Green Assumes Presidency, Two Newcomers Join Incumbents on Board

Jennifer E. Green, assistant U.S. attorney for the District of Arizona, will take the helm as president of the MCBA in 2010. Though the seventh female president in the association’s 95-year history—Hall of Fame inductee Rebecca Albrecht was the first in 1990—Green is certainly the first female federal prosecutor to lead the bar.

In the election for five available seats on the Board of Directors, three incumbents and two newcomers prevailed among 11 candidates. Roberta E. Berger, senior counsel at Wells Fargo Bank, NA, and Cathy L. Knapp, of counsel at Quarles & Brady, LLP, will join the board for the first time.

Re-elected were David E. Funkhouser III, Quarles & Brady, LLP; William A. Kastin, Snell & Wilmer, LLP; and Commissioner Benjamin E. Vatz of the Maricopa County Superior Court.

President Green holds a B.A. in English, cum laude, from Arizona State University, University Honors College, and earned her J.D. from Arizona State University College of Law in 1997. She clerked for the Arizona Court of Appeals before becoming a town prosecutor for Gilbert, and then a deputy county attorney and assistant bureau chief with the Office of the County Attorney and the District Attorney’s Office.

Roberta E. Berger 
Cathy L. Knapp 
David E. Funkhouser III 
William A. Kastin 
Benjamin E. Vatz

By Daniel P. Schaack

Eliminated Candidate Seeks Post-Primary Election Vacancy

By Daniel P. Schaack

What’s a city to do when a candidate who successfully emerges from the primary election resigns from the race for city council before the general election? Does the next leading vote-getter step in to fill the vacancy? Division One of the Arizona Court of Appeals faced that question in Katan v. City of Prescott, No. 1 CA-CV 09-0611 EL (Ariz. App. Dec. 3, 2009).

Under the Prescott City Charter, any candidate for a contested seat on the city council who receives a majority of the primary votes is deemed elected. If fewer than all of the contested seats are filled in the primary, the candidates winning the most votes—numbering twice the contested seats—qualify for the general election.

In the September 2009 primary election, none of the eight listed candidates for three contested seats won a majority. Before the general ballots were printed, Bob Bell, a council incumbent who had finished fifth in the primary, withdrew his candidacy. Paul Katan, who had finished seventh in the primary, demanded that his own name be placed on the general-election ballot, arguing that Bell’s withdrawal made Katan one of the six who qualified to run. Prescott refused to list Katan on the ballot, and he sued.

The superior court granted Katan relief. It noted that the election had not followed the normal course. The city had usually issued certificates of nomination to the primary’s highest vote getters and then listed them on the ballot.
Welcome everyone to 2010. We enthusiastically greet January and what promises to be the long-awaited return to our building at 303 E. Palm Lane.

As most of you know, it was a tough 2009 (our Diamondbacks might call it a “rebuilding year”), with a fire gutting our newly-remodeled building. We look forward to a day very soon when we can invite folks back into our building, host CLE presentations and meetings, and carry out the daily business of our organization. Indeed, it will good to be home.

The Agenda

So, other than the big move back to Palm Lane, what does 2010 have in store for MCBA? We will kick off the year with a day-long Board Retreat on Jan. 23rd. First up on the to-do list is to welcome our board members, especially new faces Roberta Berger and Carly Knapp. We look forward to their enthusiasm and contributions as we head into a year full of challenges.

Congratulations also to the cast of victorious incumbents: David Funkhouser III, the Hon. Benjamin Vazt and William Kastin. We are so pleased to have you back, and appreciate your continued service.

A project that began last year was crafting a strategic plan. This year we will renew our efforts in the long-range planning department, so we will return to that task at our Board Retreat. I look forward to sharing updates with you as we develop our long-range goals for MCBA.

We hope that late this year will also mark the opening of the Justice Museum and Learning Center in the Old Courthouse Building. The Justice Museum is a joint and extraordinary effort between the MCBA and the Maricopa County Superior Court to open the doors of our historic jail on the top floor of the Old Courthouse. The Justice Museum will showcase Arizona’s rich legal history. This coordinated endeavor has already started in earnest with fundraising and identifying appropriate exhibits for the museum.

Divisions, Sections & Committees (Oh, My!)

Our divisions, sections and committees are indeed the lifeblood of our organization. Welcome back!

Part of our mission in 2010 will be to find out what is working (and to let it be) and to identify what needs our attention. We will be relying on everyone, from the membership to our leadership, to help us in this effort. We certainly want to work hard to maintain the quality of our events and programs to earn your membership and trust in the MCBA.

Save the Date: Barristers Ball 2010

Please mark your calendars: the Young Lawyers Division is hosting the Barristers Ball on Saturday, March 6 at the W Hotel in Scottsdale. We appreciate the support of the entire legal community, as the YLD has selected the Justice Museum & Learning Center as its beneficiary. Please consider buying tickets to support this worthy cause.

Bench & Bar Committee

At the end of 2009, we welcomed back an old friend: the MCBA Bench & Bar Committee. Many thanks to Judge Christopher Whitten of the Maricopa County Superior Court for leading the charge and all the committee members who have volunteered to serve.

The Bench & Bar Committee will meet four times a year to collectively address issues and solve problems among the bench, bar and community at large. We welcome the legal community to bring issues that need attention to our attention, in the hope that we provide a resource to increase communication and collegiality among practitioners and the bench.

These are just a few of the things coming your way in 2010.

Thanks Kevin, Allen and MCBA Staff

I end with many thanks. Many thanks to Kevin Quigley, our 2009 MCBA president; Allen Kimmiborough, our executive director; and the entire MCBA staff for their steadfast leadership and energy that guided us through last year.

Kevin’s challenging year as president caps a six-year commitment to MCBA as a board member and leader of our organization. He inherited a year as president that he certainly didn’t ask for, and we are blessed that he was at the helm in such rough waters.

Every Choice Makes a Difference: An Interview with Maricopa County’s Sustainability Manager

By Aaron Nash, Maricopa Lawyer Editorial Board Chair

The editorial board of the Maricopa Lawyer is increasing its coverage of the green movement and options for practicing law in sustainable ways. Lawyers and law firms are encouraged to share their stories by submitting articles to the Maricopa Lawyer.

This article is based on an interview with Jonce Walker, sustainability manager for Maricopa County.

ML: Maricopa County’s Green Government Program started in June of 2008—what does that mean?

JW: As an introduction, green and sustainability usually are catchy ways of saying efficiency. The county is looking at specific and measurable ways to implement water reduction, energy reduction and resource management to work smarter over the long term. The program started with 10 departments but that number will double in the near future. I haven’t had to recruit new departments to become involved as much as I thought I might—most have come to me, volunteering to participate in the program.

ML: What kind of savings or efficiencies does this translate to?

JW: Maricopa County’s energy bills have consistently been over $20 million a year. Through conservation efforts and efficiency upgrades, the county trimmed $2.7 million off that energy bill this year. The stated goal is to reduce countywide energy costs by five percent by 2013. During that time, the county will add about 700,000 square feet of space by completing the court tower and will still be able to reduce overall energy consumption.

ML: How is that possible?

JW: Maricopa County now only builds buildings that meet the U.S. Green Building Council’s LEED certification requirements, which range from certified to silver, gold and platinum. LEED is Leadership in Energy and Environmental Design and has specific holistic requirements for energy efficiency and other sustainability aspects. The court tower is expected to be LEED-silver certified, if not gold. There is a misconception that building to these specifications is much more expensive, but extra cost, if any, is minimized, especially when planning early on, as in the court tower.

ML: What are other examples of sustainability-based savings?

JW: The county received federal ARRA (American Recovery and Reinvestment Act) money to install a solar-thermal system that will heat water at the Fourth Avenue jail and the Lower Buckeye jail that will create a huge savings. Photovoltaic solar power will be used at the White Tank Library and the vehicle retrofit program is back in place, allowing people to get assistance making their vehicles pass emissions.

ML: What can individual lawyers do? Carpool, take mass transit, turn off computer monitors, recycle?

JW: All of those options are good, but sustainability isn’t just green; it’s how we live in our environment. It’s a mind-shift of how we think and live our lives and is anything that improves and doesn’t harm the environment we live in. I recommend starting small, doing a couple of things at a time. Every single action adds up—it can be easy and rewarding. For example, digital is better than paper. When printing paper it’s not just paper; it’s also ink, energy and more. Sustainability is really about decisions and lifestyle; every choice makes a difference.

ML: What can law firms do? Adjust temperature settings, lights, print double-sided when possible, recycle, subsidize public transit fare?

JW: Some law firms are doing those things now. Having a sustainability vision and mission is a good planning tool. A good starting point then is to say, “What can we do that meets our sustainability vision and mission that we can do at no cost?” For firms leasing space, the relationship with the landlord is key. If the building’s maintenance company doesn’t offer recycling, for instance, there may be alternatives or they can ask the landlord to create a new partnership. There’s money in recyclables because they are a
In 2009, the Clerk’s Office and local attorneys continued to see changes in the Superior Court. Despite decreased funding, an extended hiring freeze, staffing shortages and increased workload, the Clerk’s Office created efficiency through the implementation of several key projects, leveraging technology to help the Clerk’s Office do more with less. The following summaries demonstrate some of the highlights of 2009.

Permissive eFiling

Though technically made available in December of 2008, eFilings steadily increased throughout 2009, providing increased efficiency and lower costs for both attorneys and the Clerk’s Office. eFilings increased from approximately 150 per day in December 2008 to an average of more than 450 eFilings per day in November 2009.

eFilings are accepted in all general civil cases, the criminal trial divisions and in several family court divisions. Judicial divisions that accept eFilings print language at the end of minute entries stating “This case is eFiling eligible.”

Subpoenas Online

Through a partnership with the State Bar of Arizona, attorneys can now have a civil subpoena issued 24 hours a day in any county around the state. Details are online at www.myazbar.org/subpoenas.

eFiling Survey

Approximately 500 attorneys and legal support staff responded to an eFiling survey, providing the Clerk’s Office with valuable input and insight for the current and future versions of eFiling.

Social Media

To reach a broader section of the legal community, the Clerk’s Office started posting events and information using Twitter and Facebook accounts online. Both have been useful for publicizing services, updates and office closures, both planned and unexpected.

Southeast Facility Improvements

The Mesa adult facility was reconfigured over the summer to improve the file counter and customer service areas of the Clerk’s Office.

E-mail Address Requirement

By Administrative Order, the Supreme Court directed all attorneys to have and maintain an e-mail address for official court documents. This requirement made it possible for the Clerk’s Office to increase participation in the electronic minute entry distribution system.

eAppeals

Pursuant to a Supreme Court Administrative Order, the Clerk’s Office started a pilot project to electronically file the Superior Court record with the Court of Appeals, Division One.

eFile Training

Between CLE’s, monthly demonstrations at the Clerk’s Office and onsite visits to law firms and other legal community organizations, the Clerk’s Office demonstrated the eFiling system to hundreds of lawyers and legal support staff in and beyond Maricopa County.

ECR Online and Arbitrator Access

Dozens more attorneys registered with the Electronic Court Record Online to view the public record remotely from their home or office. This valuable service was extended to arbitrators as well, allowing them to view the public records filed in a case as they are posted to the docket, rather than receive a paper copy of the record that is only up-to-date as of the date printed.

In 2010, the Clerk’s Office looks forward to further advancements in technology and the efficiencies that will result. In addition, the new cash receipting system now in place allows American Express as a payment option.

The 2010-2012 strategic plan for the office is available on the clerk’s website and communicates the strategic direction the office will take over the next three years to overcome difficult issues and to achieve specific goals. To view the complete strategic plan for the Clerk’s Office, go to www.clerkofcourt.maricopa.gov/news/StratPlanFY10-12FINAL.pdf. Thank you for the successes and developments we experienced in 2009 and we all look forward to working together throughout 2010 and beyond.

Environmental & Natural Resources Section Holiday Social

The Environmental & Natural Resources Section held their holiday social last month at the Nina Mason Pulliam Rio Salado Audubon Center. Shown here are Jerry Worsham of Gammage & Burnham, Sandra Ericson of ASU, and John Burnside of Bryan Cave.

At the Environmental & Natural Resources Section December holiday social are Joe Mikitish of the Attorney General’s Office, Laurel Arendt of Archaeological Consulting Services, Ltd., and Brad Glass of Gallagher & Kennedy.
YLD Addresses Legal Community Issues and Benefits Young Lawyers

Who can believe we just entered a new decade? And as each year passes, our legal community continues to grow.

No more than 20 or 30 years ago, most lawyers in Maricopa County knew each other personally or at least crossed paths professionally. The legal community is larger now and our interaction has tapered. But this interaction is critical to the integrity of the profession. It is particularly important that young attorneys invest themselves in their community. MCBA provides this network.

The MCBA Young Lawyers Division consists of attorneys in their first five years of practice or under the age of 36. The YLD Board of Directors meets on a monthly basis, addresses issues facing the legal community and young lawyers, and continues projects benefiting the legal community and the community at large.

Consider the mission statement of the YLD, a goal no doubt accomplished each year by the organization: The Maricopa County Bar Association Young Lawyers Division’s mission is to involve young lawyers in serving the community and enriching the profession while focusing on the specific needs of young lawyers. We are proud of what the YLD accomplished in 2009, despite the challenging climate, and look forward to another successful year packed with meaningful projects.

Allow me to point out a few of the excellent programs established by this division. For example, our Domestic Violence Committee recently piloted a new program spearheaded by its chairman, Leslie Satterlee, called Legal Assistance to Women in Shelters (LAW). The LAWS program provides pro se legal education and resources to women at local domestic violence shelters so they are prepared to represent themselves in court and confront the various issues facing them. Volunteer attorneys present seminars on topics relevant to domestic violence survivors seeking relief through the justice system. The Domestic Violence Committee also facilitates an annual Necessities Drive for a number of shelters across the Valley.

Our annual Law Week event in April provides the perfect opportunity for attorneys to give back to the community while exercising their legal skills. With the Ask-A-Lawyer and Phone-A-Lawyer events, Law Week serves hundreds of people in need of legal advice. The annual junior high school essay contest allows attorneys to introduce children to the world of justice and increase youth appreciation of the crucial role that law plays in our community.

The YLD also serves its own community, focusing on the needs of young lawyers. The YLD organizes a number of events specifically aimed at bringing attorneys together, while raising funds for charitable causes. We encourage you and your peers to attend the annual Barristers Ball, an event highly regarded in the legal community, which will be held on March 6 at the W Hotel in Scottsdale.

Proceeds from this year’s event will benefit the Justice Learning Center and Museum. The Sixth Annual Race Judicata will take place on Oct. 3, a 5K run/walk event that has grown considerably since 2004.

Each year we also orchestrate a range of CLE opportunities and panels developed specifically for our members. This March, the YLD will offer a Bridge the Gap CLE to address issues facing younger attorneys.

For this New Year’s resolution (or at least one of your many), please consider further involving yourself in our legal community while taking advantage of the wonderful opportunities offered by the bar. This year we are looking for new volunteers and members. Please also consider attending one of our YLD board meetings, which are held on the first Wednesday of each month at noon at the wonderful MCBA facility. All are welcome.

On behalf of the Young Lawyers Division, I wish you a great year personally and professionally.

If you could just push a button you wouldn’t need a CFE.

Keegan, Linscott & Kenon, PC has Certified Fraud Examiners (“CFE”) on staff who are members of the Association of Certified Fraud Examiners, the world’s premier provider of anti-fraud training and education. We can help your client prevent, deter, detect and investigate fraud and illegal acts.

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Celebrating our fifteenth year, Keegan, Linscott & Kenon, PC has been serving businesses and individuals in Tucson and the southwestern US with innovation and insight. Call 520-884-0176 to schedule a meeting.

Lawyer Referral Service Holiday Reception

Meeting at the Lawyer Referral Service holiday reception at the University Club last month are Laurel Workmen, Christine Marra and Joe Saienni.

Lawyer Referral Service board member Justin Beresky, of Beresky and Fish, attended the LRS holiday reception last month at the University Club with his spouse, Nicole Beresky, and son, Julian.
R U With Still Me? Using More Professional Transitions

As this column addressed last month, many writing critics blame the use of e-mails and text messages for the recently-claimed decline in writing quality. I agree with this basic assessment.

Using basic transitions in a legal document goes a long way to countering the sometimes sloppy shortcuts writers use in e-mails and text messages. Legal writers can do even more by using professional transitions throughout a document and not just at the beginning and end of paragraphs and sentences.

Professional transitions show relationships among words or ideas in a document. Although a legal writer may employ these professional transitions at the beginning and end of paragraphs and sentences, a writer may also use these transitions anywhere in the document.

One common professional transition is the use of repetition: ending a paragraph with a key word/concept and starting the next paragraph with that same key word/concept. I used this transition between the second and third paragraphs of this column.

A writer can also use transitions to tie together an entire paragraph. Specifically, the third, fourth and fifth paragraphs of this column use a variation of the key words “professional transition” six times. Another common, related transitioning concept is dovetailing: using similar words with the same base. Here, I have used “transition” (noun), “transitioning” (adjective) to show that concept.

Finally, there are professional transitions that go beyond mere sequencing (the subject of last month’s column). Following are lists of the most common ones.

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Aid Your Practice by Picking up a Book from the MCBA

Books and publications from the MCBA are now available for purchase online. Titles such as Life, Law and the Pursuit of Balance and A Legal History of Maricopa County are sure to benefit legal professionals at various career levels.

Take a look at our selection at www.maricopabar.org

Legal Briefs

By Joan Dalton

Judge Song Ong Receives NAPABA Trailblazers Award

Roxanne K. Song Ong, chief presiding judge of the Phoenix Municipal Court, received a trailblazer award from the National Asian Pacific American Bar Association in November. The award recognizes Song Ong for outstanding achievements and leadership that helps pave the way for other Asian Pacific attorneys.

County Court Commissioner Recipient of NCSC Award for Excellence

Marcus W. Reinkensmeyer, court administrator for the Judicial Branch of Arizona in Maricopa County, received the National Center for State Court’s Warren E. Burger Award for Excellence in Court Administration.

Obama Administration settles Longstanding Cobell Lawsuit

United States Department of the Interior Secretary Ken Salazar announced on Dec. 8 that his department had negotiated a $1.4 billion dollar settlement in Cobell v. Salazar, a class-action lawsuit filed in 1996 that involved the department’s mishandling, for more than 120 years, of Native American tribes’ oil, gas, grazing, timber and other royalties.

Salazar said during a briefing on the settlement plan that “we are here today to right a past wrong.” Lead plaintiff for the class, Eloise Cobell seemed pleased with the Obama Administration action, saying: “[today we have an administration that is listening to us.”

Salazar hopes to have legislation approving the agreement passed by Congress by the new year.

Obama Signs Legislation Affecting Minimum Sentencing and Hate Crimes

The National Defense Authorization Act signed by President Obama last October, in addition to providing for the military, requires the U.S. Sentencing Commission, within a year of the bill’s enactment, to submit a report on mandatory minimum sentencing to the Judiciary Committees of the House and Senate. The report must contain:

- A compilation of all mandatory minimum sentencing provisions under federal law;
- The effect, if any, of mandatory minimum sentencing on sentencing disparity;
- The impact of mandatory minimum sentencing on prison population;
- The compatibility of mandatory minimum sentencing with the Sentencing Reform Act of 1984;
- Consideration of mechanisms other than mandatory minimum sentencing laws that Congress could consider for sentencing policy.

Another section of the Defense Authorization Act expands the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act to include circumstances in which increased federal penalties could be imposed for hate crimes, and allows the U.S. Attorney General to assist state, local and tribal enforcement officials with hate crimes investigations.

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Contingency Fee Splitting available in compliance with Ethical Rule 1.5(e)
The MCBA Paralegal Division was built by the founding members who have set the stage for the division to become the success it is today.

This year’s board of directors, along with myself, consists of: Kelly Gray, president-elect; Joanie Littrel, secretary; Erica Warne, treasurer; Maureen Zachow, immediate past president; directors Felice Wortman, Mandy Bennett, Jennifer Caccavale, Linda Hassler, Julie Eslick and Cami Barnella. They continue to strive to meet the needs of the legal community and the 287 plus MCBA Paralegal Division members.

One of the main focal points of the division is education for and about paralegals. The first annual MCBA Paralegal Division Conference was held in 2000 and has continued each year with growing success. The planning for the 11th Annual MCBA Paralegal Division Conference has already begun, as the conference will be held on Sept. 24.

Each year the division offers a total of nine CLE credit hours. Six CLE credits can be earned by attending the conference and three CLE credits by attending the quarterly meetings (free for division members) scheduled throughout the year. These events are also excellent opportunities for networking.

The division also holds review courses for paralegals interested in obtaining their certified paralegal designation through NALA. The division is planning on holding a review course for those paralegals interested obtaining their registered paralegal designation through NFPA.

In the division’s continuing effort to promote the paralegal profession, the division offers a paralegal student membership at a reduced rate. The membership benefits for students have increased and student members will now receive student pricing for CLE, the Maricopa Lawyer, and the Friday E-News. We encourage paralegal students to become involved in the paralegal profession while also giving them the opportunity to be mentored by established paralegals.

Once again, the MCBA Paralegal Division will be awarding several scholarships to paralegal students attending ABA-approved paralegal schools. These scholarships will be presented during Paralegal Career Day on March 6, at Phoenix College. All paralegal students and paralegals are welcome to attend.

Today’s members are also active in supporting the community in a variety of ways including collecting dental items for John C. Lincoln Children’s Dental Clinic and toys for Arizona Children’s Association. The Paralegal Division also supports the William K. Eaton School with monetary donations each year.

Paralegals that are interested in having FUN, join us for our bowling outing this spring and the End-of-the-Year Celebration in December.

The future of the Paralegal Division is dependent on the continued growth of our membership and the active support and commitment of our members to make the division responsive to the needs of the paralegal community.

For more details on the MCBA Paralegal Division and our upcoming activities, please visit our website, www.maricopabar.org, and click on the For Paralegals link.

### Paralegal Division Holiday Social

Gathered around the toys donated by paralegal members for the Arizona’s Children Association at their year-end social in December are 2009 officers Sara Neily, secretary; Maureen Zachow, president; Marge Haberman, treasurer; and Kathy Bunch, immediate past president. Not present was Stacy Velasquez Palmer, incoming 2010 president.

The Paralegal Division year-end social was held last month at Macayo’s Mexican Kitchen. Shown here are Jennifer Caccavale, Bekki Joseph and Sonja Cotton.
MCBA MEMBERSHIP LUNCHEON
Thursday ■ February 18 ■ 2010

“STATE OF THE COURTS”
FEATURED SPEAKER
The Honorable Rebecca White Berch, Chief Justice, Arizona Supreme Court

Join us for this revival of the MCBA all-membership luncheon, kicking off with a distinguished jurist on a timely topic.

11:30 a.m. Registration and Networking Time
12 Noon Lunch and Address by Chief Justice Berch
1:00 p.m. Adjourn

CLE credit:.75 hour of CLE included

Register online at www.maricopabar.org or use the form below.

REGISTRATION FORM

MCBA MEMBERSHIP LUNCHEON ■ FEB. 18, 2010

$35 per person (includes lunch and CLE) ■ Registration Deadline: Feb. 16

I am registering ___________________ people

Name__________________________________________
Firm____________________________________________
Address__________________________________________
Email________________________ Phone______________

NAMES OF OTHER REGISTRANTS

1. ____________________________________________ 4. __________________________
2. ____________________________________________ 5. __________________________
3. ____________________________________________ 6. __________________________

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Social Networking Sites: The Next E-Discovery Frontier

By Shannon Awsumb

Burgeoning growth of online social networking has created a huge repository of information about individuals and organizations that attorneys may find useful in litigation. By the same token, those who frequent social networking sites should be circumspect about what information they share and how broadly they define their circle of "friends."

Experienced attorneys know that embracing new technologies—such as social networking sites—can make the difference between winning and losing cases. While once relegated a pastime of tech-savvy college students, social networking sites such as Facebook and MySpace are now ubiquitous and an important weapon in any litigator's arsenal.

Social networking sites are a key source for information regarding many aspects of litigation, including claims and defenses, expert and lay witnesses, jurors, opposing counsel, and judicial officers. For a variety of reasons and from a variety of perspectives, attorneys should utilize social networking sites as part of their litigation plans.

Rise of Social Networking

In order to understand the importance of social networking sites as a litigation tool, attorneys first need to understand the magnitude of their use.

In 2009, time spent on social networking sites for the first time surpassed time spent on e-mail. As of September 2009, Facebook's user base exceeded 300 million users and is now "nearly as large as the U.S. population."

Almost three-quarters of those active online in the United States are involved with social networking sites.

Social networking sites are now widely recognized to be a key source of information regarding a person because "[a]lthough these sites provide users with a sense of intimacy and community, they also create a potentially permanent record of personal information that becomes a virtual information bonanza about a litigant's private life and state of mind."

It is telling that every candidate for a high-ranking position in President Obama's administration had to disclose social networking sites featuring the applicant in a personal or professional capacity. In any given litigation, chances are that opposing counsel, witnesses, potential jurors, and even the judicial officers maintain a presence on one or more social networking sites.

Facebook and MySpace are the two most popular social networking sites. Both are freely accessible websites in which users can join networks and groups, interact with the public or only with persons they have designated as "friends," send private e-mail messages, issue public notices or status updates, and post photos and videos.

Review of the statistics is compelling. Both Facebook and MySpace were launched in 2004. Facebook has more than 300 million active users who have an average of 130 friends on the site. Each month, Facebook users upload over two billion photos and 14 million videos. MySpace has nearly 125 million active users.

Most social networking sites, including Facebook and MySpace, enable individual users to control whether their information is private or public and to whom it can be disseminated. How accessible information shared on social networking sites is to a third party ultimately depends on the security settings set by each individual user. The security settings range from uncensored, public profiles that can be accessed and located through the social networking site or any internet search engine, to private profiles, accessible only to persons designated as friends.

Litigation Tools

Attorneys are using social networking sites as litigation tools in various ways, including the following:

- To investigate lay and expert witnesses;
- To prepare for depositions;
- To vet prospective jurors;
- To investigate opposing counsel and judges;
- To tailor closing arguments and trial strategy.

Particularly in high-profile cases that may involve extensive jury-selection processes, attorneys should use jury questionnaires to ask whether potential jurors have profiles set up on social networking sites. Trial consultants regularly use internet research as a means of vetting prospective jurors and learning information jurors may not reveal on jury questionnaires or during voir dire, "including how they vote, how they spend money and if they've spoken out on controversial issues."

For example, in a multimillion-dollar civil action in Ohio, plaintiffs' counsel discovered that a member of the jury pool listed his status update on Facebook as "sitting in hell 'aka jury duty[.]'" The juror's status update was discovered because the juror belonged to a 238,000-person Cincinnati, Ohio, Facebook network. The judge removed the juror from the jury pool.

Attorneys can also use social networking information to tailor their openings and closings. "For example, a lawyer discovered from a person's MySpace page that [that person's] favorite book was The Seven Habits of Highly Effective People, and found a way to sublty include that reference into his closing arguments." A jury consultant likewise explained that "[i]f you find that someone is a member of an environmental group, or believes in a charity, you might use analogies to gain sympathy for your client[.]

Not only attorneys use social networking sites during litigation. A Texas state court judge recently detailed the many ways in which she has used Facebook in connection with her job, including discovering communications attorneys have written about proceedings in which they were appearing before her, many of which exposed improprieties and unethical conduct.

Informal Discovery

Attorneys can discover social networking information through both informal and formal means.

Informally, attorneys can discover social networking information regarding individuals by conducting searches on an internet search engine, such as Google, or on the individual social networking sites. The amount of publicly available information that can be uncovered depends upon what social networking site the person uses and the security settings the person has activated on the site, if any.

For example, if a person's Facebook account has low security settings, one can locate and access the account and user information by simply conducting an internet search or by searching for the person's profile on Facebook. Attorneys can discover the user's postings, list of friends, shared photos and videos, and other valuable information.

If a person has heightened security settings, attorneys may still be able to discover the social networking account, but will not be able to access the person's profile information unless the user provides permission through granting a "friend" request. Even if attorneys can only gather limited information informally, that information can provide a means to tailor subsequent formal discovery.

Attorneys' ability to conduct informal discovery of social networking information is not limitless, however, and attorneys must remain cognizant of applicable ethical constraints. For example, the Philadelphia Bar Association Professional Guidance Committee has addressed what steps an
VLP ATTORNEYS OF THE MONTH

Deatherage, Reder, Zweig Roll up Their Sleeves to Save Family’s Home

By Peggi Cornelius

“Roll up your sleeves and dive in; you’re a lawyer, this is the law; and people need you!”

The encouragement he’d offer colleagues today is the advice he gave himself in 2002, when Mark Deatherage accepted an invitation by attorney Jay Zweig to partner in pro bono representation of a family that had lost their home to equity skimming fraud masquerading as foreclosure rescue. As the case evolved, attorney Robert Reder also became immersed in the advocacy that eventually led all of them to the courtroom and a resounding victory three years later.

Both Deatherage and Zweig have been members of the Volunteer Lawyers Program (VLP) since the mid-1980s. Not long after VLP was founded by its co-sponsors Community Legal Services and the Maricopa County Bar Association in 1981, Deatherage was introduced to VLP while working at the law firm of Streich Lang, and later met Zweig during their employment at Gallagher & Kennedy. When Zweig became a partner at Bryan Cave in 2007, his commitment to the pro bono matter he shared with Deatherage continued, and he enlisted the help of Reder. Like Deatherage and Zweig, Reder became an active VLP participant early in his career.

“Shortly after I went to work at Bryan Cave in 2006, a colleague suggested I contact the coordinator of VLP’s Children’s Law Center, attorney Roni Trpper,” Reder said. “Roni’s the best, and cases involving guardianship of minors and adoption are very gratifying, but the equity skimming matter challenged me with a first jury trial experience that last two weeks.”

Zweig commented on the advantages of a team approach to pro bono work, saying, “It can provide an opportunity to step outside one’s comfort zone, to offer your unique skills, while expanding your practice through collaboration with others.

“In this case, although Mark and I both had extensive jury trial experience, I had prosecuted some fraud cases and Mark brought his expertise in real estate litigation and an amazing grasp of the nuances of the law. Robert was not only exceptionally helpful in preparing for the trial, his fluency in Spanish enhanced our communications with the clients.”

All three attorneys noted the commitment of their law firms to community service.

“I don’t think any of us envisioned what this case would become when we took it,” Deatherage said. “There were a dozen others, including Mike Gallagher, who helped with this case,” Zweig said. Deatherage also credited Kim Haggard, Glen Hallman, Tim Overton, and Ryan Anderson for their work on the matter.

“Without the substantial support of Gallagher & Kennedy and Bryan Cave, none of us could commit the time and resources necessary to do this type of impact litigation, but the necessity for it was made profoundly clear to me in working on this case,” Deatherage said. “I was struck by the sheer pervasiveness of the foreclosure rescue fraud and equity theft that has resulted in thousands of Americans being duped out of their homes when they were most vulnerable.”

Vulnerability is often a common denominator among VLP clients. Zweig noted, “VLP screens for financial need and legal merit. However, before accepting a pro bono case, I like to meet the potential clients, just as I would otherwise.

“In this case, ownership of the home was shared by two brothers and the resident family included children and their grandmother. Close relatives lived in the same neighborhood and their fraudulent eviction from the home they’d owned for nearly 20 years upset them from their community. It was literally traumatic and life changing for them.”

Deatherage commented on the dedication of Judge Helman.

“He was thoughtful and fair to both sides, taking time to deal with difficult legal issues and unexpected events. The jurors were also attentive and insightful,” Deatherage said.

Reder added, “It was amazing to witness the family’s reaction when the judge announced the jury decision and told them their home would be returned to them!” In addition to the restoration of the home to the rightful owners, a testament to the outstanding legal work in this case came when the jury awarded more than $400,000 in compensatory, RICO, and punitive damages. As Zweig put it, “This was a difficult process for our clients. They hung in there and showed confidence in us and faith in the courts. Their children kept asking when they would be able to go home.”

For their commitment to ensuring equal access to justice for VLP clients with civil law problems, simple or complex, of short or long duration, Mark Deatherage, Robert Reder, and Jay Zweig share distinction as Volunteer Attorneys of the Month.

For further information about pro bono opportunities, contact VLP Director Patricia Gerrich at (602) 254-4714 or pgerrich@clsaz.org.
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Social Networking Sites: The Next E-Discovery Frontier

attorney could ethically take to informally gain access to an unrepresented witness’s Facebook and MySpace accounts.

An attorney had inquired whether it would be ethical to ask a third person—someone the witness would not recognize—to go to the witness’s Facebook and MySpace accounts and seek to “friend” her, thereby gaining access to the nonpublic information on the witness’s pages. The attorney planned to use the information obtained from the Facebook and MySpace accounts in the pending litigation.

The Professional Guidance Committee determined that regardless of whether the witness may willingly befriend the unknown person, the proposed conduct would be unethical because the information was being acquired through “deceptive” means. The Professional Guidance Committee explained that:

“Deception is deception, regardless of the victim’s wariness in her interactions on the internet and susceptibility to being deceived. The fact that access to the pages may readily be obtained by others who either are or are not deceiving the witness, and that the witness is perhaps insufficiently wary of deceit by unknown internet users, does not mean that deception at the direction of the inquirer is ethical.”

The Professional Guidance Committee found that trying to access a social networking site in such a manner was not similar to the common and ethical practice of videotaping the public conduct of a personal injury plaintiff, explaining that in such a situation the videographer does not have to ask to enter a private area to make the video.

“If he did, then similar issues would be confronted, as for example, if the videographer took a hidden camera and gained access to the inside of a house to make a video by presenting himself as a utility worker.”

In short, while attorneys can—and should—engage in efforts to informally locate publicly available social networking information, they should be mindful of the ethical limitations.

Formal Discovery

“Nonpublic social networking information can be acquired through formal discovery requests, which attorneys should utilize as part of their overall discovery plan. The applicable federal and state discovery rules apply to information shared on social networking sites.

For example, Federal Rule of Civil Procedure 34 and Minnesota Rule of Civil Procedure 34.01 apply to electronically stored information “stored in any medium from which information can be obtained[,]” Rule 34 was “intended to be broad enough to cover all current types of computer-based information, and flexible enough to encompass future changes and developments.”

Other states have adopted similar rules which encompass social networking information. As of September 2009, 23 states have adopted e-discovery rules which mirror or are similar to the 2006 amendments to the Federal Rules of Civil Procedure.

While there have been few reported decisions addressing discovery of social networking information, review of the decisions to date provides useful insight into how courts are addressing social networking information and what attorneys need to do to get it. A few key lessons regarding the discovery of social networking information can be gleaned from these sparse but significant decisions:

 Courts are willing to require users to produce social networking information in response to narrowly tailored discovery requests.

 Courts are reluctant to compel service providers to provide broad, unrestricted access to social networking user information, but may order production in response to narrowly tailored requests. The privacy policies of many service providers, including Facebook and MySpace, permit the disclosure of user information in response to subpoenas or court orders.

 Courts are not receptive to user privacy or privilege arguments when information has been shared on social networking sites, even if the intended audience was limited. Thus, in order to ensure that relevant social networking information is uncovered through the formal discovery process, attorneys should:

■ Include interrogatories seeking the identification of social networking sites used by a person and all user profiles and accounts.

■ Include document requests seeking production of relevant information maintained or shared by a person on social networking sites, including video and photos.

■ Consider issuing a narrowly tailored subpoena to social network providers. The subpoena should be as specific as possible and reference user profile names, home and e-mail addresses, and time period of activity.

■ Inquire regarding social networking usage during deposition questioning.

■ Address social networking information during pretrial conferences and in protective orders to prevent production delays.

In sum, attorneys should explore social networking sites as part of their formal and informal discovery efforts and case preparation.

Just as it would be unthinkable nowadays to conduct discovery without considering what e-mail evidence may be available, attorneys should give the same attention to social networking information to ensure that all smoking guns have been uncovered and addressed.
RCC Gets a New Judicial Officer

Presiding Judge Barbara Rodríguez Mundell appointed Cynthia Bailey as a Superior Court Commissioner.

Commissioner Bailey has been assigned to the Regional Court Center in Downtown Phoenix. Prior to joining Superior Court, she served two years as a deputy county attorney in the civil division of the Maricopa County Attorney's Office.

She earned a Juris Doctorate from the Arizona State University College of Law and a Bachelor of Science, magna cum laude, in business from ASU.

Her legal career included work in private practice, the Arizona State Senate and two stints in the Maricopa County Attorney's Office. She also was a criminal prosecutor in Grant County, Ind.

Public Comment Sought on Superior Court Applicants

The public is invited to comment on 26 applicants for a vacancy on the Superior Court in Maricopa County created by the retirement of Judge Robert C. Houser.


The Maricopa County Commission on Trial Court Appointments will review the applications and take public testimony at a meeting on Jan. 6. The meeting will be held at the State Courts Building, 1501 W. Washington St., room 345, starting at 1 p.m.

Citizens may address the commission at that time or send written comments to 1501 W. Washington, suite 221, Phoenix, AZ, 85007 or to jnc@courts.az.gov. Written comments must arrive by Jan. 4 to be considered. Anonymous comments cannot be considered.

At the Jan. 6 meeting, the commission will choose the applicants to be interviewed. The selected applicants will then be interviewed on Jan. 19. After the interviews, the commission will recommend at least three nominees for the opening to Gov. Jan Brewer, who will appoint the new judge.

New Commissioner Assigned to IA Court

Brian Kaiser was appointed as a Superior Court commissioner by Presiding Judge Barbara Rodríguez Mundell. Commissioner Kaiser has been assigned to Initial Appearance Court. Prior to joining Superior Court, he was a litigation associate for Squire, Sanders & Dempsey, LLP. He also served as a law clerk for Arizona Supreme Court Justice Michael D. Ryan.

He holds a Juris Doctorate, cum laude, from the Boston University School of Law and a Bachelor of Arts in Political Science from Chaminade University in Honolulu.

His naval career included work as a radio and television broadcast journalist, and assignments in places like Pearl Harbor and Diego Garcia, British Indian Ocean Territory. He also earned a Navy achievement medal.

State Bar Disciplinary System to Undergo Radical Changes

The Office of the Presiding Disciplinary Judge is not available.

Hearings will be recorded using a digital audio recorder unless electronic recording equipment is supported by staff from the Administrative Office of the Court.

Settlement Procedures

If an agreement is reached on a pending case, the case will bypass the Disciplinary Commission and the agreement can be filed directly with the Office of the Presiding Disciplinary Judge.

The Presiding Disciplinary Judge

The Office of the Presiding Disciplinary Judge will be created by the Supreme Court and will be a full-time, paid position under the Administrative Office of the Court. The Arizona Presiding Disciplinary Judge will have responsibilities for ruling on all motions and prehearing disciplinary matters, deciding all questions of law before and during the disciplinary proceeding and will sit as the chair on the hearing boards.

At-Issues Conference

A conference will be required in all disciplinary matters pending hearing in which the parties will be prepared to discuss potential settlement and related issues such as motions and discovery deadlines and the selection of a hearing date. Cases which are not settled at least 30 days before the hearing date will proceed to hearing.

Volunteer Settlement Officers

As needed, cases will be assigned to volunteer settlement officers who will be appointed by the Supreme Court and will have significant experience in the area of attorney ethics.

Hearing Boards

A three person hearing board consisting of the presiding disciplinary judge, a volunteer lawyer and a public member will hear cases proceeding to hearing. The presiding disciplinary judge and the hearing board will have the authority to impose all sanctions, including disbarment. Strikes of the Presiding Disciplinary Judge and the other members of the hearing board will be permitted for cause only. The Presiding Disciplinary Judge will issue the decision in any case within 60 days. Hearings will be recorded using a digital audio recorder unless electronic recording equipment is not available.

Sanctions

Sanctions will be imposed pursuant to the American Bar Association guidelines. Proportionality arguments will be eliminated. Litigating and aggravating evidence may be presented.

Appeal

Either the bar or the respondent lawyer may appeal to the Supreme Court. Through the new proposed system the Disciplinary Commission will no longer be hearing intermediate appeals. The Supreme Court may increase, reduce or modify sanctions. The court need not write an opinion in each case, but may chose to do so.

The eight-person Attorney Disciplinary Re-Engineering Task Force appointed by the Arizona Supreme Court consists of Dave Byers, Alan Bayham, Don Carson, H. Jeffrey Coker, Nancy Swetnam, Jeffrey Messing, J. Scott Rhodes and Merit Vesella. The task force was ordered to draft and file a petition to amend the current attorney discipline systems rules by December 2009.
Every Choice Makes a Difference
continued from page 2

commodity. Some building owners have entered separate contracts to have a roll-off recycling bin placed on their grounds. It doesn’t take a lot of valuable parking space, and they can make money on the materials. Those working out of their homes can use solar to benefit their business and home at the same time. Firms that own their buildings can do a lot more and make changes on any scale. For one example, Office Max and Office Depot offer “green” catalogs, where the items are produced with the environment in mind. It’s one option to make a difference.

Valley Metro’s Rideshare service is free and matches people based on where their trip starts and ends and their work schedules.

ML: You’re on the Board of the Arizona Green Chamber of Commerce and at least one Valley law firm is a supporting partner—what is the AGCC and why should lawyers and law firms be involved?

JW: The AGCC is a chamber of commerce, but how companies do business is important. You can’t just pay dues and be a member. Membership requires decision-based sustainability practices that save money. There is a list of requirements participating businesses must commit to; duplexing, or printing on both sides of paper when possible, is one example.

Currently, the only other green chamber of commerce is in the San Francisco Bay area, so Arizona is really a leader in this area. The public relations value is great because it shows a business’s commitment and the practices save money.

The AGCC has seen solid membership growth, even in this recession. The chamber offers educational sessions to its members on solar power and other topics, which offers educational sessions to its members on solar power and other topics, which offers educational sessions to its members on solar power and other topics, which offers educational sessions to its members on solar power and other topics, which offers educational sessions to its members on solar power and other topics, which offers educational sessions to its members on solar power and other topics.

ML: Where are our country and world in terms of a transition in mindset from consumption to conservation?

JW: The sustainability movement has been around since at least the 1970s. World leaders met in Copenhagen on Dec. 7 to discuss climate change, which is only one part of sustainability, but it’s significant that world leaders are getting involved at that level.

The green fad is new to the last couple of years, but there is too much value being put on small things right now. Using compact fluorescent lights and reusable shopping bags alone won’t cut it. It’s a start, but some people think if they replace all the lights in their house with CFLs it offsets their driving a Hummer, and it doesn’t. We all have to do more, and the momentum is gaining, for sure.

Regionally we’re doing okay—it’s tough to overcome the desert’s needs. Worldwide, Cleantech is the future. Fossil fuels are finite so the world has to develop better, sustainable power sources.

ML: How are sustainability practices likely to change our day-to-day lives in the next 5, 10, 20 years?

JW: Government programs like Cap and Trade are one example from today. I don’t know if that kind of program will trickle down to residences over time. Buildings use the most resources, and starting now, construction will see more and more requirements—both for how buildings can be constructed at the work-site and what standards and technologies will be required in the completed building.

Right now people are moving to more urban areas and not rural areas. Dense population areas are more eco-friendly in the sense that more goods and services are available within walking distance or nearby. Generations are now coming up that are stewardship-minded, and that will probably continue over time.

ML: Any other observations in this area for the legal community?

JW: Locally the big issues will be Cap and Trade, and there will be a lot more activity in solar service agreements, power purchase agreements and other issues around negotiating solar contracts.

Green Assumes Presidency, Two Newcomers Join Incumbents on Board
continued from page 1

an impressive trial record. She has continued that record at her federal position. Green is a past president of the Sandra Day O’Connor American Inn of Court, was president of the MCBA’s Young Lawyers Division, where she was actively involved in many activities. (Watch for her profile, to be published in the February issue.)

Berger supports Wells Fargo Bank’s Investment Management and Trust Department and was previously in private practice at Steptoe & Johnson and Snell & Wilmer, as well as serving as in-house counsel for Bank One, NA. She has served on the MCBA board in the past, and is a former chair and current member of the MCBA Estate Planning, Probate & Trust Section and lectures frequently on that topic.

For the past 16 years, Knapp has also practiced in estate planning, probate and trust. She has represented individuals and families in structuring trusts, limited liability companies, and other entities to maximize the transfer of property. She has also represented fiduciaries and beneficiaries in probate and trust matters. Funkhouser practices in general commercial litigation, with an emphasis in real estate disputes, and is active in the Volunteer Lawyers Program, Wills for Heroes Program, and is a member of the State Bar of Arizona Mentor Committee.

Kastin, a partner at Snell & Wilmer, is the founding chair of the MCBA Real Estate Law Section, as well as being active in other bar activities. At his firm he advises clients in problem solving and tax planning on a wide variety of issues. Vaz has been a commissioner since 2001 in criminal, civil, probate and most recently, mental health. He previously was in private practice for over 20 years, focusing on plaintiff’s personal injury, civil litigation and juvenile law. He was the first commissioner ever elected as an officer of the Arizona Judges Association.

Board members may serve up to two-year consecutive terms, more if they become officers. Officers are elected by members of the board and generally progress yearly from secretary, treasurer, and president-elect to president. The newly comprised 2010 board will meet for the first time on Jan. 21. ■
Eligible Candidate Seeks Post-Primary Election Vacancy

continued from page 1

However, no certificates were issued this time, and after Bell withdrew there was still time to print ballots with Katan's name. The superior court issued a temporary restraining order/ preliminary injunction requiring the city clerk to issue a certificate of nomination to Katan and place his name on the ballot. The city appealed.

The court of appeals reversed. Judge Pat Irvine’s opinion noted that “[t]he purpose of the primary is to narrow the field of candidates so as to increase the chance that the person ultimately elected is chosen by a majority of the voters, or at least is not actively opposed by a majority. A key reason, the court continued, “is that the top six candidates in the primary election were conclusively determined” in the primary election. Because Katan was not one of them, he “was eliminated as a candidate and was not eligible to be listed on the general election ballot.” The issue, as Irvine stated, was “whether anything that happened after the March 11 terrorist attack could restore, recreate or renew Katan’s eligibility to be on the ballot.”

Irvine disagreed with the superior court’s answer to that question. “The trial court apparently read the City Charter to require six candidates for three council seats;[c] we read it differently.” The result of the primary election, he explained, was to narrow the field of candidates for six seats to six at most.

With Bell’s removal, “the ballot still left the voters with a choice between five candidates, all of whom were among the top six candidates in the primary election.” The language of the City Charter, Irvine wrote, “plainly prevents anyone not among the top six in the primary from being listed on the general election ballot.”

“Katan ceased to be a candidate eligible to be listed on the general election ballot when the canvas finalized the primary vote,” Irvine continued. “Nothing in the Charter restored his eligibility once his seventh place showing ended it. . . . The City Charter does not contain any mechanism to replace one of the top six from the primary, and we will not create one.”

Joining Irvine’s opinion were Judges John C. Gemmill and Jon W. Thompson.

Mayfield v. United States

Compensation that the plaintiff received in settlement of his claims against the federal government for violating his constitutional rights left him with no further substantial interests to redress and therefore deprived him of standing to challenge the constitutionality of the laws under which the government acted. So held the Ninth Circuit Court of Appeals in Mayfield v. United States, No. 07-35865 (9th Cir. Dec. 10, 2009).

Brandon Bieri Mayfield is an attorney who lives in a suburb of Portland, Ore. He was born in Germany and raised in Kansas; and was honorably discharged from the United States Army. He is also a practicing Muslim “with strong ties to the Muslim community in Portland.”

After the March 11, 2004, terrorist bomb attack on commuter trains in Madrid, the SNP—the Spanish National Police— recovered a plastic bag containing explosive detonators. The bag had several latent fingerprints, which SNP transmitted to Interpol, which in turn forwarded them to the Federal Bureau of Investigation.

When the FBI matched latent print LFP #17 to Mayfield’s left index finger, it set off a major investigation. FBI agents began surveillance of Mayfield and his family, observing travel to and from the mosque, law office, the children’s schools, and other family activities. The FBI also requested from FISC—the Foreign Intelligence Security Court—that the FBI monitor the family and search it while nobody was there; obtain confidential information about the Mayfields from third parties; search Mayfield’s law offices; and wiretap his home and business phones.

The FBI then sent Mayfield’s fingerprints to the Spanish government. After examining the FBI report and Mayfield’s prints, the SNP refused the FBI fingerprint reports, stating that there were too many dissimilarities to verify a match between Mayfield’s fingerprints and LFP #17.

The FBI nevertheless sought warrants from the district court, stating in an affidavit that there was a 100 percent positive identification of LFP #17, rendering it fact here, “a serious disparity” and a “disagreement with that conclusion.” The court issued the warrants. Agents then searched Mayfield’s home and office and seized his paper files and computer. They searched his children’s homework.

Mayfield was then arrested. National and international newspapers announced that he was linked to the Madrid bombings. The government jailed him for two weeks without informing his family where he was being held. But it did tell them that he was the prime suspect in a death-penalty case.

Two weeks after the arrest, news reports revealed that Spain had matched LFP #17 to Ouhane Dowad, an Algerian citizen. The next day, a second arrest warrant was issued. The Mayfields sued, alleging unlawful arrest and imprisonment, and unlawful searches, seizures, and surveillance. They argued the constitutionality of several provisions of the Foreign Intelligence Surveillance Act (FISA) as amended by the PATRIOT Act.

The parties eventually settled most of the suit. Mayfield agreed not to seek relief on two claims of statutory unconstitutionality.

The government agreed to pay $2 million in compensatory damages, destroy documents relating to the electronic FISA surveillance, return all seized materials, and apologize to Mayfield and his family.

The parties agreed that Mayfield could still pursue claims for a declaratory judgment invalidating two provisions of FISA and the PATRIOT Act as violating the Fourth Amendment by allowing the government to conduct physical searches, electronic surveillance, and wiretaps without probable cause. The district court granted summary judgment to Mayfield. It held that the provisions of FISA as amended by the PATRIOT Act, were unconstitutional. The government appealed.

The Ninth Circuit refused to address the merits, holding instead that there was no jurisdiction because there was no ongoing case or controversy. There are three elements to standing: The plaintiff must show an actual injury, that is, the violation of a protected interest that is both concrete and particularized and actual or imminent. There must be a causal connection between that injury and the defendants’ conduct. Finally, there must be a likelihood that a favorable decision will redress that injury.

The government had argued that the settlement had given Mayfield substantially all he was entitled to and that a declaratory judgment would not be meaningful. Mayfield responded that he had a twofold interest in further litigation: to prevent future abuses of FISA against him and “to force the government to return or destroy any and all derivative materials in its possession obtained from Mayfield by unconstitutional means.”

Judge Richard A. Paez, writing for the court, held that Mayfield lacked standing. Although the government still had materials that Mayfield wanted destroyed, he could not prove that result. “[T]he only relief that would redress this

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To register, use the registration form on this page, 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.

Friday January 22, 2010
12 - 1 PM (Lunch included)
Arbitration: Do You Really Save a Buck or Two? (CCD)
1.0 CLE credit hour
Arbitrations have become the soup du jour, especially in this economic climate, as a cost savings mechanism to resolve disputes. Yet, a poorly drafted arbitration clause in an agreement can result in increased expenses and time to resolve disputes. Yet, a poorly drafted arbitration clause in this economic climate, as a cost savings mechanism to consider when drafting your next arbitration clause.

Sponsored by: Paralegal Division
Presenters: Ryan Schultz, Qureshi & Ready, LLP
Cost: $40.00

Friday, January 29, 2010
11:30 AM - 1:30 PM (Lunch included)
Criminal Law: Conducting Police and Fact Witness Interviews in Criminal Cases
2 credit hours
This is a basic to intermediate program, you'll learn strategies for interviewing police officers and fact witnesses, case interview techniques, and topics to cover during interviews. Practical advice for getting the witness to share information, including tips for preparing the interview.

Sponsored by: Criminal Law Section
Presenters: Craig Logsdon, Snell & Wilmer, LLP
Paul A. Ramos, Maasen Law Firm
Cost: $150.00

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Eliminated Candidate Seeks Post-Primary Election Vacancy

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alleged Fourth Amendment violation is an injunction requiring the government to return or destroy such materials.” But, as Paez noted, “[i]n the Mayfield case he found that, “In view of the D.C. Circuit’s opinion, I would reverse the order.”

“Given the limited remedy left open by the settlement agreement and the absence of any other authority on which the district court could rely to [order] that the derivative materials be returned or destroyed, we must conclude that the Mayfield case is entitled to be considered a declaratory judgment.”

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2010 Barristers Ball
BENEFITTING THE MARICOPA COUNTY JUSTICE CENTER AND MUSEUM

The Maricopa County Justice Center and Museum educates children and adults about bedrock principles in the American criminal justice system. The Museum will restore the historic Old Courthouse’s sixth floor and preserve Arizona’s past in an interactive and vibrant way. The Justice Museum will offer visitors an opportunity to learn about Arizona’s significant contributions to the criminal justice system (e.g., Miranda rights) through interactive displays and knowledgeable tour guides. The Maricopa County Justice Center and Museum will be one more attraction that will help revitalize downtown Phoenix.

W Hotel
7277 East Camelback Road, Scottsdale, Arizona
6 p.m. Cocktails and Silent Auction
7:30 p.m. Dinner
Black Tie Optional

Cost
$125 per seat □ $1,250 per table
EARLY BIRD SPECIAL
Purchase a Table of Ten by January 31, 2010 and Receive One Free Ticket to the Ball (ten tickets for $1,125)

Registration
PLEASE PRINT CLEARLY

Name: ____________________________ Firm: ____________________________
Please reserve seats for ___________________ # of guests ___________________
Table host name*: ____________________________
Address: ____________________________
City: __________________ State: ______ Zip: ______ E-mail: ____________________________

* Table hosts are firms or individuals who sponsor a table of 10. Please provide guest list along with payment.
□ Please place me/us at a no host Table________________________ □ Please seat me/us with ______________________________

TABLE GUESTS
1. ___________________ 2. ___________________ 3. ___________________ 4. ___________________ 5. ___________________
6. ___________________ 7. ___________________ 8. ___________________ 9. ___________________ 10. ___________________

Payment Information
PLEASE CHARGE MY: □ Visa □ MasterCard □ TOTAL CHARGE TO MY C.C. $___________ □ Enclosed is my check for $___________
Credit Card Number: ________________ Exp. Date: ________________
Name on Card: ___________________
C.C. Billing Address: ____________________________

Please return form to MCBA, Attn: Laurie Williams, 2001 N. 3rd Street, Suite 204, Phoenix, AZ 85004-1439 or Fax to 602-682-8601. Thank You.