly or quarterly basis.

Q How are funds disbursed from an IOLTA account?

A Financial institutions are not responsible for determining whether or not funds can be disbursed from an IOLTA account. This determination falls upon the attorney and is typically based upon an agreement between the attorney and the client. At the financial institution's discretion, a hold may be placed on funds deposited according to Federal Reserve Regulation CC, which dictates the maximum length of time that a hold may be placed on an account. Funds should not be disbursed from an IOLTA until after the items deposited are collected. Funds are

considered collected once an item has cleared the banking system, or funds deposited are cash or an incoming wire transfer. In certain cases, funds can be disbursed before collection occurs if the lawyer has sufficient alternative funds available to cover the uncollected funds. Furthermore, funds should only be disbursed by a pre-numbered check or an electronic transfer.

Firms are permitted to deposit nominal firm funds into an IOLTA for the purpose of covering bank charges, i.e. check order fees and monthly maintenance fees on the check-

ing accounts. Financial institutions have the responsibility of reporting any overdrafts that occur in an IOLTA account to the Arizona Foundation for Legal Services and Education. Mishandling client trust funds or failure to follow proper procedures with respect to IOLTA accounts is taken seriously by the State Bar and may lead to disciplinary action.

► Kelly Conner can be reached at 602-629-1701 or via email at kconner@alliancebankofarizona.com. Alliance Bank's web site is www.alliancebankofarizona.com. ■

Lawyer advertising ethics subject of symposium

By Kathleen Brieske
Maricopa Lawyer

On Friday, Nov. 5, the Arizona College of Law will present a symposium on lawyer advertising ethics. Planned topics include the ways in which the regulation of client development has produced a debate stimulated by self-interest, examples of "interesting" advertisements, existing regulatory requirements and the direction that rule making and rules enforcement may take in the future.

The seminar will be taught by experts in the area of legal advertising. The faculty includes MCBA member Van O'Steen, Judge William Canby, Ninth Circuit Court of Appeals, Professor Geoffrey Hazard, the University of Pennsylvania Law School, and William Hornsby, staff counsel to the ABA Commission on Advertising. Hazard and Hornsby will discuss current issues on the regulation of lawyer advertising, solicitation, marketing and attorney discipline.

O'Steen will discuss the landmark *Bates v. Arizona*, in which he was a petitioner. O'Steen successfully appealed the ban on advertising as a violation of First Amendment rights. The U.S. Supreme Court held that the states could not ban lawyer advertising, but had the responsibility to regulate it. As a result, each state has a provision banning lawyers from falsely or misleadingly communicating about their services. Canby, a former professor at ASU, represented O'Steen and his partner in the case. He will share his experiences with the case and comment on the degrees to which his goals have been accomplished.

Hornsby wrote *Clashes of Class and Cash: Battles from the War to Govern Client Development*, which looks at the roles that competition and dignity have played in the regulation of lawyer advertising, solicitation and mar-

keting. The article explores whether there is or should be multiple tiers of regulation and discipline for those providing legal services to personal or corporate clients.

According to Hornsby, "Governing lawyer advertising involves striking the balance between protecting the public and potential clients and making sure that people in need of legal services have access to lawyers who provide the services they need."

O'Steen added, "Apart from the advertising rules of the Arizona Supreme Court, it is most important that lawyers serve the public interest with all marketing communications. This means providing useful information about legal rights and obligations as well as information to assist people in identifying the best resources for legal help when they need it."

In 2002, the American Bar Association revised its Model Rules of Professional Conduct. Provisions included a change in the definition of communications that are "false or misleading," and a ban on comparing one's legal services to those of another lawyer unless the comparison is factually substantiated. The rules governing solicitation have also been amended, specifically the portion addressing in-person solicitation. The modification now allows lawyers to solicit anyone other than a close family member or a prior client.

Each of these changes is only applicable if a state chooses to adopt them. According to O'Steen, "regulatory changes in Arizona's rules pertaining to attorney advertising have been relatively minor over the last decade."

There is no cost to attend this symposium, which qualifies attendees for 2.5 CLE credits in ethics. The event will be held on Friday, November 5, from 12:30-3 p.m., at the ASU College of Law, Room 116. For more information, contact Jeff Zanotti at jeff.zanotti@asu.edu. ■

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OPINION

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

The demise of continuance panel may restore lost respect between bench and bar

By Donna Lee Elm
Maricopa Lawyer

In a system that strives to correct its own internal incivility, an uncivil practice has at last been put to rest. The Maricopa County Superior Court "continuance panel" is over.

A recent chief justice set two goals for the bar: (1) increase professionalism, and (2) reduce the time taken to resolve criminal cases. Both are laudatory. The professionalism campaign was handled productively: taught by peers, it encouraged attendees to remember that honesty, integrity, and reputation matter, that this can be a noble profession. While no one wanted to give up an afternoon to another State Bar requirement, we only had to go once, and attendees' input was respected as bench and bar grappled with changing a culture that had been souring.

The call to reduce criminal case time frames was addressed differently. In Maricopa County Superior Court, the presiding judge implemented an approach at odds with the one addressing professionalism. He based the continuance panel on the principle that criminal defense and prosecution lawyers were lazy and needed to be forced or threatened to move their cases along. He set up a bench that sat daily for the sole purpose of hearing motions to continue criminal trial settings. Judges were hand-picked, vetted on their willingness to be "tough" on litigants. A new series of rules and procedures were created that mandated that all cases beyond a certain early point that sought continuances be snatched from their assigned judges and funneled through the panel. Judges who circumvented it found themselves facing judicial "Siberia" in an unattractive assignment.

Practitioners' and judges' reaction to this insulting and heavy-handed power play was swift. In no time, it was dubbed the "Star Chamber" and the "Panel of No." Rather than peers exploring how to work productively together, the continuance panel set the bench and bar against each other. In place of exhorting practitioners to remember the important principles guiding our system of justice (here, speedy trial rights), it used judicial power to order changes in culture. It emphasized speed over justice, speed becoming an end unto itself. Patronizing lawyers and functioning by fiat rather than enlisting their support, the panel undermined professionalism.

The first it hurt were attorneys. Speed is not a problem if the caseload is low and resources are available. However, over the past decade, criminal workloads have been on the rise. To manage this, lawyers had found that they could handle more cases if they could juggle them over a somewhat longer period of time in addition to working at night and on weekends more. Forcing lawyers into trial before they were ready meant even further intrusions into their private or family time. Rather than shortchange their clients or victims, some attorneys began to cut into their sleep time as well.

An unhealthy situation was brewing. Stress fueled by resenting the patronization led to acerbic barbs and snide retorts from both litigants and judges at the panel. It became an uncivil forum. When lawyers reacted badly (as was bound to happen when were ordered to take unreasonable measures), some panel judges flexed their muscles rather than question whether they were addressing the problem productively; contempt was threatened and in fact prosecuted. Complaints of judicial behavior mounted at the same time.

Also impacted by the panel were the clients and victims who had come to the court, relying on it for justice. When a prosecutor could not get her expert into trial as scheduled or a victim could not be located on short notice, the panel could force the case into trial anyway; the state sometimes dismissed cases or went to trial without necessary witnesses resulting in no justice for victims. On the other hand, when a defense attorney faced trial without witnesses, complete investigation, or all the motions that were called for, that resulted in no justice for the criminally accused. Premature trials meant that luck might have more effect on the outcome than the merits.

The motto that "speed kills" had especially salient concern for capital cases that were, for a season, also put on ridiculously short temporal leases. Death penalty lawyers were squeezed into back-to-back capital trials with no opportunity to prepare them. One respected defense attorney quit when this occurred rather than have his client's blood on his hands.

The judiciary also suffered from the panel. A criminal trial rotation once thought to be a plum assignment was "no fun anymore." Judges who knew cases and litigants best felt undermined when they had to knuckle under to the panel; it insulted the integrity, judgment, and independence of trial judges. Some fled the criminal bench rather than be part of this system. Those remaining not only had to yield to the panel but were also saddled with its predictable end-product: a higher trial rate. Courts were deluged with criminal trials, some that could have settled if they had been afforded a little more time. To accommodate this influx of criminal trials, court administration diverted resources from the civil trial bench and failed to "beef up" adequately the burgeoning family court system. Delay was not reduced; it was merely shifted.

In the past year, the panel withdrew its

talons and began functioning more benignly. Recently, the presiding judge declared victory and scuttled it entirely. "Mission Accomplished."

There is a lesson to be learned from juxtaposing how the Supreme Court went about changing the culture to increase professionalism and how Maricopa County Superior Court went about changing the culture to reduce delay in criminal practice. It is indeed a noble profession we partake in, and integrity, duty, and dedication remain worthy goals. The bench and bar, working cooperatively, can effect changes in our profession. It is by developing positive working relations to tackle common objectives that the judiciary and criminal bar can best foster respect, assist one another, and create change. The criminal court remains a human enterprise, and the humanity of those engaged in its practice, as well as those it serves, must be preserved.

► Donna Elm spent a dozen years at the Maricopa County Public Defender's Office, becoming chief trial deputy in 2000. In 2002, she moved on to be a trial lawyer in the Federal Defender's Office in Phoenix. She has been active in Arizona Attorneys for Criminal Justice and is a certified criminal specialist. ■

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Volunteer work adds extra satisfaction to career

By Susan Lewis
Special to Maricopa Lawyer

"I'm willing to take on cases that may seem to be lost causes."

That attitude, dedication and commitment has earned Ernest F. Modzelewski an award as the Volunteer Lawyers Program Attorney of the Month.

"Helping people who don't understand finance and getting them out of traps before they go into bankruptcy," Modzelewski said, is one of the most satisfying elements of his VLP work. In fact, he would recommend volunteering at VLP to other attorneys for two reasons, the "personal satisfaction" and, "improving the image of the Bar."

Modzelewski was recruited by VLP in the spring of 2003 as part of a statewide campaign sponsored by the Arizona Foundation for Legal Services & Education to increase participation by attorneys. He is currently retired, but is described by VLP paralegal Diane Davenport as "an active and willing volunteer whose enthusiasm and gentle way in relieving client's fears is impressive."

Working within a framework of law and business, Modzelewski's professional background in banking and real estate establish him as a trusted expert to approach for advice. He has helped several VLP clients regarding mortgage lending and finance issues.

Demonstrating a successful tripartite career, Modzelewski's qualifications and knowledge span more than 28 years, including a career as in-house counsel, chief lending officer and president of the state's largest savings bank. His real estate experience included development and management of industrial properties at Hewson Properties, Inc. from 1990 to 1998.

Following his retirement in 1998, Modzelewski studied arbitration and mediation to assist parties in finding alternatives which are less painful and costly than litigation. In helping VLP clients, his training in mediation and arbitration has been of great benefit because, he said, "People often find resolution by face to face dialogue rather than fighting through the process of litigation."

Modzelewski is cited for his volunteer work in several VLP cases.

Got an itch to write more than motions?

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

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

The Maricopa Lawyer editorial board reserves the right to reject articles and to edit contributions for length or content. Submit articles to Editor, Maricopa Lawyer, Maricopa County Bar Association, 303 E. Palm Lane, Phoenix, 85004 or e-mail submissions to tbooth4@cox.net

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

His first case involved a couple who borrowed against their home to buy a truck that was repossessed by the lender. They lost the truck and obtained a very high interest rate loan. Modzelewski obtained settlements from the car company, the house lender and the title company and secured a much lower mortgage loan rate for them.

In another instance, an elderly woman was sued by a building contractor. Fearful of losing her home, she no longer has to worry because Modzelewski represented her in arbitration and obtained a favorable settlement guaranteeing protection throughout her lifetime.

Currently, Modzelewski is assisting a homeowner who cannot access the equity in her home. The client attempted to refinance and was given an excessive and grossly inaccurate payoff amount. The lender has refused to discuss the matter and Modzelewski has sued for unconscionable conduct.

Another VLP volunteer, David Hilton, has been working in concert with Modzelewski. "David does the initial interviews at VLP" which provides an evaluation of the client and the issues, Modzelewski said. Hilton, also, aids in litigation preparation.

When Modzelewski is not otherwise engaged, this pro bono attorney finds time to volunteer his services to others in need. "I spend one-half day a week, eight months a year at the Squaw Peak Senior Citizen's Center to help seniors with their legal concerns. Most of the matters are solved without additional legal services. With some legal advice to lessen anxiety, seniors frequently solve matters themselves. The most common areas they seek advice are wills, probate, Medicare, guardianship and credit," Modzelewski noted.

You might say the career path for Modzelewski began as part of "All in the Family." Why did he become a lawyer? A cousin was a lawyer. "I looked up to him," he said. What led to his interest in business? Business relationships his parents sustained, particularly, with the Federal Home Loan Bank Board general counsel were a valuable teaching vehicle. A family event was influential when his uncle started a savings and loan association in his house in Illinois in 1917. Modzelewski's mother served as director.

Fast forward to law school at the University of Illinois in Champaign in the 1960s. An aside - how did the law student and his wife, a teacher, not allowed to work in those times because she was pregnant, supplement their diet? He worked at a butcher shop!

Today, Modzelewski lives a full, enriched existence. "I love my family and enjoy fishing, playing golf, reading, traveling," he said. "I'm a very busy boy and I like to keep it that way!"

Has he achieved his life goals? He said, "I think so. I have a very lovely wife and good family." His four daughters are professionals, an architect, an interior designer, a nurse and a teacher. "I have been able to utilize my education, have had several exciting careers and I can do charity and community work. I feel like I've had a good run!" ■

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of giving thanks,
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