Pro bono golf classic raises $17,000 for VLP

By Lina Alvarez
Special to Maricopa Lawyer

The Maricopa County Bar Foundation and Volunteer Lawyers Program partnered to make the Sept. 13 pro bono golf classic the most successful to date. Over 80 golfers showed up at the beautiful Westin Kierland Resort in Scottsdale to strut their stuff and raise money to help VLP continue its crucial mission of helping low-income individuals and families get legal assistance.

The players enjoyed a continental breakfast sponsored by Thomson West before heading out to the links at 7 a.m. Expertise was not a requirement for participation and categories for prizes included “Most Stylish Foursome,” “Most Time Spent in the Sand” and “Worst Shot of the Day,” along with the usual prizes for top-place finishers. Don Alvarez organized a hole-in-one contest where each golfer had a chance not only at glory but also a free 2-year lease of a Ford Mustang that was graciously donated by Ron Jones of Tom Jones Ford in Buckeye.

First place went to the team from DupLEX Legal Duplication Solutions. Team players Keith Goljan, Jeff Meyerson, T.J. Ryan and Stefan Wikstrom took home new PING putters. Second place was won by the team sponsored by the law firm of Tolman & Osborne. Greg Osborne, Arty Whitmore, Reed Tolman and Jeff Bartels walked away with PING sand wedges.

Players headed back to the clubhouse to enjoy a lunch sponsored by Martindale-Hubbell and learn the results from the silent auction and raffle. Some of the coveted items up for bid were a baseball bat signed by Rod Barajas and a suite for a Phoenix Suns basketball game. Those who preferred to try their luck at the raffle had the chance of winning gift certificates to restaurants all over the city, resort packages, theater tickets and Suns and Diamondback tickets to name just a few.

Golfers were able to enjoy a “social atmosphere and a stress-free environment” where expertise was not a requirement. Only enthusiasm was needed to join the fun. Over $17,000 was raised for VLP.

Paralegal conference draws crowd of 180

By Tricia A. Kramer
Special to Maricopa Lawyer

On Friday, Sept. 19, the MCBA Paralegal Division held its annual Arizona Paralegal Conference at the Pointe Squaw Peak Convention Center in Phoenix. In keeping with the theme, “Where do we go from here? Looking towards the future!” the conference featured a full day of speakers on the virtual practice of law and related topics. This was the division’s fourth consecutive conference and the 180 attendees — the largest turnout in conference history — were not disappointed.

The conference opened with Sybil Taylor Aytch, immediate past president, sharing Gov. Janet Napolitano’s proclamation of Sept. 19, 2003 as “Paralegal Day” in Arizona. MCBA President Yvonne Hunter then expressed her gratitude to the attendees for their hard work and commitment to both the legal profession and the MCBA itself. Additionally, division President Garth Harris extended his thanks to conference committee co-chairs Claire Pendleton (president-elect) and Amy Davis (division director) along with all those who worked many volunteer hours to organize the event.

Bert Binder, president of Advanced Litigation Resources, and Jordan Ray, senior trial technology consultant of inData Corporation, were the first presenters of the day. They discussed the paralegal’s role related to the virtual practice of law, including the
MCBA board names new executive director, sets new goals

The MCBA board of directors is now officially ready for change! The board held its annual retreat Sept. 6. This was a little early, but since we are looking for ways for the MCBA to continue to build toward a financially sound organization, we wanted to get a head start on planning for next year. We used the retreat to identify the short-term and long-term goals for the MCBA as well as the roles that board members will play in achieving those goals.

We started out reviewing the mission statement for the MCBA. We agreed to revise the mission statement to:

“The MCBA is a vehicle of service for the benefit of its members, the legal profession, the judicial system and the public.”

The retreat was facilitated by two very dedicated and hardworking employees of APS, Jessica Pacheco and Sally Odetile. Jessica and Sally work in the Community Development Department at APS and often work as a team in facilitating board retreats for non-profit organizations throughout the state. They helped us identify and focus our planning on ideas related to membership, staff/administration and board/program development. Based on our work, we hope to adopt new goals in a strategic plan that will guide the board’s efforts over the next few years.

Generally, new goals for membership include providing the motivation for retaining existing members and attracting new members, provide a reason and the means for members to actively participate in MCBA programs and look for ways to enhance benefits and programs within the bar.

Staff and administration goals focused on opportunities for the board to support the executive director and staff in implementing our goals. As you know, the MCBA is second-to-none and remains absolutely dedicated to our members. We considered ways to support staff by providing for job enrichment opportunities, evaluating existing programs for effectiveness and increasing the communication among the staff, the executive director and the board.

The board and program development goals included growing an effective, engaged and active board of directors. We discussed encouraging all board members to take a greater responsibility in MCBA activities. Board members will now be tasked with identifying a committee to chair and another to join and serve. We also plan to encourage sections and divisions to have their two top leaders, the president and president-elect, attend board meetings so that the sections and divisions continue to develop strong leaders familiar with the association and the board.

Leandra Lewis is the new executive director for the MCBA. Leandra comes to us from Arizona Clean & Beautiful, where she has been executive director since 1994.

We are very excited about Leandra and the chance to work with her. In addition to her long-term experience with the Arizona business community and world of non-profits, Leandra brings an extensive background in banking and audit experience. Most importantly, she has a respectable reputation as a hardworking consensus builder. She is a people person and this comes out when you meet her.

Leandra begins her stint as executive director on Oct. 1. In the full knowledge that she will start in the midst of our 2004 membership drive, board elections and all of the wonderful events remaining in 2003. She is ready for the challenges and the opportunity to meet the members of the MCBA.

On behalf of the entire MCBA board of directors, we thank Sonya Brant, the Interim Executive Director/Membership Services Director for taking the helm of the MCBA while we searched for a permanent director. Sonya did a great job in keeping staff morale high, providing seamless services to the MCBA members and supporting a board in transition. We recognize that Sonya probably had quieter plans for the summer and we appreciate the hard work and dedication she provided to MCBA. If you have a minute over the next few weeks, please send Sonya a note of thanks at shrant@mcbabar.org.

October is Domestic Violence Awareness Month

The numbers are alarming. Each year, one million American women are assaulted in their own homes. Nearly one-third of all women will report a rape or physical assault by a current or former partner at some point in their lives. And murders? More than 50 percent of the women killed each year are killed by a current or former partner. Even as we read this column, a woman is being beaten by her partner.

Unfortunately, the harm does not stop there. More than half of the women who report domestic violence live in a home with children under the age of twelve. Based on one estimate, more than three million children are exposed to domestic violence each year. In many cases, the children also are the victims of physical abuse.

To increase public awareness about this important issue, October has been designated as Domestic Violence Awareness Month. Although the Maricopa County Bar Association Young Lawyers Divisions (MCBA-YLD) Domestic Violence Committee serves as an advocate for domestic violence victims year round, the committee traditionally holds its annual Necessities Drive in October as well.

When domestic violence victims flee their homes for a safe haven, they often leave with nothing more than the clothes on their back. Fear can prevent them from returning to the home to pick up personal belongings and they are likely to have no money to purchase replacements, which means these victims frequently are forced to survive without even the most basic items. The Necessities Drive aims — See Higuera on page 13

Seventy-two million women are battered in this country each year. One out of every four women and one out of every seven men will be physically abused at some point in their lives. Eighty percent of victims have children in the home. Children are more likely to witness and experience violence, to be sexually abused, and to suffer the emotional effects of living with violence in the home.

Paralegals are in a unique position to help victims of domestic violence. Although the MCBA Paralegal Division offers its members the opportunity to expand their professionalism through ongoing CLE and national certifications, some time ago, I did an online search and contacted various paralegal organizations across the country to ask about the opportunities they offer to help their members gain national certifications.

You’d be surprised at the number of paralegals in other organizations who are unaware that there is more than one national paralegal certification. Most know that the National Association of Legal Assistants (NALA) offers basic and advanced certification. But only a few know about the National Federation of Paralegal Associations’ PACE certification. Many also refuse to recognize any certification from an organization that is not affiliated with their own organization or association.

This is a real shame, as I believe the primary responsibility of any paralegal organization is to do what is best for their members as well as the future of their profession.

Although the MCBA Paralegal Division is not affiliated with any local or national paralegal organization, we often work with these other organizations on various programs or events which strive to enhance our profession and help our members to develop personally and professionally. We continue to provide our members information on upcoming events sponsored by the NALA, the Arizona Paralegal Association (APA) and the Legal Assistants of Metropolitan Phoenix (LAMP).

We list these other organizations’ events on our website as well.

Garth Harris PARALEGAL DIV. PRESIDENT

Certification is important to the paralegal profession

One of the benefits the MCBA Paralegal Division offers its members is the opportunity to expand their professionalism through ongoing CLE and national certifications. Some time ago, I did an online search and contacted various paralegal organizations across the country to ask about the opportunities they offer to help their members gain national certifications.

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Napolitano appoints Norris to Court of Appeals

Applicants for Superior Court vacancy announced

Gov. Janet Napolitano recently named Lewis and Roca partner Patricia K. Norris to the Arizona Court of Appeals. Norris, 51, is a registered Democrat and a 1977 graduate of the ASU College of Law. She specializes in civil business and commercial litigation and appeals law at Lewis and Roca, where she has practiced since 1978.

“Pat has been able to be appointed to the bench,” Napolitano said. “Her knowledge of the law is phenomenal and Arizona will benefit greatly from her expertise.”

Norris will fill the post vacated by the retiring Judge Cecil Patterson and assume the bench in November.


Selected applicants will be interviewed on Oct. 3. Afterward, the commission will recommend at least three nominees to Napolitano, who will appoint the new judge.

Chavez advises Superior Court applicants to add perseverance to list of qualifications

By Barbara Vidal
Special to Maricopa Lawyer

Before Gov. Janet Napolitano appointed her to the Maricopa County Superior Court bench in March 2003, Judge Harriet Chavez already had a lengthy career serving Arizona. She first worked as an assistant city prosecutor with the cities of Mesa and Phoenix, then as a deputy with the Maricopa County Attorney’s Office where she specialized in prosecuting family violence and sex crimes. She later represented Child Protective Services as an assistant attorney general, concentrating on dependency cases.

In 1989, Chavez was appointed as a Phoenix Municipal Court judge. After two years on the bench, however, she began to crave the greater challenge and responsibility associated with hearing felony cases in Superior Court. A Superior Court position also presented the opportunity to rotate through a variety of divisions, hearing civil and juvenile cases in addition to criminal cases. In 1991, Chavez resigned her position with the Phoenix Municipal Court and was appointed as a Maricopa County Superior Court Commissioner. During Chavez’s tenure as a commissioner, she served in the juvenile and criminal departments as well as the family court. She also served as presiding criminal commissioner from 1999 through 2001.

Chavez began her quest for appointment as a Maricopa County Superior Court Judge in 1995 and estimates that she applied nearly 20 times before her eventual appointment. During that process, she was repeatedly selected to be interviewed by the Maricopa County Commission on Trial Court Appointments and frequently recommended by the commission to the governor. It was not until March, however, that Chavez was finally appointed as a Superior Court Judge by the newly-elected Napolitano.

Chavez recommends that prospective judicial applicants educate themselves about the judicial application process, examine the qualifications and experience of recently appointed judges and learn about the members of the Maricopa County Commission on Trial Court Appointments. She notes that lobbying the Trial Court Commission members can be an effective tool because it allows commission members to more fully understand the candidate’s experience and personality. Such lobbying can be especially persuasive if done through an individual the Commission member knows and respects.

If a candidate is selected for an interview with the Trial Court Commission, Chavez believes it is important for the candidate to allow commission members to see his or her passion and commitment in order to allow the commission to understand how the candidate will perform on the bench. She also believes that it is critical for a potential judicial applicant to become involved in the legal community in order to broaden his or her experience and acquire a valuable source of lobbying effort.

Chavez acknowledges that her eight years of hard work and perseverance in the judicial application process sometimes took an emotional toll on her. At the urging of others, she even stopped applying for a year. Yet she later regretted that decision as she had to begin the application process again with new commission members who had no prior experience. She decided then that she would not stop submitting applications until she was appointed. As her experience has shown that timing is everything, she now advises applicants who believe they are qualified not to be discouraged or give up.

For prospective judicial applicants desiring more information about the application and selection process, the Arizona Women Lawyers Association, Judicial Appointments Committee, will present a Nov. 6 workshop “Strategies for Applying to the Bench” at the Law Offices of Fennimore Craig. Panelists will include recent judicial appointees and members of the Commission on Trial Court Appointments and the Commission on Appellate Court Appointments.

The workshop is free for AWLA members; a $50 fee for non-members includes AWLA membership. To register, contact Pat Lewis at awla@cox.net or for more information, contact Barbara Vidal at 602-252-8400 or bvidal@kdkglaw.com.

Barbara Vidal is an attorney with Cohen Kennedy Dowd & Quigley and a member of the AWLA.

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— Barbara Vidal is an attorney with Cohen Kennedy Dowd & Quigley and a member of the AWLA. —

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staward, No. 98-99002 (9th Cir. Sep. 2, 2003). How did these two courts come to their different conclusions?

Both courts agreed on the basic framework for determining whether Ring would be retroactive dependent on Teague v. Lane, 489 U.S. 288 (1989). Teague requires the court to answer several questions. The most important question is whether Ring propounded a new rule of substance or rule of procedure. If the rule is procedural, it is prospectively only; if it is substantive, it has retrospective effect. Right off the bat, the two courts diverged.

The Arizona Supreme Court took a relative- ly simple tack in answering this question, noting the underpinnings of the Ring decision. In its 1990 Walton decision, the court had rejected an argument identical to the one raised in its 1990 decision. Ring extended Apprendi's rationale to death-penalty cases. Under the Arizona Supreme Court's analysis, Ring's application of Apprendi to death-penalty cases meant that Ring was also procedural. Vice Chief Justice Ruth V. McGregor wrote that, "Although the Supreme Court recognized that Arizona's aggravating factors operate as the functional equivalent of an element of a greater offense, Ring ... did not announce a substantive rule."

"Ring ... extends Apprendi's interpretation of the Sixth Amendment to the capital context," McGregor continued. She pointed out that the Supreme Court had held that "[t]he substantive basis for New Jersey's enhancement is thus not at issue; the adequacy of New Jersey's procedure is."

McGregor found further support for her conclusion. "In addition, Ring ... changed neither the underlying conduct that the state was required to establish that a defendant's crime warrants death nor the state's burden of proof... Ring ... altered who decides whether any aggravating circumstances exist, thereby altering the fact-finding procedures used in capital sentencing procedures more generally."

Six months later, the Ninth Circuit reached the opposite conclusion. Writing for the majority, Judge Sidney R. Thomas started with the premise that "for Teague purposes, a new rule is one of procedure if it impacts the operation of the criminal trial process, and a new rule is one of 'substance' if it alters the scope or modifies the applicability of a substantive criminal statute."

He acknowledged a factual dispute that by determining that the jury rather than the judge make the death-penalty findings, Ring had "in one sense ... announced a procedural rule." But, he held, in the context of Arizona's death-penalty statute, Ring did more: it held that "Arizona's enumerated aggravating factors operate as the functional equivalent of an element of a greater offense."

Thus, "the substantive basis for Arizona's capital sentencing scheme was precisely at issue in Ring," Thomas wrote. "Ring rendered Arizona's substantive capital murder statute unconstitutional." According to Thomas, this was "[m]ore than a procedural holding." It "effectively a redefinition of Arizona capital murder law," by "repositioning Arizona's aggravating factors as elements of the separate offense of capital murder." In so doing, he opined, Ring had "necessarily altered both the substance of the offense of capital murder in Arizona and the substance of Arizona murder law more generally."

"In this sense," Thomas concluded, "Ring had the capability of substantive import for Arizona," for "[w]hen a decision affects the substantive elements of an offense, or how an offense is defined, it is necessarily a decision of substantive law."

Acknowledging that in Tovar the Arizona Supreme Court had concluded that Ring was to be prospective only, Thomas "respectfully disagreed." Tovar ignored the fact that Ring had made "a determination of the meaning of a criminal statute," which is precisely the kind of decision that Tovar itself recognizes as substantive. He wrote, and, '[i]f equal importance,' according to Thomas, was "the fact that Ring altered the pre-Ring two-offense structure of Arizona murder law does 'address the criminal significance of certain facts,' another kind of decision that Tovar recognizes as substantive."

Thomas also took issue with the Arizona Supreme Court's analogy to Apprendi. He distinguished Ring and Apprendi. "[t]he substantive basis for New Jersey's enhancement was not at issue; while "[i]n Ring, conversely, the substantive aspect of Arizona's capital murder regime was at issue ... " Ring," he noted, "required the Arizona legislature to amend

the Arizona murder statute to conform to the requirements of the United States Constitution."

To meet this standard, the "[l]ack of any requirement of the rule must seriously diminish the likelihood of obtaining an accurate conviction," and, "[t]he rule must alter our understanding of the bedrock procedural elements essential to the fairness of the proceeding."

In Toovary, McGregor held that Ring did not pass muster on this factor. To meet it, she held, the new rule must "seriously alter our understanding of the bedrock procedural elements essential to the fairness of the proceeding."

"We have no reason to believe that impartial juries will reach more accurate conclusions regarding the presence of aggravating circumstances than did an impartial judge," McGregor wrote. She agreed with the Fifth Circuit, which had stated that "one can easily envision a system of 'ordered liberty' in which certain elements of a crime can or must be proved to a judge, not to the jury."

The Arizona Supreme Court was unani- mous. McGregor joined Chief Justice Charles E. Jones and Justices Stanley G. Feldman (who filed a special concurrence), Rebecca White Berch and Michael D. Ryan.

Once again, the Ninth Circuit had a differ- ent view, deciding that "[i]t cannot be said that "enhance the accuracy of the determination of capital murder in Arizona?" Thomas noted the procedural difference in Arizona between the trial on guilt and the sentencing hearing. Thomas acknowledged that judges are characte- rized by the orderly presentation of evidence and argument."

"In contrast," Thomas wrote, "penalty-phase presentations to Arizona judges are capable of being extremely truncated affairs with heavy reliance on presentence reports and sentencing memoranda, and with formal court proceedings frequently limited to a brief argument by counsel. He cited a "quick sur- vey of Arizona cases where no or little mitigating evidence had been adduced, or little or no argument made on the defendant's behalf.

Thomas also decried the "inordinate amount of inadmissible evidence" the judge hears, "which he or she is expected to ignore." He pointed out that presentence reports are full of hearsay and, because they are "not subject to evidentiary standards, may also contain factual errors." Further complicating the problem in Thomas' eyes was the fact that they often include victim-impact statements and sentencing recommend- ations from the victim's family.

Thomas acknowledged that judges are often expected to sort out the relevant from

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Who makes the best computer? service department is key

I

It is common knowledge that profit margins in the PC manufacturing business are razor-thin and, in many cases, nonexistent. What is less well-known is the fact that most PCs other than Apple are made from standard components manufactured by someone other than the builder of the PC.

Processing chips are manufactured by Intel, or AMD and a few others. Hard drives are manufactured by companies such as Western Digital, Seagate and IBM. RAM chips and motherboards are usually not generics—something like keyboards and even monitors.

Thus, it is not really accurate to say that major computer companies such as Dell, IBM, Hewlett Packard and Gateway “manufacture” computers. It would more accurate to say that they (Apple excluded) are “assemblers” of computer parts manufactured by others.

This confluence of intense competition, razor-thin margins and generic components means that no two desktop computers from a major manufacturer is not much greater than you would pay for an equivalent computer from your local GarageOnTrons builder.

That is not so said that all computers are equal. They are not. A standard entry-level computer (around $400), with a Celeron 2.2GHz processor from Intel, 128MB of DDR SDRAM, 40GB hard drive, a recordable CD-ROM drive, Microsoft Windows XP Home and some basic office software varies greatly in terms of service and reliability from company to company. Today’s standard computer is faster than you will ever need so long as you stay in the law business. True, the difference in processing speed between the top-rated computer and the bottom-rated computer is dramatic, but as they all are incredibly fast, there is no impact upon your return on investment.

It may seem inconsistent that some computers perform better than others when they are all made from generic parts. A cooking analogy may help explain. Two salad chips can put together generic ingredients in different ways. One will produce a masterpiece and the other will produce junk. It’s pretty easy to send a bad salad back to the kitchen, but if you have a bad computer, the problem is not so easily solved. To continue with our analogy, if you send back a bad salad, you would not expect for it to be fixed with the addition of a few more ingredients. You would expect to have a new salad made. Likewise, if a computer is a bad product because its component parts don’t work together—well, no amount of fiddling and tweaking will turn it into a good computer. You are stuck with it and with the cost of the reduced productivity that comes from having an inferior product.

One advantage that comes with mass manufacturing of computers is that experience often teaches that a particular combination of generic components doesn’t work as well as another combination. In the fast-paced world of computer assembly, the ability to respond to such information and incorporate it into a better product is critical. It is here that the “just in time” assemblers of computers such as Dell should have a big advantage. Their customer base provides them with constant feedback and their service organization is able to identify problems that show up on a broad basis.

Often those problems come about because of subtle dissonance that occurs between the hardware, the operating system and particular software applications. Here, experience counts for everything, just as it does in making salads, or in heart surgery, or in the practice of law.

Nobody wants to have their heart operated on by a fellow who may have an IQ of 180 but has no experience. Nobody would turn over a major piece of litigation to the new associate just because he was editor-in-chief of a law review. The truth is, that experience counts in life, in litigation and in computer building.

What, then, is the difference and how should you choose? For me, the difference is support and service. Everything else being equal, the quality of service is the thing that makes a difference. And quality serves comes only from experienced and committed management. Back in the 1980s, WordPerfect developed its dominance in word processing software on the basis of its high-quality service. Today, Dell Computer Corporation is building its dominance in the manufacturing field on the basis of its high-quality service. In the most recent review of national brand customer service in PC Magazine, Dell simply eclipsed the competition.

Some really big brand names have absolutely awful service. I have had clients who bought a name brand computer by mail who have been unable to get any significant service and who have invested more time and money trying to fix machines than they are worth. Sometimes it seems your only remedy is to file a lawsuit, but the reality is that many manufacturers may be effectively judgment proof.

No matter how good your computer is, if you can’t get considerate, fast and knowledgeable customer service you are in trouble. Dell’s service has been top-rated for several years now and that’s about as good as you can get. But recent surveys show that Apple is catching up quickly. If you want to read the details, see the August 5, 2003 issue of PC Magazine (http://www.pcmag.com/article20.4149.11862588.00.aspx). There you will find the latest customer service statistics. Apple and Dell provide the top-rated service overall. In the notebook category—where Apple, Toshiba and IBM hold sway—the quality of service of Apple and Dell are wins over (that has not been my experience), but they still managed a strong 4th place finish. The bottom end for notebooks contains some surprising names like Compaq, NEC and the Sony Vaio.

Apple and Dell are winners while NEC, HP, eMachines and Acer finish in a dead heat for last place. Apple and Dell show that a company that cares about service and technical support can provide it on a national basis in an effective and efficient manner. While Apple is favored by those who do intense graphic/video work, Dell remains the choice for information processing such as found in law firms. They both give me faith that the American business machine as a computer industry can combine quality, service and price to compete effectively in the international markets that will be dominant in the 21st century.

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Paralegals...

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trend toward the use of hypertext in briefs in Arizona cases and effective electronic discovery.

The morning continued with a mock trial put on by the Paralegal Prime Time Players which included Harris, Davis, Tricia Kramer, Carolyn Marshall, Annette Palmer Hurst and Bob Patterson. Courtney Chase of inData Corporation played the star trial witness Bob Patterson. Courtney Chase of inData Corporation and Judy Murphy of ASM Corporation played the star trial witness Bob Patterson.

The conference was rounded by entertainment and informative sessions on ethics presented by Assistant Arizona Attorney General Todd Lawson. With the help of celebrity guests such as Homer Simpson, Lawson spoke on ethics associated with technology and communications, particularly e-mail, internet, videotaping and audio electronics, and the special ethical considerations necessary when using these tools.

The MCBA Paralegal Division also announced its 2003 Scholarship winners at the conference. This year’s recipients were Catherine Capshaw (Phoenix Career College), Christine Erickson (Lamson College), Wendy Fairbanks (Phoenix College) Kristin Herold (Phoenix College) and Kimberly Zemelka (Everest College). Snell & Wilmer received special recognition for providing the division with a Gold Level scholarship donation.

In addition to the valuable presentations and door prizes given throughout the day, attendees were able to network with the many vendors who support the MCBA Paralegal Division and work closely with Arizona’s paralegals. Three vendors did a splendid job of showcasing their services, which ranged from litigation support and copy services to legal publishers, to employment and recruitment companies and ABA-approved paralegal schools.

Those who participated in this year’s conference were a great group. Paralegal and paralegal student attendees arrived with varying levels of experience, but all were willing to share their thoughts and ideas on the topics at hand and the profession itself. Everyone came away from the 2003 Arizona Paralegal Conference with fresh ideas, plenty of contacts, gifts galore and renewed enthusiasm for their chosen profession. And for those of you who were unable to attend, don’t dismay! Students from the Scottsdale Community College Film Department capably and graciously filmed the entire event, so look for the conference on video in the near future!

From left, Paralegal Division board members Garth Harris (president), Amy Davis, Sybil Taylor Aytch (past president) and Tricia Kramer (secretary) enjoy a lunchtime break at the conference.

The Arizona State University College of Law invites applications for the following positions:

Associate/Full Professor (tenure track): All candidates must have a J.D. degree or a Ph.D. degree in an area related to the law school curriculum. (For full professor, must also have teaching & research experience appropriate to rank.) Desired areas of specialization are open, but most desirable include: corporations & business law, criminal law, immigration law, intellectual property, international law, law and economics, mediation, NAFTA, or tax law.

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Application deadline: 11/1/03; if not filled, the 1st of each month thereafter until search is closed. Submit resume (AALS application accepted) to Ms. Jan Spence, Coordinator for Appointments Committee, Arizona State University College of Law, Box 877906, Tempe, AZ 85287-7906.

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Yes, Arizona, there is a Uniform Trust Code in your future (Part 2)

By Roger D. Curley Special to Maricopa Lawyer

Editor’s Note: Maricopa Lawyer asked Roger Curley to write about the comprehensive new trust law known as the Uniform Trust Code, which will become effective in Arizona in January 1, 2004. The first installment, which appeared in the September issue, explained some of the more controversial aspects of the law having to do with requirement notices, virtual representation, and mandatory provisions that cannot be drafted away. This week, Mr. Curley completes his overview of the UTC, ending with important information about effective dates. (The entire text of the article is available online at www.maricopa.org.)

Article 4: Creation, Validity, Modification and Termination of Trust (10401 to 10417)
The rules for the creation of a valid trust are set forth in 10401-10409. The AZ UTC does not contain any significant changes to currently existing Arizona law applicable to creating a trust. However, 10403 does contain a very broad rule with respect to the applicable law to determine the validity of a trust. While not specifically stated in the AZ UTC, the NCCUSL comments to UTC § 403 clarify that the validity of a trust created by will is still to be governed by the law of decedent’s domicile. With respect to a trust created by inter vivos instrument, 10403 provides that such a trust is valid if it complies with the law of any of a variety of states in which the settlor or trustee had significant contacts.

The rules for modifying or terminating a trust are set forth in 10410-10417. For the most part 10411 retains the current law that applies to situations in which a trust may be amended or terminated by its beneficiaries — either with the settlor’s consent or without it. The section extends the rights of beneficiaries to change a trust with the consent of the settlor. If the settlor consents, subsection A of 10411 allows the beneficiaries not only to terminate a trust as allowed in the Restatement, Second, of the Law of Trusts (‘the Restatement’), but also allows the beneficia-
the property is still community property of both spouses.

The AZ UTC does not require that the Trustee must agree with a trust amendment. If a trust amendment imposes any undue hardship on the beneficiaries, the court cannot be overridden by the terms of the trust. The comments to UTC § 401 indicate that the compensation provided for a Trustee must only be reason-ably high or low. This power of the court is to be exercised in the best interests of the trust and the beneficiaries.

The AZ UTC both clarifies and broadens the trust instrument for amending or revoking an irrevocable trust. The AZ UTC maintains the effective date section to 10813. The effective date section of the AZ UTC specifically authorizes their use. Those attorneys who prepare trust instruments have the responsibility to be aware that an exculpation clause drafted (or caused to be drafted) by a trustee is ineffective unless the trustee proves that the exculpation clause was not executed under duress or under the threat of a potential claim or to inquire into a claim's existence. Article 9 is not new, 10907 indicates that the provisions of this Article 9 apply to trusts created or existing after July 20, 1996. Article 10 Liability of Trustees and Rights of Persons Dealing with Trustee (11001 to 11103) Article 10 specifies the remedies available for a breach of trust. The AZ UTC provides that in the event of a breach of trust, the liability is to be shared unless one trustee was substantially more at fault than another trustee or if the trustee committed the breach of trust in bad faith.

5. Removal. The AZ UTC continues to allow a court to remove a Trustee for cause. However, the court now also has the authority to remove a Trustee without cause if asked to do so by all the qualified beneficiaries. This right of the qualified beneficiaries to remove the Trustee may be prohibited by the terms of the trust.

6. Compensation. The terms of the trust may set the Trustee’s compensation. In the absence of any terms of the trust, a Trustee is entitled to reasonable compensation. However, the AZ UTC gives the Court the power to alter a Trustee’s compensation that is established in the trust. The Court has the power to override the terms of the trust if it determines that the compensation is not reasonable. This power of the court cannot be overridden by the terms of the trust.

The powers and duties set forth in the AZ UTC are essentially the same as the powers and duties that have always applied to trustees. The major change is that there are new disclosure requirements for trustees. Article 9 is not new, and 10907 indicates that the provisions of this Article 9 apply to trusts created or existing after July 20, 1996. Article 10 Liability of Trustees and Rights of Persons Dealing with Trustee (11001 to 11103) Article 10 specifies the remedies available for a breach of trust. The AZ UTC provides that in the event of a breach of trust, the liability is to be shared unless one trustee was substantially more at fault than another trustee or if the trustee committed the breach of trust in bad faith.

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Volunteer Lawyers Program

Thanks Attorneys

The Volunteer Lawyers Program, co-sponsored by Community Legal Services and the Maricopa County Bar Association, thanks the following attorneys and firms who agreed to assist low-income clients with their legal needs. Each attorney receives a certificate from the Maricopa County Bar Association for a CLE discount during the next 6 months.

Bankruptcy:
Robert D. Beucler, Phillips & Associates
Jeffrey L. Phillips, Phillips & Associates
Brian Spector, Jennings Strouss & Salmon

Consumer:
David L. Abney, Skousen Skousen
Gulbrandsen & Patience
Stephen Ball, Pugh & DeBano-Rhodes
John L. Blanchard, Osborn Maledon
Steven W. Chefetz, Chefetz Iannitelli Marcolini
Matt Clarke, Ryley Carlock & Applewhite
Dorian L. Eden, Tiffany & Bosco
David D. Garner, Lewis and Roca
Peter C. Guild, The Cavanagh Law Firm
Mark I. Harrison, Bryan Cave
Robert Herd, The Hartford
Christy L.E. Hubbard, Lewis and Roca
Todd Julian, Burch & Cracchiolo
Amanda Lorenz, Burke Panzarella & Rich James Maldonado, Jennings Haug & Cunningham
DeShon Pullen, Christopher, Pullen
James B. Rolle III, Sole Practitioner
Scott A. Salmon, The Cavanagh Law Firm
Derek Sorenson, Bryan Cave
Leslie Smith, Snel & Wilmer
Dawn Valdivia, Snel & Wilmer
Eric Bradley Van Buskirk, Sole Practitioner
Geoffrey H. Walker, Sole Practitioner
Jonathan Wallack, Polese Pietzsch
Brett Wallack, Bennett Farbourn Friedman & Balint
Michael Warzynski, Jardine Baker
Sonja M. Yuriw, Sole Practitioner

Family Law/Domestic Violence:
David L. Abney, Skousen Skousen
Gulbrandsen & Patience
Steven Cole, Cole & Wingard
Killi Davis, Lisa B. Johnson & Associates
Lionel Estrada, Sole Practitioner
Marnie Hodahkwen, Quarles & Brady
Vince Gonzalez, Sole Practitioner
Kimberly Pugh, Sole Practitioner
William A. Hicks III, Snell & Wilmer
Margaret A. Gillespie, Leonard Collins & Associates
Rachel M. Bacalzo, Quarles & Brady

In Family Court:
Brandy Ramsay, Lisa B. Johnson & Associates
Teri D. McCall, Kimmerer & Derrick

Steven G. Lustig, Sole Practitioner
Tod D. McColl, Kimmerer & Derrick
Brandy Ramsay, Lisa B. Johnson & Associates

Non-Profit Organization Assistance:
Rebecca Smith, Jones Skelton & Hochuli

Guards Ad Litem for Children in Family Court:
Rachel M. Baca, Quaires & Brady
Sarah Barnes, Stinson Morrison Hecker
Margaret A. Gillespie, Leonard Collins & Gillespie
William A. Hicks III, Snel & Wilmer
Donna Farar-Jewett, Sole Practitioner
Kimberly Pugh, Sole Practitioner
Jennifer W. Shick, Shick Law Offices

Guardianship:
Charles L. Arnold, Frazer Ryan Goldberg Arnold & Gitter
David T. Barton, Quaires & Brady
Dorothy Brogan, Sole Practitioner
Kim Erickson, Bryan Cave
Isaac Gabriel, Quaires & Brady

Streich Lang

David B. Gass, Arizona Senate
Sheila E. Harmer, Sheeens & Anderson
James F. Mahoney, Mahoney Rigby & Hamilton
Clarence Matherson, Quaires & Brady
Daniel J. McCauley III, McCauley Law Offices
Chester McLachlin, Sole Practitioner
Tracy McMillan, Sole Practitioner
Marc D. Pulsfifer, Sole Practitioner
Deanna Rader, Quaires & Brady
Chad B. Sampson, Quaires & Brady
Sarah Sanders, Steptoe & Johnson
William F. Haug, Jennings Haug & Cunningham
Keith Hendricks, Feninmore Craig
E_WITH Fowler's delightful combination of intelligence, professionalism and social conscience — along with his work ethic, keen wit and boisterous grin — have benefited VLP and its clients for 15 years. ’This won’t be his first VLP award, but as Pat’s service on the VLP Advisory Committee is coming to a close, we think it’s especially fitting to recognize him once again as the Volunteer of the Month,’ said VLP Director Patricia Gerrich.

As a partner in the Phoenix office of Snell & Wilmer, Fowler’s law practice is concentrated in products liability, insurance defense and commercial litigation. His business and organizational experience, as well as his expertise as a litigator, have made him a very versatile volunteer.

With an undergraduate degree in molecular biology and a J.D. from the University of Kansas School of Law, Fowler moved to Phoenix in 1988 and joined VLP that same year. He not only conducted client intake interviews, he established and promoted the participation of other attorneys in a weekly interview clinic that continues to be staffed by Snell & Wilmer attorneys every Tuesday night at VLP.

Fowler didn’t stop at case assessment. Over the years, he provided pro bono representation to numerous VLP clients, accepting diverse cases involving family law and consumers’ rights issues. When named Volunteer of the Month in 1992, Fowler said he felt a responsibility to provide legal assistance to people less fortunate than himself. He also said he liked the opportunity for variety by delving into areas of the law not typical of his private practice.

Interviewing attorneys for legal assistance led Fowler to direct representation of clients. And representation of clients led him to policy-making and fund-raising for VLP.

‘With an undergraduate program that offers the opportunity to be a beneficiary of proceeds raised by the foundation’s annual golf tournament, Fowler agreed to co-chair the planning committee for the event with John Hendricks of Stinson Morrison Hecker. The 2002 Pro Bono Golf Classic was so successful that the two chairs agreed to repeat their performance in 2003.

On Sept. 13, 85 golfers played in the Pro Bono Golf Classic at the Westin Kierland Resort in Scottsdale. Thanks to Fowler, Hendricks and seven other committee members, the tournament raised $17,000 for VLP (see article on page 1).

Brian Rees, also an advisory committee co-chair, aptly described the scope of Fowler’s contribution to VLP. ‘Having contributed in so many ways to the growth and vitality of the Volunteer Lawyers Program, it seems safe to say that Pat Fowler is truly a renaissance volunteer in the world of pro bono. ’

Pro bono work keeps justice system relevant says VLP attorney

By Peggi Cornelius

Maricopa Lawyer

‘If members of our community are denied access to our civil justice system because they lack resources to hire a lawyer... the system will become increasingly irrelevant to more and more people. That is why I believe the Volunteer Lawyers Program is such a vitally important resource to the poor and near-poor in our community.’ These are the eloquent words of attorney Patrick X. Fowler, known to people in the Volunteer Lawyers Program as ‘Pat.’

Fowler’s delightful combination of intelligence, professionalism and social conscience — along with his work ethic, keen wit and boisterous grin — have benefited VLP and its clients for 15 years.

‘This won’t be his first VLP award, but as Pat’s service on the VLP Advisory Committee is coming to a close, we think it’s especially fitting to recognize him once again as the Volunteer of the Month,’ said VLP Director Patricia Gerrich.

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➤ Peggi Cornelius is VLP’s program coordinator. For more information about pro bono opportunities through VLP, contact director Patricia Gerrich at (602) 258-3434.
LEGAL BRIEFS

YLD committee pronounces
Back to School drive a success

The MCLA-YLD Domestic Committee thanks contributors to the 2003 Back to School Drive who donated school supplies for children in domestic violence shelters.

The law firms of Bryan Cave, Gallagher & Kennedy, along with the City of Phoenix Prosecutors’ Office and U.S. District Court were among those who helped the committee provide 147 new backpacks filled with school supplies, one for each school-age child currently living in shelters. The committee was also able to donate 50 new school uniforms to the children.

ASU law professor receives NIH grant

Gary Marchant, Executive Director of the Center for Law, Science and Technology at ASU College of Law, has been awarded a $500,000 grant over two years from the National Institute of Health to analyze the legal, ethical and policy effects that sequencing the human genome will have on federal environmental policy and regulation.

“Mapping the human genome will cause an explosion in man’s knowledge of genetic factors that affect individual human susceptibility to environmental pollution,” Marchant said. “The law needs to adjust and expand to meet this exposure. With this grant we will start what surely will be a long-term legal effort to catch up with this emerging knowledge.”

Marchant will lead a team that includes Dr. Andrew Askland, Director of the Center for Law, Science and Technology; Dr. Richard Sharp of the Baylor College of Medicine and Jamie Goodsky, an associate professor of law at the University of Minnesota Law School.

John P. Frank honored with pledge to ASU

Lewis and Roca marked the first anniversary of the death of partner John P. Frank by pledging $75,000 to the John P. Frank Endowed Lecture Series at the ASU School of Justice Studies and College of Public Programs. The pledge will be paid in installments of $7500 per year.

“During his last years, John was delighted with the lecture series, its venue and content,” said Ken Van Winkle Jr., Lewis and Roca’s managing partner. “It is with great pleasure that the firm supports the continuation of such an important program.”

Frank was a leader not only in the Phoenix legal community, but played a significant national role in a series of judicial challenges to racial segregation in the 1940s and 1950s. As an appellate lawyer, he was also involved in the landmark decision of Miranda v. Arizona.

Celtic Bar Association launches Arizona chapter

Patrick Paul, a Snell & Wilmer attorney, was elected president of the Arizona Celtic Bar Association at the organization’s first meeting on Sept. 19. Arizona’s newest bar association recently incorporated as a non-profit organization to promote Celtic culture in the local legal community.

The association will hold regular meetings monthly at the Irish Cultural Center, 1108 N. Central Ave., Phoenix. Attorneys and other legal professionals are welcome to join for annual membership dues of $25. For details and meeting dates, please contact Patrick Paul at (602) 382-6359, or by e-mail at ppaul@swlaw.com.

Environmental symposium set for Oct. 30

The non-profit Arizona Environmental Leadership Through Mentoring is hosting its second annual “Symposium for Environmental Development — Staying on Track” on Thursday, Oct. 30, at the Doubletree Paradise Valley Resort in Scottsdale. The symposium will include panel discussions on homeland security and environmental economics, interactive workshops on environmental management systems, and environmental ethics and corporate responsibility for lawyers.

For details, please visit the organization’s Web site at www.azelm.org or call (602) 840-3333, ext. 102.

Arizona Criminal Justice Commission honors innovators

The Arizona Criminal Justice Commission (ACJC) recognized 10 criminal justice programs from around the state for demonstrating cooperation, collaboration and creativity in delivering proven strategies to create safer and stronger communities. Announced at the July Annual Law Enforcement POW WOW in Flagstaff, winners included:

- National Motor Vehicle Title Information System — Statewide program relating to the incidence of title fraud and assisted law enforcement agencies in recovering stolen vehicles.
- Seriously Mentally Ill Probation, Community Supervision Program — Pima County probation program increased personal contact with those with special needs.
- Restitution Program — Yuma County program gave opportunity for probationers to earn money for victims by completing community service projects.
- Hance Park “Operation Deck-em” — A Phoenix Police Department (PPD) plan to utilize undercover officers to purchase illegal drugs resulted in 41 indictments.
- Cold Case Sexual Assault Team — A PPD multi-disciplinary team reviewed unsolved sexual assaults and homicides and identified 23 suspects and cleared 37 cases over two-year period.
- Hotel/Motel Criminal Interdiction Program — A Pima County information-sharing program between law enforcement and hotel/motel operators.
- “New Jack City” — Undercover PPD officers bought drugs near airport, resulting in 23 arrests and guilty pleas.

NEW ON THE WEB

ABA introduces site for asbestos litigation

The American Bar Association has launched a new Web site — www.abanet.org/rps/ait — to track the most current developments in asbestos litigation.

Over the past 20 years, asbestos claims have skyrocketed and currently there are 100,000 cases pending in the U.S. The ABA says the site will feature “the most cutting-edge information on the topic.”

ABA report stresses consumers’ need for lawyer access

The American Bar Association released its report on the Public Hearing on Access to Justice, encouraging legal professionals to change the way they provide personal civil legal services for low- to moderate-income clients.

The report stemmed from a hearing by the Committee on the Delivery of Legal Services to explore barriers to justice. Participants included public interest organizations, court organizations, law schools, legal aid groups and state, local and specialty bar associations.

“We are reminded that we in the legal profession need innovative routes to connect people of moderate income to the legal help they need,” said Mary K. Ryan, chair of the Delivery Committee, “as well as improved ways of matching lawyers with under-served and im-served clients.”

Many of those testifying stressed the importance of recognizing a continuum of legal needs, and identified technology such as online legal services as important tools to help consumers achieve broader access to lawyers to and justice. The report also cited “unbundled” legal services as another tool in connecting people of moderate income with legal help.

To read the report, visit the committee’s Web site at www.abalawserVICES.orvETS/.”

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MARIACOPA LAWYER CLASSIFIED ADS

IS PLEASED TO ANNOUNCE

KURT M. ZITZER
(formerly of Ropers Majeski Kohn & Bentley) has joined the firm as an associate. Mr. Zitzer’s practice emphasizes commercial litigation, construction law, insurance coverage and reinsurance.

KEVIN C. BARRETT
(formerly of Spies & Short, P.C.) has joined the firm as an associate. Mr. Barrett’s practice emphasizes commercial litigation and insurance coverage.

DAVID J. ITZKOWITZ
(formerly of Spiess & Short, P.C.) has joined the firm as an associate. Mr. Itzkowitz’s practice emphasizes real estate transactions, commercial transactions, finance, real property and tax appeals.

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THE WEB

DPS/MICAP DNA Interface — A web-based program granting the Adult Probation Department access to the DNA databank at DPS, providing increased speed and accuracy in identifying whether DNA tests are required of defendants.

County Attorney’s Information System (CAIS) Web — A Maricopa County Attorney’s Office web-based application that allowed access to accurate and timely criminal case information vital to public safety.

Rodeo/Cheyenne Fire Response — A law enforcement agencies worked together to evacuate homes and protect businesses.

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Thomson leaves legacy of partnerships and progress

By Teena Booth
Maricopa Lawyer

Back in 1996, most U.S. organizations were riding the Internet wave into an information age of speedy communication and efficiency. But here at the MCBA, things moved a bit slower. Make that a lot slower. In 1996, the MCBA didn’t even have voicemail.

Enter Brenda Thomson (then Brenda Thomas), a young lawyer recently arrived in Arizona ready to get involved in the local legal community. The MCBA welcomed her and rewarded her early volunteer efforts as well as new computers that were networked together. She also made sure that new staff members were technologically skilled.

She immediately recognized the necessity of running the association like a business and began instituting solid business practices. Many of the changes she recommended triggered fierce debate in board meetings. Yet no one argued that technological advances were long overdue.

Thomson headed the push to obtain a modern phone system, e-mail and Internet access, as well as new computers that were networked together. She also made sure that new staff members were technologically skilled.

“Now the MCBA staff is computer literate and trained in using technology resources creatively and efficiently,” Thomson said. “In the last several months, we have begun to make CLE materials available to members electronically by CD and online — and there is the potential to do much more.”

Beyond bringing technology to the office, Thomson also helped bring new partners through the bar’s doors. She helped set up meetings between the county’s bar districts, as well as with the State Bar and other legal organizations.

Such efforts eventually culminated in the 100 Women and Minority Banquet of 2001, which celebrated the achievements of women and minority attorneys in Arizona. A brain child of attorney JoEllen McBride and former MCBA president Heidi McNeil Staudenmeyer, the event took 18 months to plan and carry out, and required the help of “tons” of volunteers and sponsors.

“The banquet was the most successful event in MCBA history,” Thomson said. “It attracted over 950 guests, including the keynote speaker, Sandra Day O’Connor. [Plus], it won national recognition from the American Society of Association Executives.”

She added that her experiences planning such events taught her that “the bar’s greatest asset is its membership.”

“The hundreds of programs, events and seminars the MCBA sponsors would not be so successful without the generous time, intelligence and thank God, humor, that the volunteer attorneys bring to the table,” Thomson said. “These volunteers are most in touch with the pulse of the profession and the challenges that lawyers face on a daily basis.”

Managing a large membership of 4500 also taught her that “just because you have a lot of smart people in a room, it doesn’t mean that things will get done.” She observed that just as in 1996, the MCBA is once again going through a time of change and adjustment due to the evolving nature of the legal profession, along with its position in a rapidly growing community like Maricopa County. However, Thomson feels confident that her efforts have helped the bar become better prepared for the challenges ahead.

“I’m proud of the work I’ve done, but it has been a huge commitment in time and energy,” Thomson noted. “After seven-and-a-half years, I feel I’ve taken this road as far as it will take me. I’m ready for a rest, ready to spend more time with my family and ready to explore other opportunities.”

Although Thomson is a Yale Law School graduate and has previously practiced law from Washington D.C. to California, she has found that she is most happy when meeting with others to share information and further worthy projects. She sees a future in which she spends her time traveling, teaching, consulting and developing partnerships.

Since leaving the MCBA in early September, Thomson has been accepted into this year’s Valley Leadership program, and looks forward to meeting and working with professionals outside the legal community. “After working with lawyers all these years I think it’s time I expand my horizon a little,” Thomson said with a laugh. “I’d like to try to make an impact not only in the community where I work, but also to impact the greater community where my children are growing up.”

Most of those who have worked with Thomson and who are familiar with her drive know she is likely to do just that.
Minority Writing Program
a success, to expand in 2004

By Cynthia R. Estrella
Special to Maricopa Lawyer

The MCBA Task Force to Promote the Recruitment and Retention of Women and Minority Lawyers — in partnership with the State Bar Committee on Minorities and Women in the Law, ASU College of Law and Valley law firms — organized its first Minority Writing Program earlier this year. Five participating law firms sponsored six second-year law students from ASU College of Law during the Spring semester, giving them valuable insight into the daily workings of a law office.

Student participants have credited the program with improving their research and writing skills, a result confirmed by their law firm mentors. The students worked on preparing legal research memoranda and drafting responses to motions, and were exposed to various practice areas including bankruptcy, litigation and corporate law. Some of the law students also were given the opportunity to observe Arizona Supreme Court oral arguments as well as Superior Court hearings and depositions.

In addition to the assignments they received from their firms, the students attended weekly attorney-taught seminars covering varied topics such as legal research and writing, practical tips for practicing law and strategies for success in private law firms. Perhaps most valuable benefit to the students was the program “fantastic” and reported that the students were “dependable, professional and cooperative.” Likewise, the participating firms found the experience to be positive and many have recommended the program to their classmates. Likewise, the participating firms found the program “fantastic” and reported that the students were “dependable, professional and cooperative.”

Building on the success of last year’s program, the 2004 program has doubled in size, with four new firms joining the five 2003 firms that unanimously agreed to participate again. (See box above for list of firms)

Students interested in participating in the Spring 2004 Program should submit their resumes for consideration by Oct. 15. Interviews begin the first week of November. If your firm would like to participate in the Minority Writing Program for Spring 2004, please contact Jo Ellen McBride at (602) 273-4012, or Ilona DeRemer, ASU College of Law, at (480) 965-6738.

➤ Cynthia R. Estrella, Mann, Berens & Winet is a member of the MCBA’s Task Force to Promote the Recruitment and Retention of Women and Minority Lawyers.
the generosity of VLP's donors and sponsors. They are interested in learning more about the opportunities for involvement with VLP. They are looking for new sources of funding. VLP's participation has helped put the Maricopa County Superior Court's VLP advisory committee on the map, as Shane Clays, YLD Executive Director, said in his keynote address: "Making it easy," he said, "requires money."

VLP has been tireless and creative in looking for new sources of funding. VLP's Director Pat Gerrich approached the foundation about its support for the VLP advisory committee. "We try to make it as easy as possible to volunteer," Rees said, adding that training is provided for all those who volunteer at VLP. "Making it easy," he said, "requires money.""VLP's participation has helped put the YLD back on the map," said Shane Clays, the foundation's director. Teamwork and effective communication of all the organizers, but especially of tournament co-chairs Pat Fowler and John Hendricks, have been key along with the marketing campaign to provide victims with simple items like personal hygiene products, toiletries, diapers, formula, bottles, underwear and children's clothing.

During the month of October, please consider joining the YLD in taking action by helping the Maricopa County's victims of domestic violence. You may deliver unopened necessity items to the MCBA, or you may donate money to this cause. Please send your donation by mail to the Maricopa County Bar Foundation with a notation in the memo section that the donation is earmarked for the YLD Necessities Drive. The YLD will send you a receipt for the donation. All money will be used by the YLD to purchase basic necessities, which will be hand-delivered by the YLD to the various domestic violence shelters around Maricopa County. You can be sure that your generosity will have a direct and immediate impact on the quality of someone's life.

Tell us!

Have you changed employment?
Has your law firm named new partners?
Send information for our Legal Moves column to Maricopa Lawyer, MCBA, 303 E. Palm Lane, Phoenix, AZ 85004; fax to 602-257-0522; or email to: maricopalawyer@mcbar.org.

Foundation board member Don Alvarez (right) and Ron Jones of Tom Jones Ford in Buckeye pose with a Ford Mustang. Jones donated a two-year lease on the car for the hole-in-one contest.

Marriott Corporation, McCormick & Schmicks, Mi Patio Authentic Mexican Food, Omni Tucson National Golf Resort & Spa, the Phoenix Suns, the Phoenix Symphony, Quarles & Brady, Streich Lang, Radisson Resorts, the Ritz Carlton, Sheraton Hotels, the Tempe Mission Palms, the University of Arizona, the Village Camelback Racquet & Health Club.

Lina Alvarez is an attorney and volunteer with VLP. She currently works from home while caring for her two young children.

Golf...

Continued from page 1

they could have fun with other attorneys and friends of VLP, according to Patty Feltz, a tournament coordinator. Developing these kinds of "internal relationships is important to the success of the program (VLP)," she said. "If the lawyers and volunteers feel like a part of the program and feel ownership of it, they are more likely to help.

Maricopa County Superior Court Commissioner Brian Rees, longtime co-chair of the VLP advisory committee, said VLP's ultimate goal is to increase the number of attorneys who volunteer so more people can receive legal assistance. "We try to make it as easy as possible to volunteer," Rees said, adding that training is provided for all those who volunteer at VLP along with pre-screening of clients, among other things. "Making it easy," he said, "requires money."

VLP has been tireless and creative in looking for new sources of funding. VLP's Director Pat Gerrich approached the foundation about becoming its beneficiary about two years ago as a way to obtain additional funding and increase interest in the tournament. The partnership and mutual hard work have paid off in greater participation. "VLP's participation has helped put the YLD back on the map," said Shane Clays, the foundation's director. Teamwork and effective communication of all the organizers, but especially of tournament co-chairs Pat Fowler and John Hendricks, have been key along with the marketing campaign.

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to provide victims with simple items like personal hygiene products, toiletries, diapers, formula, bottles, underwear and children's clothing.

During the month of October, please consider joining the YLD in taking action by helping the Maricopa County's victims of domestic violence. You may deliver unopened necessity items to the MCBA, or you may donate money to this cause. Please send checks of any dollar amount to the attention of Shane Clays, YLD Executive Director, at the MCBA, 303 E. Palm Ln., Phoenix, AZ, 85004. Checks should be made payable to the Maricopa County Bar Foundation with a notation in the memo section that the donation is earmarked for the YLD Necessities Drive. The YLD will send you a receipt for the donation.

All money will be used by the YLD to purchase basic necessities, which will be hand-delivered by the YLD to the various domestic violence shelters around Maricopa County. You can be sure that your generosity will have a direct and immediate impact on the quality of someone's life.

Harris...

Continued from page 2

our Web site as a means to ensure that our members have access to the most current happenings related to our profession. In keeping with our commitment to our members and the development of our profession, the MCBA Paralegal Division is offering review courses for both NALA’s CLA certification and NFPA’s PACE certification. We might all take a page from the book of Amy S. Davis, a paralegal for the Legal Aid Society of Arizona, who has obtained certification from both NALA and NFPA.

The PACE Review Course will begin on Tuesday, Oct. 23. It is not too late to join your fellow paralegals and commit yourself to improving your professional standing in the legal community. Please take a few minutes and check out our Web site at www.maricopaparalegals.org for more information on the certification review courses. You also may call Shari Miller at (480) 614-7233 or Bonnie Glass, MCBA CLE Coordinator, at (602) 337-4200 x138.

In November, we will be voting for the future leaders of the Paralegal Division. If you are interested in learning more about being proactive and taking ownership of your career, please contact Sybil Taylor Ayetch, chair of the Division's 2003 Leadership Committee. Sybil can be reached at syatch@quarles.com.

Remember, to make a difference, you can't be indifferent.

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Courtwatch...
Continued from page 4
the irrelevant, and are presumed to do so. But this did not sway him. "The relevant question is not whether judges have been able to do so," he stated, "but whether subjecting penalty-phase evidence to the crucible of a formal trial by jury would reduce the risk of error."

"There is little doubt that it would," Thomas opined. "Subjecting penalty-phase presentations to the rigors and restrictions of a jury trial necessarily will improve the quality of presentation and diminish the risk of an erroneous verdict."

Thomas also found juries better able to "make the important moral decisions inherent in rendering a capital verdict. " "[E]ntrust the jury with the authority to impose a capital verdict is an important procedural safeguard, because the jury members are presumed to do so," he stated, "and act to 'express the conscience of the community on the ultimate question of life or death,' he wrote, quoting U.S. Supreme Court Justice Stephen G. Breyer.

He expressed his belief that jurors are better equipped to make these decisions because judges are more likely to preside over many murder cases. "A reasonable inference from the habituation brought about by imposing capital punishment under near rote conditions is that a judge may be less likely to reflect the current conscience of the community and more likely to consider imposing a death penalty as just another criminal sentence."

He also alluded to differing amounts of pressure that judges may feel to impose the death penalty. "[U]nlike judges, juries do not stand for election in Arizona and therefore are less apt to be influenced by external considerations when making their decisions. " "[G]iven the political pressures they face, judges are far more likely than jurors to impose the death penalty," he wrote, quoting U.S. Supreme Court Justice John Paul Stevens.

He concluded that "there is little doubt that the rule announced in Ring will significantly improve the accuracy of capital trials in Arizona."

Judge Johnnie B. Rawlinson disagreed. She took Thomas' task for some of the assumptions he made.

She found it clear that Ring was not a decision of substantive law. "Ring changed the 'who' of the capital sentencing determination, not the 'what.' A change in who determines the existence of the aggravating factors is quintessentially procedural."

She also disagreed with the idea that it changed the fundamental, bedrock principles of law. "In fact, the Supreme Court recognized in Ring that even before the adoption of the Bill of Rights, juries were determining which homicide defendants would be subject to capital punishment," she wrote. "A return to that well-established tradition does not lead to the ineluctable conclusion that a substantive rule of law has been established."

She rejected Thomas' consternation at judges being exposed to inadmissible evidence. She noted that in most states, the juries have available to them vic-tim-impact statements, "the same inadmissible evidence that most concerns the majority."

She found the jury's supposed role as the conscience of the community no more appealing. "Their decisions are tainted by considerations of sympathy, pity, anger and disgust," she wrote. "And their death determinations are influenced by race.

Finally, she took issue with Thomas' assumption that judges are more prone to be pressured into imposing the death penalty than juries. "The majority cites a law review article to support its statement that 'judges who face election are far more likely to impose the death penalty' ... However, the statement made in the law review article is just that—a bald statement, with no accompanying empirical evidence. " "[J]udges are not alone in facing pressure," she noted. "Juries are subjected to similar pressure when deliberating in capital cases.

"We do not execute people according to ordinary legal principles that may be good enough for our more routine decisions. When the state assumes the role of the Deity, it must exercise greater care."

— Stephen Reinhardt

12th Annual
MCBA-YLD Domestic Violence Committee
Necessities Drive

Every day women and children are forced to flee violent and abusive homes with nothing but the clothes on their backs. For the past 12 years the MCBA—YLD Domestic Violence Committee has collected personal care items and cash donations to help women and children that are victims of domestic violence.

Please join us in helping women and children. It only takes a few minutes to send a check. All donations will be used to help victims of domestic violence throughout the Valley and are tax deductible.

Checks should be made payable to:
The Maricopa County Bar Foundation with MCBA DV Committee in the memo section.

Mail checks to MCBF
Attention: MCBF Director
303 East Palm Lane
Phoenix, AZ 85004

If you would rather do the shopping yourself, the following new, unused items are greatly needed:

- Shampoo
- Toothbrushes
- Toothpaste
- Baby Supplies
- Soap
- First Aid Supplies
- Over the Counter Medicine
- Sanitary Products

All donations needed no later than October 17.

For more information or to arrange for pick up of items, please call Shane Clays at 602-257-4200 ext. 111.

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T
he old adage that crime doesn’t pay is true; unless you rip off a vulnerable adult in Maricopa County. I have learned that the greater proportion of the case load in my office is due to situations where the client is a victim of financial fraud and the perpetrator is someone that the victim is familiar with. In these cases, the perpetrator has taken advantage of the victim’s trust and confidence in order to defraud them.

The high level of paperwork that often results from these cases can be overwhelming. The case load for our office is extremely high, and the workload can be very time-consuming. This can sometimes lead to delays in the resolution of cases, and it can be frustrating to see cases that have been open for months or even years still pending.

One situation where you may wish to consider hiring a private lawyer is when you are dealing with a complex or high-stakes case. In these situations, it is important to have a lawyer who is experienced in the particular area of law involved in order to ensure the best possible outcome for your client.

Another situation where private counsel may be beneficial is when you are dealing with a particularly difficult or high-conflict situation, such as a divorce or a custody dispute. In these cases, it is important to have a lawyer who can effectively represent your interests and help you navigate the legal process.

I propose that the police, county attorney and the office of the attorney general consider hiring more private counsel in order to help manage the workload in our office and provide clients with the best possible representation.

I believe that hiring more private counsel would help to ensure that clients receive the quality of representation that they deserve and that the workload in our office is managed in a more efficient manner. I would encourage all members of the legal community to consider the benefits of hiring private counsel in order to provide the best possible representation for our clients.

By Tom Asimou
Maricopa Lawyer

An open letter to my former colleagues on the Superior Court bench

T
here are times when the paperwork on your civil calendars may be overwhelming. This seems to occur during the week when you are dealing with a large number of documents or when you are preparing for a court hearing. It can be frustrating to see so much paperwork piling up on your desk, and it can be challenging to keep track of all the important deadlines.

One way to manage your workload is to create a system for organizing and prioritizing your tasks. This can help you to stay on top of your work and to ensure that you are meeting all of your deadlines.

Another way to manage your workload is to delegate tasks to others. If you are working in a team, it can be helpful to assign tasks to other members of the team so that everyone is working on a manageable workload.

I hope that these tips will help you to manage your workload and to keep up with the high level of paperwork that you are likely to encounter in your role on the Superior Court bench.

By Alan S. Kamin
Special to Maricopa Lawyer

Attorney general, county attorney have abandoned elderly victims of crime

O
nce you tell counsel on the case that you are going to use a private attorney to help you resolve discovery disputes, you will be surprised how often and quickly those disputes are resolved without the need for a full hearing. This occurs because counsel knows that the disputes are not going to have to wait for three or four months until you are able to hear argument on or otherwise resolve them. Also, the parties understand that they are not being asked to pay a disproportionate amount of attorneys’ fees, they have all the more incentive to resolve the disputes. Moreover, if you do appoint an attorney on discovery disputes, it is important that you accept the rulings of the attorney on these disputes, as the parties are often primarily in need of objective feedback. Even if you do not deal with the matter further, the job will be a lot easier because you will have the objective thoughts and analysis of the appointed attorney on the discovery issues.

Another situation where you may wish to engage private counsel involves cases that have dispositive motions on multiple grounds that may cover areas of the law you haven’t frequently encountered, and which come with voluminous materials. Let’s face it, not all of your bailiffs are law-trained attorneys. If they are, they are not as conversant with the specific issues of seasoned counsel. No matter how bright the bailiff, experience really is the lifeblood of the law. You are apt to get a homogenized solution to difficult legal issues from experienced lawyers than from your bailiffs. And while it is true that you can solicit opinions from your fellow judges on how to rule on these issues, they usually don’t have the time to try to give your ques-

What’s your opinion?

If you would like to express your opinion on a matter of interest to Maricopa County attorneys, Maricopa Lawyer welcomes your commentary. Please send your 500-800 word essay to: Maricopa Lawyer, 303 E. Palm Ln., Phoenix, AZ, 85004.
Robert Copple has joined Lewis and Roca as of counsel and will practice with the firm’s intellectual property, environmental and business litigation practice groups. Copple (J.D. 1981, University of Nebraska) previously worked as senior litigation counsel for Motorola, Inc., and was manager of Motorola’s Phoenix law department office.

Two new associates have joined the litigation department at Brown and Bain. Michael T. Liburdi Jr. (J.D., ASU) previously served as a law clerk to Arizona Supreme Court Vice Chief Justice Ruth V. McGregor. Maria C. Sperth has joined the firm of Jaburg & Wilk.

Todd F. Lang, formerly assistant attorney general for the Citizens Clean Elections Commission, has joined the faculty of ASU as a visiting professor in the law school clinic.

Leon B. Silver
formerly of The Silver Law Firm, P.C.
has joined them in the Phoenix office of

KELLER ROHRBACK

Mr. Silver will continue to emphasize complex commercial, business and real estate litigation, arbitration and mediation services, and general business representation.

Keller Rohrback’s practice includes general commercial litigation, plaintiffs’ medical malpractice, personal injury, and products liability litigation, bankruptcy representation, business formations, real estate and other transaction practice, and an extensive national plaintiffs’ class action practice. Keller Rohrback is lead or co-lead counsel in the Lucent, Enron, WorldCom, and Global Crossing ERISA class actions.

For more information on the firm visit www.KellerRohrback.com.
**OCTOBER**

**October 1**
- Family Law Section, 5:15 p.m., University Club

**October 2**
- Construction Law Section, noon.

**October 6**
- 2003 Juvenile Law Symposium 12:15 to 5:00 p.m., ASU College of Law, Armstrong Hall, Room 105 Topics will include the minimum expectations of a guardian ad litem, establishing paternity in ICWA cases, open dependency legislation, Interstate Compact for the Placement of Children and JIC issues, crossover dealing with delinquency services and issues regarding value options.  
Cost: MCBA Member Attorneys, $115; MCBA member paralegals and public attorneys, $95; non-member attorney, $160; non-member paralegals and public attorneys, $11.5; late registration, $15 additional. CLE: 4.25 hours

**October 15**
- Litigation Section, 7:30 a.m.
- Bench Bar Committee, 12:15 p.m., Central Court Building, Phoenix

**October 16**
- Public Lawyers Division board, noon.

**Avoid The Courtroom: Call Digital Motion X-ray** 1:00 to 3:15 p.m., ASUD Our panelists will discuss how personal injury practitioners can avoid defense verdicts, settle cases out of court and increase settlement offers for your clients. MRIs can be ineffective in detecting trauma to the spine. Now you can better prove cervical injuries with Dynamic Motion X-ray, a new 21st century technology that provides crystal clear imaging.  
Cost: MCBA Member Attorneys, $50; MCBA member paralegals and public attorneys, $35; non-member attorney, $70; non-member paralegals and public attorneys, $50; late registration, $15 additional. CLE: 2 hours

**MCBA board of directors, 4:30 p.m.**

**October 17**
- Maricopa County Bar Foundation board of trustees, 7:30 a.m.

**Got Ethics? The New Arizona Rules of Professional Conduct** 1:00 to 4:30 p.m., ASUD The Arizona Supreme Court recently adopted substantial revisions to the Arizona Rules of Professional Conduct as codified in the Arizona Supreme Court Rules 42 & 43. These are significant changes that every attorney needs to know. Please join Professor Jonathan Rose of Arizona State University, College of Law, as he discusses the changes and how they will impact different areas of practice.  
Cost: MCBA Member Attorneys, $75; MCBA member paralegals and public attorneys, $55; non-member attorney, $105; non-member paralegals and public attorneys, $75; late registration, $15 additional. CLE: 3 hours

**October 20**
- YLD Domestic Violence Committee, noon.
- Task Force on Recruitment of Women and Minority Lawyers, noon.
- Paralegal Division board, 5:30 p.m.

**October 21**
- Estate Planning & Probate Section executive committee, 7:30 a.m.
- Employment Law Section, 12:30 p.m.
- Bankruptcy Section, 5:00 p.m.

**October 22**
- Sole Practitioners Section, 11:30 a.m.

**Technology Section, 7:30 a.m.**

**October 22**
- Family Law and Domestic Violence 1:00 to 4:30 p.m., ASUD Family law practitioners need to be aware of the laws and available community resources when a client is dealing with abuse. This program will examine and discuss the impact of domestic violence on family law cases while providing practical information that will help your client.  
Cost: MCBA Member Attorneys, $75; MCBA member paralegals and public attorneys, $55; non-member attorney, $105; non-member paralegals and public attorneys, $75; late registration, $15 additional. CLE: 1 hour

**October 23**
- Life Insurance: Your Client’s New Source of Wealth 7:15 to 8:30 a.m., ASUD Nate Sachs of The Sachs Group will describe how liquidating life policies that would have either lapsed or been surrendered can bring in tremendous funds. Attend this seminar and help your client turn a seemingly worthless asset into a source of income.  
Cost: MCBA Member Attorneys, $75; MCBA member paralegals and public attorneys, $55; non-member attorney, $105; non-member paralegals and public attorneys, $75; late registration, $15 additional. CLE: 3 hours

**October 24**
- Corporate Counsel Division Lunch CLE Establishing Corporate Policies to Minimize Workplace Violence 11:15 a.m. to 1:00 p.m., University Club Join the CCD as they discuss the proper steps which employers can take to reduce the potential for workplace violence, including training, intervention and the proper response.  
Cost: Corporate Counsel Division Members, $22.50; Non-Member Division, $32.50 CLE: 1 hour

**October 28**
- Juvenile Law Section, noon, southeast court facility, Mesa.  
- Corporate Counsel Division board, 4:30 p.m.

**PACE Review Course** 6:00 to 8:30 p.m., Tues., every through Nov. 18, Advance PCS, Saguaro Conference Room, 9501 E. Shea Blvd., Scottsdale The MCBA Paralegal Division is proud to sponsor this 4-week review course for the PACE certification exam. All sessions will be taught by registered paralegals and/or local attorneys.  
Cost: MCBA Paralegal Division Member, $325; MCBA non-member, $350; late registration, $15 additional after October 17, 2003.

**Thank You**

Ryley Carlock & Applewhite, P.C.
Shaughnessy Thompson & Kiley, P.C.
and Tolber & Associates, P.C.

From MCBA’s Personal Injury & Negligence Section for Your Sponsorship of the September 12th Kick-off Reception at Ryley Carlock & Applewhite Offices

**Attention Young Lawyers**

The Maricopa County Bar Association Young Lawyers Division is seeking nominations for four seats on the MCBA YLD Board. All seats are for three year terms beginning January 1, 2003.

You are eligible to serve on the YLD Board if you are thirty six years of age or under or if you have been practicing law in any jurisdiction for five years or fewer.

The MCBA YLD is committed to promoting educational and civic activities of interest to lawyers new to the practice of law in Arizona.

If you wish to run for a YLD Board position, please send a paragraph summarizing your qualifications along with a black and white photo to:

Maricopa County Bar Association  
Attention: Shane Clays  
303 E. Palm Lane  
Phoenix, Arizona

Deadline: October 24, 2003

**Tell us!**

Have you won an award? Is your law firm involved in an interesting community project? Send information for our People in Law column to Maricopa Lawyer, MCBA, 303 E. Palm Lane, Phoenix, AZ 85004; fax to 602-257-0522; or email to: maricopalawyer@mcbar.org.
Stresses importance of independent judiciary at investiture

By Dan Kaplan
Maricopa Lawyer

Division One of the Arizona Court of Appeals welcomed long-time appellate practitioner Donn Kessler to the bench in an investiture ceremony held at the Arizona Supreme Court Courtroom earlier this summer.

Kessler, a 1975 graduate of Yale Law School, has practiced appellate litigation in Phoenix for over twenty years, and chaired numerous committees dealing with Supreme Court and Court of Appeals matters. He also served for two years as Staff Attorney for the Supreme Court, and co-authored treatises on appellate and health-care law, including the Ninth Circuit Federal Appellate Practice Guide.

Speakers at the event, including Kessler’s stepson David Lipshtultz and his former Supreme Court colleagues Patience Huntwork and John Rea, lauded Kessler for his ability to combine great “intellectual gravitas” with an unflagging devotion to honesty and fairness, while at the same time maintaining an easygoing and even “a little quirky” personal style. (Huntwork noted, for example, that among the effects in Kessler’s office is a clock that plays the theme song of claymation duo Wallace & Gromit each day at 11:40.)

After donning the robe, as well as a ceremonial lei presented by his former colleagues from his first post-law-school job at the Hawaii Attorney General’s Office, Kessler turned to more serious concerns, stressing the importance of respect for the independence of the judiciary. He noted that the independence of the state and federal judicial branches is essential to the notion that ours is “a government of laws, and not just of men and women,” and he exhorted members of the legal community not to “vulify in practice what we praise in principle,” — a maxim he identified as particularly important in light of the pressures placed on the judiciary by measures currently being taken to address the threat of terrorism.

Kessler concluded on a lighter note, inviting everyone to visit his chambers to see his Wallace & Gromit clock and play with his classic toys, including his original Slinky.

Kessler warned visitors, however, to “leave Mr. Potato Head alone,” as he “tends to fall apart.”

Kessler’s investiture was attended by all of the members of the Supreme Court and Division One of the Court of Appeals, as well as Gov. Janet Napolitano, her Chief Counsel, and several members of the Ninth Circuit and Division Two of the Court of Appeals.

Courtwatch...
Continued from page 14

“The empirically established problems with jury sentencing deliberations,” Rawlinson concluded, “calls into question the majority’s facile conclusion that transfer of capital sentencing responsibility to a jury will enhance the accuracy of the process.”

Joining Rawlinson’s dissenting opinion were Judges Diarmuid F. O’Scannlain and Richard C. Tallman. Joining Thomas in the majority were Chief Judge Mary M. Schroeder and Judges Harry Pregerson, Stephen Reinhardt, Michael Daly Hawkins, Sidney R. Thomas, M. Margaret McKeown, Kim McLane Warlaw, and Raymond C. Fisher.

In his concurring opinion, Reinhardt issued a stinging rejoinder to his dissenting colleagues, opining that not following the majority’s approach “would be unthinkable in a society that considers itself both decent and rational.”

Noting several couples of cases where the United States Supreme Court had first reached the wrong conclusion on a constitutional issue and then later corrected its error, Reinhardt called for the corrected decisions to be applied to all. “Certainly, all must agree that constitutional errors made by the Court should not have any greater adverse consequences than necessary.”

“Here, however, in the dissent’s view,” he continued, “additional people should now be put to death following unconstitutional proceedings even though the Court has recognized the unconstitutionality inherent in those future executions, and even though had the Court not erred initially, the death sentences in question would have been set aside. To me, this represents a seriously warped view of the nature of our legal system, and the relationship of that system to its ultimate objective, justice.”

“I remind my dissenting colleagues that “death is different,” Reinhardt continued. “I do not think it rational for a society to make its decisions regarding whom it will kill in the manner that my dissenting colleagues suggest. A state’s decision to take the life of a human being, if it can be justified at all, must rest on a far less arbitrary foundation. And if our society truly honors its constitutional values, it will not tolerate the execution by the state of individuals whose capital sentences were imposed in violation of their constitutional rights. It should not take a constitutional scholar to comprehend that point.”

“We do not execute people according to ordinary legal principles that may be good enough for our more routine decisions,” Reinhardt wrote. “When the state assumes the role of the Deity, it must exercise greater care.”
Are footprints as foolproof as fingerprints?

The prosecutor in a capital offense case wanted to submit footprints taken inside a shoe as evidence. Two nights before the trial, the defense attorney received a Mealey’s E-Mail News Report about a case that questioned the admissibility of this evidence.

The Mealey’s E-Mail News Report notified the defense attorney of a recent court decision from the highest court in a neighboring state. He was surprised to find the prosecution’s expert witness had also testified in that case. But the court held that footprints from inside a shoe were not a recognized area for expert testimony under the Daubert standard. As the defense attorney continued his search of analytical sources from Matthew Bender®, including Moore’s Federal Practice® on the LexisNexis™ services, he quickly found further supportive commentary and analysis.

When you need to go a step beyond cases and codes in your research, use the LexisNexis™ Total Research System—it’s how you know.