Justice O’Connor Touts iCivics at Schools

When retired U.S. Supreme Court Justice Sandra Day O’Connor attended school in the 1930s and 40s, civics classes were an integral part of students’ education. Today, due to school budget cuts and an emphasis on raising math and science scores, many civics classes have been cut, or have had little impact with students. To the 81-year-old former Arizona senator, assistant attorney general and judge, that is devastating news.

In an effort to revitalize both an interest in and an understanding of civics among young people, O’Connor and a small team comprising Abby Taylor, who is the iCivics Executive Director and served a fellowship for O’Connor while studying at Georgetown University Law School, and Jeff Curley, also a graduate of Georgetown in education and communications, launched a web-based education project in 2009 called iCivics.

The project, which was created through a non-profit organization, uses online games and activities to teach students an array of civics-based lessons, including on the three branches of government, the Constitution and Bill of Rights, citizenship and participation, and the separation of powers doctrine. Using the program, students can run their own law firms, be president for a day, act as an attorney arguing a real Supreme Court case, learn

See O’Connor Touts iCivics page 10

Nearly 20 Years Later, Courts Clash Over Coerced Confessions in Temple Murders Case

A dark moment in Arizona history continues to vex the state. Almost twenty years ago, the Valley was shocked by news of a horrible crime. Nine members of the Wat Promkunaram Buddhist Temple in Waddell had been massacred.

The investigation was not a model of pride. Creditling the words of a mentally imbalanced man, detectives investigated four Tucson men, extracting confessions from three of them. The confessions, which were demonstrably false, were the product of interrogation techniques that were highly questionable, to say the least.

Hard evidence eventually led detectives to real suspects. The discovery that a rifle owned by Rolando Caratachea had been used in the murders led detectives to two of his acquaintances: high schoolers Alejandro Garcia and Johnathan Doody. Interrogated, Doody and Garcia confessed their involvement. Garcia took a plea and testified against Doody, who was convicted and sentenced to life in prison. The judgment was affirmed, State v. Doody, 187 Ariz. 363, 930 P.2d 440 (App. 1996).

Doody v. Schriro was again concluded that habeas corpus was improper granted. But three separate opinions reveal sharp, and sometimes bitter, differences of opinion. Doody v Ryan, No. 06-17161 (9th Cir. 2011).

Writing for the majority, Judge Johnnie B. Rawlinson held that Doody’s confession was inadmissible because he had not been properly advised of his Miranda rights and his confession had been coerced.

Rawlinson held that Detective Pat Riley had botched the Miranda warnings. Riley

See Courts Clash page 13
What Are You Going To Do About It?

David H. Benton
MCBA PRESIDENT

I am convinced. We’ve lost our leaders. Maybe I watch too many of the Sunday morning talking heads, but I am sure that the world is coming to an end. Ok, my mother told me at least a billion times not to exaggerate. But I am frustrated with the din of voices hocking insight, alternatives, and solutions for everything from reducing gas prices, to controlling healthcare costs.

Why think for myself when we are awash in “experts” who clearly know what is best. Of course, who can turn away when someone offers up, “Let me tell you what’s really going on here!” Absolute in their certainty, leaving little doubt that to listen to another will only lead to the apocalypse. They swim against the grain, and they do this for you. How precious.

Ok, I realize this appears to be a call for civility. Maybe it is. But I think there is more going on here. Any one of us can recognize when someone has crossed the line, but don’t you think that line seems to be moving all the time?

We are almost two years away from the next general election, yet the hyperbole has skyrocketed already. Birthers? Really?!

Absent from the roar are tangible solutions or an identifiable direction toward improvement. Where is the leadership? When will the sensible make a reasonable decision?

Why must we listen, week after week, month upon month, to special correspondents; policy directors of the you-name-it foundation; or some fellow of some think tank with no real power to make a difference? When will the chosen few, chosen to lead, choose to lead?

What does this have to do with you? Nothing. Everything, It depends. Are you the one who does something, or the one who bobs in the ocean of complacency? Have you decided to stay in the safe and controlled environment of your office and let someone else make a difference? Are you convinced bar associations are a waste of time; you never get what you pay for; and if the bar really wanted to help, it should be doing things to make your life easier! It is easy to preach to the choir. Find an audience at the neighborhood establishment; belly up the proverbial podium; string together a list of your disappointments with the bar association; and feel the love from the nodding nameless.

I say, rise against.

Make a decision. Draw a line. Do the right thing. Be a leader. Show the way. Get involved.

Don’t complain about your bar association not providing the services you need. Tell us. Don’t shake your head in disgust while your bar association provides yet another CLE that does you no good, Teach one. Don’t be one of them. Identify the issues that are important to you and make certain they are important to us. Stop complaining and do something. You know – put up or…

Voters to Decide on Judicial Merit Selection Changes

After much deliberation, lawmakers, State Bar of Arizona representatives and others have agreed to a resolution to be decided on by voters in November.

Around mid-April, the respective groups reached a compromise that will allow for merit selection in both the Maricopa and Pima (and soon, Pinal) counties, retain the Judicial Nominating Commission and not require Senate confirmation of judicial nominees.

The State Bar of Arizona will have a designated seat on each of the court commissions to be appointed by the bar’s president. This seat would be one of the five existing lawyer positions on each commission. As in the past, the other four lawyer positions will be appointed by the governor. The bar’s role in vetting the four lawyers appointed by the governor for the commissions would be limited to collecting and reviewing applications, and then forwarding them with recommendations to the governor. Previously, the bar’s nominating committee only forwarded a limited number of applications which passed a merit screening.

Other changes would include increasing the qualifications for lawyer members of the commission to 10 years of practice, good standing, and no formal disciplinary complaints or formal sanctions; increasing judicial terms to eight years; and increasing the retirement age to 75 from 70.

Initially, conservative lawmakers sought to remove the bar’s role in selecting candidates for commissions that put forward recommendations for filling judicial vacancies.

However, negotiations with the bar and prominent members of the judiciary persuaded legislative leaders to put forward a resolution that would change the process without eliminating the bar’s involvement.

While judges in smaller counties are selected and retained through elections, Maricopa and Pima counties, whose populations are larger than the current 250,000-person threshold, have used a merit selection system since 1974 that begins with nominating commissions. Merit selection is also used for state court of appeals and supreme court nominees.

Under the current system, the governor appoints five attorneys from a pool vetted by the state bar and 10 members of the public to each county’s nominating commission. The state Senate confirms each commission nomination. When a judicial vacancy occurs, the commission selects at least three candidates judged most qualified to fill the position. The governor then makes a final appointment from those candidates.

Biggest Merit System Changes

- The State Bar of Arizona will have a designated seat on each of the court commissions (appointed by the bar’s president). This seat would be one of the two existing lawyer positions. The bar’s role in vetting the four lawyers appointed by the governor for the commissions would be limited to collecting and reviewing applications, and then forwarding all of them with recommendations to the governor.
- Qualifications for lawyer members of the commission increased.
- Judicial terms increased to 8 years.
- Judges’ retirement age increased from 70 to 75.
- Supreme Court must post all opinions and orders on its website.
- Creates a joint legislative committee to conduct informational hearings on judges prior to retention elections.

Celebrating Arizona’s Newest Lawyers

The Phoenix School of Law is celebrating the achievements of Arizona’s newest lawyers. PhoenixLaw’s first-time bar exam writers scored an 82 percent passage rate, compared to the state’s average of 76 percent.

“PhoenixLaw is very proud of the bar passage rate our graduates have achieved,” said Shirley L. Mays, Dean of Phoenix School of Law. “It is a testament to the hard work of our law school community: our students, faculty, staff, and alumni. Coupled with our number one job placement rate and our move to our new downtown location, PhoenixLaw continues to provide great value to our students.”

The Arizona law school graduate who scored the highest on this year’s exam was Phoenix School of Law’s James Plitz, originally from North Plainfield, New Jersey. Repeat bar exam writers scored over 5 percent higher than the state’s average. Combining first-time and repeat writers, PhoenixLaw graduates scored almost 7 percent higher than the state’s average. Twenty-nine PhoenixLaw graduates are on their way to taking the oath of admission to the Arizona bar.
Remedial Evidence: Frequently Mishandled Evidentiary Rules

By Tom Crowe

A healthy debate is again taking place on the subject of mandatory sentencing: state laws that operate to divert judges of discretion in sentencing and place that discretion in the hands of prosecutors. Those statutes mandate certain minimum sentences depending upon how the offense is charged and what allegations a prosecutor elects to file in a given case. This article briefly summarizes the debate and then suggests that the analyses by those both in favor of and opposed to mandatory sentencing are deficient. A new paradigm is proposed.

To Reform or Not to Reform

Those who favor mandatory sentencing argue that incarceration is not only necessary as punishment, but also serves as an effective deterrent. While acknowledging that sending people to prison is expensive, many prosecutors and others assert that the prevention of crime by imprisoning offenders results in a net cost savings.

Those who favor sentencing reform argue that in many cases there are more effective, less costly options to imprisonment. They contend that the roughly billion dollars a year Arizonas spends on prisons (1 out of every 170 Arizonans was incarcerated as of June 30, 2008) could be better spent on improving the effectiveness of probation and providing other supervision options.

Drug offenses are particularly troublesome. They are an obvious cancer in our society. Nevertheless, it is here where sentencing reforms have taken hold. The Wall Street Journal (States Rethink Drug Laws, March 5, 2011) recently reported that a growing number of states are renouncing long prison sentences, long the hallmark of the war on drugs, and are focusing on treatment.

On March 3, 2011, Kentucky became one of the latest states to make the shift. Delaware, Florida, Indiana, Massachusetts, and Pennsylvania are among those states which have legislation pending to reduce criminal penalties and direct defendants into treatment instead of prison. Similar laws have already taken effect in Colorado, New York and South Carolina. Even Texas has begun shifting some drug offenders away from prison and into treatment and other options.

These so-called reforms are, of course, not without their critics. The Wall Street Journal notes, for example, that Scott Burns, executive director of the National District Attorneys Association, believes that there must be serious consequences in place if people use illegal drugs. Many prosecutors share his view that treatment is an insufficient slap on the hand, and unless offenders learn that there is a serious price to pay for their continued drug use, they will most probably continue to engage in illegal behavior.

Others believe that one size does not fit all. There are some folks who need to go to prison for a very long time, if not forever. There are others for whom incarceration is not necessarily the answer and, indeed, may present a greater risk of creating a repeat offender than would other options.

See A Different Analysis page 17

Litigation Headaches?

- Early Case Assessment Assistance
- Proactive Cost Control
- Determine Opposing Party Intent
- Uncover Spoliation and File Downloading
- Quality (vs. Quantity) Document Review
- Defense Strategies
- Special Master Services

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Justin N. Redman

has become an associate of the firm.

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Mandatory Sentencing: A Different Analysis

By Tom Crowe

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See A Different Analysis page 17
Major Changes to eFiling and File Counters at the Clerk’s Office

By William Auther and Amanda Pyper, Bowman and Brooke LLP

State Medicaid liens and reimbursements were recently addressed by the Arizona Court of Appeals in Southwest Fiduciary, Inc. v. Flynn and Arizona Health Care Cost Containment System Administration, No. 1 CA-CV 10-0300 and No. 1 CA-CV 10-0301 (March 10, 2011). The primary issue on appeal was whether the Arizona Health Care Cost Containment System Administration (AHCCCS) should be reimbursed for the monies it paid to cover plaintiffs’ medical costs or for the amount billed by the medical facilities.

Southwest Fiduciary involved two consolidated cases in which AHCCCS had a lien against two independent settlements for past medical expenses. Plaintiffs’ settlements resolved all of their claimed damages, including past billed medical expenses, future medical expenses, lost wages, pain and suffering, and any other costs.

In administrative proceedings, the director of AHCCCS held that AHCCCS was able to recover for the amount of medical expenses billed to plaintiffs instead of the amount actually paid as reflected in its lien. In Arizona, plaintiffs can recover for billed medical expenses even if the amount was not fully paid in order to prohibit tort-billed medical expenses even if the amount billed. AHCCCS held that AHCCCS was able to recover for the amount of medical expenses billed to plaintiffs instead of the amount actually paid.

For background and details on eFiling through AZTurboCourt, view Administrative Order 2010-117 at http://www.azcourts.gov/Portals/22/admonliner/Oders10/2010-117.pdf. There are specific roles in AZTurboCourt that every attorney and firm will want to plan for, such as an office administrator for the firm’s eFiling account and each filer’s individual access to AZTurboCourt. The Clerk’s Office is not involved in the training, maintenance or operation of AZTurboCourt, making it important to use the websites and phone numbers above for assistance.

New Service Hours at File Counters

New service hours will take effect at the Clerk’s file counters on June 1, 2011. The Clerk’s Office will continue to file in documents at the file counters between the business hours of 8 a.m. and 5 p.m. Monday through Friday. The hours are available during the busiest hours of the day, 11:30 a.m. – 2 p.m. However, to ensure that staff can timely complete the day’s transactions and maintain security standards, new filing procedures are required for the end of each day.

The file counter windows will close promptly at 5 p.m. Customers still in line and at the window at 5 p.m. will be directed to the external filing boxes to complete any remaining filings. This change is necessary for the Clerk’s Office to ensure compliance with the Fair Labor Standards Act for staff and to assist court security with ensuring non-employees exit the buildings when business hours end at 5 p.m.

Save Time on Filing

When possible, limit documents filed at the filing counters to those that require special handling where a clerk can offer assistance or provide a receipt. Save time or for ease of filing, documents that don’t require special handling can be stamped and deposited at the internal and external filing boxes located around the valley. A list of filing box locations is on the Clerk’s website at http://www.clerkofcourt.maricopa- pa.gov/alternative_filing.aspx. The filing boxes are secure, making this a popular option for filings that require payment of fees at the time of filing. After filing, the case-initiating document on paper, electronic filing is another convenient way to file in civil and criminal cases and in the limited family court divisions that accept eFilings.

Future Implications of Medicaid Liens, AHCCCS Case

By William Auther and Amanda Pyper, Bowman and Brooke LLP

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Researching Beyond Lexis Nexis and Westlaw

QUESTION
Help! I've been given a massive research project! I know how to do legal research on Lexis and Westlaw, but that's simply not going to be enough to satisfy the partners. Can you please give me some creative ways to get answers? — Questioning in Queen Creek

I empathize with you! Although I fully appreciate the value of Lexis and Westlaw, it's important to consider searching other less traditional resources to create a thorough and complete product. So, here is a list of sources I have come up with over the years:

1.) Google or Bing: The obvious one! I cannot tell you how many times I have been able to find the answer with a simple Google/Bing search.

2.) Process Server Companies: Your process server company is a fountain of knowledge on personal service and filing questions. My firm’s process server knows the rules backwards and forwards, they know what needs to be served and to whom. They can also help you with service questions in other counties and states. Although you might not consider them, a quick telephone call might get you the answer to your question.

3.) Court Liaisons and Ombudsmen: Both TASC and Child Protective Service have individuals whose jobs are to work with the community and attorneys to get results and answer questions. Some city governments, some court systems, and some companies have similar individuals who can point you in the right direction or who might be able to answer your question over the phone. Get to know these people and call on them when a question arises.

4.) Listserv: Recently, a family law listserv (www.azfla.com) was developed, and I have already begun using it to get advice on various subjects from other attorneys. I was surprised by how quickly I got responses and by the knowledge of other attorneys in my field. There are listservs for many different types of law; consider joining the one that makes sense for you. These include the well-known trial lawyer’s listserv and the American Bar Association’s listserv.

5.) Local Publications, Newspapers and Newsletters: The MCBA, ABA, SBA, YLD, etc., each have newsletters or other publications designed and tailored to individual practice areas. In addition, your local newspaper and magazines may just have something useful. Staying current in your review of newsletters, other publications and local newspapers/magazines will prove an immeasurable asset.

6.) Fastcase: Fastcase is a free legal research service, and you can use it with membership through the state bar. In fact, they have an app that I have just installed on my iPad.

7.) Judicial Assistants: Get to know the judge’s judicial assistant and always be kind to them. Many times they can give you some insight on procedural questions, and specifics relating to your case.

8.) Friends/Colleagues: I have a group of friends that I keep on speed dial and call when a question arises that I cannot answer. Develop friendships and associations with other attorneys and professionals who will answer your calls and e-mails when you need assistance.

9.) Blogs: Once in a while, a blog has led me to the right place. I suggest searching with Google/Bing to find some helpful blogs on your area of law, and bookmarking them for future reference.

10.) Websites to Bookmark: Some websites that I’ve used in the past to find various bits of information include:
- Maricopa Assessor’s website (http://www.maricopa.gov/Assessor/)
- Maricopa Clerk of the Court’s website (http://clerkofcourt.maricopa.gov/)
- Superior/Justice Court website (http://www.superiorkont.maricopa.gov)
- Arizona Supreme Court website (http://apps.supremeourt.az.gov)
- Maricopa County Bar Association website (http://www.maricopabaron.org)
- Arizona State Bar Association website (http://www.azbar.org)
- Maricopa County Recorder’s website (http://recorder.maricopa.gov/)
- Arizona Department of Corrections website (http://www.azcorrections.gov)
- Arizona Judicial Branch website (http://www.azcourts.gov)
- News websites (www.azcentral.com)
- Individual city websites like (www.phoenix.gov)
- American Bar Association website (http://www.americanbar.org).

Want to Spoil a Sentence? Use Too Many Nouns

Most careful legal writers realize that turning a noun into a verb can make writing unclear (See the Legal Writing column from March 2010). Having too many nouns in a row can also cause writing to be unclear. Legal writing style manuals call these “nouns” or “noun strings.” A noun string is simply several nouns in a row (and occasionally an adjective) that modify the final noun in the string. These noun strings are confusing because the reader assumes each noun is functioning as a noun and not as a modifier or adjective until the reader rereads the sentence. Consider the following simple example from a contract negotiation:

The widget order confirmation e-mail contains the final order number.

A reader has a hard time picking out the key noun or subject on the first read. Is the sentence about the widget? The order? The confirmation? The e-mail? The best way to fix the clarity of the noun string — widget order confirmation e-mail — is to unstring it by writing simpler sentences that follow the traditional structure: noun/subject as the first (or close to first) word, then the verb, then the object.

We sent an e-mail that confirms your order of widgets. This e-mail contains the final order number.

It should come as no surprise that most government and technical writing uses noun strings to save space (ex. National Highway Traffic Safety Administration’s automobile seat belt interlock rule). Although noun strings take less space, saving space is rarely a legal writer’s primary goal. So unless the intended reader is familiar with the technical jargon in the writing, avoid noun strings to avoid spoiling the clarity of the writing (ex. The National Highway Traffic Safety Administration’s interlock rule applies to automotive seat belts).
**INSIDE THE PARALEGAL DIVISION**

**Personal Injury and the Paralegal**

**PARALEGAL DIVISION PRESIDENT**

**Kelly Gray**

**Bylaws Approved**

The division has been busy the last two months and I am pleased to announce that the Paralegal Division bylaws were recently changed and approved by the Maricopa County Bar Association’s Board of Directors. The bylaws are posted on the website and may be accessed at the “Paralegal Link” for updated information.

**Introducing Nilda Jimenez, Treasurer**

I would like to introduce Nilda Jimenez, your division treasurer and mentor liaison who will be writing the rest of this column. Nilda has been a great colleague and friend over the last several years and was instrumental in my obtaining employment in 2009. The dedication Nilda has to the paralegal profession is commendable and I am honored to call her a friend. – Kelly Gray, Paralegal Division president

My name is Nilda Jimenez. I have been in the legal profession since 1994. I am currently the treasurer for the MCBA Paralegal Division and mentor liaison. I obtained my paralegal certification through the National Association of Legal Assistants in 2007 after completing my Bachelor of Science degree from Ottawa University. I am an instructor at Phoenix Community College and help prepare other paralegals for the certification exam. I have worked in several areas of law, primarily in the personal injury field. I am currently employed with Goldberg & Osborne.

Prior to my current employment, I worked for a sole practitioner. I was not only the paralegal, but also the office manager and receptionist. Working for a sole practitioner allows you to learn a great deal.

**The Composition of a Personal Injury Case**

Personal injury cases consist of two parts, the actual injury to the person and the property damage (the vehicle for example). The personal injury section also has two parts, pre-litigation or litigation.

Depending on the firm, the paralegal may meet with the potential client first and obtain basic information regarding the accident, such as how the accident happened, who was injured, were citations issued, any hospital or doctor visit, etc. If the case is deemed viable, then the attorney, and perhaps the paralegal, will meet with the potential client for additional information and explanation of the fee agreement.

The case now enters the pre-litigation phase, which includes calendaring the statute of limitations, ordering the police report, establishing liability, determining if there is uninsured and/or underinsured insurance coverage and reporting the claim, locating the client’s vehicle, obtaining witness statements, monitoring client’s treatment with all the medical providers, and ordering records and billing statements from all the medical providers. Also, during this phase the paralegal will verify the types of coverage available such as medical payments, health insurance, and disability insurance. Once all the possible coverage is determined, the paralegal will contact each insurance company to either open a claim or, in the case of health insurance, verify if there is third-party recovery reimbursement.

Once the client is done treating and all the medical records and bills are received, in many firms, the paralegal prepares the initial draft of the settlement packet, also referred to as the demand. The paralegal also drafts letters, answers client calls, solves reimbursement issues with the health insurance, reviews the medical records, and basically takes care of anything which pertains to the case.

**Pre-Litigation vs. Litigation**

The majority of the personal injury cases settle in the pre-litigation phase. There are times when a suit must be filed. At this point, the paralegal prepares the complaint, summons, subpoenas, schedules depositions, arbitration and/or mediation statements, disclosure statements, discovery responses, motions/orders; prepares the file for trial; and continues to do all the other duties mentioned previously. During litigation there are many due dates and response times that must be calendared. The paralegal must also coordinate with opposing counsel’s paralegal and with the court.

There are times when the attorney is appointed to serve as an arbitrator. When the notice is received, the paralegal must coordinate with the other parties and schedule the arbitration hearing. If your attorney is also a Judge Pro Tempore, the paralegal must also calendar and coordinate with the court when the attorney will be out covering for a judge.

The larger personal injury firms have different people handling the pre-litigation from the litigation. In a smaller firm or a sole practitioner, the paralegal handles the entire case from start to finish.

The personal injury field has a great deal of one-on-one contact with the client, especially in the beginning. You get to know your client and understand them. I truly enjoy this field. I get to know the client and develop a relationship that helps reach the best possible outcome for them.

**Calendar of Events**

**June**

- 6 Monday Board Meeting
- 9 Thursday Conference Committee Meeting

**July**

- 7 Thursday Conference Committee Meeting
- 11 Monday Board Meeting

All Board of Director and Conference Committee Meetings are held at 5:30 at the MCBA offices unless otherwise specified. Quarterly CLE Division meetings are held at the MCBA offices unless otherwise specified.

Please visit the website at: maricopabar.org and click on the “Paralegal Link” for updated information.

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BOOK REVIEW

Drive: The Surprising Truth About What Motivates Us

By Daniel H. Pink

While asking for $7.3 billion in 2012 appropriation, the United States Judicial Conference Budget Committee, asked a Congressional subcommittee for the District of Maine, the Northern District of New York, and the U.S. District courts for the Districts of Idaho, Kansas, Maryland, Minnesota, Rhode Island, the Northern District of Alabama and the Districts of Delaware, Northern District of Alabama and the Districts of Delaware. The 12-month period ending March 31, 2011 found only a 2.6 increase in overall bankruptcy filings compared to the number of bankruptcy filings filed the previous year. According to statistics released by the U.S. Administrative Office of the Courts, the majority of bankruptcy filings involve predominantly non-business debts (personal or consumer filings), while the number of bankruptcy filings involving primarily business debts fell.

New pilot makes federal judicial opinions free to public

Twelve federal courts have been selected to participate in a pilot program that would make their court’s judicial decisions free to the public through the Government Printing Office’s Federal Digital System (FDsys).

Legal Briefs

Appropriations Subcommittee on Financial Services and General Government, stating that a large funding shortfall would have a profound impact on staffing levels. Noting that the most significant impacts would occur with a reduction in the staffing levels of clerks of the court and probation and pretrial services officers, Judge Gibbons said that the United States Judiciary “do(es) not have the discretion to decline or defer cases based on resource constraints. We are required to adjudicate the cases that are brought to us regardless of staffing and resource levels in the federal courts.”

Bankruptcy filings rise slightly

The 12-month period ending March 31, 2011 found only a 2.6 increase in overall bankruptcy filings compared to the number of bankruptcy filings filed the previous year. According to statistics released by the U.S. Administrative Office of the Courts, the majority of bankruptcy filings involve predominantly non-business debts (personal or consumer filings), while the number of bankruptcy filings involving primarily business debts fell.

Retired Justice gets book deal

Little, Brown and Company announced today that retired United States Supreme Court Justice John Paul Stevens’ memoir titled “Five Chiefs” will be released the first Monday in October – the day the United States Supreme Court traditionally begins its yearly term. Written solely by Stevens, his memoir reflects on the five chief justices he knew during his career.

and though author Daniel H. Pink admits that autonomy won’t be advantageous to most task-driven businesses, this is the kind of book that every business owner should read. Surprisingly, Pink shows that “management” may go the way of rotary phones and mimeograph machines in the office. Of course, there are exceptions to every rule, but Pink says future jobs (those that rely on creativity more than physical labor) won’t need to be “managed” and that allowing employees to do non-work at work actually makes them work harder.

While I wouldn’t call this book a casual read, for businesspeople, it’s a must-read. If you want your business to be around in the future, what’s in Drive is in the cards.

The Bookworm is Terri Schlichenmeyer. Terri has been reading since she was three years old and she never goes anywhere without a book. She lives on a hill in Wisconsin with two dogs and 12,000 books.

JUNE 2011 CALENDAR

All meetings at MCBA Office, unless otherwise specified.

1 CLE: Drafting and Enforcing Restrictive Covenants and Independent Contractor Agreements
   Noon to 1 p.m.
   Young Lawyers Division Board meeting
   Noon

2 Construction Law Section Board meeting
   Noon

3 Estate Planning, Probate & Trust Section Board meeting
   7:30 a.m.
   CLE: Bankruptcy Law Fundamentals
   Session 1-Overview of Bankruptcy Law
   11:30 a.m. to 1 p.m.

4 Maricopa Lawyer Editorial Board meeting
   5:15 p.m.
   Paralegal Division Board meeting
   5:30 p.m.

5 CLE: Hot Ethics Issues
   1 to 4 p.m.

6 VLP Volunteer Awards Reception
   5 to 7 p.m.

7 CLE: Estate Planning, Probate and Trust Section Seminar
   7:30 to 10:30 a.m.
   Executive Committee meeting
   7:30 a.m.
   CLE: Social Security Disability Plus-A Practitioner’s View
   11:30 a.m. to 1 p.m.
   Public Lawyers Division Board meeting
   Noon
   Diversity Committee Summer Associates Social
   5:30 to 7:30 p.m.
   Paralegal Conference Committee
   5:30 p.m.

8 CLE: Bankruptcy Fundamentals: Session 3
   -Chapter 11 Bankruptcy Litigation Issues
   11:30 a.m. to 1 p.m.

9 CLE: Steve’s Talmudic Tidbits
   Noon to 1 p.m.

10 CLE: Bankruptcy Fundamentals: Session 1
   -Chapter 13 Bankruptcy Litigation Issues
   11:30 a.m. to 1 p.m.

11 CLE: Bankruptcy Fundamentals: Session 2
   -Chapter 7 Bankruptcy Litigation Issues
   11:30 a.m. to 1 p.m.

12 CLE: Bankruptcy Fundamentals: Session 4
   -Chapter 9 Bankruptcy Litigation Issues
   11:30 a.m. to 1 p.m.

13 CLE: Bankruptcy Fundamentals: Session 5
   -Chapter 11 Bankruptcy Litigation Issues
   11:30 a.m. to 1 p.m.

14 Family Law Section Board meeting
   Noon

15 Employment Law Section Board meeting
   Noon
   LRS Committee meeting
   Noon

16 CLE: The Culture of Divorce is Changing
   1 to 5 p.m.
   MCBA Board of Directors meeting
   4:30 p.m.

17 CLE: Bankruptcy Fundamentals: Session 4
   -Chapter 9 Bankruptcy Litigation Issues
   11:30 a.m. to 1 p.m.

18 CLE: True Tales from the Trenches: 10 Tips for Avoiding Ethics & Legal Malpractice Liability
   1 to 4 p.m.

19 Maricopa County Bar Foundation Board meeting
   7:30 a.m.
   CLE: General Counsels Give the Real Deal
   4 to 5 p.m.

20 CLE: Dealing Internationally: Practical Tips and Advice to Provide Clients
   Noon to 1 p.m.

21 CLE: Bankruptcy Fundamentals: Session 4
   -Chapter 9 Bankruptcy Litigation Issues
   11:30 a.m. to 1 p.m.

22 CLE: Bankruptcy Fundamentals: Session 5
   -Chapter 11 Bankruptcy Litigation Issues
   11:30 a.m. to 1 p.m.

23 CLE: Family Law Trial Advocacy
   1 to 5 p.m.

*Please watch your MCBA E-News for updated information about meetings and events.
Volunteer Lawyers Program Thanks Attorneys

The Volunteer Lawyers Program thanks the following attorneys and firms for agreeing to accept 28 referrals last month from VLP to help low-income families. VLP supports pro bono service of attorneys by screening for financial need and legal merit and provides 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.

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- Kristy B. Blackwell
- Donaldson Stuart
- Amie Clarke
- Burguan Clarke Law Office

**BANKRUPTCY**
- Alice Vacek Aranda
- Sole Practitioner
- Jeffrey A. Katz
- Sole Practitioner
- Chhaya Patel
- Sole Practitioner
- Kevin J. Rattay
- Sole Practitioner

**CHILDREN’S ADVOCATE/COURT ADVISOR**
- Evelyn Rachel Hernandez
- Schneider & Onofry

**CONSUMER ISSUES**
- John P. Ager
- Sandweg & Ager

**GUARDIANSHIP OF MINOR CHILDREN**
- Matthew P. Feeney
- Snell & Wilmer
- Gregory D. Hague—2 cases
- Stimson Morrison Hecker
- Vera E. Munoz
- Sole Practitioner
- Craig J. O’Loughlin
- Quarles & Brady
- J. Gregory Osborne
- Tolman Osborne & Keenan
- Robert W. Shely
- Bryan Cave
- Andrea Tiazoli
- Quarles & Brady
- Timothy J. Thomason
- Mariscal Weeks McIntyre & Freidlander

**DOMESTIC VIOLENCE/FAMILY LAW**
- Jennifer Ciccaro
- Kearsaw & Felts
- DeShon Pullen
- DeShon Pullen & Associates

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**Public Invited to Submit Comments on Public Defender**

The United States Court of Appeals for the Ninth Circuit is conducting a performance evaluation of Federal Public Defender Jon Sands. The identity of all respondents will be kept confidential except to those with a need to know. Deadline for comment is Tuesday, June 14. Comments may be submitted online at http://www.ca9.uscourts.gov/fpd-sands or by mail or fax to: Office of the Circuit Executive; Evaluation-FPD, AZ; U.S. Courts for the Ninth Circuit; P.O. Box 193093; San Francisco, CA 94119-3939; Fax: (415) 355-8901.

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O’Connor Touts iCivics
continued from page 1

how immigrants become American citizens, and be a Supreme Court justice.

A screenshot of the iCivics homepage shows a myriad of colors and graphics to make stu-
dents’ learning of civics fun and entertaining. - photo provided iCivics.

Students can also play fun games that allow them to campaign for an issue of their choice, choose questions for politicians to debate and work as a legislator trying to meet the needs of constituents.

O’Connor, who has been busy promoting the iCivics program to schools and at events across the country since 2009, said she is shocked and discouraged at students’ lack of knowledge of basic U.S. government. “Our young people know virtually nothing. “They're coming out of high school at 18 and they're eligible to vote yet don't register or don't know how to vote,” O’Connor said.

A report released May 4 by the National Assessment of Educational Progress, a national-
ly representative measure of achievement in vari-
ous subjects – including math, science, reading and history – over time, shows that while fourth graders’ knowledge and skills in civics have increased and eighth grade scores remain unchanged, those of 12th-grade students have declined with just one-quarter of high-school seniors deemed “proficient.” The report, called the Civics 2010 National Assessment of Educational Progress at Grades 4, 8, and 12, is known as The Nation’s Report Card.

The 2010 test assessed 26,600 students in a sample that was designed to be representative of the entire U.S. student population by socioeconomic status, race, parents’ education, language barrier and disabilities.

Jeff Curley, deputy director of iCivics, said O’Connor has been tireless in her efforts to help students learn more about civics. As a result of her work, people are responding to the challenge.

Last year the Florida Legislature enacted the Sandra Day O’Connor Civics Education Law. The law requires that 7th graders complete a civics course and 8th graders pass a civics test to be promoted to high school. Additionally, civics-related content must be taught at all grade levels.

O’Connor said that while that’s a great start, she would like to see Arizona schools also make strides in the area of civics, starting with implementing the iCivics program in schools. “It’s my hope that my home state of Arizona will help get it (iCivics) in use,” she said.

O’Connor also called upon attorneys and others in the legal field to help get iCivics into the schools. “Most lawyers are willing to help students to be good citizens…It would be wonderful if members of the Maricopa County Bar would help us by contacting schools. It’s free, costs the school nothing, and it is very teacher friendly. It would be a great service to get the county bar to contact high schools and middle schools,” she said.

The Phoenix School of Law has announced that it will be relocating to downtown Phoenix, in the One North Central building, located at the corner of North Central Avenue and East Washington Street. In a lease that begins Aug. 1, the school will ultimately occupy 205,130 square feet of the building’s 13th to 20th floors and a portion of the first floor. The relocation is a result of the school’s dedication to enhancing its learning environment, commitment to improving student outcomes, and its increasing student enrollment.

“Phoenix School of Law is extremely excit-
ed for our move to downtown Phoenix,” said Scott Thompson, president of the school.

“This strategic initiative provides the foundation for the next phase of our institution, and
When we first established our company back in 1987, we never would have guessed that by the spring of 2011 we’d be celebrating our 100th assignment as a court appointed real estate receiver. With the arrival of that happy milestone, we imagined a celebration to be remembered…but we had to quickly put down our party hats when the call came in for number 101!

Nonetheless, we are proud of the reputation and experience we have established, not to mention the trust we have earned in the legal and financial community. We are committed to delivering the same level of service and care to the next 100 appointments, whatever and wherever they may be. Thanks for making us your Arizona real estate receivership specialists!
Family Law Reception Hosts Judges

Senate Bill Provides More Judges for Arizona and California’s Overburdened Courts

On May 17, judicial leaders welcomed the introduction in the United States Senate of a bill authorizing new judgeships for overburdened federal trial courts in California and Arizona.

The Emergency Judicial Relief Act of 2011 would provide the U.S. District Court for the Eastern District of California with four new judgeships, and the U.S. District Court for the District of Arizona with two new judgeships. It would also make permanent temporary judgeships, one on the Arizona court and one on the U.S. District Court for the Central District of California, which are scheduled to expire next year.

The legislation, which also includes new judgeships for courts in Texas and Minnesota, was introduced by Senators Dianne Feinstein of California and Jon Kyl of Arizona. Co-sponsors include Senators Barbara Boxer of California, John McCain of Arizona, John Cornyn and Kay Bailey Hutchison of Texas, and Amy Klobuchar and Al Franken of Minnesota.

“This legislation extends a lifeline to courts that are struggling to stay afloat amidst overwhelming caseloads,” said Ninth Circuit Chief Judge Kozinski. “Senators Feinstein, Kyl and their colleagues are to be commended for responding to this emergency. We are hopeful the bill will be passed and these new judgeships filled swiftly.”

The District of Arizona has the third highest criminal caseload in the nation driven by illegal immigration and drug smuggling across the U.S.-Mexico border. Criminal cases have increased 65 percent since 2008, when the federal government greatly expanded its law enforcement efforts along the border. The Arizona situation only worsened in January with the death of the court’s then-chief judge, John M. Roll, one of those killed in the mass shooting in Tucson.

“The circumstances in the District of Arizona are truly dire. We need help badly,” said Chief District Judge Roslyn O. Silver, who has taken the rare step of declaring a judicial emergency to temporarily suspend a time limit for bringing accused criminals to trial.

“Felony caseloads in the court’s Tucson division have doubled in the past two years. Since the killing of Judge Roll, each of the active judges are assigned 1,200 criminal cases each, which is just not tenable,” Judge Silver said.

Law Week 2011

Winners of this year’s Law Week Student Essay Contest were given a small tour of the Arizona Supreme Court and also met with judges and received awards for their good work.

First-place sixth-grade essay contest winners Madeline Maiorella and Vincent Wu, from Lookout Mountain Elementary, hold up their awards for all to see.

Members of the Young Lawyers Division board meet up at a reception after attending the April 27 Law Week CLE on “The Legacy of John Adams: From Boston to Guantanamo,” featuring presenter Howard Cabot of Perkins Coie. From left to right are YLD Chair-Elect Leslie Satterdee of Nirenstein Garnice Soderquist, Nicole Soto of Arizona Credit Union System, Megan Judy Hardman of Snell & Wilmer, Jen Rehholz of Barrell & Seletos, and Casey Blair of Burch & Cracchiolo.

Trial Court Commission Recommends 11 Candidates

The Maricopa County Commission on Trial Court Appointments has recommended 11 candidates to Gov. Jan Brewer for three openings on the Maricopa County Superior Court.

Nominees for the opening created by the retirement of Judge Robert Budoff are Cynthia J. Bailey, 44, Republican, of Phoenix, a commissioner for the Maricopa County Superior Court; James T. Blomo, 48, Republican, of Phoenix, a commissioner for the Maricopa County Superior Court; and, Phemonia L. Miller, 49, Democrat, of Glendale, a commissioner for the Maricopa County Superior Court.

Nominees for the opening created by the retirement of Judge Edward Burke are Gerald J. Porter, 45, Republican, of Scottsdale, a commissioner for the Maricopa County Superior Court; Katherine M. Cooper, 48, Republican, of Phoenix, an attorney with the Scottsdale City Attorney’s Office; and, Steven P. Lynch, 46, Democrat, of Chandler, a commissioner for the Maricopa County Superior Court.

Nominees for the opening created by the retirement of Judge Joseph Hellman are Michael J. Herrod, 51, Republican, of Scottsdale, a partner at the law firm of Schmit, Schneck, Smyth & Herrod, PC; Janice K. Crawford, 54, Republican, of Chandler, a commissioner for the Maricopa County Superior Court.

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gave Doody a printed Miranda card, but his oral explanations of the enumerated rights were “garbled, rambling, inaccurate, [and] obfuscatory.” He had “downplayed the warnings’ significance, deviated from an accurate reading of the Miranda waiver form, and expressly misinformed Doody regarding his right to counsel.” “Detective Riley,” Rawlinson wrote, “admitted that Doody had the right to counsel if Doody was involved in a crime,” even though innocent persons have the same right. “In such a circumstance, Rawlinson wrote, “the invocation of one’s right to counsel would be tantamount to admitting one’s involvement in a crime.”

The Arizona Court of Appeals, Rawlinson wrote, “unreasonably applied Miranda’s requirement” that “the accused must be adequately and effectively apprised of his rights.” “[W]hen police officers interrogating a juvenile transform Miranda’s warnings into a twelve-page rambling commentary that is in alternating part misleading and unintelligible,” she wrote, “there is no possibility of informed jurors could disagree.”

Rawlinson next turned to Doody’s confession and, considering “the intensity of his interrogation and his isolation during twelve plus sleep-deprived hours of continuous questioning,” found that it was not voluntary. She cited “Doody’s lack of prior involvement in the criminal justice system, his lack of familiarity with the concept of Miranda warnings, and the staging of his questioning in a straight-back chair, without even a table to lean on.”

She chided the Arizona court for not even mentioning these factors and for not considering the totality of the circumstances. She also concluded that the court had based its holding “on an unreasonable determination of several pivotal facts,” including its conclusion that Doody had remained responsive during the lengthy interview. The tape recordings, she believed, revealed that “Doody was anything but ‘responsive.’” “[T]he detectives,” she wrote, “utilized relentless interrogation tactics precisely because Doody remained unresponsive and did not provide the answers they sought.”

Rawlinson then turned to what she called “the elephant in the room.” “Let us not forget,” she wrote, “that this same task force questioned four adult men and, undoubtedly using the same tactics, procured what the State conceded were false confessions from all four.”

“That the will of four adult men was overborne to the extent that they confessed to murders they did not commit,” she continued, “further persuades us that the will of this young teen was similarly overborne.” The totality of the circumstances, she concluded, “forecloses the possibility of informed voluntariness.”

The circumstances, she continued, “reveal a picture that bears no resemblance to the avuncular scene painted by the Arizona Court of Appeals.” In holding, she concluded, “was an unreasonable application of established authority, and it renders the conclusion of voluntariness infirm.”

Joining Rawlinson were Judges Mary M. Schroeder, Betty B. Fletcher, Harry Pregerson, Stephen Reinhardt, Sidney R. Thomas, and Kim McLane Wanalw.

Chief Judge Alex Kozinski concurred in the result. He agreed that the Miranda warnings were inadequate but disagreed with the majority’s analysis of the voluntariness issue. “The state court may well have been wrong to find Doody’s confession voluntary,” he wrote, “[b]ut that’s not the only way to read the record.”

“The majority spins a good yarn, but the state court also told a good story,” he continued. “[F]inality and respect for the independent judgment of the state courts,” he wrote, “counsels the highest deference on federal habeas review.” “I would therefore let stand the state court’s finding that the confession was voluntary,” he concluded.

Judge Richard C. Tallman, joined in dissent by Judges Pamela Ann Rymer, Andrew J. Kleinfeld, criticized the majority for not being properly deferential to the Arizona court. “[M]y colleagues continue to treat this case as if it were on direct appeal to be reviewed de novo,” he wrote, accusing them of failing to “yield to the shot across our bow fired by the Supreme Court when it granted Arizona’s petition for certiorari and vacated and remanded our original en banc decision.”

He pointed to the deferential standard imposed by the Antiterrorism and Effective Death Penalty Act of 1996, under which, he wrote, the state court’s determination must be affirmed “unless it was objectively unreasonable.”

“The majority,” he wrote, “pares the record and re-weights the evidence to reach what is effectively a de novo determination—and then strikes down the Arizona court’s decision when it arrives at a different result.” The Supreme Court, he noted, had repeatedly and recently chastised the court for this very conduct. “But we are unrepentant.”

Tallman disagreed with the majority’s Miranda analysis. Detective Riley’s oral explanation “was not a model of English diction,” he wrote. Nevertheless, “[e]ven those of us who spend our days striking every unnecessary word from our written work commonly make, and hear, statements of less than perfect prose.”

“While part of Detective Riley’s explanation may have been ambiguous, the four essential Miranda warnings themselves were stated correctly, and Doody was simultaneously looking at a written form that clearly laid out the warnings without any problematic elaboration,” he wrote. The Arizona court could reasonably have concluded that Doody was reasonably notified of his Miranda rights, he believed.

He was no less critical of the majority’s analysis of the voluntariness issue. Doody, he wrote, was not the tender youth that the majority had painted: He was just shy of his eighteenth birthday, had been emancipated from his parents, had a B average in high school, had a steady job, and was commander of his ROTC unit.

The majority, Tallman believed, had misrepresented the record by claiming that Doody’s will was overborne after long hours of interrogation: Doody admitted having pos-
**WEDNESDAY ■ JUNE 1**

**NOON – 1 P.M. (Lunch included)**

**Drafting and Enforcing Restrictive Covenants and Independent Contractor Agreements**

**SPONSORED BY:** Corporate Counsel Division

**1 standard CLE credit hour**

The program will cover the following topics:
- How social media might be a marketing boon, but it's also an ethics nightmare.
- Supervising your staff: What are your firm's policies?
- Again with the conflicts warnings: Scary recent discipline cases.
- What every lawyer should tell about the Internet.
- How to gracefully (ethically) withdraw from cases.
- Labor law issues for lawyers who are employers.

**PRESENTERS:**

Lynda Shely, The Shely Firm, PC
Denise Blommel, Denise M. Blommel, PLLC
Nancy Greenlee, Attorney at Law
Roberta Tepper, State Bar of Arizona

**COST:**
- MCBA member: $105
- Non-member: $165
- Public Lawyers Division and Paralegal Division member: $60
- Student member: FREE

**SUPPORTED BY:** Doug Reed Insurance Services

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**TUESDAY ■ JUNE 7**

**1-4 P.M. (Lunch included)**

**Hot Ethics Issues**

**SPONSORED BY:** MCBA

**3 ethics CLE credit hours**

The program will cover the following topics:
- How social media might be a marketing boon, but it's also an ethics nightmare.
- Supervising your staff: What are your firm's policies?
- Again with the conflicts warnings: Scary recent discipline cases.
- What every lawyer should tell about the Internet.
- How to gracefully (ethically) withdraw from cases.
- Labor law issues for lawyers who are employers.

**PRESENTERS:**

Karen Clark, Adams & Clark, PC
Ralph Adams, Adams & Clark, PC
Mark Bregman, Bregman, Burt, Feldman

**COST:**
- MCBA member: $105
- Non-member: $165
- Public Lawyers Division and Paralegal Division member: $60
- Student member: FREE

**SUPPORTED BY:** Doug Reed Insurance Services

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**THURSDAY ■ JUNE 9**

**7:30 – 10:30 A.M. (Breakfast included)**

**Avoiding Ethics and Malpractice Liability in Probate and Estate Planning Practices**

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

**3 ethics CLE credit hours**

Using current and topical cases, the speakers will explore:
- Concurrent and multi-state estate plans: The tragic tale of the irrepressible Charles Kuralt on the Road.
- Ethical pitfalls awaiting estate planners: A view from 20,000 feet.

**PRESENTERS:**

Sherman Bendalin, Bendalin & Smelkinson, LLC

**COST:**
- MCBA member: $50
- MCBA member: $80
- Non-member: $120
- Student member: $10

**THURSDAY ■ JUNE 16**

**1-5 P.M.**

**The Culture of Divorce is Changing**

**SPONSORED BY:** Family Law Section

**4 standard CLE credit hours**

The adversarial, litigating divorce model is becoming a thing of the past. Be ready to provide your clients with the most valuable process for today's divorcing families: Collaborative divorce. If you are unaware of this alternative dispute resolution model, you risk losing cases to contemporary lawyers who offer this valuable service.

**PRESENTERS:**

Norma Izzo Miller, Collins, May, Potenza, Baran & Gillespie
Ellie Izzo, Ph.D., LPC
Vicki Carpel Miller, BSN, MS, LMTF, PC
Tamara Rounds, Child Specialist
Judith A. Morse, Judith A. Morse, PC, Andrew Hoffman, FCA CFP CDFA

**COST:**
- MCBA member: $105
- Non-member: $165
- Public Lawyers Division and Paralegal Division member: $60
- Student member: FREE

**SUPPORTED BY:** Doug Reed Insurance Services

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**TUESDAY ■ JUNE 21**

**1-4 P.M.**

**True Tales from the Trenches: 10 Tips for Avoiding Ethics & Legal Malpractice Liability**

**MCBA ethics CLE program**

**3 ethics CLE credit hours**

Two of Arizona's most experienced ethics lawyers explain how to avoid the most common mistakes lawyers make that land them in ethics and legal malpractice hot water. These distinguished speakers will lead you through an interactive exploration of scenarios involving challenging situations lawyers face in their everyday practices. Learn the 10 Tips for Avoiding Liability—derived from leading ethics and legal malpractice cases—to help you limit your risk.

**HIGHLIGHTS INCLUDE:**
- Interactive exploration of common ethics/malpractice challenges facing lawyers
- Review of cutting-edge discipline and legal malpractice cases
- Strategies to avoid bar complaints and legal malpractice claims
- Insurance-coverage issues for defense of legal malpractice claims and bar complaints
- Dangerous areas of practice
- Liability to third parties
- Ethics violations and their effect on legal malpractice suits
- How to apply the 10 Tips for Avoiding Liability

**PRESENTERS:**

Karen Clark, ethics defense attorney, Adams & Clark, PC
Ralph Adams, legal malpractice and ethics defense attorney, Adams & Clark, PC

**COST:**
- MCBA member: $105
- Non-member: $165
- Public Lawyers Division and Paralegal Division member: $60
- Student member: FREE

**SUPPORTED BY:** Doug Reed Insurance Services

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**WEDNESDAY ■ JUNE 22**

**4 - 5 P.M. (happy hour to follow)**

**General Counsels Give the Real Deal**

**SPONSORED BY:** Corporate Counsel Division

**1 standard CLE credit hour**

Hear from this panel of high profile GCs their take on the world of in-house counsel and outside counsel relations. From privately-held and publicly-traded businesses to the tech transfer world, this panel will provide real perspectives on best practices to develop win-win relationships with outside counsel and the C-suite. How do you communicate what you really need? How do you get what you need? Likewise, the panel will discuss how in-house counsel can rise through the ranks of a company and be a benefit, not a speed bump. How do you climb the corporate ladder and offer sound advice without being viewed as a cost center? This panel will provide best practices.

**MODERATOR:**
Bradley C. Vynalek, Quarles & Brady

**PANEL MEMBERS:**
Andrei K. Bunka, RedFlex Traffic Systems Inc
Christine Jones, Go Daddy
More panel members TBA
WHERE THE LEGAL COMMUNITY CONNECTS

Friedlander (Father)
Steven Evens, Udall, Shumway & Lyons
(Director of mother)
Susannah Sabzekar, Sabzekar and Associates
(Expert)
Leslie Satterlee, Gregg R. Woodnick, PLC
(Moderator)
Nicole Siqueiros, Hallier Law Firm (Mother)
Andrea Lawrence, Hallier Law Firm
(Director of dad)
Bill Bishop, Bishop & Martin
(Cross examination of dad)
Ronne Steiner, Law Office of Ronne Korbibin Steiner
(Cross examination of mom)

JUDY MORSE, JUDITH A. MORSE, PC. (Expert direct)
Judge Kenneth Fields (Retired), Maricopa County Superior Court
Judge Randall Warner, Maricopa County Superior Court
Judge John Rea, Arizona Supreme Court
Judge Robert Budoff (Retired), Maricopa County Superior Court

COST: Public Lawyers Division and Paralegal
Division member: $80
Family Law Section member: $120
MCBA member: $140
Non-member: $220
Student member: FREE

Phoenix School of Law Moving
continued from page 10
will build on the attainment of full accreditation granted last summer by the American Bar Association."

The new campus will be equipped with state-of-the-art technology, a fully-operacional mock courtroom, a legal clinic and a law library with an expansive physical collection of legal resources, and a variety of electronic databases.

“Our location in the heart of the legal community and justice system maximizes our students’ ability to utilize many resources in the downtown area,” said Shirley L. Mayas, Dean of Phoenix School of Law.

“As a law school with nearly 1,000 students and employees, our presence downtown confirms our commitment to Phoenix and will benefit both the city and the broader community.”
INSIDE THE COURTS

Justice Court Pilot Kicking Off

As part of the implementation of the AzTurboCourt project, a web-based system to allow the public to initiate and file small claims and civil cases online, the Maricopa County Justice Courts (MCJC) are developing a new Electronic Document Management System (EDMS) to serve as a repository for documents submitted online. The system will enable the courts to accept documents electronically from AzTurboCourt, eliminating inefficient paper documents and physical case files.

Some of the features of the new EDMS system include the ability to generate support documents automatically, making them part of the electronic case record; automatically track cases by predefined schedules and notify staff when dates are due and provide documents and case files electronically to the judge for review.

MCJC will conduct a pilot program beginning in July at the four justice courts located at the Northeast Regional Court Center, including Moon Valley, Desert Ridge, McDowell Mountain and Dreamy Draw justice courts.

The pilot program will wrap up in late fall, at which point implementation will begin at the remaining 21 justice courts over a 24-month period.

Appointments and Investitures

Judge Mark H. Brain has been appointed to fill the vacancy created by the passing of Judge Pendleton Gaines. Brain was appointed in 2006 as a Superior Court commissioner assigned to Juvenile Court. He received his undergraduate degree in Physics from Iowa State University in 1985, and graduated from the University of Michigan School of Law in 1988. Judge Brain was admitted to the State Bar of Arizona later that same year. Before his appointment to the bench, he worked for the law firm Fennemore Craig from 1988 to 2002, and the law firm Peshkin & Kotalik from 2002 to 2006, where he focused on civil matters.

Presiding Judge Norman Davis has appointed John R. “Jack” Doody as a Superior Court commissioner. His first assignment will be on civil/probate at the Northeast Regional Court Center. Doody is admitted to practice law in all courts in California and in Arizona. He practiced civil litigation for 26 years, including nine years in his own firm. He also served two terms on the Ethics Committee of the State Bar of Arizona and as a member of the American Arbitration Association’s commercial and construction panels in Phoenix.

Michael J. Herrod has been appointed as a judge of the Maricopa County Superior Court. Herrod is a founding director of the law firm Schmitt, Schneck, Smyth & Herrod, P.C., where he has practiced since 1999. His areas of expertise include adoptions, private dependancies, private termination of parental rights and paternity practice. Herrod primarily represents birthmothers and adoptive couples and practices in the area of family business and estate planning, wills, trusts, probate, guardianships, conservatorships and business formation. This court appointment was made to fill the vacancy created by the retirement of Judge Joseph Heilman.

Over the past 10 years, Danielle J. Viola has served as a judge pro tem for the Maricopa County Superior Court, presiding over numerous settlement conferences and as a court-appointed guardian ad litem and assisting children in family-court cases. She is a partner at the Snell & Wilmer law firm, where she has worked since graduating with honors from the Arizona State University College of Law in 1999. Viola’s law practice focused on representation of small businesses and national corporations in commercial litigation, with emphasis on matters involving franchising, banking, insurance, real estate and general contract disputes. Her appointment was made to fill the vacancy created by the retirement of Judge Paul Katz.

The Arizona Supreme Court re-appointed Superior Court Judge Maria Verdin to the Arizona Commission on Judicial Performance Review. The commission sets performance standards for judges, decides whether or not a judge meets those standards, and reports its findings to the public. Judge Verdin will serve on the commission until June 30, 2011.

Edward DeCoste was appointed to serve as the new court security director. He comes to the position with 35 years of law enforcement experience in county, state and federal government. A graduate of Arizona State University, DeCoste has served as chief deputy U.S. Marshal, Washington, D.C.; regional director over an eight state area for the U.S. Department of Homeland Security; marshal for the Supreme Court of Florida; judicial security advisor in Iraq; a sheriff deputy in Maricopa and Pinal counties; and a detective for the Crestview Police Department, Florida.

Investitures

A new judge has taken her post at the United States Court of Appeals for the Ninth Circuit.

Judge Mary H. Murguia was formally invested into office on March 25, one year to the day after President Obama nominated her to the Ninth Circuit Court. Murguia is a former judge of the U.S. District Court for the District of Arizona, and a former federal and state prosecutor in the state. She was confirmed on December 22, 2010, by a unanimous vote of the Senate.

Judge Murguia filled a vacancy left when Judge Michael Daly Hawkins, also of Phoenix, took senior status. Murguia, 50, was appointed to the U.S. District Court for the District of Arizona in 2000. Nominated by President Clinton, she was the first Latina to serve on the Arizona federal bench. Her brother, Judge Carlos Murguia, sits on the U.S. District Court for the District of Kansas.

Superior Court Hosts Visitors

A small delegation of judges and prosecutors from China, accompanied by faculty from the Phoenix School of Law, visited Superior Court’s Therapeutic Drug Court.

The group observed staffing with Comr. James Morrow, and they later went into his courtroom to view proceedings.

Court Helps with Affordable Legal Representation

The Maricopa County Superior Court is making it easier and more affordable for litigants needing limited scope representation. Recognizing the tough economic climate and the cost of maintaining an attorney for an extended period of time, Superior Court’s Self Service Center is assembling a roster of Phoenix area attorneys who offer limited legal services to litigants. Attorneys on the roster charge litigants by the hour and only for the services they need.

Limited scope representation allows litigants to act as a team with their attorneys. Litigants handle certain tasks but will turn to attorneys for advice and direction and help with complex tasks like document preparation and limited representation in court.

Although fees for attorneys on the roster vary from attorney to attorney, litigants, who contact attorneys through the attorney roster, typically receive a slightly reduced rate. Any attorney admitted to the State Bar of Arizona and who is in good standing can participate in the program. The Superior Court has waived the in-person orientation; however, all attorneys must be aware of the ethical rules and obligations of limited scope representation.

The public attorney roster link as well as the registration link for attorneys seeking to apply to the attorney roster is available at http://www.superiorcourt.maricopa.gov/SuperiorCourt/FamilyCourt/Rosters/index.asp.

Once the application is approved, attorneys may set up an account and make any needed updates to their entry online. If you have any questions about the attorney roster, please contact Jennifer Murray at murray006@superiorcourt.maricopa.gov or 602-506-3464.
New Judge Q-and-A: A Chat with Mark H. Brain

Q. What has surprised you the most about making the transition from a Superior Court commissioner to a judge? Please explain.

For me, it’s not much of a transition because my juvenile court assignment has been to handle the same cases that judges handle (plus adoptions every other week). But I have been surprised by my sense of sadness that I’m leaving juvenile court. Don’t get me wrong; I spent almost two decades handling civil matters as an attorney, so rotating to a civil assignment in May will be a little like coming home, and I’m looking forward to it. But over the last 4.5 years, I’ve grown to love the juvenile court. It’s the one place where a judge can make big differences in children’s lives. I’m really going to miss it.

Q. You were raised on a farm in Iowa. Do you feel your upbringing has influenced your legal career?

Yes, in a couple of senses. First, it’s a great way to get a good work ethic—planting and harvesting seasons aren’t “9 to 5’ jobs, and you find a way to get it done while the weather cooperates. Second, it puts one in a mindset to get things done even if they aren’t fun (if you’ve ever cleaned hog-houses, you know what I mean).

Q. What’s your favorite quote?

“Yes, in a couple of senses. First, it’s a great way to get a good work ethic—planting and harvesting seasons aren’t “9 to 5” jobs, and you find a way to get it done while the weather cooperates. Second, it puts one in a mindset to get things done even if they aren’t fun (if you’ve ever cleaned hog-houses, you know what I mean).

Q. What is your favorite genre to listen to?

To the extent I make the bulk of my cd collection on it a few years ago, it contains rock n’ roll, Motown, rhythm and blues, etc.). To the extent I make the effort to pull up something specific, it’s usually something like Tower of Power or Bela Fleck and the Flecktones. I’ve been sorely tempted to buy a second one for the office and load it with my classical collection (there’s nothing like a full blown symphony), but haven’t got around to it yet.

Q. Do you own an iPod? If so, what songs are in your playlist?

I do, but it doesn’t get much use because the interface in my car is essentially worthless. It has roughly 1,800 songs on it (I loaded the bulk of my cd collection on it a few years ago, so it contains rock n’ roll, Motown, rhythm and blues, jazz, etc.). To the extent I make the effort to pull up something specific, it’s usually something like Tower of Power or Bela Fleck and the Flecktones. I’ve been sorely tempted to buy a second one for the office and load it with my classical collection (there’s nothing like a full blown symphony), but haven’t got around to it yet.

Judge Thompson’s Investiture

Arizona Supreme Court Vice Chief Justice Andrew D. Hurwitz (left) delivers the oath of office to Superior Court Judge Peter Thompson during his investiture ceremony at Board of Supervisors Auditorium in Phoenix.

A Different Analysis

Sentencing v. Reform Misses the Mark

This article does not seek to join the debate as to whether mandatory sentenc- ing is effective in terms of deterrence and cost. What it suggests is that the current debate misses the mark by not employing an appropriate analytical framework.

There is little likelihood of being able to reach a consensus on the type of sentenc- ing framework we want to have in place unless we first start with a set of core, fundamental principles on which we can all agree. Those core principles will, in turn, serve to better inform our formulation of an appropriate sentencing policy based upon those shared values.

What then are the core, fundamental principles we can agree upon which should apply to all persons charged with a criminal offense in our American system of justice? They are few and simple:

First: A person accused of a crime is presumed innocent until proven guilty beyond a reasonable doubt.

Second: A person accused of a crime is entitled to freely exercise his or her right to a fair and impartial trial.

Third: A person accused of a crime, upon conviction, is entitled to receive a fair and impartial sentence which takes into account all relevant facts and circumstances.

The term “mandatory sentencing” simply means that the Arizona Legislature has, in many kinds of cases, effectively divested judges of discretion in sentencing and placed those determinations in the hands of prosecutors.

As a result, decisions by a defendant and her counsel as to whether to proceed to trial are all too often driven not by issues of guilt or innocence, what the state can prove, technical defenses, or other considerations. Instead, those dis- cussions are frequently focused solely on sentencing.

For example, if a defendant faces the option of going to trial and, if convicted, spending a healthy chunk of her life in prison versus enacting a plea of guilty with the understanding that a much lesser sentence, including the possibility of proba- tion, would be available, guilt or innocence becomes a secondary consideration.

Avoiding a lengthy mandatory prison term becomes paramount.

Betting the farm is simply not a viable option if other alternatives are available, even if they are not particularly palatable. The fact is that the right of a person accused of a crime to a fair and impartial trial is materially fettered based on the manner in which the charge is brought and what subsequent allegations are made by the prosecutor.

Mandatory sentencing operates to abrogate the first and second core principles on which we have, or should, agree are fundamental to our system of justice.

Let the Judge Decide

The basic policy issue addressed here is not whether or not certain defendants should go to prison or suffer some other punishment. The issue, rather, is who should be entrusted with the responsibility of making the kinds of determinations that profoundly affect so many lives—victims, defendants and others—in so many ways consistent with the core principles which we share.

Of course, no system is perfect. Judges are not infallible. Their decisions, whatever they may be, will necessarily be contro- versial and, in some instances, flat wrong. But the fact remains that independent judges are better qualified to determine the appropriate sentence in any given criminal case, and preserving judicial independence is necessary to ensuring the unfettered rights of an accused to proceed to trial and the right to receive a fair sentence.

Let the Judge Decide

One cannot fault prosecutors for using every tool in their kit. Indeed, they are following the law as provided to them by the legislature. Prosecutors, as a whole, should be given credit for wanting to serve the interests of justice. They surely believe that they are doing the right thing in a given case. In many instances, they may well be right. But it is not consistent with our third core principle for prosecutors to be the ones who can dictate a minimum sentence that is appropriate.

Attorneys, prosecutors and defense attor- neys alike are advocates. They are not neutral, detached and objective. Prosecutors are likely more inclined to empathize with vic- tims or, in the case of victimless crimes, sup- port the police. Defense attorneys are often more inclined to relate to their client or her family or to question the police.

It follows that prosecutors are not the ones who should determine whether a given defendant can, in purely practical terms, go to trial. Neither, in the case of a defendant who pleads or is found guilty should the prosecutor be in a position to dictate a minimum sentence. That’s why we have judges, even if we—prosecutors and defense attorneys—may disagree with them sometimes.
CLASSIFIEDS

ATTORNEY WANTED

GUST ROSENFIELD SEEKS AN EXPERIENCED TAX ATTORNEY. Ideal candidate will have at least three years experience in federal and state taxation, general corporate and partnership matters, estate planning and probate. Must have an LL.M. in tax and be hard working, efficient, and well organized. Excellent research, writing and communication skills required. Excellent opportunity to deal with varied tax matters while working directly under the supervision of the firm’s senior tax attorney. If you are interested in joining a sophisticated, client-centered and collegial firm, please contact rasegal@gustlaw.com.

GUST ROSENFIELD SEEKS PRIVATE OR PUBLIC ATTORNEY who is experienced in municipal law. The attorney would assist in the firm’s civil municipal and public finance practice areas. Experience in planning and zoning preferred. An LLM in taxation or some experience in municipal finance will be beneficial. If you are interested in joining a sophisticated, client-centered and collegial firm, forward a resume to gustlaw.com.

MID-SIZED CENTRAL PHOENIX law firm seeks attorney with a minimum of 5 years experience in real estate. Excellent academic credentials required. Competitive salary and benefits. Send resume to T. Kevin Dykstra, BÖNNETT, FAIRBOURN, FRIEDMAN & BALINT, P.C. E-MAIL: ldykstra@bfblaw.com, FAX: 602-796-5816.

POSITIONS

MEDIATOR WANTED. Established Arizona divorce mediation firm seeks part-time mediator with JD and under- graduate or higher degree in psychology or similar area of study. Email resume to mediatorresume@gmail.com

OFFICE SPACE

FULL SERVICE CLASS 'A' office available within existing Surprise law firm. Dodds Law Firm, P.C. (602) 544-2480.


VIRTUAL TUCSON OFFICE - Would your practice benefit from a Tucson foothills presence and professional address? Get started virtually for only $125/month, which includes remote reception, use of our professional address, mail service, use of our conference room, and more! Work from home, or from Phoenix, and let us be your Tucson connection. Email info@YourTucsonOffice.com

FULLY FURNISHED EXECUTIVE OFFICES available within offices of a major law firm in downtown Phoenix (Central/Thomas). Includes use of the firm’s support services, such as receptionist, copy center, conference rooms, lunch, rooms, etc. Covered parking available; conveniently located near the light rail. Contact Jill, 602-285-5052.

SPRINGING INTO ACTION! A tour of our office will get you more excited about the idea of going into professional practice. Stop by and find out more about our fully furnished office space available in downtown Phoenix - quit your current office location and join the President’s Advisory Board at Gallagher & Kennedy. Call 602-345-7032.

ATTORNEY WANTED

JEFF ROBERSON, M.D., Ph.D., Sc.D., spent 20+ years building the practice of a successful medical-legal consulting firm. A master litigator, Jeff brings that experience to his new solo practice. He is currently building a book and is looking for a partner with writing or publishing experience. Contact Jeff at jeff@gmail.com.

ATTORNEY WANTED

Established Arizona divorce mediation firm seeks full-time mediator with JD and under-graduate degree. Must be a member of the State Bar of Arizona and have a professional reputation in the legal community. Salary, based on experience. Please send resume to mediatorresume@gmail.com.
The Maricopa County Bar Hall of Fame Selection Committee is now seeking nominations for 2011. So far 73 lawyers have been honored (see list at right). The committee expects to select a dozen or so from the broad diversity of lawyers in the county this year.

The deadline for submissions is August 4, 2011.

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:

- Played prominent and important roles that have had an impact on the history and development of our 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.

Please note that nominees from previous years will not automatically be re-considered for 2011. You are, however, invited to re-submit a previous nominee with complete information as noted below.

Submission Requirements
- Full name of nominee, including date of birth (and death, if applicable):
- A brief statement or summary of nominee’s significant qualifications and achievements (about 100 words or less).
- A detailed biographical description of nominee. The committee relies on the information supplied by the nominator(s), so comprehensive information is important. Supporting letters from others are also welcome.
- A photograph, preferably in color, submitted in electronic jpg format as an attachment to email.

Where to Submit Nominations
Nominations will be accepted by mail, email or through the MCBA website. For mail or email, please use the form on this page, or you may download the form from the website or use the website’s electronic form: www.maricopabar.org

Forms should be mailed or emailed to: Laurie Williams, Hall of Fame, Maricopa County Bar Association, 303 E. Palm Lane, Phoenix, AZ 85004-1532. Phone: (602) 257-4200. Email: lwilliams@maricopabar.org

Deadline for submission is August 4, 2011.

HALL OF FAME INDUCTIONS 2008-2010

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<th>PIONEERS</th>
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<td>Willard H. Pedrick</td>
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<td>Alice Birdsell</td>
<td>Leon S. Jacobs</td>
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<td>Hon. Walter E. Craig</td>
<td>Hon. Joseph Kibbey</td>
<td>Philip A. Robbins</td>
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<td>Amelia Dietrich-Lewis</td>
<td>Hon. A.D. Lemon</td>
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<td>Rafael (Ralph) Carlos Estrada</td>
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<td>Hon. Hayzel B. Daniels*</td>
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<td>Samuel P. Goddard, Jr.*</td>
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*The selection committee relies upon the detailed bio to make a decision. Letters of support from others are also welcome. Also separately, please send a photograph (preferably in color) in jpg format, as an attachment to email.

Deadline for submission is August 4, 2011

Submit to: Laurie Williams, Hall of Fame, Maricopa County Bar Association, 303 E. Palm Lane, Phoenix, AZ 85004-1532. Email: lwilliams@maricopabar.org. Phone: (602) 257-4200.

Website: www.maricopabar.org
$311K GOAL FOR 2011 CHARITY DRIVE

"LAWYERS REALLY DO CARE."

Kenneth J. Sherk
Director
833 N. Central Ave.
Phoenix, AZ 85004
Office: (602) 261-5000
Fax: (602) 261-5020
klesh@sw.com

FENNEMORE CRAIG, P.C.
150 N. Central Ave.
Phoenix, AZ 85004
Office: (602) 261-5000
Fax: (602) 261-5020

[Letter to all Maricopa County Lawyers]

THE MARICOPA COUNTY BAR FOUNDATION: ... LAWYERS CARE, THEY REALLY DO CARE!

Twenty-eight years ago the decision was made to form the Maricopa County Bar Foundation, the charitable arm of the Maricopa County Bar Association, because lawyers really do care about the plight of the disadvantaged. Since that time more than $815,000 has been given to worthy recipients in Arizona. One of these recipients is Arizonans for Children, a cause that I have been involved with since its inception in 2003.

Arizonans for Children, with seven lawyers on its Board, fills a need for many of the most vulnerable children, those abused, neglected and abandoned children in foster care. Care plans for foster youth are managed by attorneys, caseworkers, and legally mandated judges. Foster children have virtually no knowledge regarding their legal processes that control their lives. Through its Justice League Program, Arizonans for Children educates foster youth about the legal system and their legal rights within that system. The program also is designed to positively affect attitudes, values, and perceptions about the law, and empower these youth to advocate effectively for themselves in their dependency hearings and case planning. Ultimately the goal is to help these children to function and contribute to society.

Arizonans for Children, along with dozens of other worthy programs in Arizona, has depended on the charitable giving of organizations such as the Maricopa County Bar Foundation. I ask that you join with me by giving your financial support to the Foundation to ensure that those worthy programs that benefit the indigent, and especially children, are able to continue in the future and to show that lawyers really do care.

Very truly yours,

Kenneth J. Sherk

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