Montini Mixes Humor with Gravitas at Luncheon

By Laura Swendseid

Long-time Arizona Republic columnist E.J. Montini, who’s no stranger to receiving sharp criticism (and sometimes praise) for sharing his views on current issues, brought a mixed bag of humor, perspective and seriousness to the March Membership Luncheon.

About 70 members attended the luncheon, which was held at the Hyatt Regency Phoenix. Montini, a veteran writer who also proved to be an astute and entertaining speaker, elicited plenty of laughs through his tales of attending Catholic school, discussion on current events, and a tongue-in-cheek reading of several of the hundreds of emails he receives each day.

A Propagandist Scumbag

Among those emails, many of which were riddled with profane language, was one in which the writer called Montini a “propagandist,” “scumbag,” and “pile of human garbage” (not including the expletives). Another offered the perfect solution to the border-security problem: placing Montini’s fetid corpse on the border to ward off any incoming illegal immigrants.

Montini said he came up with an apt way to respond to the malicious emails by sending the writers what appeared to be a computer-generated reply thanking them for their “kind words.” The fastest response time Montini logged after sending the email was 28 seconds, and included the writer angrily relating that they had not sent Montini a complimentary email. Montini responded post-haste by sending a second “computer-generated response” email.

Lessons from Catholic School

On a heavier note, Montini talked about the best lesson he learned in his eight years of attending Catholic school, aside from being disciplined by the nuns.

One day in class the teacher asked her young students to say a prayer for a fellow student whose grandmother had recently passed away. One of the students inquired as to why had another pupil lost his mother to a car accident just a few months earlier.

The nun replied that she thought they happened to remind those still living about life’s gifts. A second student asked, if that was the case, why had another pupil lost his mother to a car accident just a few months earlier.

The nun answered that, perhaps it happens again because people keep forgetting to appreciate what they have, and tragedy

Kelly Kral of Dyer & Ferric, Jill Hubizer of Myers & Jenkins, and solo practitioner Mark Moritz pose with Wells Fargo stagecoach horses during the April 7 Estate Planning, Probate & Trust Section’s annual judicial reception at the Wells Fargo Museum in downtown Phoenix. Kral and Moritz are section board members and Hubizer is a former board member.

Private Schools’ Funding Source Key to Court’s Landmark Decision in Arizona Tax Credit Case

A sharply divided United States Supreme Court has used an Arizona case to severely limit taxpayers’ ability to challenge governments’ monetary support of religion. The Court tossed a suit in which a group of Arizona taxpayers challenged an Arizonan law that allows a one-for-one tax credit for contributions to religious and other schools.


Arizona allows taxpayers a dollar-for-dollar tax credit for contributions made to STOs—school tuition organizations—which use the money for scholarships for students to attend private schools. Many of the affected schools are religious.

A group of Arizona taxpayers challenged the program, contending that the STO tax credits violate the First Amendment’s Establishment Clause. The district court dismissed, holding that the complaint failed to state a claim. The Ninth Circuit held that the plaintiffs had standing under *Flat v. Cohen* and reversed on the merits, *Winn v. Garrett*, 562 F.3d 1009 (9th Cir. 2009).

The Supreme Court granted certiorari. Writing for the majority, Justice Anthony Kennedy held there was no standing.
Good Board Members, Good Members… Is there A Difference?

David H. Benton
MCBA PRESIDENT

Good Board Members. Good Members. Is there a difference? I am not sure there is.

If you have been a member of a board, you have been through at least one seminar or conference workshop that focuses on good board governance. Heck, the theme of the 2011 MCBA retreat this year was how to be a good board member.

Yet, if you list the characteristics (or traits or qualities, or what have you), I think you too will also realize there is not much of a difference between what it is to be a good board member and a good member of the MCBA. Let’s review a typical list of good governance characteristics.

The most obvious thing a good board member knows is the mission or goal statement of the organization. Indulge me and take down from the wall in your office the framed and laminated copy of the MCBA Mission Statement (just for the moment; you can put it right back!), and read it with me: “The mission of the Maricopa County Bar Association is to serve its members, the legal profession, the judicial system, and the public.” Every board member is responsible for carrying out the mission of the MCBA. When a board member incorporates the mission into their actions and their words, our members, our profession, and the public benefit. Is there any doubt that when a member of the MCBA acts on the mission of the MCBA, they serve the very same beneficiaries?

As board members of the MCBA, we believe in something bigger than ourselves. Our collective responsibility to the membership is paramount, as the interest of any one individual on the board is set aside for the greater membership. Leaders in their own right, these board members focus their talents together to manage the needs of the entire membership. These efforts are no different than those of our members.

MCBA members call upon us to join them in serving clients, assisting employees, and supporting the judiciary. Members realize that their voice, when heard as one, is most effective when requesting services, urging change, focusing criticism, or heaping praise. No member is an island. Good MCBA board members are prepared and informed. They understand the short-term and long-term strategic objectives of the organization, and they are ever fiscally responsible. They operate within the guidelines and realize when it is time to change the rules.

They are students of the organization and stewards of its rich history. Of particular note, MCBA board members recognize that Maricopa County, Arizona operates on a national stage, and forces within and without are constantly engaged, and except for constant vigilance and attention, a nationally renowned judiciary, constructed on merit and proven by time, could be irremediably harmed by self-serving, partisan fanatics.

Similarly, MCBA members realize that without preparation, information, and a good understanding of strategic objectives of themselves, clients, and employees, the likelihood of success is quickly reduced to practically nothing. MCBA members know they have one of the best benches in the country — bar none — and any threat to the bench is threat to us all. MCBA members know that businesses and residents get a fair shake, sans partisan ranking. This is the foundation of our profession.

I could go on, but I think you get the point. We, board members of the MCBA and members of the MCBA are ambassadors. Each of us, together, shares the vision and imparts the mission. We are the servants. By what we say and what we do, we serve the profession; our fellow members; our judiciary; and of course, most honorably, the public.

Tucson’s increased border security adding thousands of new cases to judges’ caseload

The judicial vacancy crisis in Arizona federal courts has reached emergency proportions. As a result of a significant increase in law enforcement efforts at the border, the number of criminal cases in Arizona has risen 65 percent since 2008. Yet, Congress has failed to add any new federal judgeships in Arizona to handle the flood of new cases, and Arizona is down three judges due to vacancies. One of those vacancies was created by the tragic murder of Judge John Roll. The magnitude of this crisis and its impact on our community should not be underestimated. Swift action by the president and by Congress is needed to fill existing judicial vacancies and to add additional judicial positions in Arizona.

On Jan. 21, the newly designated Chief U.S. District Judge of the District of Arizona, the Hon. Roslyn Silver, issued an order declaring a judicial emergency. A few days later, the Ninth Circuit Court of Appeals took the unprecedented action of exercising its authority to extend the judicial emergency beyond the limited period of time ordered by Judge Silver.

The judicial emergency existed before Judge John Roll was tragically gunned down in the Jan. 8 shooting in Tucson. Judge Roll, who was at the time serving as chief judge in the District of Arizona, was seeking congressional support for measures to deal with the unwieldy caseload in our state. In an article published in the East Valley Tribune four days before his death, Judge Roll declared that the federal courts in Arizona had “reached a choke point” as a result of the record number of felony cases being filed in his district. He had gone to speak with U.S. Rep. Gabrielle Giffords about this very issue on the day when he was shot and killed. His untimely and tragic death has exacerbated the emergency.

Numerous pending Arizona federal cases are now being re-assigned to visiting judges brought in from other states (where those judges face their own large caseloads), until the current vacancies are filled. But this is only a temporary Band-Aid for the problem. Arizona needs additional federal judges. A look at the numbers illustrates the crisis. In Tucson, the annual number of new criminal cases doubled in the last two years, from 1,564 two years ago to 3,289 last year.

See Swift Action Needed page 15

‘Forty Under 40’ Names Four MCBA Members for 2011

Four MCBA members have been selected by the Phoenix Business Journal for its 11th class of Forty Under 40. They are Wendy Akbar of Quares & Brady, LLP; Laurence Hirsch of Jaburg & Willk, PC; Nicole Kullary Siqueiros of the Haller Law Firm, PLC; and Victoria Tandy of the Office of the Federal Public Defender.

The Business Journal annually selects up and coming leaders in business, community, government and nonprofit areas who have achieved impressive milestones in their businesses and careers and have made significant contributions to the Valley’s overall quality of life.
Repeat Offenders: Most Common Ways Lawyers Violate Rules

Despite all the shows portraying the law as an exciting profession, it turns out the most common violation does not relate to ER 1.8(j). Instead, some of the most common violations of Arizona’s Rules of Professional Conduct relate to not communicating with the client, not managing client expectations, and not properly managing trust accounts.

Lack of Diligence and Communication

“Routinely, the biggest complaints to the bar are about diligence and communication,” said Roberta Tepper, senior counsel to the State Bar of Arizona. “Every client wants to think they are the only client.” The best way to avoid a complaint on this issue is by managing client expectations from the outset.

“If you are a lawyer that is in court all the time, tell the prospective client that up front and tell them other ways to communicate with you,” Tepper said. Lynda Shely, an attorney who represents others in professional responsibility matters, said a good rule of thumb is to return calls within 24 hours. Tepper suggests that if you are a lawyer whose schedule causes delays in communication, an alternate communication plan is a good idea. “The important thing is to set up some channel of communication. Typically the client just needs confirmation that you’ve heard them and you’re working on their issue.”

Give Updates, Manage Expectations

Shely explains that it is important to explain how long the case may take so that the client does not expect a faster resolution than is possible. In this regard, even things the client does not expect a faster resolution can improve client relations. Typically the client just needs to know how long the case may take so that they can properly plan on their own time.

Keep Records on Correspondence

There are also things lawyers can do to insulate themselves from problems. Tepper suggests keeping some record of your communication with your clients, even if only in your time sheets. That way, if an issue arises in the future you have some record showing that you communicated with your client. The other way to avoid problems is to follow your instincts up front: if you have a prospective client and you are going to be their third or fourth lawyer, and the client has nothing good to say about your predecessors, it is probably a problem client.

The other major area where problems arise are violations of the rules relating to lawyers’ trust accounts. One unintentional violation stems from a failure to properly describe the kind of fee the lawyer is receiving. A common mistake is attempting to set up a minimum fee that is non-refundable/earned upon receipt. When properly arranged, that fee can go into the lawyer’s operating account. But many lawyers fail to properly follow the state bar’s guidance and therefore use the phrase “retainer” when what they really mean to do is create an advance fee that is going to be billed against the difference matters because a fee earned upon receipt may go into the lawyer’s operating account, while an advance fee needs to go into the trust account. Not categorizing the fee properly can lead to a violation of the Rules of Professional Conduct. The state bar has provided guidance on charging a flat “earned upon receipt” fee in Arizona Ethics Opinion 10-03.

Poor Supervision and Record Keeping

Other typical violations relating to trust accounts are about supervision and record-keeping. Lawyers sometimes fail to keep individual client ledgers in addition to the general ledger. Or the lawyer may trust the wrong people with their trust accounts. Tepper explains that sometimes lawyers give clients access to the trust account or they hire a bookkeeper and do not supervise those people well enough, and there is money missing by the time someone notices a problem.

A full review of the prior years’ ethical issues may be found in the State Bar of Arizona’s annual report for the Office of Lawyer Regulation.

Ball Committee Seeks 2012 Beneficiary

The Young Lawyers Division Barristers Ball Committee is now accepting applications for the 2012 Barristers Ball Beneficiary.

If you know of a non-profit organization whose project or program benefits the legal community or a legal or law-related service provided to the community at large that is worthy of this honor, please contact Laurie Williams at twilliams@maricopabar.org.

The deadline for applications is May 27, 2011.

Bankruptcy Fundamentals Series – Fridays

Hot Ethics Issues

Avoiding Ethics and Malpractice Liability in Probate and Estate Planning Practices

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

Family Law Advocacy

Family Law - Collaborative Divorce

Social Security Basics

In-House Council program

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Find details in the June issue and on www.maricopabar.org.

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Preserving Arizona’s Historically Significant Cases
Public, Members of Judiciary Invited to File Motion to Designate Historically Significant Cases

BOOK REVIEW
Raw Law Offers ‘Rules’ to Avoid Criminal Justice System

By Muhammad Ibn Bashir, Esq.
c.2011, Cash Money Content / Atria Books
$15.99 / $17.99 Canada
203 pages

There was no way you weren't going to walk. You weren't carrying. There was nothing on you, you weren't armed, and the cops couldn't catch you at something you weren't doing. But you were there at the scene, and you were arrested just the same.

Now the only way you're doing is in leg irons. You got fifteen with six and you're still wondering how it happened.

Could you have done anything differently to avoid arrest, trial, or prison? According to Muhammad Ibn Bashir, there are lots of things as historically significant as part of the records retention schedule located in the Arizona Code of Judicial Administration, section 3-402(F). The code requires that the motion for designation set forth one or more reasons for designating the case as historically significant and that the motion be filed with the presiding judge.

Several Maricopa County cases have been designated as historically significant: the Ernesto Miranda case (Miranda rights); the case against Winnie Ruth Judd (the Trunk Murderess); the case against former Governor Evan Mecham (indicted on six felony charges, later acquitted of all criminal charges); Public Fiduciary v. Arizona State Hospital (Sarno Case/mental health), which began as a class action in 1981 and continues today; and James Kidd and his hagiographic will, which designated funding for research to capture an image of the human soul leaving the body at death.

Other cases that have been identified for designation include the case against Jonathan Doody, who was convicted in the Buddhist Temple murder case (the conviction was overturned later based on a coerced confession); the case against Timothy Ring, the lead case in the “Ring Decision” that required death sentences to be decided by juries rather than judges; and cases related to the murder of Arizona Republic reporter Don Bolles. The potential list of notorious names, events and changes in the law that rise to the level of historical significance goes on in Maricopa County.

If you have presided over or represented a client in a court event that was historically significant, or if you have simply attended, followed or even heard of a case that should be maintained for the future based on its historical significance, consider filing a motion to designate those cases.

If the case was (or is being) heard in Maricopa County, the motion would be filed here. Cases heard in other counties should have the motion to designate filed with the presiding judge in the applicable county. A proposed motion form for use in all applicable courts is available on the Supreme Court’s website at www.supreme.state.az.us/selfserve/ Historically_Significant/MotionDesignHistSig.pdf.
Handling First Day On The Job Jitters

Your First Day

If you haven’t met the staff and attorneys already, you will likely be paraded around from office to office for introductions or have to make your own introductions. Be sure to greet everyone with a friendly smile (even if you don’t feel like smiling). Shake their hand and try to be as personable as the situation allows. Learn as many names as you can, as quickly as you can. People appreciate being called by their names. Do not become involved in office politics and do not participate in gossip. But, it’s okay to appropriately socialize, which does not include excessive drinking at happy hours.

It is a good idea to listen and observe in the first few days. Soak up the firm like a sponge, and try to understand who might fill the following roles for you in the weeks/months to come: mentor; friend; problem-solver; problem-starter; difficult to work with; and easy to work with. Learning the firm’s culture and dynamics is very important.

You have to expect that, to some degree, you probably will not do too much work on your first day. In the days to come, you may be assigned work that you believe is insignificant. However, there is likely a purpose behind each of the major projects. Take initiative with any assignments you are given and volunteer to do more. Keep your work-space and your projects organized. Try never to turn in a rough draft; your work should be polished and finalized as possible. Be flexible and open to new ideas/policies/procedures. It is important that you do not have unrealistic goals and expectations for this position. You cannot expect to make sweeping transformations any time soon and need to understand that changes take time and patience. That is why learning as much as you can about the firm will help you figure out what you can add to the firm, and what you need to leave alone for the time being.

Also, stay away from comparing a new firm to an old firm, and using statements like: “We never did that at my old firm.” This will almost always result in a negative reaction.

I say this in almost every article: never be afraid to ask questions! Especially in the beginning you need to communicate and receive feedback. A good partner should not mind taking a few minutes to talk to you about an assignment and answer your questions. Ask for specifics on how you can improve your work because no one starts without a few mistakes. Mistakes are a part of the learning process. Partners should understand that your work will improve over time and should not be too quick to judge your work. Once you start to learn the firm’s and the partners’ individual preferences, things will get easier.

The first few months will be exhausting, but it gets better with time and practice! A successful and smart law firm should be willing to give you whatever you need, within reason, to be a productive firm member and great lawyer. Patience on the part of the new employee and the new employer will result in a great relationship for years to come. Good luck!

Grammar Points That “Count”

Grammar rules involving numbers are some of the hardest ones to remember – especially rules involving terms that indicate quantities.

The main reason they are difficult is because we do not use these terms consistently when we speak. Does this matter? It does matter in legal drafting because drafting requires precision. Following are some of the more common quantity terms and their usage rules.

F ewer or Less?

If the object is something that can be counted individually, then use “fewer.” If the object is something abstract that cannot be counted, then use “less.” “Less” is also appropriate if referring to weights, distances, sums of money, and periods of time.

We have fewer rooms in the new building.

She feared she had less odds of winning after the hearing.

The account has less than $500 in it.

Persons or People?

“Persons” is appropriate when referring to a specific number of individuals. “People” is appropriate when referring to the group and not the individuals.

Twelve persons showed up for the public meeting.

All people in the audience were eligible to win.

All or Each?

“All” can be used with either a singular or plural verb. With the singular verb, “all” means “the only one.” With the plural verb, “all” stands for a group.

All I can do is to wait.

All of the members are available for consultation.

Each” means one of a group of persons or things, and it takes a singular verb.

Each member is available for consultation.

Each of the members is on call.

LSC Offering Grant Funding for 2012

The Legal Services Corporation (LSC) announces the availability of competitive grant funds to provide civil legal services to eligible clients during calendar year 2012. A Request for Proposals (RFP) and other information pertaining to the LSC grants competition is available from www.grants.lsc.gov.

In accordance with LSC’s multiyear funding policy, grants are available for only specified service areas. The listing of service areas for each state and the estimated grant amounts for each service area will be included in Appendix A of the RFP. Applicants must file a Notice of Intent to Compete (NIC) in order to participate in the competitive grants process. The NIC will be completed online at www.grants.lsc.gov.

Further instructions on filing the NIC will be available in the Request for Proposal’s Narrative Instruction. Please refer to www.grants.lsc.gov for filing dates and submission requirements.

Please e-mail inquiries pertaining to the LSC competitive grants process to Competition@lsc.gov.

Grammar Points

I just accepted an associate offer at a mid-size law firm. This is my first job out of law school, and I’m very nervous. What advice do you have for me on my first day?

— Freaking Out in Phoenix

Congratulations! Starting your first job, or even starting at a second or third job, is never easy and can be nerve-racking. I hope these tips will help make your transition a little smoother.

Before You Start

The more you can familiarize yourself with the firm, the more prepared you will be for your first day. Talk to colleagues who can give you information and impressions on what the firm does, the dynamics in the firm and how it functions. Review the firm’s website, and try to learn the names of attorneys and staff at the firm. If you receive a new employee handbook in advance, take the time to read it cover to cover.

Anyone who tells you first impressions are not important is simply wrong! You will be judged from the minute you walk in the door, so take care with your appearance. Dress appropriately. If you’re not sure what the dress code is, then wear a suit (as lawyers, we can never go wrong in a suit!). Make sure your clothes are pressed and clean, manicure/clean your nails, shine your shoes, etc.

The night before, get a good night’s rest, eat a hearty breakfast in the morning and be sure to be on time. Timeliness is very important at a new job, and you should arrive early and stay late!

LAWS Seeks Attorney Volunteers to Help Present at Shelters

The LAWS program was developed to provide pro se information to women at domestic violence shelters.

The focus of the LAWS program is to provide education, resources and tips to victims of domestic violence to familiarize them with the legal process from starting a case to the final trial. This will be done via a series of one-hour seminars presented to women at domestic violence shelters across the valley.

The session topics include:

- Introduction to the Courts, Resources
- How to File and/or Respond to a Case
- How to Represent Yourself in the Courtroom
- Courtroom Etiquette
- What to Do if You Don’t Like the Result
- Family Court/Custody/Child Support
- Orders of Protection
- Bankruptcy/Foreclosures
- Immigration/VAWA

Volunteers are needed to help present these topics to the shelters. If you would like to learn more about the LAWS program or are interested in volunteering, please contact Alexandra Gormley at AGormley@lrlaw.com. If you are interested in volunteering, please contact Alexandra Gormley at AGormley@lrlaw.com. If you are interested in volunteering, please contact Alexandra Gormley at AGormley@lrlaw.com. If you are interested in volunteering, please contact Alexandra Gormley at AGormley@lrlaw.com.

Keep up with Facebook and Twitter

Find out about the ‘goings on’ at the MCBA. Watch videos, peruse event photos, and stay up to speed with upcoming CLE and programs. Plus, find promos that can help you save on CLE!
The Paralegal Role in a Sole Practitioner’s Office

I (Kelly Gray, Paralegal Division board president) would like to introduce you to the 2012 Paralegal Division President, Cami Barnella. I have known Cami for a few years. Cami has assisted me when I’ve needed help and is always willing to step in and help wherever the need may arise. She is my right hand. I now turn this article over to Cami to share her experience as a paralegal working in a sole practitioner’s office.

By Cami Barnella

My name is Cami Barnella, and I am the president-elect of the MCBA Paralegal Division. I am a single mom of a six-year-old son who keeps me busy when I am not working. In my spare time (yeah right, what is that?) I love to read and scrapbook the fun activities I do with my son. I stay pretty active and am starting to even like running and participated in Great Urban Race, Pat’s Run, and Warrior Dash this year. I also love anything that has to do with food. I love to read about it, watch shows about it, talk about it, cook it, and, most importantly, I love to eat it.

While writing this article, I realized that this is my tenth year in the legal profession. The time has flown. During the past 10 years I was able to go back to school and in May 2008, I graduated from Phoenix College with a degree in Paralegal Studies. In July 2008, I obtained my certification from the National Association of Legal Assistants.

I am currently employed by the Law Office of Phoebe Moffatt, PC. I assist in the areas of estate and trust administration, estate planning preparation, and the preparation of documents to help clients in guardianship/conservatorship matters. I am expected to not only do my job as a paralegal, but usually I am also the secretary, receptionist, office manager, and if need be, the gopher. I prepare correspondence to clients and other parties, make all copies of documents, arrange the filing of pleadings and motions with the court, file everything in client files, organize client files, answer the phones, and order office supplies.

For the past 10 years I have worked for sole practitioners. The first attorney I worked for, Richard Holper, encouraged me to pursue my education in paralegal studies. At that firm I assisted in the areas of corporate law, construction law, real estate law, small business formation/reorganization, and bankruptcy. Working for a sole practitioner has its benefits and pitfalls. There is a sense of casualness and flexibility in the firm; however, this does not mean that it is an unprofessional environment. I am able to arrange to work four days a week to cut down on my commute and to spend more time with my son. The billable hours must be tracked, yet I do not have a required minimum, unlike some paralegals do at the larger firms.

There are trade offs for more flexibility. A paralegal working for a sole practitioner may have to sacrifice income and benefits or share more of the expense of benefits than a paralegal working for a larger firm or corporation.

I love that I found a career that I enjoy and that allows me to continue to grow and learn. The main advice I can give is to find what is important to you and in your life and figure out how work fits into your life’s goal. At this time in my life, the ability to raise and spend some additional time with my son is most important to me, so working for a sole practitioner is the best fit for me. Maybe in a few years, when my son is not so young, my life’s goal will change and working in this field, I love knowing that the opportunities for me as a paralegal can grow and change with me and my life goals.

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We can help you put the pieces together!
Ninth Circuit Upholds SB 1070 Decision, State Prepares Response

The Ninth U.S. Circuit Court of Appeals, April 11, upheld the decision by Judge Susan Bolton of the U.S. District Court for the District of Arizona last summer to enjoin key parts of Arizona’s highly debated immigration bill SB 1070, which Gov. Jan Brewer signed into law last April.

A three-judge panel, comprising two conservative judges, made the decision to uphold Bolton’s injunction. Writing the opinion was Judge Richard Paez, with Judge John T. Noonan concurring and Judge Carlos T. Bea expressing partial concurrence and partial dissent.

Supporters of S.B. 1070 have promised to petition the U.S. Supreme Court to overturn the Ninth Circuit court’s ruling in hopes that the largely conservative high court will be more sympathetic to their cause.

In his opinion, Judge Paez wrote that though Congress intended for states to be involved in enforcing immigration laws, under the supervision of the state’s attorney general, it did not intend to grant states the authority to remove immigrants, which is the “purview of the federal government.”

Furthermore, the court found that SB 1070 interferes with Congress’ scheme in enforcing immigration laws by allowing the state to assume a role in directing how its officers enforce the Immigration and Nationality Act (INA).

“We are not aware of any INA provision demonstrating that Congress intended to permit states to usurp the Attorney General’s role in directing state enforcement of federal immigration laws,” wrote Judge Paez.

Moreover, the court determined that the law also impinges upon the Executive Branch’s discretion, delegated by Congress, to determine how federal officers enforce immigration law.

Gov. Brewer said she believes Arizona and other states have the right to enforce immigration laws in accordance with federal statute. “[The] decision by the Ninth Circuit Court of Appeals to uphold Judge Bolton’s suspension of key provisions of SB 1070 does harm to the safety and well-being of Arizonans who suffer the negative effects of illegal immigration,” Brewer stated in a press release sent by her office.

Both Brewer and Attorney General Tom Horne said they believe the constitutionality of SB 1070 will eventually be affirmed.

“I note that the Ninth Circuit relied heavily on the opposition of foreign governments in upholding the injunction on two of the four elements,” said Horne. “As the dissent by Judge Carlos T. Bea eloquently stated, foreign governments should not be given a ‘heckler’s veto’ to establish preemption by the federal government over the state.”

Horne said they believe the constitutionality of SB 1070 will eventually be affirmed.

“Today’s decision is internationalism run amok that ranks right up there with the U.S. State Department’s decision to refer SB 1070 to the United Nations Human Rights Council.”

High Court Review

Arizona Supreme Court Petitions Granted for Review

Compiled by Ardyn Feken of the Arizona Attorney General’s Office

Case Caption & Court Origination

Jacobson v. Honorable Linda/State of Arizona
CV-10-0309-PR
Ariz. Ct. App. Div. 1

A. Whether the Court of Appeals erred in determining that A.R.S.13-4066 does not adequately protect a probationer’s rights against self-incrimination while undergoing sex offender treatment.

Did the Court of Appeals err in ruling that an unbuilt, untested design concept is sufficient evidence to create a jury question on the statutory state of the art defense?

Case Caption & Court Origination

Conn. et al v. Ford Motor Company
CV-10-0336-PR
Ariz. Ct. App. Div. 1

1. Whether the Court of Appeals erred in determining that A.R.S.13-4066 does not adequately protect a probationer’s rights against self-incrimination while undergoing sex offender treatment.

2. Whether the Court of Appeals erred in its interpretation of the “Contractual Liability Exclusion” (“CLE”), by holding that the clause only applies to an insured’s “assumption of another’s liability, such as an agreement to indemnify or hold harmless another.”

3. Whether the Court of Appeals erred in determining that DMP’s voluntary expenditures to repair property damage caused by construction defects were the result of a “legal obligation” to pay “damages” when the undisputed evidence established that DMP was not ordered by any court or governmental agency to undertake the repairs.

Case Caption & Court Origination

Desert Mountain Property v. Liberty Mutual Fire Insurance
CV-10-0339-PR
Ariz. Ct. App. Div. 1

Petition granted as to issues 1, 2, & 4 only.

Issue(s) Granted to be Reviewed

A. Whether the Court of Appeals erred in determining that A.R.S.13-4066 does not adequately protect a probationer’s rights against self-incrimination while undergoing sex offender treatment.

B. Whether the Court of Appeals erred in concluding that Jacobson did not waive his rights against self-incrimination at the plea agreement.

MAY 2011 CALENDAR

All meetings at MCBA Office, unless otherwise specified.

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

4 Young Lawyers Division Board meeting
Noon

5 CLE: Anatomy of a Criminal Prosecution and the Importance of Having a Response Plan
Noon
Phoenix School of Law
CLE: Managing Risk in The Cloud
11 a.m. to 1:30 p.m.
Construction Law Section Board meeting
Noon

6 Estate Planning, Probate & Trust Section Board meeting
7:30 a.m.
CLE: Employment Law Fundamentals: Session I - The Hiring Process
11:30 a.m. to 1 p.m.

9 VLP Advisory Board meeting
Noon

10 Family Law Section Board meeting
Noon

11 CLE: The Environmental Appeals Process: What You Should Know
9 a.m. to 4:45 p.m.
Environmental Law Section Board meeting
Noon

12 CLE: Estate Planning, Probate & Trust Section
7:30 a.m. to 5 p.m.
Executive Committee meeting
7:30 a.m.

13 CLE: Employment Law Fundamentals: Session II – Managing Employees – Responding to Issues
11:30 a.m. to 1 p.m.

*Please watch your MCBA E-News for updated information about meetings and events.

A BIG THANK YOU TO

SHANNON HENNESSEY

and the FRUTKIN LAW FIRM

For providing extensive pro bono legal services to secure a better future for a child in an Arizona Dependency case.

On behalf of all parties involved, thank you for making such a difference!

KAREN KOZIENETS PLLC - PHOENIX, AZ
MOBILE REVIEW

The Conspirator Posits: Did Justice or Revenge Result from an American Tragedy?

By Joan Dalton

America has suffered an overwhelming attack and the country recoils in horror and grief. The perpetrators must be brought swiftly to justice. For the United States government, swift justice means military tribunals for the accused.

The date of the tragedy that ignites the U.S. government’s reaction is not September 11, 2001, but April 14, 1865, and the event is not the attack on the World Trade Center towers, but rather, the assassination of President Abraham Lincoln.

In The Conspirator, Robert Redford presents the compelling story of Mary Surratt (played by Robin Wright), a Confederate sympathizer and the owner of a boarding house where John Wilkes Booth and others complicit in Lincoln’s assassination either visited or rented rooms.

Mary Surratt’s youngest son, John Surratt (played by Johnny Simmons), after befriending John Wilkes Booth (played by Toby Kebbell), disappears just prior to Lincoln’s assassination. Mary Surratt’s guilt is assumed because, as President Andrew Johnson (played by Dennis Clark) puts it, Mary: “kept the nest that hatched the egg.” Mary is quickly arrested and on June 30, 1865, is found guilty by a nine-member military tribunal and sentenced to hang for treason, conspiracy and plotting murder. However, a question remains: Was she a conspirator or did she serve as a scapegoat for the government that could not find her son?

Aside from the obvious parallels to United States government’s actions following the September 11 attack on the World Trade Center, The Conspirator also examines the emotional complexities of Frederick Aiken (played by James McAvoy), a young Union war hero assigned as reluctant legal counsel to a defendant accused of a loathsome act who, although young and inexperienced at lawyering, is spirited enough to put on a valiant defense and is intelligent enough to recognize the due process inadequacies inherent in his client’s arrest, imprisonment, and trial.

The Conspirator is a stunning film, rich in historical detail, from the filming techniques used to create imagery that reflect what the world looked like in a time of candlelight and gas lighting, to the detail of the military uniforms and the style of speech used at that time, to the use of historical trial transcripts and newspapers to deliver accurate events, context and public sentiment to the audience.

With The Conspirator, Redford and the movie’s production company, American Films, offer a riveting historical retelling of the story of Mary Surratt and the plot to assassinate President Lincoln and his top cabinet members. And, while the film does not postulate on Mary Surratt’s guilt or innocence in connection with the plot, it does depict the denial of due process rights for the accused, and, in so doing, subliminally prods the audience to reflect on whether civil liberties were similarly eviscerated after the acts of 9/11.

Catch The Conspirator, which was released on April 15, and look forward to the release of the production company’s next project: the retelling of the story of Paul Revere and William Dawes.

Joan Dalton is a member of the Maricopa Lawyer Editorial Board and Library Director at the Arizona Attorney General’s Office. When MCBIA was invited to send a reviewer to special preview-showing of “The Conspirator” for members of the community and others, Joan agreed to attend and wrote this review.

The Ins and Outs of Copyright Law: Beware the Pitfalls

By Ray K. Harris

The copyright statute broadly applies to computer downloads for personal use (games, music and books) and to copying for commercial purposes. Licenses are drafted to maximize protection under both copyright and contract law. Copyright protection is subject to statutory limits.

Copyright

The elements of a copyright infringement claim are deceptively simple: (1) ownership of a valid copyright and (2) copying of protected elements of the copyrighted work. Ownership springs into existence when material is fixed in any tangible medium of expression by an author.

Copyright registration is not required to create rights. But copyright registration is required by statute to sue for infringement. The Supreme Court recently held that registration is not jurisdictional. Jurisdiction over unregistered works is important for compilations. A “compilation” is created when preexisting materials (perhaps unregistered) or unprotected facts are “selected, coordinated, or arranged.” To resolve disputes involving compilations, courts can address rights in unregistered works. For example, the U.S. District Court held that the Google Book Search “opt out” consent program violates copyright law by imposing on authors an impermissible obligation to affirmatively contact Google to prevent digital publication.

Copyright is ordinarily proved by showing that the infringing work is “substantially similar.” Courts have imposed a higher standard if there is only a narrow range of possible expression of an idea — proof that the copy is “virtually identical.” In the Bratz Dolls case the Ninth Circuit applied virtual identity to the doll “sculpt” and substantial similarity to the sketches. Issues remain regarding the scope of the rights granted under the defendant’s employment contract.

Contract

Authors usually exploit their exclusive rights by authorizing others to copy, distribute, display or publicly perform the work. This authorization is a license governed by contract law. The Ninth Circuit determines when breach of a license constitutes copyright infringement based on whether the breached license term was a covenant (breach of contract) or a condition (copyright infringement). Contract or related statutory rights sometimes grant greater protection against copying than the Copyright Act. Contract protection can be obtained for blank forms and unsolicited scripts that lack sufficient copyrightable material to support an infringement claim. The Ninth Circuit has held that prohibitions in the Digital Millennium Copyright Act also can augment copyright protection and may not be subject to traditional copyright defenses.

Statutory Damages

There are significant copyright infringement remedies available if the contract term is a condition. In addition to injunctive relief, a copyright plaintiff (with a timely registration) is entitled to elect statutory damages of up to $150,000 for each work willfully infringed upon. Willfully copying can result in large-damage awards. In Sony v. Tennakum, for example, the jury awarded $625,000 for willfully copying 30 songs. The District Court held that this damage award, although specifically authorized by statute, violated the due process clause of the Constitution. In a case seeking to hold a LimeWire secondarily liable for inducing 500 million infringements on 10,000 songs, another District Court noted the absurd result that the statutory damages sought might exceed the total profit to the record industry since Edison invented the phonograph in 1877.

Exceptions in Cases

Not every creation is eligible for copyright protection. The author’s contribution must be an original expression fixed in a tangible medium. Wildflower Works, a display of wildflowers within an elliptical area bordered by gravel and steel, was enjoyed by visitors to Grant Park in Chicago for 20 years. In Kelley v. City of Chicago, the Seventh Circuit held that nature,
Montini Mixes Humor

Montini said he recently interviewed two people who had lost loved ones, Ross Zimmerman, father of Gabe Zimmerman, who was the legislative aide to Rep. Gabrielle Giffords and died in the Jan. 8 Tucson shootings; and Julie Erfle, wife of Phoenix police officer Nick Erfle who was shot and killed in the line of duty.

“In both of those conversations, which were about much different subjects, that notion came up. And with them [Ross Zimmerman and Julie Erfle], it was all in the lines of, well, for us it will never be a situation anymore that we don’t appreciate what we have. For everybody else, we recognize that there have to be people like us to remind them of what it’s like,” Montini said.

Current State of Politics

In a brief Q and A session following the main event, Montini answered a question about the possible reasons behind the current state of politics. He said that in his many years as a writer, he has seen politics evolve with parties becoming more acrimonious towards each another and less willing to compromise; however, the reason for that change is beyond him, he said.

“The overall dialogue has ratcheted up some so that the people who say the nastiest things win elections. And so, if that’s what wins elections, you’re going to keep saying it while you’re in office. That’s sort of how it works these days. It is bizarre. It is very different from, I think, what it was,” Montini said.
VLP ATTORNEY OF THE MONTH
Shick Gratified by Giving Clients Chance to ‘Hope for the Future’

By Peggi Cornelius, CVA

“Volunteer work has always been an important part of my life. Considering her early history of community service in such well-known organizations as the Humane Society, the Red Cross, and CASA, that statement easily explains why attorney Jennifer Shick joined the Volunteer Lawyers Program (VLP) as soon as she opened her family law practice in 2002. In 2005, VLP honored Shick as the ‘Court Advisor of the Year’ for her outstanding pro bono contributions through the Children’s Law Project (CLC). Now, in recognition of her ongoing and varied assistance to low-income clients, Shick is once again being recognized as VLP’s Attorney of the Month. Attorney Roni Tropper, CLC coordinator, describes Shick as a volunteer who ‘always rises to the challenge of complex legal issues and difficult human situations with the impressive combination of her competence and compassion.’

The story of Shick’s road to law school has many divergent paths, including employment in retail sales, a trailer business, an insurance company, an airline, and a Manhattan nightclub where she sold roses. But the position that led her to the doors of Rutgers School of Law and to graduation from the University of Pittsburgh School of Law in 1999 was her job as a nanny. "The children’s parents were well educated and believed I was capable of big things," she said. "I wanted to pursue law after I took an ethics class and learned the difference between arguments made by emotional investment versus those based in fact.”

In addition to her pro bono work as a court advisor in custody matters and representation of VLP clients in adoption proceedings, Shick periodically serves as a volunteer in the Family Lawyers Assistance Project (FLAP) at Superior Court. There, she advises many family law litigants who are representing themselves. "It’s rewarding to instruct people on how to develop evidence and discovery requests, and how to draft and provide pretrial information to the court. What is beyond a doubt most rewarding at FLAP is giving the client confidence to believe he or she can effectively present their case," she said.

Her professional commitments do not hinder Shick’s enjoyment of her personal life with her husband of 13 years. She cheerfully reports her husband’s passion for off-road racing, and the fun they have sharing family life with three dogs and a cat. Their present life is good, and their future looks bright.

With an appreciation for her blessings, Shick says the most gratifying part of assisting VLP clients is the opportunity to "give them hope for the future.” To her colleagues in the law, she says, "It is our duty to provide our skill to as many people as we can, not only to those who can afford us. It is truly the most rewarding work I do."

Jennifer Shick

VOLUNTEER LAWYERS PROGRAM THANKS ATTORNEYS

The Volunteer Lawyers Program thanks the following attorneys and firms for agreeing to accept 39 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@clasa.org.

ADOPTION
Becky L. Cholewka
Sole Practitioner

Molly L. Eskay
Bryan Cave

Lori Beth McLeod
Phoenix School of Law

Leslie Ross
Az Foundation for Legal Services & Education

BANKRUPTCY
Stephen F. Banta
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Steven M. Brechner
Artobleda Brechner

Stanley A. Buzzelle II
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Nathaniel James Odle
The Doyle Firm

Christina Perez
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Preudhomme Law Group

Gosia M. Zawislak
Sole Practitioner

CHILDREN
ADVOCATE/COURT ADVISOR
Robert Ian Brooks
Osborn Maleden

Claudia D. Work
Campbell & Mahoney Chartered

CONSUMER ISSUE
Stanley A. Buzzelle II
Sole Practitioner

DOMESTIC VIOLENCE/FAMILY LAW
Clarence Calvin—2 cases
Fromm Smith & Gadow

Harry P. Friedlander—2 cases
Sole Practitioner

Dianne N. Sullivan
Sullivan Law Office

EMPLOYMENT
Richard K. Mahle
Gammage & Burnham

GUARDIANSHIP OF INCAPACITATED ADULTS
Linda J. Arnold
Pinnacle West Capital Corporation

Michelle M. Lauer
Bade & Raskin

Pedro J. Rivera-Marty
Bryan Cave

GUARDIANSHIP OF MINOR CHILDREN
James Cool
Abrams Schenk Hawkins & Ricciardi

Lindsey M. Gomez
Bonnert Fairburn Friedman & Balint

Daniel W. Huittink
Snell & Wilmer

Karlene Martorana
Snell & Wilmer

Kristine Waddell
Snell & Wilmer

MARKETPLACE

ADVERTISER INDEX**

**PRO BONO SPOTLIGHT ON NEW APPELLATE PILOT PROGRAM**

Attorneys are needed to handle appellate cases (civil and family) in the Arizona Court of Appeals Division One. To help with appeals, please call Pat Gerrich or Danae Brownell at VLP at 602-254-4714.

MSC’s unique Legal Administrative Assistant program consists of 1700 hours of hands-on instruction.

Entry-level graduates are prepared to:
• Transcribe your pleadings accurately
• Answer your phones courteously
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For more information, contact: Margaret (Peggy) Shortridge, Esq. (602) 238-4329 shortridge@gatewaycc.edu

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MARICOPA LAWYERS
10  •  MAY 2011
There was a time in the late 1960s when a paper airplane thrown during the lunch rush at Tom’s Tavern in downtown Phoenix would almost certainly have passed over the head of a lawyer who could legitimately claim to have played a part in the various cases of Ernesto Miranda. While much of the country was occupied with racial unrest, the British rock invasion and the Vietnam War, the criminal bar in Maricopa County was enmeshed in a debate about the fundamental 5th and 6th Amendment constitutional rights of accused criminals. Much of the debate revolved around this young man from Mesa and his generally undistinguished criminal career.

The Perp and Prior

Miranda’s notoriety as a celebrity criminal began with a short article in the Arizona Republic on March 14, 1963. Only a few days after his 23rd birthday and nine months after the birth of his daughter, Miranda was reported to have signed a statement confessing to a crime spree involving attacks on several young women in Phoenix over a period of several months.

Miranda started working nights as a driver and warehouseman at United Produce Co. at 3rd Street and Madison in the late summer of 1962. Before and after work and before heading home to his girlfriend and new baby in Mesa, he would hang out in the “Deuce.” The downtown area around 2nd Street that would later become Symphony Hall was renowned for its seedy flophouses, rough bars and generally openly illicit atmosphere. Only a few blocks to the west were the old Maricopa County Courthouse, the Phoenix Title and Trust Building and the Paramount Theatre. All would play important parts in Miranda becoming a household name.

As a teenager, Miranda had been accused of the attempted rape of a married woman, who was dishonorably discharged from the Army for being a “Peeping Tom,” and later served time in federal prison for transporting stolen vehicles across state lines. The young felon was about 5’9” and weighed around 170 pounds. He had dark curly hair, wore black-rimmed glasses and had a variety of tattoos, including a large naked woman on his right leg. One doctor diagnosed him as having a chronic, undifferentiated schizophrenic reaction, and another described his condition as a sociopathic personality disturbance. In general, though, he was described as neat, clean, cooperative, and a little shy.

In the months after he was hired in the produce warehouse, Miranda was linked to several downtown purse snatchings, an armed robbery (purportedly using a fingernail file) and finally, the kidnapping and rape of an 18-year-old named Patricia.

The Crime

Patrol officers were called to a special police station at 11:30 on the night of March 2. Marlette, Miranda followed the bus and parked the car further east on Marlette. As the young woman, described in the police reports as “a big girl” with “a low IQ” passed him, Miranda forced her into the car and drove her into the desert near 20th Street and Bethany Home and raped her. Afterwards, Miranda dropped his victim off at 12th Street and Rose Lane, asked her for money and to pray for him.

The Memorial

Several days later, Miranda was linked to several downtown area around 2nd Street that would become a household name. The downtown area around 2nd Street that would later become Symphony Hall was renowned for its seedy flophouses, rough bars and generally openly illicit atmosphere. Only a few blocks to the west were the old Maricopa County Courthouse, the Phoenix Title and Trust Building and the Paramount Theatre. All would play important parts in Miranda becoming a household name.

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OLY COMMUNIQUE
CONTINUING LEGAL EDUCATION FROM THE MARICOPA COUNTY BAR ASSOCIATION
WHERE THE LEGAL COMMUNITY CONNECTS

THURSDAY  ■  MAY 5
11 A.M. – 1:30 P.M.  (Lunch included)
Managing Risk in The Cloud
2 standard CLE credit hours
SPONSORED BY: Arizona Technology Council & MCBA
The widespread adoption curve of cloud computing prevails in business. Today, decisions to adopt cloud technologies frequently occur outside of IT, legal and operational channels. Being tasked with securing corporate information assets— including intellectual property, customer data and operations – mandates understanding best practices for risk management and information governance. Attend this seminar for a balanced discussion. Panelists representing both legal and technology perspectives will address:
• Market dynamics of cloud computing
• Legal best practices for risk mitigation and data protection
• Regulatory, finance and audit considerations in cloud computing
PRESENTERS:
Jeffrey Tye, Owner, GMP Networks
Tim Burke, Vice President, Marsh Insurance & Risk Management
Melissa Proctor, Member, Sandler, Travis & Rosenberg, PA
JJ Marais, Price Waterhouse Cooper, LLC
COST:  ■ Arizona Technology Council member: $25
        ■ MCBA member: $25
        ■ Non-member: $35
        ■ CLE credit recharge: $25

THURSDAY  ■  MAY 5
NOON - 1 P.M.  (Lunch included)
Anatomy of a Criminal Prosecution and the Importance of Having a Response Plan
SPONSORED BY: Corporate Counsel Division 1 standard CLE credit hour
Presenters will give an overview as to how criminal investigations and prosecutions of companies and individuals are conducted from start to finish. They will also cover effective response strategies and proactive measures that can be employed by a company to deal with various enforcement actions.
PLEASE NOTE: This program will be held at the Phoenix School of Law, located at 4041 North Central Avenue, Phoenix, AZ 85012. The program will be held in room D108 of Building D.
PRESENTERS:
Barry Mitchell, Gallagher & Kennedy, PA
Paul K. Charlton, Gallagher & Kennedy, PA
COST:  ■ Corporate Counsel Division member: $40
        ■ Public Lawyers Division / Paralegal Division member: $30
        ■ MCBA member: $45
        ■ Non-member: $65
        ■ Law student member: $10

WEDNESDAY  ■  MAY 11
9 A.M. - 4:45 P.M.  (Lunch included)
The Environmental Appeals Process: What You Should Know
An all-day program
6 standard CLE credit hours
For transactional, estate planning, corporate as well as environmental attorneys and others.
Are you a construction law attorney whose client has received a notice of violation for failure to control dust emissions or stormwater runoff? Are you a real estate transactional attorney whose client leased its property to a recycler who is violating county air quality regulations? Are you an estate planning attorney whose client inherited contaminated property? Are you a corporate attorney whose client is accused of violating state hazardous waste laws? Because environmental law affects a variety of practice areas, it is in your interest and that of your client’s that you understand your client’s appeal rights. This program highlights the county, state, tribal, and federal administrative appeal procedures. You will be enlightened and entertained by three panels whose members have experienced firsthand the nuances of navigating through the varied administrative appeal processes.
COST:  ■ Environmental & Natural Resource Law Section member: $190
        ■ MCBA member: $220
        ■ Non-member: $330
        ■ Student member: $10
        ■ Public Lawyers Division and Paralegal Division member: $130

REGISTERATION (FULL-DAY AND SESSION 1 ATTENDEES)
9:30 - 9:45 A.M.
SESSION 1
9:30 - 11:30 A.M.
COUNTY ADMINISTRATIVE APPEALS PROCEDURE
PRESENTERS:
Dennis A. Dickerson, Maricopa County Air Quality Department
Jerry Woosam, Ridenour, Hienton & Lewis, PLLC
LUNCH (REGISTRATION FOR SESSION 2 ATTENDEES)
11:30 A.M. - 12:30 P.M.
SESSION 2
12:30 - 2:30 P.M.
STATE AND TRIBAL ADMINISTRATIVE APPEALS PROCEDURE
PRESENTERS:
Barbara Rodriguez-Paskowski, Gust Rosenfeld, PLC
Michelle De Blasi, Quarles & Brady, LLP
Pejman Esraghi, Brown & Caldwell
Hon. Tom Shedden, Arizona Office of Administrative Hearings
BREAK
2:30 TO 2:45 P.M.
SESSION 3
2:45 TO 4:45 P.M.
FEDERAL ADMINISTRATIVE APPEALS PROCEDURE
REGISTERATION (FULL-DAY AND PART 1 ATTENDees)
8:00 - 8:30 A.M.
PART 1
8:30 TO 11:30 A.M.
SPECIAL NEEDS TRUSTS AND ELIGIBILITY AND PLANNING FOR GOVERNMENT ASSISTANCE
PRESENTED BY: Keith Lyman, Frazer, Ryan, Goldberg & Arnold, LLP

THURSDAY  ■  MAY 12
8 A.M. - 4 P.M.  (Lunch included)
Estate Planning Seminar
An all-day program
SPONSORED BY: Estate Planning, Probate & Trust Section
6 standard CLE credit hours (full-day) or 3 standard CLE credit hours (half-day)
PLEASE NOTE: You may choose to register for either the “full-day” or the “half-day” pricing options. The full-day option runs from 8 a.m. - 4 p.m., and includes Part 1 and Part 2 of the seminar. If you register for the half-day, you may come to either Part 1 (8 - 11:30 a.m.) or Part 2 (12:30 - 4 p.m.) of the seminar, but not both. Lunch is included in both full- and half-day pricing options.

FULL-DAY PRICING
• Estate Planning, Probate & Trust Section member: $190
• MCBA member: $220
• Non-member: $330
• Law student member: FREE
• Public Lawyers Division and Paralegal Division member: $150

HALF-DAY PRICING
• Estate Planning, Probate & Trust Section member: $100
• MCBA member: $115
• Non-member: $175
• Law student member: $40
• Public Lawyers Division and Paralegal Division member: $70

REGISTERATION (FULL-DAY AND PART 1 ATTENDees)
8:00 - 8:30 A.M.
PART 1
8:30 TO 11:30 A.M.
SPECIAL NEEDS TRUSTS AND ELIGIBILITY AND PLANNING FOR GOVERNMENT ASSISTANCE
PRESENTED BY: Keith Lyman, Frazer, Ryan, Goldberg & Arnold, LLP

In this session, the following topics will be covered:
• Various Government Assistance Programs and Eligibility Criteria:
  ■ SSI, SSD, VA, ALTCS
  ■ Mistakes people make when trying to qualify for benefits
  ■ Techniques for Qualifying for SSD benefits
  ■ Techniques for Qualifying for VA benefits
  ■ Techniques for Qualifying for ALTCS
  ■ Married Applicants/Single Applicants
  ■ Tips and Considerations when applying for ALTCS
• Utilizing the Special Needs Trust:
  ■ Types of Special Needs Trusts
  ■ Administration of the Special Needs Trust
  ■ Coordinating with ALTCS

LUNCH (REGISTRATION FOR SESSION 2 ATTENDEES)
11:30 a.m. - 12:30 p.m.
PART 2
12:30 TO 2:00 P.M.
FINANCIAL EXECUTION AND YOUR OBLIGATIONS UNDER ARIZONA'S ADULT PROTECTIVE SERVICES ACT
PRESENTED BY: Roger T. Coventry, Director of Estate Services for Child & Berg, LLC and Board Member of the Arizona Fiduciaries Association.
This afternoon program will discuss:
• Reporting to and Working with Adult Protective Services
• Maricopa County Financial Abuse Specialist Team (F.A.S.T.)
• Fiduciary Duties/Perpectives in the Civil & Criminal Prosecution of Exploitation

TUESDAY  ■  MAY 17
1 - 4 P.M.
Whatever Happened to Atticus Finch?
5 ethics CLE credit hours
Hollywood has mastered the craft of building characters that make the audience think they really are doctors, cooks, cowboys, etc. And, sadly enough, it’s true of the made-in-Hollywood lawyers that have given us equal portions of admiration and disgust over the years.
The central question in this presentation poses three simple questions: Did the “old” Hollywood portray lawyers as the good guys they were 40 odd years ago? Does the current genre of movies about lawyers depict us as sleazebags for good cause? Did Hollywood change us, or did we change the way it’s true of the made-in-Hollywood lawyers that have given us equal portions of admiration and disgust over the years?
This program will offer participants the chance to think about, and perhaps debate, the notion that courtroom movies either are, or are not an accurate reflection of society’s view of lawyers. It will also give the audience the chance to see how real life ethical dilemmas in courtrooms play out on the large screen.

ATTORNEY REGISTRATION (FULL-DAY AND PART 1 ATTENDEES)
9:00 - 9:30 A.M.
SESSION 1
9:30 - 11:30 A.M.
COUNTY ADMINISTRATIVE APPEALS PROCEDURE
PRESENTERS:
Dennis A. Dickerson, Maricopa County Air Quality Department
Jerry Woosam, Ridenour, Hienton & Lewis, PLLC
LUNCH (REGISTRATION FOR SESSION 2 ATTENDEES)
11:30 A.M. - 12:30 P.M.
SESSION 2
12:30 - 2:30 P.M.
STATE AND TRIBAL ADMINISTRATIVE APPEALS PROCEDURE
PRESENTERS:
Barbara Rodriguez-Paskowski, Gust Rosenfeld, PLC
Michelle De Blasi, Quarles & Brady, LLP
Pejman Esraghi, Brown & Caldwell
Hon. Tom Shedden, Arizona Office of Administrative Hearings
BREAK
2:30 TO 2:45 P.M.
SESSION 3
2:45 TO 4:45 P.M.
FEDERAL ADMINISTRATIVE APPEALS PROCEDURE
REGISTERATION (FULL-DAY AND PART 1 ATTENDees)
8:00 - 8:30 A.M.
PART 1
8:30 TO 11:30 A.M.
SPECIAL NEEDS TRUSTS AND ELIGIBILITY AND PLANNING FOR GOVERNMENT ASSISTANCE
PRESENTED BY: Keith Lyman, Frazer, Ryan, Goldberg & Arnold, LLP
**PLENARIES:**

Gary L. Stuart, Gary L. Stuart, PLC 
Hon. Craig A. Blakey III, Maricopa County Superior Court 
Michele Fenney, Mohr, Hackett, Pederson, Blakely & Randolph, PC. 
David Sandweiss, State Bar of Arizona 

**PRESENTERS:**

Mark E. Lassiter 
PRESENTER: 
Before Judgment 
Seizing Debtors’ Assets 
I 

**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 ▪ MAY 18**

11:30 A.M. - 1 P.M. (Lunch included) 
Paralegal CLE: Representing Veterans in Criminal Cases 
Paralegal Division Quarterly Meeting 
1 standard CLE credit hour 

This program will help you understand the types of war injuries that lead to anti-social and criminal behavior, and learn strategies for obtaining optimal results for veterans facing criminal charges. 

**PRESENTERS:**

Craig Logsdon, Snell & Wilmer, LLP 
Col. Billy Little, Jr., USAF Reserves 

**COST:**

- Paralegal Division member: $10 
- Non-member: $20 
- Student member: $10 

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**THURSDAY ▪ MAY 26**

11:30 A.M. - 1 P.M. (Lunch included) 
What Do You Mean I’m the Arbitrator? Answers for Beginners 
1.5 standard CLE credit hours 

The Superior Court appoints attorneys as arbitrators in qualifying civil cases, regardless of the appointed attorney’s background or experience. This program is ideal for new attorneys, first-time arbitrators and anyone who wants to be well prepared and confident in tacking an arbitration. Participants will learn the basics of what to expect, what forms and time frames are required, where to access information, and whom to contact with questions. Practicing attorneys and the Maricopa County Superior Court arbitration judge will provide insight for successful outcomes. 

**PRESENTERS:**

Hon. Sam Meyers, Maricopa County Superior Court 
Naomi K. Gault, Schaller Anderson, an Aetna Company 
Jennifer A. Cranstoun, Gallagher & Kennedy, PA 

**COST:**

- Public Lawyers Division / Paralegal Division member: $40 
- MCBA member: $62.50 
- Non-member: $92.50 
- Law student member: $10 

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**THURSDAY ▪ MAY 19**

5:00 P.M. - 6:00 P.M. 
Purchasing and Interpreting Liability Insurance for Contractors 
1 standard CLE credit hour 

A panel of litigators and insurance agents will discuss purchasing and interpretation of insurance policies for construction projects. Topics will include understanding policies and endorsements for completed operations, wraps/difference in coverage, and resumption of projects. 

**PRESENTERS:**

Eric Lynch, Meckler Bulger Tilson Marick & Pearson, LLP 
Christopher Hennessey, Meckler Bulger Tilson Marick & Pearson, LLP 
Paul Lee, AON Risk Insurance Services 
Greg Prentice, AON Risk Insurance Services 

**MODERATORS:**

Louis Horowitz, Attorney at Law 
Jason Mullins, Attorney at Law 

**COST:**

- Public Lawyers Division / Paralegal Division member: $20 
- Construction Law Section member: $30 
- MCBA member: $35 
- Non-members: $55 
- Law student member: FREE 

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**S E E C T I O N I**

FRIDAY, MAY 6 
**The Hiring Process**

This basic seminar will include topics such as the types of questions and information that should or should not be on employment applications, confidentiality, interviewing, policies, drug testing, background and credit checks, e-verify, implications of failure to hire and 1-9s. 

**PRESENTERS:**

Andrea Lisenbee, Ryley Carlock and Applewhite 
Charlote Hartso, Ryley Carlock and Applewhite 

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**S E E C T I O N H**

FRIDAY, MAY 13 
**Managing Employees - Responding to Issues**

This basic seminar will address topics including responding to complaints of discrimination or harassment, conducting investigations, and avoiding retaliation. 

**PRESENTERS:**

David Villafied, Burch & Cracchiola, PA 
Jeff Toppel, Jackson Lewis, LLP 

**Payment Options:**

Register at www.maricopabar.org or call Lisa at (602) 682-8588 

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**S E E C T I O N I V**

Wednesday, May 25 
**Termination**

Topics in this seminar will address enforcement of covenants not to compete, discipline, documenta- tion, practical approaches to unemployment claims, avoiding retaliation in references, post-employment litigation, responding to claims, and electronic discovery issues. 

**PRESENTERS:**

Doryce Norwood, General Counsel, Circle K Stores, Inc. 
Laura Lawless-Robertson, Greenberg Traurig, LLP 

**Payment Options:**

Register at www.maricopabar.org or call Lisa at (602) 682-8588 

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**S E E C T I O N I V**

**May 2011 Employment Law fundamental series**

**FRAIDAYS, MAY 6, 13, 20 & WEDNESDAY, MAY 25**

( Please note that because of the Memorial Day holiday weekend at the end of the month, Session IV will be held on Wednesday, May 25) 

11:30 a.m. - 1 p.m. • 6 total credit hours (1.5 each). Lunch included. 
Register for the four-session practice fundamentals luncheon series scheduled for the month of May, YOU SAVE $5. 

**PACKAGE PRICES**

| Employment Law Section Member: | $185 | 
| Public Lawyers Division members/Paralegal Division members: | $105 | 
| MCBA Member: | $195 | 
| Non-Member: | $315 | 
| Student Member: | $40 | 

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**M A Y 2 0 1 1 EMPLOYMENT LAW FUNDAMENTAL SERIES**

**FRIDAYS, MAY 6, 13, 20 & WEDNESDAY, MAY 25**

( Please note that because of the Memorial Day holiday weekend at the end of the month, Session IV will be held on Wednesday, May 25) 

11:30 a.m. - 1 p.m. • 6 total credit hours (1.5 each). Lunch included. 
Register for the four-session practice fundamentals luncheon series scheduled for the month of May, YOU SAVE $5. 

**PAYMENT OPTIONS:**

Register at www.maricopabar.org or call Lisa at (602) 682-8588 

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**INDIVIDUAL PROGRAM PRICES**

| Employment Law Section Member: | $185 | 
| Public Lawyers Division members/Paralegal Division members: | $105 | 
| MCBA Member: | $195 | 
| Non-Member: | $315 | 
| Student Member: | $40 | 

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**SESSION I**

**FRIDAY, MAY 6**

**Managing Employees - Avoiding Issues**

This basic seminar will address enforcement of covenants not to compete, discipline, documentation, practical approaches to unemployment claims, avoiding retaliation in references, post-employment litigation, responding to claims, and electronic discovery issues. 

**PRESENTERS:**

Robert Reder, Stimson Morrison Hecker, LLP 
Chad Connelly, Mellever & Connelly 

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**SESSION IV**

**WEDNESDAY, MAY 25**

**Termination**

Topics in this seminar will address enforcement of covenants not to compete, discipline, documentation, practical approaches to unemployment claims, avoiding retaliation in references, post-employment litigation, responding to claims, and electronic discovery issues. 

**PRESENTERS:**

Doryce Norwood, General Counsel, Circle K Stores, Inc. 
Laura Lawless-Robertson, Greenberg Traurig, LLP 

**Payment Options:**

Register at www.maricopabar.org or call Lisa at (602) 682-8588 

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**Raw Law Offers ‘Rules’**

Book Review, continued from page 4 

that could get you arrested. You’ve already been in trouble, or someone in your family has. What next? 

Rule Number One of criminal justice, according to Bashir, is “DO NOT GET IN” the system. The second rule is to “come correct” when arrested. The third rule is easy: know your friends and your enemies. 

Understand, says Bashir, that there are “only two truths” to what you’re about to experience and you won’t like either one: no matter how the case ends up, there will be no justice. And “you may get exactly what you deserve.” 

Be willing to call the best lawyer you can afford, and listen to him or her. Keep your mouth shut and answer when asked. Never sign anything blank. Take the plea if your lawyer advises it; it often really is the best deal. 

**Decision Making:**

Part guidebook, part dictionary, and part wake-up call to anyone considering doing something illegal or stupid. Raw Law is just about the scariest book you’ll ever read – particularly if someone you know is heading down the kind of road that may need this book. 

Author and attorney Muhammad Ibn Bashir is brutally honest with his readers from start to finish, and he doesn’t hide a thing. Bashir speaks directly to his audience in language they’ll understand, which not only makes the legal system a bit more understandable, but gives readers something hard and “real” to think about. 

While Raw Law can be read by anyone, it’s mainly for people who are in trouble or going in that direction. If that’s you or someone in your family, don’t walk – run – and find this book. 

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**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. 

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**The Ins and Outs continued from page 8**

not the designer, was the true author and Mr. Kelley’s work was not sufficiently “fixed.” Landscape plans or drawings are protected but not the resulting “garden.” 

Copyright law can apply to leisure activity, but gardening appears safe from infringement but not the resulting “garden.” 

Landscape plans or drawings are protected but gardening appears safe from infringement but not the resulting “garden.” 

Understand, says Bashir, that there are “only two truths” to what you’re about to experience and you won’t like either one: no matter how the case ends up, there will be no justice. And “you may get exactly what you deserve.” 

Be willing to call the best lawyer you can afford, and listen to him or her. Keep your mouth shut and answer when asked. Never sign anything blank. Take the plea if your lawyer advises it; it often really is the best deal. 

And if you’re tempted by illegal activities and wondering how much trouble you could get into for real, read this book. In a few chilling pages, Bashir envisions a future for you that also affects everybody you love.
To place a classified ad, please e-mail shamin@maricopabar.org or call (602) 257-4200.
Private Schools’ Funding

CourtsWatch, continued from page 1

This is because in the last three years, the number of federal prosecutors in the U.S. Attorney’s Office in Tucson rose from 33 to 61, and there are now 3,000 Border Patrol officers in the Tucson sector. More than 212,000 illegal immigrants were apprehended last year in the Tucson sector. The current number of vacancies in Tucson has been a natural outgrowth of the increased border-area law enforcement activity.

The number of new criminal cases continues to grow. Each federal judge in Tucson currently handles more than 1,200 criminal cases. Despite the ever-increasing caseload, the number of federal judge positions has remained the same.

Criminal cases are just one part of the judges’ dockets. In addition to the crushing criminal caseload, each judge also carries a full docket of civil cases. The court, the number of full docket cases, has increased significantly. Civil litigants, therefore, find it increasingly difficult to get their day in court.

Two years ago, 3,023 felony cases were filed in federal courts in Arizona. That number increased to 4,311 the next year, and 5,219 last year. In the face of this rising tide of criminal cases, the total number of federal judge positions in Arizona has been stuck for years at 13 authorized judges. At present, there are two vacancies in Tucson and one vacancy in Phoenix that need to be filled. Federal judges are appointed by the president of the United States and confirmed by the United States Senate.

The Federal Bar Association, as a matter of policy, requires the presentation of the credentials or qualifications of the nominees to the federal bench. The FBAs foremost interest lies in the assurance of prompt, dispositive action by the president in nominating qualified federal judicial candidates and the U.S. Senate in promptly acting on the president’s nominations.

The people of Arizona deserve better. Congress needs to act to fill existing vacancies, create additional positions for judges, and provide needed court resources to handle the increasing load of criminal cases in our community. The Federal Bar Association urges everyone to contact Sens. Kyl and McCain, as well as their U.S. representative, to encourage prompt action to address this judicial crisis.

Editor’s note: This letter was written on behalf of the Federal Bar Association by Ashley L. Belleau, national president, Federal Bar Association; Mark P. Hensman, treasurer, Phoenix chapter, Federal Bar Association; and Isaac D. Redscheld, treasurer, Tucson chapter, Federal Bar Association.

J ustices Scalia and Thomas would have preferred the Court to simply overrule Flast. That case, Scalia wrote in a concurring opinion, “is an anomaly in our jurisprudence, irreconcilable with . . . restrictions on federal judicial power that our opinions have established.”

Disenting, Justice Elena Kagan wrote that the majority’s “novel distinction” of Flast “has as little basis in principle as it has in our prede- cent.” “Taxpayers experience the same injury for standing purposes whether government subsidization of religion takes the form of a cash grant or a tax credit.”

The majority’s opinion, she contended, gave states a blueprint for avoiding court challenges to governmental support of religion. “Precisely because appropriations and tax breaks can achieve identical objectives, the government can easily substitute one for the other,” she wrote. “Today’s opinion thus enables the govern- ment to end-run Flast’s guarantee of access to the Judiciary.”

Kagan accused the majority of contorting Flast’s reasoning to reach its result. Taxpayer standing under Flast, she believed, requires the plaintiff to allege merely “that a statute enacted pursuant to the legislature’s taxing and spend- ing power violates the Establishment Clause.”

Contrary to the majority’s assumption, she continued, Flast did not require the plaintiffs to show how the government action would affect their individual tax payments. Instead, it had simply held that “a taxpayer will have standing consistent with Article III to invoke federal judicial power when he alleges that congressional action under the taxing and spend- ing clause violates the Establishment Clause.

Joining Kagan were Justices Ruth Bader Ginsburg, Stephen G. Breyer, and Sonia Sotomayor.

** Ninth Circuit Upholds Death Penalty Decision, Supreme Court Grants Stay

The Ninth Circuit Court of Appeals has affirmed a district court decision turning down a condemned inmate’s challenge to Arizona’s plan to execute him using a drug obtained from abroad. Both courts concluded that the inmate had not stated a plausible claim that he would be legally injured by the drug’s use.

Cook alleged that this raised several prob- lems. The state could not, he asserted, ensure that the thiopental was viable, was not contami- nated, or indeed was actually thiopental. And without FDA supervision it was possible that the drug was not safe or effective. Thus, the drug might not effectively anesthetize him, lead- ing to excruciating pain during the execution.

The Ninth Circuit agreed with the district court that Cook’s allegations did not state a plausible claim. Cook needed to show that the risk was sure or very likely to cause serious and needless suffering. But his allegations, held Judge Constando Maria Callahan, “are all specula- tive and overly generalized claims applicable to every drug produced outside the United States.” Cook’s allegations, she concluded, were “conclusory and without any supporting factual allegations.”

Furthermore, Cook had not made “a suffi- cient showing that the lack of FDA approval . . . makes it sufficiently likely that the sodium thiopental is either not what it purports to be, or is otherwise adulterated.”

Callahan concluded that Cook’s allegations “do not plausibly suggest that the drug is ‘sure or very likely to cause serious illness and need- less suffering’ or otherwise creates a ‘substantial risk of serious harm’ in violation of Cook’s Eighth Amendment right to be free from cruel and unusual punishment.” Cook had failed to show that if the drug were not up to par, the state would fail to discover that fact and correct the problem.

Joining Callahan in affirming the dismissal of Cook’s action were judges Diarmuid O’Scannlain and Susan Graber.

Cook’s execution nevertheless did not occur as scheduled. One day before it was to take place, the United States Supreme Court granted a stay to allow Cook to file a petition for certiorari.
$311K GOAL FOR CHARITY DRIVE 2011

"LAWYERS REALLY DO CARE."

[Letter to all Maricopa County Lawyers]

THE MARICOPA COUNTY BAR FOUNDATION—LAWYERS CARE; THEY REALLY DO CARE!

A few years back, I looked up from my desk, stared out the window, and took a deep breath. I was proud and excited to be a lawyer here in Maricopa County, but also wanted to do more as a lawyer here. Fortunately, I got involved with the Maricopa County Bar Association, and served on its Board of Directors. Over the following years, I was able to work with my fellow board members in conjunction with our charitable arm, the Maricopa County Bar Foundation, to promote and support the charitable causes of Maricopa County’s legal community. Through supporting Community Legal Services, the Volunteer Lawyers Program, the Young Lawyers Division’s numerous charity drives and events, and numerous other projects, the Foundation has helped all show that lawyers really do care.

The MCBA and MCBF continue to work together to give back to the community. The organizations’ members have once again come together to help support a lasting tribute to Maricopa County’s legal community, the Maricopa County Justice Museum and Learning Center. Scheduled to open in 2015, the Museum and Learning Center will be an educational resource centered on and around a restored old courthouse on the west side of Maricopa County’s Courthouse. The vision for the Museum and Learning Center is to instill in visitors, including our community’s school children, a sense of Maricopa County’s legal history and important elements of the Rule of Law, including our state and United States and Arizona constitutions. The Museum and Learning Center will help make those fundamental concepts “real” for our kids. Again, we all have reason to be proud of, and thankful for, this work.

And, the work must continue. I am humbled and privileged to be a part of the good work of those lawyers who have built our legal community, and particularly the Maricopa County Bar Foundation. I look forward to the coming years working as a lawyer in Maricopa County, and doing what small part I can to better our community here. And, I look forward to continuing to help a tradition of lawyers who really do care. Please join us and support our tradition.

Sincerely,

Kevin D. Quigley

www.maricopabar.org

CALL or EMAIL TO GIVE YOUR SUPPORT
602-257-4200 | kwilliams@maricopabar.org