Nominations for the Maricopa County Bar Hall of Fame are now open. Last year 36 distinguished local attorneys were inducted. The Hall of Fame Committee well knows that many more deserving attorneys should be considered—but it is up to lawyers like you to nominate them.

Nominees should have practiced for at least 10 years; played prominent and important roles that have impacted the history and development of the local bar and the legal profession; made significant or unique contributions to the law or the administration of justice; and/or demonstrated significant leadership, advocacy and accomplishments in service to the community or the profession.

Find a 2009 nomination form on page 16 of this issue or go to www.maricopabar.org to download a form or fill out an online form. The deadline for nominations is Aug. 7.

VLP Honors the Brightest Lights of Pro Bono Service

So much need and the very special lawyers and legal professionals who stepped up to meet it

That’s what the 2008-09 “For Love of Justice” Volunteer Lawyers Program Pro Bono Awards luncheon was all about. In all, over 40 lawyers, legal professionals, and firms were honored for exceptional service in providing free legal assistance to low-income residents in a four-county area.

With former U.S. Supreme Court Justice Sandra Day O’Connor giving the keynote speech, attendance at the downtown Hyatt Regency where the event was held on May 4 was higher than usual. O’Connor’s remarks focused on the importance of merit selection of judges to the American system of justice (see MCBA president’s column on page 2) as well as the importance of individual pro bono legal assistance.

Awards were presented by Hon. Ruth V. McGregor, chief justice of the Arizona Supreme Court to reconsider Belton rule. The dissent nevertheless joined in urging the Supreme Court to reconsider Belton. The dissent cited the majority for not applying Belton, noting that it had not considered the crucial issue: whether a warrantless search incident to an automobile arrest is justified after the scene has been secured. It applied Chimel and held that no exigent circumstances existed to support the search.
A Welcome Refresher on Merit Selection

On May 4, I was privileged to attend the Volunteer Lawyers Program 2008-09 Pro Bono Awards luncheon, “For Love of Justice.” It was uplifting to witness the recognition and accolades given to the many outstanding volunteer lawyers, paralegals and other legal professionals who unselfishly give of their time and talent to assist those who might otherwise not be able to get legal help.

Each and every one of these individuals and organizations, as well as the countless others that volunteer pro bono, deserves our gratitude and thanks. If you have not had a chance, please look through the listing of award winners on page 10—it is an impressive list. And thank you to the volunteers and staff from Community Legal Services and the MCBA for their work on the program and the sponsors who made the awards ceremony possible. It was a great event.

The event was made even more momentous by the attendance of attorneys and judges who are icons of the legal profession. The importance of the event and the work of VLP was marked by the presence of numerous past and present members of our state Supreme Court, Court of Appeals, trial courts, and, of course, Justice Sandra Day O’Connor, who was the keynote speaker. We are all continually amazed by Justice O’Connor’s dedication to our country and the cause of justice. Justice O’Connor has not slowed down at all since retiring from the Supreme Court.

If you have ever heard her speak, you know just what a powerful and inspiring speaker she is. Her topic: merit selection of our judiciary.

Some of us in Maricopa and Pima County take merit selection for granted—unless you follow the issue, you may assume that is the way it has always been (and should be, at least as the majority would opine). Justice O’Connor, however, walked the audience through Arizona’s history on the issue since statehood.

The audience was particularly entertained by Justice O’Connor’s recounting President Taft’s disdain for the people of Arizona after Arizona obtained statehood. While Arizona had removed judicial recalls which Taft found contrary to the principle of an independent judiciary from its proposed constitution to obtain President Taft’s approval, Arizona voters immediately reinstated such recall’s through a constitutional referendum, much to the displeasure of President Taft.

Arizona’s Constitution called for nonpartisan election of judges and term limits, but in 1974 Arizona adopted a merit-selection and retention system for appellate judges and for Superior Court judges in Pima and Maricopa counties. Justice O’Connor was a leader in the efforts to bring merit selection to our state.

Justice O’Connor spoke passionately in favor of merit selection as a necessary pre-requisite to a fair and impartial judiciary—a judiciary that is essential to democracy and the rule of law. She emphasized that our founders protected courts from political influence so judges could protect our freedom. Judges must be politically unfettered in their decision-making process to enforce the law, even when a particular rule of law is then unpopular.

Justice O’Connor stated that we must support merit selection to defend fair and impartial courts so they can protect our rights. She will continue her efforts in this regard and encouraged all of us to do the same. Her speech was a welcome reminder on these points to all in attendance.

And, with Mother’s Day and Father’s Day in the immediate future, Justice O’Connor also made a timely suggestion that we, as parents (or mentors) of young children, need to pass on this civics lesson. She has become increasingly involved in educating our youth on the rule of law and the role of the court system. She has been involved with the creation of the interactive website www.ourcourts.org, a tool by which kids can learn about the legal system. As Justice O’Connor did, I encourage all legal professionals with children in their lives to visit the site—sooner rather than later.

In closing, I again thank everyone for their continued support of the VLP, as well as all pro bono efforts in support of the rule of law.

Marcopa Lawyer is published monthly by the Maricopa County Bar Association. Contributions of articles and letters to the editor are encouraged. All materials must be submitted by the first Monday of the month to be considered for the next issue. All submissions may be edited for content, length and style.

The MCBA does not necessarily endorse the views expressed by contributors and advertisers.

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The St. Thomas More Society Bar Convention Breakfast
All St. Thomas More Society Members and Friends are Cordially Invited To Attend the Society’s Annual Bar Convention Breakfast

Where
ARIZONA BILTMORE RESORT

When
THURSDAY • JUNE 25, 2009
7:30 A.M.

Fr. Christopher Fraser, the Society’s new Chaplain and the Diocese’s Judicial Vicar and canon law expert, will present the topic: “Law and Faith in the Catholic Church: Reflections on Canon Law and its Appropriateness for a Christian Church.”

Please register at www.azbar.org.
Check Your Minute Entries

New language has been added to minute entries in cases where electronic filing is available. Supreme Court Administrative Order 2008-89 made eFiling available for attorneys and pro se litigants in all general civil cases, not including probate, mental health, tax or juvenile matters or special actions, transfers of jurisdiction or lower court appeals cases.

eFiling pilot programs are also in place in five family court divisions and in all criminal court trial divisions. The new minute entry language is applied to individual cases where the judicial division is equipped to process electronic filings and contains the website address to register for eFiling.

Check your minute entries to determine if you have a case that is eligible for electronic filing. With eFiling, the original pleading filed with the Clerk is received and processed electronically. Upon acceptance and filing by the Clerk, the document is automatically electronically delivered to the judicial officer. Eliminating the need to provide paper to the clerk or the court, eliminates the need to provide paper to the clerk or the court. Paper copies must still be served on opposing counsel, unless an agreement for electronic service is in place per the Clerk's Office, eliminating the need to provide paper to the clerk or the court. Paper copies must still be served on opposing counsel, unless an agreement for electronic service is in place per the rule 5(c).

Follow the Clerk's Office

The Maricopa Lawyer is an effective way to stay in touch with the legal community. As a paper form of communication, it provides predictable deadlines with flexible word limits and arrives about the first of every month in physical form. As an agency dedicated to less paper communication, it provides pre-dated reminders, links to upcoming CLEs and other information will be posted to this page. From Facebook.com, search for "Michael K. Jeanes" or link directly to www.facebook.com/home.php#!/pages/Michael-K-Jeanes/83022496372.

Subpoenas Online

After a successful pilot program in Maricopa County, the State Bar of Arizona reports that all State Bar members in good standing can now use the State Bar's online document-creation wizard to have civil subpoenas for the Superior Court issued from all Arizona counties.

The online wizard prompts the user through the process of creating, managing and purchasing subpoenas online. The Online Subpoenas system allows the user to view or reprint previously issued subpoenas and save incomplete subpoenas for completion later. The Online Subpoenas system is available 24-hours-a-day, seven-days-a-week. For more information, contact the State Bar's Resource Center at (602) 340-7239.

Passport Reminder

The Clerk’s Office is one of thousands of agencies and facilities that accept applications to the U.S. Department of State for passport books and passport cards. U.S. citizens traveling by air from Canada, Mexico, the Caribbean and Bermuda must present a valid U.S. passport when entering the United States. Passport books can be used for all international travel by air, land and sea.

Effective June 1, 2009, U.S. citizens must present a valid U.S. passport book or a passport card when entering the United States from Canada, Mexico, the Caribbean and Bermuda at land border crossings or sea ports-of-entry. Travel by air still requires a U.S. passport book. The passport card is wallet-sized and less expensive than a passport book, but cannot be used for air travel.

The fees to apply through the Clerk’s Office for a passport card and a passport book are located online at www.clerkofcourt.maricopa.gov/fees.asp#passport. More information from the Department of State is available online at www.travel.state.gov or by calling 1 (877) 487-2778.
Keeping Up to Date with Our Profession

Paralegal Division President
Maureen L. Zachow

Many paralegal students are finishing their paralegal programs now, or will be in the near future. These students will be coming out of their classes with the most current information and techniques regarding the paralegal profession. For those of us already working in the paralegal field, and for these students just entering the profession, it is important to keep up to date with what is happening in our profession.

My main area of work is in the commercial litigation group and it is not uncommon for commercial litigation cases to encompass more than one area of law. Within the past year I have worked on litigation cases that have had at least one other component such as IP, real estate and/or bankruptcy.

It is advantageous for those of us in the litigation fields to familiarize ourselves not only with other areas of litigation, but also with some of the transactional areas with which our firms or corporations deal.

The same can be said for the transactional paralegals, it is to your advantage to familiarize yourself with litigation. By attending CLE in areas outside of our normal expertise, and expanding our knowledge base in other areas, we are increasing our value not only to ourselves, but to our employers and future employers.

The MCBA Paralegal Division offers the opportunity to gain nine hours of CLE credit. The division offers three CLE credit hours free to members. Our next quarterly meeting will be held Wednesday, June 17, at 11:30 a.m. (lunch will be provided) and will feature Judge Ammie Anderson and Denise M. Quinterni of the Law Office of Denise M. Quinterni, PLLC, the topic is attorney client privilege. This meeting is free for members of the MCBA Paralegal Division and $10 for non-members. We will be collecting dental drive items for the John C. Lincoln Children's Dental Clinic at this meeting. The 10th Annual Paralegal Division Conference, “Building our Legacy: A Decade of Growth,” will be held on Sept. 25 and will afford paralegals the chance to hear speakers on a variety of topics, including a panel discussion on “The Future of the Paralegal Profession: Sustaining Viability in a Sharply Competitive Industry.” The panel will include several speakers from our 2001 conference.

We are honored to have Robert J. Le Clair, Therese Cannon and Susan Howery participate in our conference again. The conference is worth six CLE credit hours, including one ethics credit hour. In honor of this being our 10th annual conference, we are offering a $10 off registration coupon.

For more information regarding the June 17 meeting, dental drive, conference registration form and the $10 off conference registration coupon, please visit our website at www.maricopabar.org and click on the “For Paralegals” link.

Thank you to everyone who turned out for the bowling event on April 18th. Proceeds from the bowling event will benefit the William K. Eaton School.

Paralegal Conference!

Donations Needed for Children's Dental Clinic

The MCBA Paralegal Division is collecting items to benefit the John C. Lincoln Children's Dental Clinic.

Among the items needed are new, individually-wrapped children’s toothbrushes, toothpaste, dental floss, and stickers.

Items may be brought to the Paralegal Division Quarterly Meeting on Wednesday, June 17, but all donations must be received no later than Friday, July 10.

Volunteers are also needed to help assemble goodie bags with the donated items following the Paralegal Division board of directors meeting on Monday, July 13.

For more information or to head up a collection for items at your firm or office, please e-mail Stacy Palmer at spalmer@swlaw.com.

Calendar of Events

JUNE
1 Monday Dental Drive Begins
2 Tuesday Conference Committee Meeting
8 Monday Board of Directors Meeting
17 Wednesday Quarterly Division Meeting
Speakers: Judge Ammie Anderson and Denise Quinterni
Topic: Attorney Client Privilege
Times: 11:30 lunch
Presentation begins at Noon
Place: 2001 North 3rd Street, #204 (MCBA Temporary office)

$10 Off Conference Registration Price

In honor of our 10th Annual Paralegal Conference
Paralegals: Building our Legacy: A Decade of Growth

Friday, September 25, 2009
at the Phoenix Convention Center

Register on-line at www.maricopabar.org click on "Paralegals link" and log in to 2009 MCBA PD to receive $10 off the registration price

For additional information, or if you have a disability and require accommodations, please contact Andrea Bartles at andrea.bartles@bowmanandbrooke.com or Sara Nelly at sara@fritsharp.com. For more information about the MCBA Paralegal Division, please visit our website: www.maricopabar.org ("For Paralegals" link).
Summer, Summer, Summer Time. . .

Here it is, the groove slightly transformed; just a bit of a break from the norm. . . The temperature's about 108; Hop in the water plug just for old times sake; Break to ya crib, change your clothes once more; Cause you're invited to a barbeque that starts at 4 . . .

There's an air of love and of happiness; And this is the Fresh Prince's new definition of summer madness.

Oh, I'm sorry, is thing on. . .um, hmm, hmm (clearing throat). On to my column!

In the month of June, the YLD first reflects on the success of its Law Week, which took place in May. (See photos on page 8) Both of the Law Week volunteer events – Ask-A-Lawyer and Phone-A-Lawyer – were well-staffed by attorney volunteers and utilized by gracious laypersons in the community. The theme for this year’s Law Day essay contest was A Legacy of Liberty: Celebrating Lincoln's Bicentennial. The 8th grade winning essay was from a student at Bogle Junior High in Chandler, who described his journey back in time to address the Union army, from an African American young man’s perspective. (Read his essay on page 8.) His speech to the Union army explained to them how important their victory would be for the civil liberties of all Americans. The 7th grade winning essay was from a student at Pioneer Elementary in Peoria, who also wrote about his trip to the past to explain to a crowd of citizens and troops why the battle of Gettysburg would be a turning point in the Civil War and how it would impact American history.

Congratulations to our time travelling students for their winning essays!

Law Week was wrapped up by a great CLE presentation from David Horowitz on incorporating cross-cultural competency in your practice, and delicious food from Wild Thaiger. Congratulations Law Week chair Melinda Sloma on a job well done! The YLD thanks all participants that made this year’s Law Week a success!

The days of summer are often referred to as dog days. I’m not sure about you, but any dog I spot outside during a Phoenix summer day is usually mangy, foaming at the mouth, and desperately looking for a watering hole. This leads me to believe that the term “dog days” was not meant to describe summer days in Arizona. Of course, we all know that this term really refers to hot days of inactivity and laziness. And, of course, every Jeopardy-walking-encyclopedia lawyer realizes that this term (in the singular) also refers to when Sirius (the Dog Star), in Canis major, rose and set with the Sun (also referred to as the “helical rising”).

Regardless of what term we use to describe Phoenix summer days, we probably agree on one thing about them: An indoor activity with air conditioning is better than testing your odds of climbing Piestewa Peak in 110 degree heat. To use the famous introductory words of John McCain, “my friends”, it is this common belief that has led the YLD to provide an activity this summer to ensure that you are indoors and in air conditioning! Calm yourselves, I will tell you the details now.

The LAWS Program, in exchange for the use of your valuable time and talent as a lawyer, will be held at women’s shelters across the Valley to help female victims of domestic violence represent themselves in court on common legal issues that confront them in such situations. The Domestic Violence Committee still needs volunteer lawyers to make this June program a success. If you are thinking, “Surely others have stepped up to the plate to volunteer!”, I regret to inform you, “my friends”, that they have not. As shelter and air conditioning will be provided for all LAWS Program volunteers, there is no reason for you to let “dog days” describe your summer days this month! Contact Leslie Satterlee at lsatterlee@nrlaw.net 480-961-5900 to volunteer.

Now, the YLD does not want to suggest that you should only stay indoors for the summer and watch TV on the couch (that is, when you’re not volunteering for the LAWS Program). Outdoor activities during summer days in Phoenix can be healthy if you rise early, put on sunscreen, drink lots of water, stretch, and go for a walk or run in the neighborhood. (In fact, according to the Center for the Promotion of YLD Activities and Disease Control, this is the ONLY way outside activities can be healthy!)

That’s why we want to suggest an anecdote of motivation and at least one outdoor activity you can implement to avoid “dog days” this summer. The Fifth Annual Race Judicata 5k/1mile will take place at Kiwanis Park on September 27, 2009. Please take advantage of the cooler temps in the mornings this summer to prepare to BEAT LASHAWN (the unbeaten fastest lawyer of Race Judicata). That’s right, unless I’m on an injured reserve, the YLD will treat any MCBA member that beats my time in the 5k to a free lunch at the restaurant of your choice (. . . that has items on the menu no higher than Subway’s $5 foot-long – kidding). Because I am now experiencing my first gray hairs (seriously, I am), the YLD believes there’s a faster lawyer out there somewhere (so bring it on, and while you’re at it, also gather a team of ten that can beat my team, Team Slowpokes, if you dare!)

In conclusion, in the month of June, DO listen to your favorite summer tune at the bbq/pool party. DON’T let “dog days” describe your Phoenix summer days this year. DO take advantage of a wonderful outdoor opportunity to help someone better their lives and/or the lives of their children. And finally, “my friends”, DON’T sit on the couch all day and watch TV until mid-September and expect to BEAT LASHAWN’s time in the 5k!

Native American Vets Win Arizona Battle to Vote

Just two years before he died, Phoenix attorney Richard E. Harless was honored by his friends and clients for spearheading the successful campaign for Native American voting rights in Arizona. In the fall of 1968, 20 years after his political and courtroom victories, Harless was named an “Honorary Chief” by the 30-trIBE Arizona Indian Association.

‘Chief’ Harless

Harless, originally from Texas, grew up in Thatcher, Ariz., and after graduating from the University of Arizona, became a teacher and coach in Marana. In 1933, at the age of 28, Harless obtained his law degree from the University of Arizona and moved to Phoenix to begin his legal career.

After a short stint in private practice, Harless served as assistant city attorney for Phoenix, and, later, assistant attorney general. He was elected Maricopa County attorney from 1938 to 1942. In 1942, he was elected to Congress as a Democrat to fill Arizona’s newly created second seat in the House of Representatives.

He was easily re-elected in 1944 and 1946, but in 1948, Arizona’s congressmen were to be elected by districts, rather than at-large (Maricopa County was one district and the rest of the state was the other). Since both then-serving representatives were from Maricopa County, Harless decided not to run for re-election, but instead ran for governor.

The 1948 gubernatorial campaign began a long string of political setbacks for Harless, who would never again win election to public office. He lost the election for governor, later had two unsuccessful runs for Congress, was defeated in his efforts to become mayor of Phoenix, and was not able to win election to the Superior Court bench.

In Congress he had helped move legislation establishing Arizona’s right to Colorado River water and worked to secure the Central Arizona Project. He was expected for his efforts in support of securing women the right to serve on a jury and his advocacy for Native American benefits and civil rights.

Despite these successes, Harless’ political career was derailed by the post-war flood of African American ex-soldiers who were establishing racial communities. Hispanic veterans in Maricopa County were relentlessly pushing for housing and school integration, and African American ex-soldiers were establishing themselves as professionals and beginning to break down Jim Crow barriers.

Frank Harrison’s family lived on the Fort McDowell–Yavapai Reservation east of Scottsdale, where Harry Austin was serving as tribal chairman. Before the war, Harrison and other Indian men had been denied construction jobs, for which they were qualified, for the construction of Bartlett Dam. They persisted in their efforts for equal treatment and were eventually admitted to the unions working on the project and were hired.

When Harrison returned from the war after being honorably discharged from the Army, he was moved by the plight of his elderly parents and other older tribe members who were denied Social Security benefits that had been promised by the federal government, but which Arizona, the administrator of benefits for its citizens, refused to pay. Arizona contended that such payments had to come directly from the federal government under the theory that Indian peoples were subject to federal guardianship.

This same argument was used to deny Native Americans the right to vote in Arizona – as “wards” of the federal government, tribal members did not meet the state’s eligibility requirements for voting.

An Early Skirmish

Twenty years earlier, Peter Porter and Rudolph Johnson, both members of the Pima Indian Tribe, had attempted to register to vote in Pinal County, on the Gila River Indian Reservation. These men and their fellow tribal members just a few years earlier had been granted citizenship under the Indian Citizenship Act of 1924.

In conclusion, in the month of June, DO take advantage of a wonderful outdoor opportunity to help someone better their lives and/or the lives of their children. And finally, “my friends”, DON’T sit on the couch all day and watch TV until mid-September and expect to BEAT LASHAWN’s time in the 5k!
Preparing Medical Experts for Deposition and Trial: Communicating in Deposition or Trial is Unique

By James C. Goodwin and Emily Vatz

We spend our days immersed in countless forms of communication and rarely stop to consider how unique each situation is.

But as Stephen E. Lucas, one of the most highly regarded modern Professors of Communication Arts, has observed, "regardless of the kind of speech communication involved, there are seven elements—speaker, message, channel, listener, feedback, interference, and situation." Each element is easily understood, but their interplay can make effective communication difficult.

Elements of Communication

For all communication, there must be a “speaker” sending a “message” to a “listener.” At first glance, those three elements appear so basic as to not warrant much discussion, but in fact the communication process is deceptively complex. Consider the “speaker” element. The success of any speaker getting his intended message across hinges on his ability to play on what Aristotle referred to as ethos (credibility), pathos (emotional appeal) and logos (logic). Some situations call for an emphasis on logos, whereas others compel a call to passion. What works well at a political rally may not fly at a funeral.

The “message” element is equally complex and is where communication often goes astray. The intended message does not always translate accurately into the message the “listener” takes away from the process. Oftentimes this is because the listener has a different frame of reference than the speaker does.

The other four elements of the communication process also have a huge impact. The “channel” is the means by which messages are communicated. Sometimes the channel is simply the air between the speaker and the listener (such as water cooler chat), but in modern society, we encounter an ever-expanding variety of channels. The internet is a great example.

If you asked me to cite-check a case with an actual book, I would struggle to do it, as would most law school graduates from my generation or later. When computer systems crash and that “channel” breaks down, a massive amount of communication simply stops until we fix the channel, or until we resort to another channel (such as the telephone, snail mail, or messenger service).

The fifth element to impact the communication process is known as “interference.” As Professor Lucas points out, “Interference is anything that impedes the communication of a message.” He uses phone static, noise from outside a building, the clutter of a radiator, or even a listener’s distraction by a bothersome itch, as examples.

The sixth element is known as “feedback.” Feedback is simply any message that the listener conveys back to the speaker. Feedback may be verbal or nonverbal, and it generally impacts the nature of subsequent messages.

And finally, the seventh element is termed the “situation,” which is simply the time and place in which communication occurs. I believe this single element has the greatest impact on the ultimate success of an expert witness at deposition or trial because the “situation” is the only element that you, as an attorney, have much of an impact on when it comes...
**Legal Briefs**

**Seventeen Applicants Seek Interview for Arizona Supreme Court Judgeship**

The Arizona Commission on Appellate Court Appointments will hear public comments on 17 applicants for the vacancy created by Arizona Supreme Court Chief Justice Ruth McGregor’s retirement from the bench. The public meeting will take place on June 3 for the following candidates: Edward P. Ballinger Jr., Robert M. Brutinel, Kent E. Cattani, Norman J. Davis, Philip G. Espinosa, John C. Gemmill, Philip L. Hall, Lisa G. Tewksbury Hauser, Wallace R. Hoggatt, Robert C. Houser Jr., Diane M. Johnsen, Stephen H. Lesher, A. John Pelander III, Jose H. Robles, Thomas M. Ryan, Ann A. Scott Tewksbury Hauser, Wallace R. Hoggatt, and Lawrence F. Winthrop. Selected applicants will be interviewed on June 29.

**Speculation on Obama Supreme Court Justice Pick Points to Four Women**

As President Obama moves to choose a successor for Supreme Court Justice, the four women speculated to be under the strongest consideration for the post are: Judge Sonia Sotomayor of the U.S. Court of Appeals for the Second Circuit; Solicitor General Elena Kagan; and the U.S. Court of Appeals for the Seventh Circuit; Judge Diane P. Wood of the U.S. Court of Appeals for the District of Columbia. The public meeting will take place on June 3 for the following candidates: Edward P. Ballinger Jr., Robert M. Brutinel, Kent E. Cattani, Norman J. Davis, Philip G. Espinosa, John C. Gemmill, Philip L. Hall, Lisa G. Tewksbury Hauser, Wallace R. Hoggatt, Robert C. Houser Jr., Diane M. Johnsen, Stephen H. Lesher, A. John Pelander III, Jose H. Robles, Thomas M. Ryan, Ann A. Scott Tewksbury Hauser, Wallace R. Hoggatt, and Lawrence F. Winthrop. Selected applicants will be interviewed on June 29.

**Judge Urges Congress to Rethink Cocaine Sentencing**

Judge Reggie Walton of the U.S. District Court of the District of Columbia testified before the Senate Judiciary Subcommittee on Crime and asked Congress to end the disparity between powder and crack cocaine sentencing standards.

Appearing in his capacity as a member of the Judicial Conference Criminal Law Committee, Judge Walton called the disparity in cocaine sentencing “a specter that has haunted the federal criminal justice system for more than twenty years.”

Walton pointed out that while African-Americans comprise less than 12.4 percent of the U.S. population, they comprise approximately 81.8 percent of federal crack cocaine offenders, but only 27 percent of federal cocaine powder offenses.

As a result, African-American defendants sentenced for cocaine offenses serve prison terms greater than those served by other cocaine defendants.

**NCSL Maps Out State Budget Woes**


**The Second Rule of Sentence Clarity**

Generally, clear prose is a goal of any good writer. Consider the following sentence:

*The Daily Gazette said that the murder of the town’s mayor was one of the worst crimes in the last three decades and a tragedy from which the town will never fully recover.*

In fact, the award-winning paper ran a three-part special series on the crime. Which solution you choose depends on what information you wish to highlight and the length of the surrounding sentences. For instance, if most of the surrounding sentences are long, you may consider breaking a long, front-loaded sentence into shorter sentences in order to persuade your reader to focus on the information in the shorter sentence. It works.

It also works to use a front-loaded sentence when hiding unfavorable information in a sentence. Just be wary of using this persuasive writing technique too often, as you will sacrifice clarity in the rest of the document.

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**SUMMER ASSOCIATES RECEPTION**

**WHEN**

Thursday, June 18

**WHERE**

George Washington Carver Museum
415 E. Grant St., Phoenix

**SPONSORED BY**

The MCBA Diversity Committee

Meet and mingle with legal professionals at the 2009 Summer Associates Reception.
Complimentary drinks and hors d’oeuvres will be available.

Turn to page 17 for more information.
Law Week 2009: Young Lawyers Celebrate ‘A Legacy of Liberty’

Ask-a-Lawyer, Phone-a-Lawyer and an essay contest for sixth, seventh and eighth graders once again highlighted Law Week at MCBA.

The YLD carried out the ABA’s designated theme of “A Legacy of Liberty,” honoring the bicentennial of Abraham Lincoln’s birth. Events were held throughout the week of April 25-May 1, and ended with a CLE and social.

The six winners of the sixth through eighth grade elementary school essay contest pose here with YLD Law Week leaders and Arizona Supreme Court Chief Justice Ruth V. McGregor, fifth from left. From left are: Melinda Sloma, YLD Law Week chair; Elisha Jindal, sixth grade, third place, D.W. Higgins Institute, Tempe; Andrew Sawyer, seventh grade, first place, Pioneer Elementary, Glendale; D’Amani Grayer, eighth grade, first place, Bogle Junior High, Chandler; Atharva Dhole, eighth grade, third place, Bogle; Molly Kigin, seventh grade, second place, Bogle; Nicole Holt (in back), YLD Law Week co-chair; Jorji Cole, eighth grade, second place, Bogle.

Not just YLD lawyers helped out at the Phone-a-Lawyer event. Here veteran attorney Dean Warner takes a call.

At the Ask-a-Lawyer event, John Sullivan answers a question from a woman seeking legal guidance. A cadre of volunteer lawyers made themselves available to the public for most of the day on April 25 at the Christown YMCA in Phoenix.

At the Phone-a-Lawyer event, veteran attorney Dean Warner takes a call.

T.J. Ryan and Jennifer Rebholz answer calls from the public.

Nicole Siqueiros and Ashley Donovan check the statutes in response to a caller’s question at the Phone-a-Lawyer event held at ASU’s KAET-TV studio April 28.

First Place Essay – Law Day 2009

By D’Amani Grayer
Grade 3, Bogle Jr. High, Chandler

Hello fellow Americans. I stand here before you to speak of the war you are fighting right now, the Civil War. I assume by the looks on your faces you are wondering how I, an African American man, was granted the honor to follow up after the great President Abraham Lincoln. It is a simple answer where I come from, but it may be a little hard for you to grasp. I am from the future. Do not be alarmed, I beg you. I have traveled here to ensure you, the Union Army, of a victory. However, do not become overconfident and begin fighting with less vigor and valor you are fighting with now. For the future is always changing. Winning this war is extremely important for the future of our country, for a loss could spell doom for us. The remainder of my time speaking to you will consist of me pointing out the reasons why winning this war is so important: Firstly on how it is important to the future of our great nation, and secondly how it is important to past, present, and future Americans and their—our—civil liberties.

Winning this war is very important, as I have previously stated. The French and the British are siding with the Confederates, and they aren’t doing it just for the Confederates gain. Historians in my time have analyzed the events that could occur if the Confederates win, and they aren’t very good. The U.S. would be torn apart, and this would leave us open to attack from other countries, including Britain and France, as they would like to retake control of America. It would be a terrible thing for a split apart U.S. to fight against multiple countries. If we win this war, or rather when we win this war, President Lincoln will issue a period of reconstruction. This will have two effects. Firstly, it will boost our economy by making jobs for everyone, especially the Confederates, and secondly, allow the Confederates to strengthen their ties with us by working together to repair our country. Our historians have found that if the Confederacy wins, they will not help us rebuild, and that will leave a feeling of resentment in the Union, spreading America farther and farther apart.

This brings me to my next topic, why victory is so important to all Americans and their civil liberties. As you know, you live in a country where there is slavery. In the future, due to your victory, there is none, as everyone is equal. Each American has the same chance as the next, provided he applies himself or herself. There is no slavery, and although there is some racial tension, America is home to so many races they are just considered naïve. This war is about equality. You are fighting for the oppressed African American slaves in the south. You are fighting to ensure America grows into the free country it is where I live. In our America, we uphold the Declaration of Independence, as each and every man and woman are indeed equal.

A victory in this war is needed to make American into the world power it will become in the future. By becoming one entity, and winning the war, we are strong. By splitting apart, due to allowing the Confederates to win, we are weak. I hope you remember this as you go back out to fight. Win this war for the future of the United States of American.
200 CASA Volunteers Advocating on Behalf of Abused, Neglected Children

Court Appointed Special Advocate (CASA) volunteers hold to the belief that there are no hopeless children, only children who have yet to experience hope.

New recruiting efforts and lots of hard work have helped the program reach a new milestone: 200 volunteers advocating on behalf of abused and neglected children.

“This achievement is due to the hard work and dedication of the CASA staff,” CASA Program Director Robert Hahn said. “We spent numerous hours streamlining the process and developing better management and resource skills for volunteer supervision.”

According to Hahn, CASA needed to increase the numbers of children benefitting from a volunteer. Not only did CASA increase its numbers, the program is becoming a model for other organizations to follow.

“The community is starting to take notice. They are calling and sending e-mails, asking for assistance,” Hahn said.

When Hahn took over CASA in 2007, his goal was to find a CASA for every child in Maricopa County’s foster care system. While he has not achieved that goal yet, he’s headed in the right direction.

“The program has its sights on 100 CASA volunteers,” CASA Program Development Specialist Justine Grabowsky said. “For the near future, we believe this is a very achievable goal.”

Grabowsky said CASA sent 43 new applicants to CASA training in March and nearly 50 applicants in May, with an additional 25 to attend later trainings.

CASA volunteers are appointed by the presiding juvenile court judge to watch over and advocate for abused and neglected children, to make sure they don’t get lost in the overburdened legal and social service system or languish in an inappropriate group foster home. They stay with each case until it is closed, and the child is placed in a safe, permanent home.

Last year, nearly 60,000 CASA volunteers served more than 240,000 abused and neglected children nationally. CASA volunteers have helped more than two million abused children since the first program was established in 1977.

Applications Being Accepted for Vacancy on Maricopa County Superior Court

Applications are being accepted for a vacancy on the Maricopa County Superior Court created by the retirement of Judge Silvia R. Arellano, effective June 30, 2009.

The Maricopa County Commission on Trial Court Appointments will review applications, interview selected applicants and recommend to the commission at least three nominees for the vacancy to Gov. Jan Brewer, who will appoint the new judge.

Applications must be at least 30 years old, admitted to practice law in and a resident of Arizona for the past five years, and a resident of Maricopa County for the past year.

Applications can be obtained from the Administrative Office of the Courts, Human Resources Division, 1501 W. Washington, Suite 221, Phoenix; by calling (602) 452-3311; by sending an e-mail request to: jnc@courts.az.gov; or at the Judicial Department website: supreme.state.az.us/jnc/Apply.htm.

The original completed application and 6 copies must be returned to the Administrative Office of the Courts, Human Resources Division, 1501 W. Washington, Suite 221, Phoenix, AZ, 85007, by 3 p.m. on Friday, June 5.

Applications for the recent vacancies in Maricopa County will be considered for the new vacancy and do not need to reapply.

The commission may, at its discretion, use the applications filed for this vacancy to nominate candidates for any additional vacancies known to the commission before the screening meeting for this vacancy is held.

All meetings of the Maricopa County Commission on Trial Court Appointments are open to the public. Meeting dates will be announced next month. The new judge will be paid $145,000 annually.

Presiding Judge Receives Judge Santana Award

The Arizona Foundation for Legal Services and Education named Presiding Judge Barbara Rodriguez Mundell as its 2009 recipient of its Law-Related Education Award.

She will accept the award on June 12 during the Arizona Civics Summit at the Mercado in downtown Phoenix.

The award recognizes exceptional contributions of Arizona attorneys or law firms in furthering education and understanding of the role of the law in our democratic society. This award focuses on public awareness on the contributions that attorneys provide to the community.

Superior Court Judge Mark Santana served as a judge for five years, before passing away in 2005. Judge Santana is remembered as a scholar who was upbeat, friendly and soft-spoken.

Q&A with Superior Court Judge Dawn Bergin

Q: Before joining Superior Court, you were a partner with Lewis and Roca, LLP specializing in complex commercial and business tort litigation. How did that work prepare you for your career as a judge?

A: My litigation experience at Lewis and Roca helped prepare me to become a judge in a broad sense. I learned the mechanics of preparing a lawsuit, how to advocate, analyze legal issues, deal with conflicts with other lawyers, be a professional and try a case. I could not have asked for a better place to learn these skills, or a better set of lawyers to learn from.

I had no exposure to juvenile law before coming to the bench, though, so I have learned it through rapid-fire on-the-job training. And there are some things about being a judge that you can learn only by doing.

Examples for me include making sure that everyone gets their say while at the same time keeping control over the courtroom and staying on time; and maintaining detachment from some of the very distressing cases we hear.

Q: Prior to attending law school, you spent a year studying international business relations at the Autonomous University of Madrid in Madrid, Spain. Did that experience influence your career path?

See Q&A with Superior Court Judge Dawn Bergin page 17

Superior Court, County Adult Probation Creates Restitution Court

A new Superior Court program is holding defendants accountable by making sure they pay restitution to crime victims.

Each day in court, victims are awarded restitution only to see defendants default on paying restitution to crime victims.

Under A.R.S. § 13-810, the new court holds defendants in civil contempt if realistic plans and honest efforts to pay restitution have not been made. If defendants are not in compliance, they may be held in contempt with the possibility of work release until the debt or a court-ordered portion of the debt is paid.

Once a month, Judge Roland Steinle sets aside a half day from his busy calendar to conduct restitution hearings, handling approximately seven cases a month. Judge Steinle’s work and the efforts of the probation department have been extraordinary.

Restitution Court is being met with positive reviews in the victim community. In fact, Superior Court has been invited to introduce its program on the national victim awareness stage. In late August, the court will give a presentation on Restitution Court at the National Organization for Victim Assistance Conference at the Kierland Resort in Scottsdale.

“Kudos to Judge Steinle and the Adult Probation Department,” Presiding Judge Barbara Rodriguez Mundell said. “It’s another example of how Superior Court continues to address issues in the area of victims’ rights.”

Q: Did that experience influence your career path?

A: It certainly did.”
VLP Honors the Brightest Lights of Pro Bono Service

continued from page 1

Supreme Court; Hon. Colleen McNally, presiding judge of the Family Division of Maricopa County Superior Court; and Jennifer R. Barnes, Community Legal Services board co-president. Patricia Gerrich, director of the Volunteer Lawyers Program, along with Barnes and MCBA President Kevin D. Quigley, made welcoming remarks. The Hon. Frank X. Gordon was present to introduce his long-time friend, Justice O’Connor.

What the clients say . . .

“I would never have had the courage to speak for myself during the hearing, if the people at FLAP (Family Lawyers Assistance Project) hadn’t helped me.”

– Domestic violence victim in custody case

“The volunteer attorney assigned to me was 100 percent more than I expected. He spent as much time as it took to answer all my questions and made sure I understood all options and possible outcomes. He treated me the same way he must treat his retain clients.” – Homeowner

“Thanks to VLP and especially the volunteer attorney for caring for the welfare of my child. This is the greatest gift anybody has ever given me. A gift I could never repay.” – Appointed guardian

What attorneys say . . .

“You can’t explain to someone why they should volunteer. It’s a door on springs—for those who haven’t walked through it, they can’t possibly imagine what’s on the other side. For those who have, they can’t imagine going back.” – Kolby W. Granville

“I enjoy volunteer work because it brings me joy. – Dr. George C. Chen

“It’s U Photography

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April 2009

MCBA FRANK X. GORDON, JR.

TRAVELING AWARD

Est. 1989 by the Maricopa County Bar Association as the highest honor bestowed by VLP

The Arizona Equal Justice Foundation Board of Directors

DECADE OF DEDICATION AWARD

Est. 1994 as highest honor bestowed by Community Legal Services

Steven G. Biddle

LITIGATION SUPPORT AWARDS

Frontier Private Process Service, Patty Chlebanowski, General Manager

Pro Bono Litigation Support

Pamela Griffin and Griffin & Associates Court Reporters

Pro Bono Litigation Support

James R. Gough

Marilyn Benech Paralegal of the Year

ATTORNEY OF THE MONTH AWARDS

Nicole Ann Miller, May 2008

Christina K. Geremia, June 2008

Robert D. Wermager, July 2008

Bradley Pack, September 2008

Jane A. Proctor, October 2008

Rebecca L. Owen, November 2008

Stanley M. Friedman and Allen L. Ginsberg, December 2008

Kami S. Galvani, January 2009

James A. Craft, February 2009

Charles C. Schock, March 2009

Zachary LaPrade, April 2009

PROGRAM EXPANSION AWARDS

Ann-Marie D. Alameddin

Community Outreach

James J. Belanger

Volunteer Recruitment

Stanley M. Friedman

Volunteer Attorney Leadership

Victoria E. Tandy

New Attorney of the Year

CLINICAL SERVICES, CONSUMER & HOUSING AWARDS

Kolby W. Granville

William T. Birmingham Clinical Services Award

Hyung S. Choi

Consumer Protection Collaboration

Thomas J. Davis

Tenants’ Rights Attorney of the Year

Ernest F. Modzelewski

Family Home Protection

HIV/AIDS LAW PROJECT (HALP) AWARDS

George C. Chen

Daniel S. Ho

Neil Landeen

HALP Team of the Year

FAMILY LAW LITIGATION AWARD

Joseph E. Collins

Family Law Attorney of the Year

CHILDREN’S LAW CENTER AWARDS

Sara G. Gardner

Children’s Court Advisor of the Year

Adrienne W. Wilhoit

Guardianship Attorney of the Year

Laura J. Zeman

Children’s Law Center Advocate of the Year

LAW FIRM AWARDS

Ballard Spahr Andrews & Ingersoll, LLP

Medium Firm of the Year

Quarles & Brady, LLP

Law Firm Support

Snell & Wilmer, LLP

Large Firm of the Year

COUNTY PRO BONO PROGRAM AWARDS

Areas served by Community Legal Services

Kenneth E. Moyer

Mohave County Attorney of the Year

Mark A. Kille

Yavapai County Attorney of the Year

Cristyn E. Weil

Yuma County Attorney of the Year

Jerome County Attorney of the Year

Kari T. Levy

Laurel County Attorney of the Year

Lawrence C. Eger

Cherokee County Attorney of the Year

Joseph S. Brexel

Maricopa County Attorney of the Year

Jon T. Andrus

Apache County Attorney of the Year

Stanley M. Friedman accepts the Volunteer Attorney Leadership Award from Chief Justice McGregor. Friedman was also the Attorney of the Month for December 2008.

Law firm awards went to Snell & Wilmer, LLP, for Large Firm of the Year, represented by Greg Marshall (left); Ballard Spahr Andrews & Ingersoll, LLP, for Medium Firm of the Year, represented by Sarah Glover (center); and Quarles & Brady, LLP, for Law Firm Support, represented by Kent Stevens.

From left, the HIV/AIDS Law Project Team Award winners Neil Landeen, Daniel Ho and George C. Chen.

Adrienne Wilhoit accepts Chief Justice McGregor’s congratulations for receiving the Children’s Law Center Guardianship Attorney of the Year, while the Hon. Colleen McNally looks on.

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<table>
<thead>
<tr>
<th>Event</th>
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<tr>
<td>CLE: Bankruptcy for Non-bankruptcy Attorneys</td>
<td>1 p.m.</td>
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<tr>
<td>CLE: How to Build a Successful Law Practice from Scratch</td>
<td>12 p.m.</td>
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<tr>
<td>CLE: Focus Groups and Jury Deliberation Dynamics</td>
<td>7:30 a.m.</td>
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<tr>
<td>Construction Law Section Board</td>
<td>12 p.m.</td>
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<tr>
<td>Estate Planning, Probate &amp; Trust Board</td>
<td>7:30 a.m.</td>
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<tr>
<td>CLE: Greenhouse Gases: The Past, the Present, the Future</td>
<td>10 a.m.</td>
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<tr>
<td>Paralegal CLA Review Class</td>
<td>9 a.m.</td>
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<td>YLD Board</td>
<td>12 p.m.</td>
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<td>Paralegal Division Board</td>
<td>5:30 p.m.</td>
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<tr>
<td>Foundation Grants Breakfast</td>
<td>7:30 a.m.</td>
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<tr>
<td>Public Lawyers Division Board</td>
<td>12 p.m.</td>
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<tr>
<td>Environmental &amp; Natural Resources Section Board</td>
<td>12 p.m.</td>
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<tr>
<td>CLE: Ethical Estate Planning and Administration: The Devil's in the Details</td>
<td>7:30 a.m.</td>
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<tr>
<td>CLE: Lawyer Ethics and TV: Is There an Honest Lawyer on the Box?</td>
<td>12 p.m.</td>
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<tr>
<td>Paralegal CLA Review Class</td>
<td>9 a.m.</td>
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<tr>
<td>CLE: Difficult Times, Difficult Decisions: Handling Reductions in Force and Other Workplace Changes</td>
<td>12 p.m.</td>
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<tr>
<td>CLE: What Personal Injury Attorneys Must Know About Special Needs Trusts</td>
<td>ASU Mercado, 502 E. Monroe, Room C-131, 7:30 a.m.</td>
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<td>CLE: eFiling in Superior Court</td>
<td>7:30 a.m.</td>
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<td>CLE: Appellate Practice and Persuasion</td>
<td>12 p.m.</td>
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<tr>
<td>Employment Law Section</td>
<td>12 p.m.</td>
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<td>Paralegal Division</td>
<td>12 p.m.</td>
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<td>Quarterly Meeting</td>
<td>12 p.m.</td>
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<td>Lawyer Referral Committee</td>
<td>12 p.m.</td>
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<tr>
<td>CLE: Why Superman and Copyright Matter to You</td>
<td>4 p.m.</td>
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<tr>
<td>MCBA Board of Directors</td>
<td>4:30 p.m.</td>
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<tr>
<td>Diversity Committee’s Summer Associates Reception</td>
<td>George Washington Carver Museum, 5:30 p.m.</td>
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<tr>
<td>MCB Foundation Board of Trustees</td>
<td>7:30 a.m.</td>
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<tr>
<td>CLE: Working with Environmental Consultants: How to Use but Not Abuse Your Experts</td>
<td>12 p.m.</td>
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<tr>
<td>Paralegal CLA Review Class</td>
<td>9 a.m.</td>
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<tr>
<td>VIDEO CLE: Drafting for the Arizona Trust Code</td>
<td>12 p.m.</td>
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<tr>
<td>CLE: Selecting the Fact finder: Voire Dire in the Real World</td>
<td>12 p.m.</td>
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<tr>
<td>CLE: Ethical Issues in Construction Litigation</td>
<td>12 p.m.</td>
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<tr>
<td>CLE: The Future of Getting Paid</td>
<td>12 p.m.</td>
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<tr>
<td>CLE: A New Dawn for Organized Labor: EFCA, Policy Changes and Aggressive Union Organizing</td>
<td>12 p.m.</td>
</tr>
<tr>
<td>Paralegal CLA Review Class</td>
<td>9 a.m.</td>
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<tr>
<td>VIDEO CLE: Loan Modifications and Workouts: Tax Planning and Practical Solutions that Every Business Lawyer Needs to Know</td>
<td>12 p.m.</td>
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*Please watch your MCBA E-News for updated information about meetings and events.*
Steven G. Biddle: Community Legal Services’ ‘Decade of Dedication Award’ Recipient

It really was a coin toss: medical school or law school. The legal profession won, as did the thousands of people who have benefited from the generous pro bono service of Steven G. Biddle.

From “Attorney of the Day” and taking VLP cases early in his career, to Community Legal Services Board President in 2001, Biddle’s pro bono service has spanned more than 20 years. During that time, including almost 20 years as Community Legal Services’ pro bono legal counsel, Biddle has provided thousands of volunteer hours and truly exemplifies the best of pro bono.

Littler Mendelson, PC, encourages its attorneys to provide pro bono services as part of their professional responsibility to the community, and Biddle follows in the footsteps of attorney Charles (Chuck) Fine, a Littler colleague whom Biddle credits as his mentor, and who served as Community Legal Services’ first pro bono legal counsel almost 25 years ago until the late 1990s. When Chuck Fine mentioned to Lillian O. Johnson, executive director of Community Legal Services, that he wanted her to meet a young associate, it was the beginning of a two decade relationship between Biddle and CLS. Biddle’s background had included human service work, and his first-hand the value of helping the most vulnerable populations.

He credits his paternal grandmother, now 95, with instilling the values in him that his parents continued to foster and that he and his wife, Linda, taught their three children. “To me, volunteerism is both a duty and a pleasure. I hope I am making the world a better place, one person at a time.”

Multiplying his impact on the non-profit community is his partnership with ONE, the Organization of Nonprofit Executives, an organization fostering partnerships and innovation among nonprofit executive directors. Now in his third year, Biddle coordinates a team of Littler Mendelson attorneys who provide trainings for the nonprofit community about the most up to date changes in employment law. He also provides low-cost legal advice and counsel in employment law matters to the ONE membership organizations.

Biddle is only the sixth recipient of the prestigious Decade of Dedication Award since it was established in 1994 to honor those Arizonans who have distinguished themselves in the delivery of pro bono legal services for 10 years or more. This honor is awarded by Community Legal Services only when one stands tall above the already impressive crowd of Arizona’s distinguished volunteer attorneys.

To Community Legal Services and to Arizona’s non-profit community, Biddle stands 10 feet tall.

Disability Appeals Program Offered to Phoenix Lawyers

On Friday, June 19, the Arizona Center for Disability Law will host a free, three-credit hour program from 1-4 p.m. on “Overview of Arizona Medicaid Services and Due Process Rights: How to Represent a Client in a Denial of Services Appeal.”

The program will be held at the offices of Perkins Coie Brown & Bain, PA, in Phoenix.

The Arizona Center for Disability Law is a nonprofit law firm and is the federally mandated protection and advocacy agency for persons with disabilities in Arizona. Though based in Tucson, the firm also takes cases in the Phoenix area.

Arizona became the last state to establish a Medicaid program, called the Arizona Health Care Cost Containment System (AHCCCS). Anytime AHCCCS denies a requested service, the Supreme Court has held that the beneficiary has the right to appeal. However, people with disabilities report they find the process overwhelming and intimidating. Many legitimate claims are dropped or lost for this reason.

The Center’s Pro Bono Health Law Project (HLP) is designed to level the playing field by providing AHCCCS members with lawyers for their appeals. The HLP will train private attorneys and provide free CLE to attorneys who agree to take at least one case pro bono during the next year.

The project will train private attorneys and provide free CLE to attorneys who agree to take at least one case pro bono during the next year. The center also will provide technical assistance, professional liability insurance, and payment of court costs and expenses.

If you’re interested in getting involved, register for the program by contacting Mavis Lauritzen at the center, (520) 327-9547 ext. 28 or mlauritzen@azdisabilitylaw.org, or download a registration flyer from the center’s website at www.azdisabilitylaw.org.

Volunteer Lawyers Program Thanks Attorneys

The Volunteer Lawyers Program thanks the following attorneys and firms for accepting 30 cases during the past month.

VLP supports pro bono service of attorneys by screening for financial need and legal merit and providing primary malpractice coverage, donated services from support professionals, training, materials, mentors, and consultants. Each attorney receives a certificate from MCBA for a CLE discount.

For information about cases and other ways to help, please contact Pat Gerrich at VLP at (602) 254-4714 or pgerrich@clsaz.org.

A D O P T I O N

Erin M. Evans
Garey Woner Hoffmaster & Peshek

B A N K R U P T C Y

Daniel Halster (two cases)
Jaburg & Wilk

C O N S U M E R

Patricia A. Alexander
Hoopes & Adams
Jennifer N. Benoit
Quales & Ready
Simone Colgan Dunlap
Quales & Ready
Eric B. Johnson (two cases)
Quales & Ready
Shari L. Miller
The Phoenix Law Group of Feldman Brown Wala Hall & Agema

C O N S U M E R

Thomas Moring
Solo Practitioner
Bruna E. Pedrini
Fennimore Craig
Katea Ravage
Quales & Ready

E M P L O Y M E N T L A W

Joseph T. Cree
Ogletree Deakins Nash Smook Stewart

F A M I L Y L A W / D O M E S T I C V I O L E N C E

Yvette C. Gray (two cases)
Solo Practitioner

G U A R D I A N S H I P S O F I N C A P A C I T A T E D A D U L T S

Matthew Donovan
Snell & Wilmer
Ruth Khalsa
Snell & Wilmer
Stefanie Layton
Snell & Wilmer
Megan Lennox
Bryan Cave
Daniel Blake Scheden
Gallagher & Kennedy

G U A R D I A N S H I P S O F M I N O R C H I L D R E N

Jessie Callahan
Solo Practitioner
Erin M. Evans
Garey Woner Hoffmaster & Peshek
Kyle S. Hirsch
Bryan Cave
Delta Salvatierra
Solo Practitioner

H O M E O W N E R S H I P I S S U E S

Steven W. Cheifetz
Cheifetz Iannitelli Marcolini
Brynn Hallman
Snell & Wilmer
Ernest F. Modzelewski
Solo Practitioner
Rodney W. Ott
Bryan Cave
Katie Ravage
Quales & Brady
Yvonne Snucker
Quales & Brady

T e e t t  J u s t I n

The MCBA has entered a new, online frontier by establishing pages on Facebook, MySpace and Twitter. Add us to get the latest news and updates on everything MCBA, from CLE and networking events, and even MCBA re-construction.

Facebook
www.facebook.com/pages/Phoenix-AZ/Maricopa-County-Bar-Association/88618034464

MySpace
www.myspace.com/maricopabar

Twitter
www.twitter.com/maricopabar
THE BULLETIN BOARD

News from the legal community

The Maricopa Lawyer invites members to send news of moves, promotions, honors and special events to post in this space. Photos welcome.
Send your news via e-mail to maricopalawyer@maricopabar.org.

Moves and New Hires

Hallier Law Firm PLC, Phoenix, announced that Kaine R. Fisher has joined the firm and practices in the area of Domestic Relations.

Arizona Mediation Institute and Judith M. Wolf have relocated to 3131 E. Camelback Road, Suite 230, Phoenix, Arizona 85016. Wolf continues to practice in the area of divorce mediation, arbitration, private judgment and special master work for the family law attorneys and judges in Maricopa County.

Honors, Awards and Certifications

The Phoenix Affiliate of Susan G. Komen for the Cure honored Gallagher & Kennedy, PA, with the Founder’s Award at the organization’s annual Fulfilling the Promise luncheon on March 26.

In an effort to raise money for Susan G. Komen for the Cure, Gallagher & Kennedy hosted multiple fundraising events over the past four years that resulted in a monetary donation of more than $100,000 from the firm’s employees to the charity.

The national law firm of Quarles & Brady LLP is pleased to announce that Katea Ravega, an attorney with the firm’s environmental practice, has become one of a small number of attorneys in the country to have become a LEED-certified accredited professional.

Adrienne Wilhoit, a partner in the business & finance group at Ballard Spahr Andrews & Ingersoll, LLP, was honored for her pro bono work at the firm’s 12th Annual Pro-Bono Awards and received a $1,000 award, which she donated to Arizona Women’s Education and Employment, Inc.

The National Association of Legal Assistants, Inc., is proud to announce that Pamela Anders has successfully completed the two day CLA/CP examination and is now entitled to the use of the “CP” professional credential. Anders is among 1,068 paralegals nationwide who have attained this goal.

News and Events

On April 3, Paul E. Burns, a partner concentrating in intellectual property and commercial litigation with Gallagher & Kennedy, PA, spoke at a Patent Mediation and Arbitration Conference in San Diego, sponsored by the Thomas Jefferson School of Law. Burns has an active mediation practice and is an adjunct professor of law at Arizona State University teaching patent litigation, and at Pepperdine University School of Law’s Straus Institute for Dispute Resolution.

The national law firm of Quarles & Brady announces the launch of its Clean Energy, Climate Change & Sustainability Industry group to help clients navigate the increasingly complex intersection of business and legal issues linked to the environment.

This multidisciplinary group includes more than 50 attorneys from the firm’s environmental, real estate, corporate, utility, finance, intellectual property, litigation, tax, and immigration practices with the technical, financial and regulatory background to manage matters from concept to completion.

Phoenix-based law firm Engelman Berger is celebrating its 10 year anniversary this spring. Launched as a boutique business, bankruptcy and debtor-creditor firm in 1999, Engelman Berger has expanded its practice to include related legal services for their business owner, financial institution, and municipal clients.

Relevant Aspects about Distribution Contracts Prepared in the US and Executed in Mexico

By Mario Molina

By definition, most distribution contracts signed between US distributors and Mexican growers involve two different applicable laws and jurisdictions. Even though the majority of these contracts are prepared and signed under the regulations of US states, once the default of the grower comes up, those contracts need to be executed by a Mexican court, where the grower is actually located.

In this scenario, we find that, even when the Federal Mexican Civil Code prevents the application of a foreign law by the local or federal courts (applicable for commercial cases), previously established jurisdiction and applicable law clauses that didn’t take Mexican law regulations into consideration often limit the legal action the distributor can really accomplish on this side of the border.

Since Mexican and US laws have substantially different structures (common law vs civil law), in most cases, the quickness and speediness of US laws conflict with the formality of Mexican law, often without good results for the distributor.

The first conflict takes place when the plaintiff attempts to execute the remedies he is entitled to under the US law, which in the agricultural business often are the most carefully planned clauses. The Mexican courts have no jurisdiction to admit the claim or cannot act on the grower’s assets without a complete trial or a final resolution.

Remedies: US law prevents a number of remedies that can be immediately executed before a final resolution has been dictated in a controversy. Mexican law, on the other hand, provides only very special remedies under specific circumstances that can be executed before the conflict has reached its final instance.

Jurisdiction: Different from Mexican law, some foreign regulations prevent the privilege of the plaintiff to file the claim or attempt the remedies of the distribution contract in whichever jurisdiction the grower or the product is located, waiving a previously designated jurisdiction in the contract.

Jurisdiction is a very complex matter in Mexico as there are strict formal rules that must be followed in order to legally waive the Mexican courts’ jurisdiction. These rules are even different for civil or commercial matters. When these rules aren’t followed, the jurisdiction clause can be declared null by the local courts and the party located in Mexican territory would have to be defeated before a local judge.

Distributors have a tendency to believe that US regulations provide them with expeditious access to their remedies, considering that such is the law with which they are generally more familiar. It must be considered, however, that in practice, the enforcement of a distribution contract subject to foreign jurisdiction against a Mexican grower, and in respect to an eventual crop located in Mexico, has proven to be a far more complex ordeal than it is to proceed against a grower under a contract regulated by Mexican law and subject to the jurisdiction of Mexican courts.

Nonetheless, parallel documents can be signed and prepared for every operation, keeping US law as the applicable law for the main contract, but introducing some important provisions of Mexican law and preparing additional documents in order to have a better starting point when the time comes to execute the remedies.

Molina’s practice is dedicated to representing foreign clients (U.S. and other) doing business in Mexico.
MONDAY • JUNE 1  ■  1-4:15 P.M.  ■  Bankruptcy for Non-bankruptcy Attorneys

**3 credit hours**

**LOCATION:**
2001 N. 3rd Street, Suite 204;
park in the MCBA building lot

Bankruptcy filings are skyrocketing and non-bankruptcy attorneys need to understand the ramifications of bankruptcy on their practice areas. Not understanding them can lead to unhappy clients and, in certain instances, even malpractice claims. This seminar is designed to help you flush out those issues so you can recognize how bankruptcy may impact on your representation of your client and help you avoid malpractice claims.

**PRESENTERS:**
Randy Nussbaum, Nussbaum & Gills, PC
Doni Friend, Nussbaum & Gills, PC

**SPONSORED BY:**
MCBA

**COST:**
- MCBA member: $90
- Non-member: $150
- Law Student: No charge

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FRIDAY • JUNE 5  ■  10 A.M.-12 P.M.  ■  Greenhouse Gases: The Past, the Present, the Future

**2 credit hours**

**LOCATION:**
2001 N. 3rd Street, Suite 204;
park in the MCBA building lot

This program will help you understand the issues surrounding greenhouse gases, including:

- What exactly is the greenhouse gases issue?
- Why does it raise so much controversy?
- Current legislation
- Regional efforts to combat the effects of greenhouse gases
- What is carbon sequestration?
- Arizona Public Service's carbon sequestration project

**PRESENTERS:**
Martin T. Jones, Partner, Gust Rosenfeld, PLC
Michael Kafka, Ryler Carbuck & Appelwhite
John Boyer, Arizona Public Service

**SPONSORED BY:**
Environmental & Natural Resources Law Section

**COST:**
- MCBA member: $60
- Non-member: $100
- Law Student: No charge

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TUESDAY • JUNE 2  ■  12-2 P.M.  ■  (lunch included)
How to Build a Successful Law Practice from Scratch

**2 credit hours**

**LOCATION:**
2001 N. 3rd Street, Suite 204;
park in the MCBA building lot

This program will help participants evaluate why they want their own practice and what they will need to get started. They'll be able to plan their structure, including whether to be solo or have a partner, how to begin, where to locate, and when to start. Finally, participants will explore the business and marketing needs of a new practice as well as how to develop future business.

**PRESENTER:**
Deni Schirrei, Results Marketing
Michael Zolfo, Zolfo Consulting

**SPONSORED BY:**
MCBA

**COST:**
- MCBA member: $70
- PL Division member: $47.50
- Non-member: $100
- Law Student: $10

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WEDNESDAY • JUNE 3  ■  7:30-9:30 A.M.  ■  (breakfast included)
Focus Groups and Jury Deliberation Dynamics

**2 credit hours**

**LOCATION:**
2001 N. 3rd Street, Suite 204;
park in the MCBA building lot

If you've ever wondered about the value of using jury focus groups for trial, this basic to intermediate CLE program will give you answers. You'll also learn how to use focus groups most effectively.

**PRESENTERS:**
Marc Lamber, Fenwickmore Craig
James Goodnow, Fenemore Craig

**SPONSORED BY:**
MCBA

**COST:**
- Litigation Section member: $55
- MCBA member: $65
- Non-member: $105
- Law Student: $5

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FRIDAY • JUNE 12  ■  12-3 P.M.  ■  (lunch included)
Lawyer Ethics and TV: Is There an Honest Lawyer on the Box?

**3 ethics credit hours**

**LOCATION:**
2001 N. 3rd Street, Suite 204;
park in the MCBA building lot

Join our experts in discussing the latest ethical issues presented by popular television shows. This informative and entertaining seminar features video vignettes from several television series including Law & Order, Boston Legal, Shark, Damages, and Eli Stone.

**PRESENTERS:**
Jess A. Loron, managing partner, Loron, Steiner, Ducar & Horowitz, Ltd.
Robert B. Van Wyck, private practitioner, formerly State Bar of Arizona Chief Bar Counsel

**COST:**
- MCBA member: $100
- PL Division member: $47.50
- Non-member: $100
- Law Student: $10

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MONDAY • JUNE 15  ■  12-1 P.M.  ■  (lunch included)
Difficult Times, Difficult Decisions: Handling Reductions in Force and Other Workplace Changes

**1 credit hour**

**LOCATION:**
2001 N. 3rd Street, Suite 204;
park in the MCBA building lot

Or, as Ben Franklin put it: “An ounce of prevention is worth a pound of cure.” This program will alert you to the rules and issues you must know about to avoid future problems. Topics to be covered include:

- Initial intake and fee agreements and fees
- Rule 1.7: Conflict of Interest: Current Client
- As representing various people, waiver and confidentiality
- Who is the client?
- Preparation of documents for someone other than the client
- Joint representation letter
- Rule 1.8: Conflict of Interest: Current Clients: Specific Rules
- Managing expectations, limiting scope of representation
- Failure to communicate
- Diligence in completion of work
- Disengagement letter
- Rule 7.5: Direct Contact with Prospective Clients
- Solicitation, marketing, advertising
- Privilege and confidentiality
- Duties to non-clients
- Duty to court
- Fiduciary
- Rule 1.14 - Client with Diminished Capacity
- Assessing capacity prior to drafting
- Issues with filing for GAL or conservatorship
- ACTEC - Annotations of EEs

**PRESENTERS:**
Alisa J. Gray, Gray & Fassold
J. Scott Rhodes, Jennings Strouss
Lynda C. Sibly, The Shely Law Firm
Patricia Salzer, State Bar of Arizona

**COST:**
- MCBA member: $95
- Non-member: $155
- Law Student: $5

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TUESDAY • JUNE 16  ■  7:30-9 A.M.  ■  (breakfast included)
E-filing in Superior Court

**1.5 ethics credit hours**

**LOCATION:**
2001 N. 3rd Street, Suite 204;
park in the MCBA building lot

This course is a brief introduction to electronic filing in the Superior Court in Maricopa County. Learn how to register and do a basic filing in the Clerk of Court’s system, how to view documents remotely, and learn the future of e-Filing in Arizona. Lawyers and legal support staff are encouraged to attend.

**PRESENTERS:**
Michael R. Jeans, Clerk of the Superior Court
Aaron Nash, Programs Manager

**COST:**
- PI Division member: $47.50
- MCBA member: $55
- Non-member: $85
- Law Student: $10

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TUESDAY • JUNE 16  ■  12-2 P.M.  ■  (lunch included)
Appellate Practice and Persuasion

**2 credit hours**

**LOCATION:**
2001 N. 3rd Street, Suite 204;
park in the MCBA building lot

This program is for all levels of appellate practitioners. Learn how to effectively and persuasively prepare your appeal.

**PRESENTERS:**
Hon. Ann A. Scott Timmer, Chief Judge, Arizona Court of Appeals, Division One
Philip G. Urzy, Clerk of the Court, Arizona Court of Appeals, Division One
Charles W. Widson, Gust Rosenfeld, PLC

**COST:**
- MCBA member: $70
- Non-member: $110
- Law Student: $10

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Learn when to use a special needs trust and understand the various types and which ones you need for personal injury settlements. You’ll also explore the anatomy of these trusts and related administration issues. Plus, gain perspective on relevant public benefit programs and how they impact administration and funding.

- Develop an understanding of Medicare and Medicaid issues.
- Discover the important considerations with regard to structured settlements.
- Investigate the use of a (408(b)) Qualified Settlement Funds Trust.
- Find out when to use a Medicare Set-Aside Arrangement.
- Analyze attorney liability issues pertaining to special needs trusts.
- Learn about selected case law, research materials and forms provided.

**PRESENTER:**
Keith Lyman, Frazer, Ryan, Goldberg & Arnold, LLP

**COST:**
- MCBA member: $70
- Non-member: $110
- Law Student: $10

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To register, use the registration form on this page, or go to www.maricopabar.org, or call Jennifer Deckert at (602) 257-4200. Unless otherwise specified, all CLE programs will be held at the MCBA office, 2001 N. 3rd Street, Suite 204, Phoenix, AZ 85004.
**THURSDAY • JUNE 18**
4-5 P.M.
**Why Superman and Copyright Matter to You**

1 credit hour

**LOCATION:**
2001 N. 3rd Street, Suite 204;
park in the MCBA building lot

Get answers to these questions:
- Why trust and estate lawyers need to know copyright law fundamentals before crafting estate plans
- Why copyright reversion can generate a massive transfer of wealth to clients
- Why trusts and estate lawyers are on the front lines of copyright reversion

**PRESENTER:**
Chris Ardledge, Turner Green Afrasiabi & Ardledge, LLP

**SPONSORED BY:**
Estate Planning, Probate & Trust Section

**COST:**
- EPPT Section member: $25
- MCBA member: $30
- Non-member: $60
- Law Student member: No charge

**TUESDAY • JUNE 23**
12-3 P.M. (lunch included)
**Selecting the Fact Finder: Voir Dire in the Real World**

3 credit hours

**LOCATION:**
2001 N. 3rd Street, Suite 204;
park in the MCBA building lot

Many practitioners find it very difficult to craft meaningful voir dire questions that elicit needed information within the time permitted by the court. Consequently, decisions on strikes are not uncommonly based on what is really nothing more than a hunch. Unfortunately, failure to identify at least the most unfa-
vorable potential jurors on any given panel can prove fatal to a client’s cause. It is vital that counsel be able to conduct voir dire in a manner that at least reveals those potential jurors whose bias would disqualify them from service.

This seminar focuses on ways and means where views of potential jurors can be discerned through proper questioning techniques, as opposed to improv-
ering questioning techniques that elicit almost no useful information.

**PRESENTERS:**
Larry Cohen, Cohen Law Firm
Neil Harrington, Law Offices of Neil Harrington

**SPONSORED BY:**
MCBA

**COST:**
- MCBA member: $100
- Non-member: $150
- Law Student member: $10

**WEDNESDAY • JUNE 24**
12-1 P.M. (lunch included)
**Ethical Issues in Construction Litigation**

1 ethics credit hour

**LOCATION:**
2001 N. 3rd Street, Suite 204;
park in the MCBA building lot

This intermediate level program will include discussion of:
- Ethical issues that arise in construction-related litiga-
tion
- Inadvertent disclosure
- Party and non-party communications

**PRESENTERS:**
J. Gregory Cahall; and
Scott A. Holcomb, both Matson Weeks, McIntyre & Freifeldner, PA

**SPONSORED BY:**
Construction Law Section

**COST:**
- CL Section member: $35
- MCBA member: $40
- Non-member: $60
- Law Student member: $10

**THURSDAY • JUNE 25**
12-1 P.M. (lunch included)
**The Future of Getting Paid**

1 credit hour

**LOCATION:**
2001 N. 3rd Street, Suite 204;
park in the MCBA building lot

Getting paid for goods and services is always a priority—for your clients and your firm. This program explains how current and future payment processing methods will affect you and your clients, as well as what provide sample information you can immediately put to use.

**PRESENTERS:**
James W. Ryan, Frazer Tyan Goldberg & Arnold, LLP
T. James Lee, Fennimore Craig, PC

**SPONSORED BY:**
Estate Planning, Probate & Trust Section

**COST:**
- EPPT Section member: $60
- MCBA member: $70
- Non-member: $110
- Law Student member: $10

**FRIDAY • JUNE 26**
12-1 P.M. (lunch included)
**A New Dawn for Organized Labor: EFCA, Policy Changes and Aggressive Union Organizing**

1 credit hour

**LOCATION:**
2001 N. 3rd Street, Suite 204;
park in the MCBA building lot

This program for lawyers familiar with labor issues looks ahead to the likely impact of proposals such as the Employee Free Choice Act (EFCA), recent policy reversals from the new President to support organized labor, and stepped up union organizing. Employers should be prepared for new challenges, defending against both organizing and unfair labor practice alleg-
ations.

**PRESENTER:**
Robert J. Derrig, Sherman and Howard, LLC

**SPONSORED BY:**
Corporate Counsel Division

**COST:**
- CED member: $35
- MCBA member: $40
- Non-member: $60
- Law Student member: $10

**VIDEO PRESENTATION**
**MONDAY • JUNE 22**
12-2 P.M. (lunch included)
**Drafting for the Arizona Trust Code**

2 credit hours

**LOCATION:**
2001 N. 3rd Street, Suite 204;
park in the MCBA building lot

Arizona’s recently enacted Trust Code provides new opportunities for drafters of estate planning documents.

In this intermediate seminar, you will learn now to draft (with examples of sample language) documents that use the ATCs new provisions and options, such as the inclusion of ADP provisions, unitrust provisions, specialized spendthrift clauses, utilization of trust pro-
tectors, establishing the settlor’s intent, modification and termination of irrevocable trusts, accounting bifur-
cation of trustee duties, and certifications of trusts. The speaker will also examine sample language in a dis-
cussion of how you can put the new ATC to work for your clients.

**PRESENTERS:**
Lisa Spahr, Environmental Services-Senior Project

**SPONSORED BY:**
Environmental & Natural Resources Law Section

**COST:**
- ENSR Section member: $35
- MCBA member: $40
- Non-member: $60
- Law Student member: $10

**FRIDAY • JUNE 19**
12-1 P.M. (lunch included)
**Working with Environmental Consultants: How to Use but Not Abuse Your Experts**

1 credit hour

**LOCATION:**
2001 N. 3rd Street, Suite 204;
park in the MCBA building lot

In this CLE you can expect to learn how to:
- Quality environmental “experts”
- Contract with environmental firms
- Manage environmental consultants
- Understand the ethical obligations of professional engineers and geologists

**PRESENTERS:**
Jerry D. Wordham II, Gammuge & Burnham
Lisa Spahr, Environmental Services-Senior Project Manager, Engineering and Environmental Consultants, Inc.

**SPONSORED BY:**
Environmental & Natural Resources Law Section

**COST:**
- ENSR Section member: $35
- MCBA member: $40
- Non-member: $60
- Law Student member: $10

**WEDNESDAY • JUNE 24**
12-1 P.M. (lunch included)
**Loan Modifications and Workouts: Tax Planning and Practical Solutions that Every Business Lawyer Needs to Know**

1 credit hour

**LOCATION:**
2001 N. 3rd Street, Suite 204;
park in the MCBA building lot

Designed for business lawyers at all levels, this program will discuss:
- General tax considerations associated with loan modifications and workouts
- Considerations for borrowers
- Practical solutions offered for issues that arise in most workouts
- Special consideration for borrowers that are either partnerships or LLCs
- Workout issues addressed in the American Recovery and Reinvestment Act of 2009

**PRESENTERS:**
Bahar Schippel, Snell & Wilmer, LLP
Bill Kastin, Snell & Wilmer, LLP

**SPONSORED BY:**
Real Estate Section

**COST:**
- RE Section member: $35
- MCBA member: $40
- Non-member: $60
- Law Student member: $10

**VIDEO PRESENTATION**
**MONDAY • JUNE 29**
12-1 P.M. (lunch included)
**The Future of Getting Paid**

1 credit hour

**LOCATION:**
2001 N. 3rd Street, Suite 204;
park in the MCBA building lot

Getting paid for goods and services is always a priority—for your clients and your firm. This program explains how current and future payment processing methods will affect you and your clients, as well as what provide sample information you can immediately put to use.

**PRESENTER:**
Paul H. Button, former attorney, new software execu-
tive and e-commerce entrepreneur

**SPONSORED BY:**
MCBA

**COST:**
- MCBA member: $40
- Non-member: $60
- Law Student member: $10

**MAKE EXTRA COPIES OF THESE CLE pages so you can register more than one time. Remember, you can also register for any and CLE programs at the MCBA website at www.maricopabar.org.**
HALL OF FAME CRITERIA

The Maricopa County Bar Hall of Fame will recognize Maricopa County attorneys who have practiced for at least 10 years and who have:
1. Played prominent and important roles that have had an impact on the history and development of our local bar and the legal profession;
2. Made significant or unique contributions to the law or the administration of justice; or
3. Demonstrated significant leadership, advocacy and accomplishments in service to the community or the profession.

Native American Vets Win Arizona Battle to Vote
continued from page 5

The Citizenship Act was intended to reward Native Americans for their service during World War I and promote the federal policy of assimilation. One privilege of citizenship presumably imparted under the act was the 15th Amendment guarantee of the right to vote. Despite this protection, only a few states voluntarily permitted Indians equal voting rights. When Porter and Johnson were denied registration, they filed suit and their case made its way to the Arizona Supreme Court. In November 1928, the divided court, in a lengthy opinion by Justice Lockwood (father of future Chief Justice Lorna Lockwood) for the majority, determined that Indians had no right to vote in Arizona because they were “wards of the federal government,” and therefore subject to guardianship. The Arizona constitution provided that “No person under guardianship . . . shall be qualified to vote at any election. . . .”

Ironically, The Arizona Republic that morning had featured an editorial arguing strongly against the federal government’s policy that states were responsible for Indian Social Security payments; and also carried a promotional piece for the Armistice Day parade on the following Tuesday that would honor the Pima Indian war hero, Ira Hayes. Hayes was famous as one of the Marines who raised the U.S. flag on Mt. Suribachi, Iwo Jima.

Well Planned Attack
Before that visit to the recorder’s office on Nov. 8, 1947, Harrison and Austin had contacted Congressman Harless and local attorneys Lemuel and Ben Mathews. Harless had lined up support from the ACLU, the National Congress of American Indians (NCAI), and the U.S. Department of Justice.

Within a month, on Dec. 9, at the direction of Congressman Harless, Ben Mathews filed a detailed complaint in Maricopa County Superior Court. Within a few days, on Dec. 13, County Attorney Francis Donofrio and his deputy, Warren McCarthy, filed a one-paragraph motion to dismiss, based on Justice Lockwood’s decision in the Porter case. Harless was still in D.C. for a special session, but returned on Dec. 18, in plenty of time to prepare to argue the motion on Dec. 29 before Judge Thomas Croaff in Division Three.

Harless and McCarthy appeared before Judge Croaff, beginning at 9:30 sharp. After arguments, the judge ruled from the bench, dismissing the case, “with regret.” Judge Croaff commented to the press that although he did not agree with the Porter decision, he didn’t think this court or any other summary court should attempt to reverse the decisions of the supreme court. “Within about a week, the plaintiffs had filed a notice of appeal to the Arizona Supreme Court.

While the legal arguments before the supreme court focused on the applicability of the guardianship provisions in the state constitution to individual Indians, policy arguments were also advanced based on the military service, off-reservation property ownership, and taxing status of the plaintiffs and other tribal members. Amicus briefs were filed by the Arizona Attorney General’s office and the U.S. Attorney’s office; a 55-page brief co-authored by the ACLU and NCAI was drafted primarily by Felix Cohen, the leading Indian Law authority in the nation.

In one of the last decisions issued before the summer recess of 1948, in an opinion written by Justice Levi Udall, a unanimous court overruled Porter and reversed the lower court dismissal of Harrison and Austin’s complaint.


The local press had a mixed response to the decision. Pragmatic political and financial concerns were expressed about the risk that Arizona’s Indian population of 50,000 would electorally overwhelm the white minorities in Navajo and Apache Counties, and that the case would lead to Arizona being forced to pay social security benefits to Indians. On the other hand, editors held out hope that the decision would be a step toward assimilation of Native Americans into the culture of the state.

In a realistic assessment of the legal victory, The Arizona Republic reported, with some relief, that before voting, Arizona’s Indians would still be required to satisfy the other voter qualifications: being of age, a resident of the state, able to write, able to read the U.S. Constitution in English without prompting, being of sound mind, and not having been convicted of a felony.

The newspaper predicted that between 80 and 90 percent of the state’s Native American population would not meet these standards. These barriers were slowly eroded – primarily under the supervision of the U.S. Department of Justice subsequent to the passage of the 1965 Voting Rights Act and subsequent U.S. Supreme Court rulings.

By the time Richard Harless was named an “Honorary Chief” in 1968 by his long-time tribal clients, he could see the results achieved by his Maricopa County and D.C. legal team, with Harry Austin and Frank Harrison leading the charge to eventually end Arizona’s discriminatory voting laws.
MCBA Diversity Committee to Sponsor Annual Summer Associates Reception

The MCBA Diversity Committee is once again sponsoring a reception honoring this year's summer associates.

The event – open to all in the legal community – will be held on Thursday, June 18, from 5:30 to 7:30 p.m. at the George Washington Carver Museum and Cultural Center, 415 E. Grant Street, in Phoenix.

Complimentary beer, wine, soft drinks, and appetizers will be served. The MCBA Board of Directors will be holding their June meeting at the same venue, so their attendance is anticipated.

One of the goals of the Diversity Committee is to foster interaction between attorneys and future attorneys of diverse backgrounds in the broadest sense of that word. We hope that all MCBA members will take advantage of this special opportunity and attend this excellent networking event. For any questions or to register for the event, please contact Laurie Williams at the MCBA (602) 682-8585 or lwilliams@mari copabar.org.

Social networking or “working a reception” can be an intimidating experience for most anyone, but, hopefully, some of these suggestions will make any event more pleasant (and effective) for you:

1. Wear your name badge on your right side (lapel or chest). This will make it easier for others to greet you and not lose eye contact.

2. Avoid lanyards if possible – the badge will almost certainly twist around and your name will be facing you.

3. When chatting with an individual or a small group, maintain eye contact with each person. Try to avoid looking over the person’s shoulder in an effort to spot your next conversation target (maybe a surreptitious glance can work, but this takes practice).

4. If your goal is to meet virtually everyone in attendance, you must master the ability to extricate yourself from the longwinded guest. One method is to bring another person into the conversation, then move on after a few moments while saying, “It was very nice to meet/see you.”

5. One suggestion (attributed to former Secretary of State George Schultz) is to enter the room, go in a clockwise or counterclockwise direction, and leave the event when you get back to the door, having greeted and chatted with as many people as possible. Allegedly, he and his wife would work the room in opposite directions, then vamoose to the next event on their calendar when they were reunited at the door.

Q: Basic manners that your mother (one can hope) taught you should be followed. For example, don’t talk with your mouth full, don’t be a “close talker,” be courteous to the servers and bartenders (a “please” and “thank you” won’t kill you and may make a good impression on an observer), and don’t take drunk. Hogging the buffet isn’t pretty, nor is taking home the food unless it is offered to you.

A: Above all – smile and enjoy yourself. If you are pleased to be there and pleased to be meeting new people or seeing old friends it will show and make you more appealing.

Preparing Medical Experts for Deposition and Trial

continued from page 6

to preparing your client or witness.

“You cannot control the ‘situation,’” (although I have seen some attorneys try mightily) but you can certainly help your expert to understand the ‘situation’ and you can give them tools to prepare for success.

Understanding the ‘Situation’ of Deposition and Trial

For the most part, we all move in and out different communication “situations” fluidly and without conscious effort. But testifying in deposition or trial is not only unique, but delicate, because of the importance placed on accuracy and honesty.

The problem is that witnesses can sometimes forget the unique “situation” inherent in any deposition or trial, and lapse into “conversation” mode, as though they were speaking directly to a friend over coffee at Starbucks. Communication theory commonly refers to this as “interpersonal communication.” The problem is that when your expert lapses into “conversation mode” at deposition or trial, he usually forgets that there are others in the room, including the ever-important court reporter.

The presence of the court reporter adds an element of what communication theory commonly refers to as “mediated communication.” While entire textbooks and courses are dedicated to the study of “mediated communication,” the basic distinction between “interpersonal communication” and “mediated communication” is that mediated communication typically proceeds on two fronts, with the message being generated on one end, and received on the other end, usually with some form of technology acting as the “channel” to bridge the gap. Think about television and radio. Producers of such shows create a “message,” and then shoot it over a “channel” into your television or radio, where you, (the “listener”) receive the message and interpret it. In deposition, the transcript being created by the court reporter can be thought of as simply one more “channel.”

What makes depositions and trial so unique is that they blend so many different forms of communication. Two or more people are engaged in a form of interpersonal communication, but they must try not to speak over each other because the court reporter needs to accurately capture every word. The communication is thus “mediated,” simply by the role of the court reporter and the transcript being created.

But communication is also “mediated” by the presence of other attorneys, or even the judge or jury, who will each periodically interrupt or inject themselves into the process. Even more problematic, sometimes the entire process transpires telephonically or by videoconference, and/or may be recorded by audiotape or videotape, which adds yet another layer of “media- tion.”

In a more informal setting, these added elements might not prove terribly problematic, but when the goal is to learn about scientific, technical or other specialized concepts in an accurate and honest fashion, the potential for misunderstanding or breakdowns in communication is quite real, and quite serious.

Fortunately, you can give your clients and experts the knowledge and tools to help ensure the process goes as smoothly as possible for all concerned.

Q&A with Superior Court Judge Dawn Bergin

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A: Yes, and in a fundamental way. After I graduated from college, I worked as a budget analyst and lived in the same northern Virginia suburb in which I grew up. I was lucky to receive a scholarship after graduation and took a leave of absence to study in Spain. I had never been overseas before. The exposure to another culture and language made me want to confront new challenges.

So, when I returned to the United States, I decided to seek out a new career and a new place to live. That is how I stumbled on the idea of law school, which led to my move here and eventually to this job, which I love.

Q: You have done work in the community assisting families and domestic violence victims. Does this work help you better understand some of the cases you hear on your juvenile calendar?

A: My prior volunteer work in the domestic violence and family arenas provided me with some fundamental understanding of issues I face on the juvenile bench, such as the cycle and psychology of domestic violence and its effect on the family. But it is the actual experience on the bench that has opened my eyes to the extent of the problems pervading families, including methamphetamine and abuse. I have developed a great deal of respect for the professionals who work in this field—the lawyers, CPS workers, social workers, probation officers and staff. The case workers and probation officers in particular are on the front lines every day, facing situations that most of us only read about in the newspaper. They are the ones who make a true difference in the families’ and children’s lives.

Q: What’s your favorite quote? This can be something one of your children said to you, what you said to them, a line from poetry or something you wish you hadn’t said.

A: I tend toward the simpler and more concise quotes. One that has stayed with me for years is, “No one can make you feel inferior without your consent,” by Eleanor Roosevelt.

Q: Do you have a favorite movie or television show in the court or legal genre? Please explain.

A: “12 Angry Men.” I found the dynamics of the jury deliberations fascinating, and you can’t beat the cast—Henry Fonda, Jack Klugman, E.G. Marshall, Ed Begley. Q: Do you own an iPod? If so, what songs are on your playlists?

A: Yes, I suppose I am bound by my ethical obligations to be totally truthful, so I will admit that I have multiple cheesy 1970s songs like “Ode to Billy Joe,” “The Nights the Lights Went Out in Georgia” (the Vick Lawrence version), and “The Night They Drove Old Dixie Down.”

This is the second in a series of articles from the authors on preparing medical experts for deposition and trial. Goodwin may be reached at James.Goodwin@SandersParks.com and Vatz may be reached at evjvatz@gmail.com.
Supreme Court granted the State’s petition for certiorari. Justice John Paul Stevens wrote the majority opinion in which the Court did indeed limit the Belton rule. Stevens noted that, with a few well-delineated exceptions, warrantless searches are unreasonable and therefore violate the Fourth Amendment. One of those exceptions is the search incident to a lawful arrest, which arises under both standards. Because the officers out-numbered the suspects five to three, and the suspects were all secure in the squad cars, there was no danger that any of them could reach Gant’s car to secure any weapon or destructible evidence. Furthermore, there was no reasonable likelihood that Gant’s car would contain any evidence pertinent to the charge of driving on a suspended license.

Belton was not compatible with Chimel’s limitations, though the opinion had stated categorically that it was not departing from Chimel. “[W]e reject this reading of Chimel,” Stevens wrote, “and hold that the Chimel rationale authorizes police to search a vehicle incident to a recent occupant’s arrest only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search.” The opposing argument, Stevens concluded, “seriously undervalues the privacy interests at stake.”

While the majority appeared to approve the holding in Belton while disapproving its general rule, it did not overrule the case. Stevens noted that the officer in Belton was outnumbered and unable to secure the car’s four occupants because he only had one set of handcuffs. But most courts had interpreted Belton as allowing the warrantless search whether or not the arrestee could physically reach the places that the officers wanted to search. Read that way, Stevens noted, the decision was not compatible with Chimel’s limitations, though the opinion had stated categorically that it was not departing from Chimel. “[W]e reject this reading of Chimel,” Stevens wrote, “and hold that the Chimel rationale authorizes police to search a vehicle incident to a recent occupant’s arrest only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search.” The opposing argument, Stevens concluded, “seriously undervalues the privacy interests at stake.”

But Stevens did not stop with Belton. He also held that a search incident to a lawful arrest does not give officers carte blanche to search the vehicle for any and all evidence. Rather, they may search only for evidence that is relevant to the crime for which the arrest was made. Often, he noted, when a person is arrested for a traffic violation, there will be no reason to believe that the car contains any evidence relevant to that violation.

In Gant’s case, the search was unreasonable under both standards. Because the officers out-numbered the suspects five to three, and the suspects were all secure in the squad cars, there was no danger that any of them could reach Gant’s car to secure any weapon or destructible evidence. Furthermore, there was no reasonable likelihood that Gant’s car would contain any evidence pertinent to the charge of driving on a suspended license.

Joining in overturning Gant’s conviction and joining Stevens’ opinion were Justices Clarence Thomas, David Souter, and Ruth Bader Ginsburg. Justice Antonin Scalia agreed with the result but filed a concurring opinion because he believed the Court should simply have overruled Belton.

Dissenting were Chief Justice David Roberts, Anthony Kennedy, Stephen Breyer, and Samuel Alito. Breyer and Alito penned dissenting opinions, both arguing that the Court should adhere to Belton under stare decisis. Alito also criticized the majority for not acknowledging that it was actually overruling Belton.


Several tuition programs established by the Arizona Legislature have recently found disfavor with the courts. The Arizona Supreme Court struck down two programs, and the Ninth Circuit held that another is vulnerable.

Under the Arizona Scholarships for Pupils with Disabilities Program, the State pays for a disabled public-school student to transfer to a private school, paying a scholarship up to the amount of basic state aid that the student would generate for a public-school district. Parents who are dissatisfied with the public school that the pupil attended during the prior school year may apply for a scholarship. The private schools may not discriminate on the basis of race, color, handicap, familial status or national origin.

Under the Arizona Displaced Pupils Choice Grant Program, the State pays up to $5,000 of the tuition and fees for children in foster care to attend their choice of private schools that do not discriminate on the basis of race, color, handicap, familial status or national origin. Both sectarian and nonsectarian schools may participate in both programs and need not alter their “cred” or practices or curriculum in order to receive funding.

In Cain v. Horne, No. CV-08-189-PR (Ariz. Mar. 25, 2009), the supreme court addressed these programs under the Arizona Constitution’s Religion Clause Article 2, Section 12, and the Aid Clause, Article 9, Section 10. The former provides that “[n]o public money . . . shall be appropriated to any religious worship, exercise, or instruction, or to the support of any religious establishment.” Under the latter, “[n]o tax shall be laid or appropriation of public money made in aid of any church, or private or sectarian school, or any public service corporation.”

Writing for a unanimous court, Justice Michael D. Ryan held that the both acts were prohibited under the Aid Clause because both appropriate public funds for prohibited purposes. Although “[t]he voucher programs appear to be a well-intentioned effort to assist two distinct student populations with special needs,” Ryan wrote, “we are bound by our constitution.”

“A[ll]ent a constitutional amendment,” he continued, “because the Aid Clause does not permit appropriations of public money to private and sectarian schools, the voucher programs violate . . . the Arizona Constitution.”

In Winn v. Arizona Christian School, No. 05-15754 (9th Cir. Apr. 21, 2009), the Ninth Circuit addressed a program under which Arizona grants income-tax credits to taxpayers who contribute to nonprofit organizations that award private-school scholarships to children. Arizona taxpayers challenged the program, alleging that because some of the benefiting organizations only give scholarships to religious schools, the program deprives parents of a genuine choice between selecting scholarships to private secular schools or religious ones.

The district court dismissed the complaint, but the Ninth Circuit revived the suit. Judge Raymond C. Fisher, joined by Judges Dorothy W. Nelson and Stephen Reinhardt, held that the complaint “sufficiently alleges that Arizona’s tax-credit funded scholarship program lacks religious neutrality and true private choice in making scholarships available to parents.”

Although scholarship aid is allocated partially through the individual choices of Arizona taxpayers, overall the program in practice carries with it the imprimatur of government endorsement,” Fisher concluded, quoting the Supreme Court.
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