Scandals leave lasting impact on corporations

By Kathleen Brieske
Maricopa Lawyer

Ever since Enron Corporation and its auditor, Arthur Anderson Inc., were caught performing and covering up illegal accounting practices in 2002, America has watched large corporate scandals go from a what-if hot topic to a frightening expectation. The avalanche of corporations gone corrupt came at an amazing speed and the lasting consequences followed right behind. Maricopa Lawyer interviewed Arizona Corporation Commission Chairman Marc Spitzer and Gallagher & Kennedy attorney Steven Lawrence to get their take on the impact of this disturbing trend. Both will serve as faculty for an upcoming MCBA CLE on this topic.

Maricopa Lawyer: In recent years, many financial scandals have rocked the corporate world. From Enron to Tyco, Adelphia Communications to WorldCom, corporate responsibility has begun to seem a thing of the past. What seems to be the explanation for all this turmoil?

Steven Lawrence: Of course greed is the easy answer, but if you look a bit deeper, I think you will find a more complex answer. There really was a perfect storm of causes for the debacle in corporate America. For example, in the run-up of the value of many Internet-related stocks, the valuations masked many fundamental problems. The moral decay of society certainly has an impact. Executive incentives were in place to encourage a short-term perspective, rather than a long-term approach. Wall Street expectations were skewed toward short-term issues. Auditing firms were too closely tied to their audit clients. Finally, our educational systems lacked focus on instructing...
The benefits of your MCBA membership are growing

I t has been said many times before that our members are the reason the Maricopa County Bar Association has been continuously successful—never is that more true than this year. The MCBA’s ongoing goal of developing membership value is gaining momentum through a number of new strategies and benefits, genuinely making this an organization centered around its members.

We launched our first new membership program this month, a program that highlights the importance member law firms hold for this organization. The “100 Percent Club” recognizes those law firms who have reached full attorney membership in the MCBA. In the newly created program, firms with 20 or more lawyers are acknowledged for their 100 percent attorney membership in the MCBA through a certificate and public recognition. They also receive special membership benefits, including special CLE materials for their law libraries, exclusive advertising rates in Maricopa Lawyer and invitations to 100 Percent Club members-only events. We hope these benefits will serve to thank the firms for their commitment to the MCBA.

Department of Labor says paralegals are non-exempt

The Department of Labor (DOL) currently considers paralegals as non-exempt employees who should be paid overtime. This position is consistent with the prior DOL opinion letter dated February 19, 1998. In March 2003, the DOL released proposed rule changes to the Fair Labor Standards Act of 1938 (FLSA) for public comment. The National Federation of Paralegal Associations submitted comments. The National Association of Legal Assistants did not. Most statewide associations did not submit comments. Thus, final DOL regulations were released without input from the majority of paralegals.

Paralegals generally do not qualify as exempt learned professionals because an advanced specialized academic degree is not a standard prerequisite for entry into the field. Although many paralegals possess general four-year advanced degrees, most specialized paralegal programs are two-year associate degree programs from a community college or equivalent institution. Under the learned professional exemption the key phrase seems to be “prerequisite for entry into the field.” Until the paralegal profession universally recognizes this, the MCBA does not necessarily endorse the views expressed by contributors and advertisers.

Maricopa Lawyer is published monthly by the Maricopa County Bar Association (Jerome K. Elwell, president; Leandra Lewis, executive director). Contributions of articles and letters to the editor are encouraged. All materials must be submitted by the 10th of the month to be considered for the next issue. All submissions may be edited for content, length and style. Errors will be corrected in a subsequent issue. The MCBA does not necessarily endorse the views expressed by contributors and advertisers.

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Calderón opens new Phoenix law firm

By Carl Gerchick
Maricopa Lawyer

Inevitably, any encounter with Ernie Calderón is unforgettable. You are consumed by his energetic presence, his enthusiastic handshake and his remarkable passion for life. His attention is always on the person or project before him, even though he always has a great deal to keep him busy.

Though he never loses his focus, Calderón is pulled in many different directions. First and foremost, he is a husband and father. He is a deeply spiritual man. He is dedicated to his clients and the law. And he never forgets his friends. The common thread in Calderón’s life is the continuing importance of education. Gouv. Janet Napolitano recently appointed him to the Arizona Board of Regents, the body that governs the Arizona public university system. His desire to take on new challenges is driven by his belief that to undertake the service that we are all obligated to do — service to one’s family, faith, friends, community and clients — we must continue to grow past our comfort zones. That is the reason that he is charting a new course in his life by opening his own law firm — Calderón Law Offices.

It is quite a change to move from Calderón’s home for the past 14 years: the Phoenix law firm of Jennings, Stroup & Salmon. At Jennings, he saw firsthand how to act with a sense of duty and respect toward all involved in the practice of law. Calderón says he is grateful for his time at Jennings and will miss the folks there a great deal.

While at Jennings, he practiced in the area of employment law. He also gained experience in procurement law, construction litigation, employment law. He also gained experience in employment law. His new practice also will focus on professional responsibility and discipline issues.

His training in the field of lawyer discipline is grounded in the many years of service to the Bar and general community. His record of service to the bar and general community is legendary. To name just a few of his legal community activities, he has either served in leadership or chaired efforts for the State Bar of Arizona. Los Abogados and St. Thomas More Society. He currently is a delegate for Arizona to the American Bar Association.

As with all things, Calderón is dedicated to the civic community as well. He has served on the boards of the following organizations: Valley Leadership, Central Arizona Shelter Services, American Diabetes Association, Maricopa County Hospital and Health System, Community Council, Volunteer Center of Maricopa and the Roman Catholic Church of the Diocese of Phoenix. He is currently president of the Grand Canyon Council, Boy Scouts of America, and chairman of the Maricopa Association of Governments (MAG) Continuum of Care to End Homelessness.

Calderón is not a little guy; he is a big man with a big heart, an active mind and the knowledge that we all can make a difference in the world around us. What is different about Calderón is that he backs up that knowledge with action. No matter where he goes or what he does with his career, he will inevitably help the little guy and gal get what they deserve. His proudest legal victory is a 1992 case that forced a Flagstaff employer to reinstate the medical coverage of a woman suffering from leukemia. Many more such victories and happy clients are sure to follow. Calderón can be reached at calderon@azlex.com and 602-265-0004.

Legal Brief

Ninth Circuit oral arguments now available on Web

Cases argued before the Ninth Circuit Court of Appeals since January 2004 are now available as audio recordings at the Ninth Circuit’s Web site: http://www9.uscourts.gov/. For arguments pending before the court, new audio files will be available the day following oral argument and will remain available for three months after their posting.

ARE YOU MISSING NURSING HOME NEGLECT & ABUSE CASES?

Nursing home residents are neglected and abused more often than we think. Poor outcomes in the care of the elderly may be a signal of neglect or abuse. However, the investigation and analysis of liability are complex and labor intensive.

In order to maximize recovery, an attorney must possess a working knowledge of federal and state regulations governing nursing homes, as well as an understanding of industry practice (both clinical and fiscal).

Representing nursing home residents and their families in cases of neglect and abuse can have a positive impact on the quality of care given to all residents of nursing homes.

Our Nursing Home Litigation Division is available for association with referring counsel. We promptly pay referral fees in compliance with E.R. 1.5.

For additional information call or write:
Martin J. Solomon
Solomon, Relihan & Blake, P.C.
1951 W. Camelback Road, Suite 110
Phoenix, Arizona 85015
(602) 242-2000

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Scandals... Continued from page 1

tion on ethical behavior.

Chairman Marc Spitzer: Recent corporate scandals are not unprecedented. There have been periods in American history when the collective business conscience surrendered to excess. The clearest analogy to “the Bubble” was “the Gilded Age” at the turn of the twentieth century, vividly chronicled by Upton Sinclair.

In corporate misconduct cases, business operations were intellectually divorced from business ethics. The question of why this happened during the late 1990s is a difficult question. Clearly our political culture tolerated, at the very top, improper conduct as long as the results were good (“It’s the economy, stupid”). Too many executives took their cue from the politicians and decided that it was permissible to “make the numbers,” any way possible, particularly if no one was looking and the fraud was unlikely to be discovered. And remember that during the 1990s politicians in both parties openly undermined IRS and SEC corporate watchdogs.

Marcia Lawyer: Obviously public confidence has been destroyed with scandal after scandal, particularly in the case of shareholders who invested in the companies. Assuming corporate responsibility gets — and remains — on track, how can trust be restored in corporate America?

Lawrence: The pendulum has clearly swung away from a “hands-off” approach toward stronger controls on corporate boards. Sarbanes-Oxley is here to stay and its corresponding impact on the public markets does not appear to be going away any time soon. Reform bills and listing requirements on the New York Stock Exchange are only ancillary vehicles to restore trust. Trust will only be restored when corporate America proves to the investing public that successful companies are the ones with the greatest integrity. When corporate America’s word can be trusted and performance corresponds, the investing public will return trust.

Spitzer: I have found on Main Street serious distrust of Wall Street. It is shameful that many Americans decry the American capital markets, the envy of the world, as a rigged casino. I do not believe new laws are the panacea, especially subject to repetition without adequate vigilance. Second, regulatory agencies need new mechanisms to ferret out corporate fraud and prosecute potential violators.

Some have argued that Sarbanes-Oxley Act is too broad and creates too many burdens on public companies. The act has certainly changed the climate in corporate America. The notion of having CEOs and CFOs sign certifications has increased efforts to assure that financial statements accurately reflect a company’s performance.

Regarding accounting procedures, the difficulty is in the nature of the standards. The procedures are too complex for every entrepreneur. Naturally, there is interpretation and analysis that is required for each set of facts. This has led to extremely aggressive (and even criminal) analysis of the accounting standards. The SEC and the Financial Accounting Standards Board have worked to narrow the gaps of interpretation. However, there is much work left to be done.

Spitzer: White collar crimes often are difficult to explain to jurors. Unlike street crime, there is no smoking gun or bleeding victim and the issues often are far from clear cut. And the laws often are vague. I do believe the recent wave of criminal prosecutions will deter future misconduct, and that appropriate criminal cases are necessary given the limited “sting” of the typical civil sanction.

Marcia Lawyer: How has Arizona been affected by the scandals? Has legislation here changed to reflect the on-goings? Have corporations headquartered in Arizona taken special measures to ensure their fate is not similar to those who have fallen from the public’s grace? With so few corporate headquarters remaining in Arizona, have these scandals done more harm or more good in bringing business back here, or have they made Arizona a PR trashcan? Mistakes, errors, and yes, crimes happen. The securities industry needs to accept responsibility, admit its past mistakes, accept responsibility, fix the problems and then seek restored trust. Some companies have already accomplished this, others have not.

Marcia Lawyer: Why have criminal corporations been difficult to find guilty? Is new business regulation more effective than past regulation? What are the difficulties that come into play when deciding whether an accounting practice is legal? Has new regulation made that fine line clearer?

Lawrence: Any corporate criminal case is a difficult case. The concept of proving that a group of people set out to take a certain action is subject to multiple interpretations at practically every step along the way. The government’s role, particularly the SEC and the Attorney General of the State of New York, along with their own Attorney General and Corporations Commission, has been to ferret out corporate fraud and prosecute potential violators.

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Jury...
Continued from page 1
means a prospective juror only has to come to
court for jury service for one day if not select-
ed to participate in a trial. And if the juror is
selected for a specific trial, then their service
ends at the end of that trial. This part of the
new law takes effect in all courts of Arizona
more details.
But what about a citizen who is called to
serve and selected for a trial that may last
weeks or longer? Another change in the law
addresses the anxiety that may occur in this
situation. Jurors who are assigned to a trial
that lasts longer is making a recommendation
for, and will who lose money from their
employer or as a result of being self-
employed, may be able to recover a signifi-
cant part of that money thanks to the
Arizona Lengthy Trial Fund.
The fund, created by A.R.S. 21-222, is
financed by an add-on to some civil filing
fees that will allow courts to pay jurors as
much as $300 each day of their jury service
after the tenth day to compensate for identi-
cations.

And for those who still don’t think they
should treat a jury summons with the same
gravity as any other court order, the cost of
that mistake just went up. A.R.S. 21-334
was amended to increase the maximum financial
penalty for being held in contempt for fail-
ing to appear for jury service from $100 to
$300. But that only occurs if courts decide to
invoke that remedy.

Since November 2003, the Maricopa
County Superior Court has held jurors
accountable under that statute. Each
month, jurors who have been summoned
twice for jury service and have failed to
appear, even though they were not excused
or disqualified, are served with an Order to
Show Cause which requires their appear-
ance in court to explain why they should
not be held in contempt. To date, more than
130 summoned jurors have been found in
contempt, fined and ordered to appear for
jury service.
Since this monthly contempt calendar
was created, twice as many summoned
jurors are complying with their summons.
This has allowed the jury office to scale back
the number of summonses that need to be
generated. So now, more than 50,000 people
each year in Maricopa County will not get a
jury summons thanks to those results.

Jury service is considered by many to be
one of the most empowering activities we do
as citizens of this country. The next time you
see a jury summons for you, one of your
employees, or someone you know — or are
in a courtroom with a filled jury box — it
reflects the recent changes in the law and
court policy that went into that summons,
and their effects on this most democratic
of our justice system processes.

Public lawyers needed to help with
Ronald McDonald House Project
The Maricopa County Bar Association’s
Public Lawyers Division is embarking on its
annual Ronald McDonald House project on
Oct. 2, by preparing and serving a dinner for
the guests of the house.
The planned dinner includes a menu of
barbecued chicken, cole slaw, potato salad,
fruit salad, peach cobbler, rolls, tortillas
and drinks. The meal is intended to feed 30
people, and volunteers are needed to prepare
the meal and serve the food that night.
Volunteer cooks will be responsible for mak-
ing and freezing food ahead to be brought
to the House and warmed in the oven on the
night of the dinner. Volunteer servers will
meet at the House to assist in the service and

Don’t Play Around When It Comes To Immigration Law

Public Lawyers Division Chair Jack
Hudock explains the value attorneys receive
from participating. “As a way to give back to
the community, the project allows attorneys
to bring comfort to people who are going through a difficult time.”

Atorneys interested in volunteering their
time for this project either as a cook or a serv-
er can contact Public Lawyer Division Liaison
Rochele Parker at (602) 257-4200 ext. 137.

To place a classified ad, call the MCBA, 602-257-4200

Invitation for Public Comment
Judicial Reappointment
The Glendale Judicial Selection Advisory Board (JSAB) is considering the reappointment
of Judge John D. Burkholder to a four-year term as City Judge in the Glendale City Court.
All interested parties are invited to offer comments to the JSAB regarding Judge Burkholder’s
judicial performance to serve another term as City Judge at the following hearing:
5 p.m., September 15, 2004
Glendale City Hall
5850 W. Glendale Avenue, Glendale, AZ
Room B-3
Signed, written comments received by September 14, 2004 will also be considered by the JSAB.
Send comments to:
Judge Colleen McNally, Chair
Judicial Selection Advisory Board
5711 W. Glendale Avenue
Glendale, AZ 85301

The Judicial Selection Advisory Board will consider public comments and other
relevant factors when making a recommendation to the Glendale City Council regarding
the reappointment application of Judge Burkholder.
Courtwatch...  
(Continued from page 1)

was essentially unconstitutional punishment of pretrial detainees who had not been convicted of any crime, the district judge preliminarily enjoined the operation of the cameras. Arpaio appealed.

Two problems faced the Ninth Circuit before it could decide the case: there were no longer any images from the jailcams being streamed over the Internet, and all of the plaintiffs had left the Madison Street Jail. Neither side questioned whether these facts left the court without a live case or controversy, apparently wanting to count the court as the merits. The court obliged.

The court first agreed with the parties that the fact that the cameras were not currently operating did not moot the case. This was because Arpaio had made it clear that he intended to find another host for the jailcam images. Judge Richard A. Paez, writing for himself and Judge Marshar S. Berzon, held that a claim is not moot "if there is a likelihood of recurrence." Once a defendant has engaged in conduct the plaintiff contends is unlawful and the courts have devoted resources to determining the dispute, there is Article III jurisdiction to decide the case as long as 'the parties [do not] plainly lack a continuing interest,'" he wrote, quoting the Supreme Court.

Slightly more troubling was the fact that the plaintiffs had all left the Madison Street Jail. Paez resolved this conundrum by holding that "this controversy falls squarely within the capable-of-repetition-yet-evading-review branch of the mootness doctrine." He explained that this applies when "the duration of the challenged action is too short to be litigated prior to cessation," and "there is a reasonable expectation that the same parties will be subjected to the same offending conduct."

The first prong was easily satisfied. Because the Madison Street Jail houses only pretrial detainees, most of its inmates would be either out of the system or in post-conviction detention centers before the district court could decide their constitutional claim.

Paez also found that the plaintiffs satisfied the second prong — the likelihood that the same parties would suffer the offending conduct. He found "compelling evidence" that at least some of the plaintiffs, if released, would be reincarcerated in the Madison Street Jail. Plaintiff Benny Berryman had been detained at Madison Street for twenty-four times between February 1997 and June 2002.

Turning to the merits, Paez held that the district court had applied the proper legal standard. In Bell's Wofish, 441 U.S. 520 (1979), the United States Supreme Court held that "under the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt." The district judge, Paez held, had properly identified and applied Bell's test for identifying unconstitutional punishment at the pretrial stage. An action is punishment if it is expressly intended as such. Alternatively, the court must ask whether there is a "rational relationship between the action, and whether it appears excessive with regard to that alternative purpose."

Paez agreed with the district judge's application of the law to the facts. He first agreed that the defendant's test for identifying unconstitutional punishment: "Plaintiffs were certainly harmed by Sheriff Arpaio's actions. Having every moment of one's daily activities exposed to general and world-wide scrutiny would mke anyone uncomfortable. Exposure to millions of complete strangers, not to mention friends, loved ones, co-workers and employers, as one is booked, fingerprinted, and generally processed as an arrestee, is ghastly. Standing or lying in a holding cell, constitutes a level of humiliation that almost anyone would regard as profoundly undesirable and strive to avoid."

Paez rejected the alternative purposes that Arpaio offered. He first dismissed the contention that the webcams helped provide security. "[B]ecause the webcams were placed so close to the closed-circuit cameras, they did not increase the security — they were designed to help monitor the jail that was subject to video surveillance." Furthermore, "because the Sheriff's deputies were presumably already monitoring the images captured by the closed-circuit video cameras, there was no added benefit to publishing the images on the internet."

He also rejected Arpaio's contention that the webcams deterred crime. "To be sure," he wrote, "as a general matter, deterrence of crime is a legitimate governmental objective. But, as the Supreme Court and this court have recognized, where an individual is incarcerated before trial but has not been convicted of any crime, the mere existence of his pretrial detention as a means of deterring crimes is not permissible."

"Such exploitation of pretrial detainees is not appropriate to assure the detainees' presence at trial or to maintain the security and order of the detention facility and otherwise manage the detention facility," he wrote. "Thus, Sheriff Arpaio cannot point to deterrence, general or specific, as a legitimate governmental objective. But, as the Supreme Court and this court have recognized, the installation of webcams in the Madison Street Jail is illegal."

Paez also rejected Arpaio's argument that the interest in having the pretrial detention centers open to the public justified the webcams. "We have given prison officials wide latitude in administering pretrial detention facilities, in guaranteeing detainees' attendance at trial, and in promoting prison safety," he noted. "But we fail to see how turning pretrial detainees into the unwilling objects of the latest reality show serves any of these legitimate goals."

Judge Carlos T. Bea dissented not only from the sheriff's decision on the merits, but also from its decision to hear the merits: "Perhaps in an effort to express their repugnance for the Madison Street Jail webcast policy, the majority substitute conjecture for analysis of the mootness issue." He rejected the idea that any self-serving proposals of Plaintiffs towards future arrest and detention — whether through their own malfeasance or simple bad luck—is legally sufficient to clothe Plaintiffs with the required standing.

Bea reviewed the webcasts inflicted unconstitutional punishment. "The relevant inquiry is whether jail policies are reasonably related to legitimate penological interests," he wrote, and accused the majority of giving "the government interest that justifies the installation of webcams militated against this conclusion."

"Thus, Sheriff Arpaio cannot point to deterrence of any crime, the mere existence of his pretrial detention as a means of deterring crimes is not permissible."

"Sheriff Arpaio's methods to achieve his purposes of public deterrence and governmental transparency may not suit the fine sensibilities of some group advocates and jurists," Bea concluded. "But absent a violation of the constitutional rights of Plaintiffs—be it free speech, or the right to petition—the mere desire of opinion must be vindicated, if at all, in the ballot box, not in the courtroom."
Adding details to a legal brief can help win verdict

By Dr. Kendra H. Gaines
Special to Maricopa Lawyer

What is a legal brief if not a persuasive document? It is intended to present the facts of a given case. But how do you present those facts in such a way that a reader is swayed — consciously or unconsciously — to agree with the writer's point of view? If you cannot fall back on emotional appeals, nor leave out problematic points that must be acknowledged, then what can you do?

Some time ago, I worked with an adult student who was struggling to learn the art of rhetorical analysis. Rather than simply doing the assignment — my student fell into the old trap of agreeing with disagreeing with the argument. We had worked on this difficulty over several meetings when she appeared one day, waving an article from a weekly news magazine.

“This is not an editorial,” she explained. “It’s a straight news article. But for some reason I found myself incredibly angry at the guy mentioned in the article. I hate him! But I can’t figure out why. Could we do an analysis?”

I read the short article she handed me and, amazingly, I felt a similar surge of anger. The article was about a man who concerned a Native American man caught with illegal eagle feathers. He had been arrested and was being held in jail to await trial. Why on earth were my student and I reacting as if he’d already been found guilty?

The answer, as we found through our analysis, lay in the writer’s choice of information to include along with the bare factual bones of the case. For example, we were told that the man was a member of a Native American tribe. This was significant because the animal feathers at issue were revered and were considered an animal spirit guide.

The bloody feathers were found inadvertently glued to the floor of the truck. The blood stains were several bloody eagle feathers. No, they weren’t feathers from a vulture or a crow. They were feathers from a Bald Eagle.

The truck was slowly being searched. Under the rear seat, were a bloodstained blanket and a pair of bloody gloves. The driver was driving a truck that he “frequently borrowed” from an acquaintance. For a very long time, he had been unemployed. He no longer worked for an acquaintance money.

But this didn’t satisfy the writer. He dug into the background story. He was driving the truck that he “frequently borrowed” from an acquaintance. This bloody, illegal eagle feathers were the final straw. He’d already been found guilty?

The answer was that other people who just left — didn’t you just make a telephone call on July 2 at 2:27 p.m. in that case? Why the haste to make a phone call? It seems the accused called “immediately” or “lastly,” giving rise to suspicions on the part of your reader that he was nervous about something.

No, I’m not telling you to dive into the creative writing business. You do need to stick to the facts of your case. But try to think descriptively, using details to paint pictures in your reader’s mind. Readers can only go by the information you provide for them. So make that information work for you. You are obligated to include the facts of the case, but nothing says that all you must include. Remember the eagle feathers and our unformed anger at an untried suspect. Then, think details!

➤ Dr. Kendra Gaines is a professional writing consultant available to help lawyers with their writing skills and questions. Gaines can be contacted by email at kgaines@email.arizona.edu or by telephone at (520) 326-6199.
This calendar includes all CLE seminars presented by MCBA as well as MCBA meetings, luncheons, and events and those of other voluntary bar associations and law-related organizations. The divisions, sections, and committees listed here are those of the MCBA, unless noted otherwise. Everything takes place at the MCBA office, 303 E. Palm Lane, Phoenix, unless noted otherwise. Other frequent venues include the University Club, 39 E. Monte Vista, Phoenix; Arizona State University Downtown (ASUD), 502 E. Monroe, Phoenix; and the Arizona Club, 38th floor, Bank One Building, 201 N. Central, Phoenix. For information about MCBA events or to register for any of the

**SEPTEMBER 2004**

- **September 1**
  - Family/Juvenile Law Section, 5:15 p.m., ASUD
- **September 2**
  - Construction Law Section, noon
  - Maricopa County Attorney debate, 7 p.m., Wells Fargo Conference Center, 100 West Washington (Members Only Reception, 5 p.m., Wells Fargo Museum)
- **September 6**
  - Labor Day, MCBA office closed
- **September 8**
  - MBCA Executive Committee, 7:30 a.m.
  - Environmental Section, noon
- **September 9**
  - Personal Injury/Negligence Section, noon
  - Paralegal Conference Committee, 5:30 p.m.
- **September 10**
  - Understanding the New Mold Remediation Standards
  - 1:00 to 4:30 p.m., ASUD
  - This unique seminar will take you from proper microbial claims handling through actual field investigation and testing. Topics will include microbial fundamentals, the proper way to gather information, the mold remediation protocols, testing methods and equipment, chain of custody and testing strategies.
  - Cost: MCBA member attorneys, $75; member paralegals and public lawyers, $55; non-member attorneys, $105; non-member paralegals and public lawyers, $75; same-day registrations/payments, $15 additional.
  - CLE: 3 hours
- **September 13**
  - Young Lawyers Division, noon
  - Maricopa Lawyer editorial board, 5:15 p.m.
  - Paralegal Division Board, 5:30 p.m.
- **September 14**
  - Estate Planning Legislative Update 2004
  - 7:15 to 8:30 a.m., ASUD
  - The Estate Planning, Probate and Trust Section invites you to join the discussion and get the latest information on new 2004 legislation.
  - Cost: MCBA member attorneys, $25; member paralegals and public lawyers, $15; non-member attorneys, $40; non-member paralegals and public lawyers, $30; same-day registrations/payments, $15 additional.
  - Price includes continental breakfast.
  - CLE: 1 hour
- **September 15**
  - Litigation Section, 7:30 a.m.
  - Lawyer Referral Service Committee, noon
  - Bench Bar Committee, 12:15 p.m., Central Courthouse
- **September 16**
  - Public Lawyers Division, noon
  - Corporate America – What Happened?
  - 2:00 to 4:00 p.m., ASUD
  - Scandal first crippled Enron, then Adelphia, then Worldcom, then Martha Stewart.
  - Shareholder’s and public confidence has been destroyed by these scandals. How has this affected Arizona?
  - Get an in-depth analysis of the current status of the recent Wall Street scandals by joining us at this informative seminar.
  - Cost: MCBA member attorneys, $75; member paralegals and public lawyers, $55; non-member attorneys, $105; non-member paralegals and public lawyers, $75; same-day registrations/payments, $15 additional.
  - CLE: 2 hours
- **September 20**
  - Personal Injury Section CLE Luncheon, 11:30 a.m., ASUD
  - YLD Domestic Violence committee, noon
- **September 21**
  - Corporate Counsel Division, 4:30 p.m.
  - Bankruptcy Law Section, 5 p.m.
- **September 22**
  - Criminal Law Section, 7:30 a.m.
  - Sole Practitioner Section, 11:30 a.m.
- **September 23**
  - Estate Planning, Probate & Trust Section, 7:30 a.m.
  - Technology Section, 8 a.m.
  - MCBA board of directors, 4:30 p.m.
  - Cyberterrorism: Fact or Exaggerated Fiction?
  - 8:30 a.m. to 12:00 p.m., ASUD
  - Join us as we discuss whether cyberterrorism is a real threat or if it is simply another “blown out of proportion” publicity scare. Learn what type of legislation and law enforcement tools are in force to fight this type of behavior.
  - Cost: MCBA member attorneys, $75; member paralegals and public lawyers, $55; non-member attorneys, $105; non-member paralegals and public lawyers, $75; same-day registrations/payments, $15 additional.
  - CLE: 2 hours
- **September 24**
  - The Essentials of Commercial Leases Corporate Counsel Division Lunch CLE
  - 11:45 a.m. to 1 p.m., University Club
  - Join us as we discuss essential items to consider when doing commercial leases.
  - Cost: CCD members, $22.50; non-members, $32.50 (price includes lunch)
  - CLE: 1 hour
- **September 27**
  - Task Force for the Recruitment and Retention of Minority and Women Lawyers, noon
- **September 28**
  - Employment Law Section, 11:30 a.m.
- **September 29**
  - What the Private Bar Needs To Know About the IVD Child Support Program
  - 1:00 to 4:00 p.m., ASUD
  - What is Arizona’s IVD program? Why do they do things the way they do? What are the benefits of the program to attorneys and their clients? What are the methods to get case and payment information?
  - This seminar will cover the history and the federal mandates that drive the program, who the program serves, reasons why your client might want an IVD case and ATLAS basics.
  - Cost: MCBA member attorneys, $65; member paralegals and public lawyers, $50; non-member attorneys, $90; non-member paralegals and public lawyers, $65; same-day registrations/payments, $15 additional.
  - CLE: 2.5 hours
- **September 30**
  - Estate Planning, Probate & Trust Section CLE Luncheon, 11 a.m., ASUD

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**Adra Approved Mediation Trainers**

- Amy Lieberman Esq.
  - Advanced Practitioner, AAN for Conflict Resolution
  - Judge Pro Tem
  - Chair AZ State Bar ADR Section
  - Executive Director, Insight Employment Mediation

- Oliver Ross J.D., Ph.D.
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  - Director of Mediation Services, Out-of-Court Solutions

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— David Greenfield, Arizona
Paralegal Division creates scholarship in memory of Marilyn Benesch

By Sybil Taylor Aycht Maricopa Lawyer

On March 7, 2004, Marilyn Benesch, a paralegal at Snell & Wilmer and a founding member of the MCBA Paralegal Division, unexpectedly passed away. Her loss has left a tremendous void, but those who knew and loved her continue to honor her memory.

Benesch was born on August 3, 1942 in Orange County, California. She majored in Business Administration at Arizona State University and was a graduate of the American Institute for Paralegal Studies. Prior to joining Snell & Wilmer in 1986, she worked as an import account executive and in the banking industry.

In October 1998, when a group of paralegals met at the MCBA to discuss developing a formal Paralegal Committee, Benesch was one of those in attendance. Her work on behalf of this committee played a part in its eventual elevation to division status at the MCBA.

In addition to her work, Benesch was a great proponent of volunteerism and community service. She was very active in the March of Dimes, the Volunteer Lawyers Program, Homeward Bound, and the annual Snell & Wilmer paralegal retreat. Her other interests included reading, swimming, travel and sports. She frequently ran in marathons for Team in Training on behalf of the Leukemia Society.

As a way to honor Benesch’s memory and accomplishments, the paralegals at Snell & Wilmer contacted the Paralegal Division about establishing a scholarship for paralegal students in her name. The division was honored to have been approached for such a worthy endeavor. At Snell & Wilmer’s annual paralegal retreat in June, 42 individuals walked to Tempe Town Lake as a kick-off fund raiser for the Marilyn Benesch Scholarship Fund. The first scholarship is called the Marilyn Benesch Scholarship Fund.

Benesch was missed by her friends and colleagues in the legal community, particularly by Snell & Wilmer family Craig Williams, a partner at the firm, remembered her as “a true friend and great paralegal. She provided excellent service to our clients, firm and the community for over 15 years. She made a difference in our firm and she touched many people with her positive attitude and willingness to help others.”

“...We are thankful that we got to know her, and we know that she’s up there urging us on,” said Linda Saperstein, her friend and secretary. “It’s funny; I was the one who had earned a private pilot’s license, but she was really the one who knew how to fly.”

Meredith Larabee, director of legal assistants at Snell & Wilmer, described Benesch as “a go-to person when we needed an objective opinion about something that might impact the paralegals. Her warmth and humor were a comfort to everyone who knew her. Most of all, I remember Marilyn’s dedication to the paralegal profession.”

Peggy McMahon, Benesch’s close friend and coworkers, and one of the Snell & Wilmer paralegals who spearheaded the establishment of the memorial scholarship, called her “a shining example of how to live a balanced life...She was smart and sassy, bold and graceful. She laughed easily and often. Her confidence in herself and others made so many things possible. She was, and will always be, simply awesome.”

Among those who miss her most are her beloved children, her daughter, Stacey, her son, Scott, and her granddaughter, Shaeli. She was extremely proud of Scott’s accomplishments in the field of international management and of Stacey’s position as a coach for master swimmers. They, along with many others, were proud to know her.

Contributions to the Marilyn Benesch Scholarship Fund can be sent to the Maricopa County Bar Foundation, 303 East Palm Lane, Phoenix, AZ 85004. Checks should be made payable to the foundation with the Marilyn Benesch Scholarship Fund referenced in the memo portion.

Paralegal Division creates scholarship in memory of Marilyn Benesch

By Kathleen Brieske Maricopa Lawyer

The Maricopa County Bar Association and its Criminal Law Section have added many sponsors for the upcoming county attorney debate and VIP reception on Thursday, Sept. 2, at the Wells Fargo Conference Center. The list of participating sponsors includes: Wells Fargo, the Arizona Bankers Association, Nationwide Insurance, Lewis & Roca and Koeller Nebecker Carlson & Haluck. Wells Fargo is sponsoring both the debate and reception venues, while Lewis & Roca and Koeller, Nebecker, Carlson & Haluck are covering the remaining cost of the debate.

The MCBA is partnering with the Arizona Bankers Association for the VIP Reception. Nationwide Insurance is MCBA’s Affinity Sponsor for this event. The members-only event will be held prior to the debate from 5 to 7 p.m. at the Wells Fargo Museum, directly across from the debate conference room. Attendees will have the opportunity to talk with the county attorney candidates as well as the debate moderator and questioners.

The debate itself, which is free and open to the public, will take place at 7 p.m. at the Wells Fargo Conference Center, 100 West Washington Street, in downtown Phoenix. All candidates with the exception of Andrew Thomas will be present. Joseph Cárdenas, host of Horizonte, will serve as moderator of the event, and the questioners include Mike Sumsuck of the Business Journal, Chip Scutari of the Arizona Republic, attorney Jo Ana Saint-George of Bowman and Brooke and attorney Barry Mitchell of Gallagher & Kennedy. The Arizona Bankers Association also will be providing questions. As the debate is expected to last for an hour or so, the audience will have the opportunity to ask questions as time permits.

Editor’s note: The debate was originally scheduled to be held at the Board of Supervisors Auditorium (August Maricopa Lawyer). If you plan to attend, please make note of the change of venue.

Maricopa County Attorney debate highly anticipated

By Kathleen Brieske Maricopa Lawyer

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Maricopa County Attorney debate highly anticipated

Maricopa County Attorney debate highly anticipated
Local attorneys prepare to tee off for Wells Fargo 2004 Pro Bono Golf Classic

By Teena Booth
Maricopa Lawyer

For the past two decades, Maricopa County attorneys have been meeting once a year to challenge each other outside a courtroom at the Maricopa County Bar Foundation’s annual charity golf tournament. “I have vivid memories of past year’s tournaments,” said Charles & Brady attorney Booker Evans, a co-chair of this year’s tournament committee. “I especially remember the year I almost sank a hole in one and won a car. The ball rolled around the rim of the hole and I could see myself sitting in that car… then the ball just eased off to the side and ended up an inch away from the hole. That’s not something I’ll ever forget!”

This year, more memories will be made at the Wells Fargo 2004 Pro Bono Golf Classic, scheduled for Sept. 18 at the Westin Kierland Resort in Phoenix. As in the last several years, the beneficiary of the event is the Volunteer Lawyers Program.

“This is definitely an important fundraiser for VLP with a big impact on our ability to serve the legal needs of the community,” said VLP Director Pat Gerrich. “We would put a lot of effort into it just for that reason. But to be honest, we love working with the foundation to put together this event because it’s just so much fun.”

Attorneys and others in the legal community who would enjoy a round of golf on one of the most beautiful courses in the Valley of the Sun have the perfect excuse for a morning of golf with colleagues. And as Evans noted, a lot of friendly rivalry and good-natured ribbing can rise up between members of different firms.

“Lawyers are competitors,” said Evans with a laugh. “We don’t even have to issue a challenge. The players tend to take care of that themselves.”

Nonetheless, the tournament will offer prizes for players that stand out, whether the Most Stylish Foursome or the Longest Putt or prizes for players that stand out, whether the Most Stylish Foursome or the Longest Putt or prizes for players that stand out, whether the Most Stylish Foursome or the Longest Putt or prizes for players that stand out, whether the Most Stylish Foursome or the Longest Putt or prizes for players that stand out, whether the Most Stylish Foursome or the Longest Putt or prizes for players that stand out, whether the Most Stylish Foursome or the Longest Putt or prizes for players that stand out, whether the Most Stylish Foursome. Of course, getting a hole in one might be something they will never forget.

If you want to learn as much as you can from a continuing legal education seminar while being entertained at the same time, don’t miss the opportunity to attend a class taught by attorney Larry Cohen. With 12 years experience teaching 40 seminars per year, along with 18 years of practice experience, Cohen has created a formula to make sure participants not only walk away with a better understanding of the specific legal topic, but also with an improved ability to apply that knowledge. And he keeps no secrets about what he thinks will help attorneys who attend his programs — he tries to teach them as many practical applications as he can.

Born in Boston, Cohen earned a Bachelor of Arts degree in political science from the University of Massachusetts-Amherst. He then went on to earn both a masters and doctorate degree from Syracuse University before attending law school at Northwestern University in Illinois. He currently is working on a post-doctorate degree in neuropsychology from the Fielding Institute.

Cohen heads his own firm where he focuses on litigation and trial work, primarily personal injury and medical malpractice. Practicing law is Cohen’s fourth career — support a good cause and feel like you got more out of it than you put in.”

Golfers may register up until the day before the event. If you have not signed up yet, grab a few friends or colleagues and join in this longstanding Maricopa County legal tradition. For details and registration, download a form from the foundation’s Web site at www.maricopabarg foundation.

Trial attorney dedicated to sharing knowledge

By Kathleen Brieske
Maricopa Lawyer

MCBA MEMBER PROFILE
prior to becoming an attorney, he served in the military, was on the political science, criminal justice and survey research faculties at the University of Illinois, Chicago, and then did applied research for a think tank in Washington, D.C.

After realizing how much he really wanted to help people deal with their everyday troubles, he began to practice law. In doing so, he has carved a fulfilling niche for himself. In addition to speaking, he consults nationally in brain injury and emotional damages cases and is an avid contributor to journals and books. Cohen also serves as adjunct faculty for two universities (including ASU College of Law), is a settlement judge for the Nevada Supreme Court and a pro tem judge in several departments at Maricopa County Superior Court. He also is on the board of directors of a diplomating organization in neuropsychology and serves on the editorial board of a peer review journal, among many other things.

When asked what being a lawyer means to him, it is clear Cohen has as much of a passion for teaching as for helping others. As he put it, “have program, will travel.”

“And anything I can do to help other attorneys understand and improve the practice of law, I will do,” Cohen said. He realizes that attorneys who attend his seminars come to learn things that will happen in everyday practice — See Cohen on page 13

Legal moves

Thomas W. Rouse has joined Ryley Carlock & Applewhite’s commercial and real estate practice group as a shareholder. Rouse (J.D. 1974, Washington College of Law) has 20 years experience in representing lenders in general business loans and both commercial and residential real estate transactions.

Richard Brumbaugh has joined the law firm of Burch & Cracchiolo as an associate. Brumbaugh (J.D., St. Louis University) will practice in a number of areas, with an emphasis on commercial litigation and family law.

People in law

Andrew Halaby
Bryan Cave partner Andrew Halaby has been elected to the board of directors of Big Brothers/Big Sisters of Central Arizona, an organization that fosters positive friendships through every day experiences for local children and volunteer mentors.

Bryan Cave partner Steven A. Hirsch has been elected president of the board of directors of the Wildlife For Tomorrow Foundation, the charitable arm of the Arizona Game and Fish Department. The foundation supports the protection, enhancement and enjoyment of Arizona wildlife. Hirsch is an avid outdoorsman and conservation advocate.

Gov. Janet Napolitano has reappointed Robert Roos, a partner with Lewis and Roca, to another three-year term on the Arizona Board of Technical Registration. The 15-member board has serves as a regulatory agency to six design and technical professions, including architecture, assaying, engineering, geology, landscape architecture and land surveying. The board also certifies remediation specialists. Roos practices with Lewis and Roca’s construction litigation and environmental law groups.

Paul E. Burns, an intellectual property attorney with Steeple & Johnson, has been appointed as chair of the Arizona Chapter Licensing Executives Society, a professional society of 3000 members engaged in trademark use, development, marketing and intellectual property.

Bryan Cave partner R. Neil Irwin has been appointed by Phoenix Mayor Phil Gordon to the board of directors of the Greater Phoenix Economic Council. Since moving to Phoenix in 1971, Irwin has practiced law in all facets of the business area, with special emphasis in finance and real estate.

Legal defense

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CORPORATE COUNSEL, GLOBAL $2 BILLION semiconductor manufacturing company located in suburban Phoenix seeking qualified candidate to expand existing in-house legal department. Primary duties to include review, drafting and negotiation of contracts in support of worldwide sales, business development and other functional areas of the company. Position requires law degree from accredited U.S. law school, and 2-5 years law firm or corporate legal department experience including review, drafting and negotiation of marketing and service agreements, supply agreements, and other commercial contract documents. Salary commensurate with experience and qualifications. Send resume with salary requirements and summary of trial experience to Law Office of Robert Staniewicz, 2141 East Broadway Road, Suite 113, Tempe, Arizona 85282 or fax to 480-968-7034.

PALMISANO & ASSOCIATES, P.C. a Tempe based law firm, seeks an associate attorney with criminal law experience, salary & benefits. Position available immediately. Please fax resume, 480-557-7442.

PI PARABOLIC. 0 to 2 years experience, must be admitted to the bar. Pincus & Associates, P.C. is seeking a new associate attorney. We offer a great working environment, fair pay and benefits. Please fax your resume to 480-777-2799. No phone inquiries.

TUCSON REAL ESTATE ASSOCIATE The Tucson office of Lewis and Roca LLP is seeking a highly-motivated transactional associate who has at least two years experience in both real estate and corporate transactions. The qualified candidate will join a friendly, team-oriented environment and will immediately participate in sophisticated transactions. We offer a competitive compensation and benefits package and will pay relocation costs for qualified candidate. If interested, please reply in confidence to: Julie Moy, Lewis and Roca LLP, 40 North Central, Phoenix, Arizona 85004 or e-mail materials to jmoy@lrlaw.com.

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1, 2, or 3 ATTORNEY OFFICES AVAILABLE for lease together with secretarial and/or paralegal work areas. Possible attorney association available. Located mid-town. Use of library, kitchen, covered parking, 2 conference rooms and reception area. Call Nancy at 602-263-0203 for appointment.

LEGAL OFFICE SUITE, North Central, approx. 3,500 sq. ft., 3 large luxury offices, many built-ins, large and small conference rooms, kitchen, DSL, cable, quiet street, covered parking, entire second floor, N. of Bethany at 714 E. Rose Lane, 602-230-2977.

LEGAL OFFICE SUITE, 2nd floor, Scottsdale, approx. 1,000 sq. ft. Two large office suites, private and shared offices available, kitchen, conference rooms, and lunch area. Call 480-948-4200.

BAXTER ENGINEERING expert witness, mechanical products and equipment, accident reconstruction. Contact Gene K. Baxter, Ph. D., P.E. 480-832-7744.

MICHAEL L. KEITH - CONSTRUCTION SERVICES, INC. Construction Investigation Expert services. Experience in construction and commercial litigation. Excellent references. Current practice includes real estate, lending, business and all related areas of real estate transactions. Cohen also knows that education has to be entertaining. Proactive in encouraging people to participate, he always makes it a point to answer questions as they come up within the seminar, no matter when they are asked. Time and experience have shown Cohen which questions are often asked and what attorneys will find interesting. He uses that to keep the audience engaged and things rolling during his seminars.

Cohen's biggest piece of advice to those attorneys who are just starting to teach CLE seminars is to “suspend their own egos and keep the audience at the forefront.” The key to a good presentation is realizing the seminar is for the audience, not the speaker.”

PRESIDENTIAL CLE seminars provides Cohen his own opportunity to learn and stay current on all types of matters. He says teaching keeps him up to date with new developments in the law.

Though he speaks nationally many times a year, Cohen truly values the opportunity to teach programs at the Maricopa County Bar Association. He especially likes to work with other MCBA members in coming up with new topics. In keeping with his belief that continuing legal education has to meet members’ needs and goals, the MCBA allows him to choose and present more specialized topics. Cohen appreciates being able to present narrow topics that go into more depth than what he teaches on a national level.

Tell us!
Have you changed employment? Has your law firm named new partners? Send information for our Legal Moves column to Maricopa Lawyer, MCB, 303 E. Palm Lane, Phoenix, AZ 85004; fax to 602-257-0522; or email to: maricopalawyer@mcbabar.org.
Ninth Circuit okays public shaming

By Joan Dalton
Maricopa Lawyer

Last month, a Ninth Circuit panel in a 2-1 decision affirmed a federal district court's imposition of a sentence that involved public shaming in lieu of a longer prison sentence. United States v. Gementera, No. 03-10103 (9th Cir. Aug. 9, 2004) (Hawkins, J. dissenting). The sentence required, as part of a broader sentence, that convicted mail thief Shawn Gementera parade outside a local post office for eight hours while wearing a sandwich board that read: "I stole mail. This is my punishment." Although the Sentencing Reform Act affords federal district courts broad discretion in fashioning appropriate conditions of supervised release, that discretion is not boundless. The exercise of discretion must: (1) be reasonably related to the nature and circumstances of the offense and the history and characteristics of the defendant; (2) involve no greater deprivation of liberty than is reasonably necessary to deter criminal conduct; (3) protect the public from further crimes of the defendant; and (4) provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

In the course of deciding whether the district court's discretion was reasonably related to a legitimate statutory purpose, the Ninth Circuit majority set out to determine first whether the sentencing judge imposed the conditions for permissible purposes, and then to determine whether the sentence conditions were reasonably related to those purposes. The majority argued that the sand- wich board condition was imposed for the impermissible purpose of humiliation (at the first sentencing hearing the district court said, "We are careful not to articulate a principle broader than that presented by the facts of this case. With care and specificity, the district court outlined a sensible logic underlying its conclusion that a set of conditions, including the signboard provision, but also including reintegrative provisions, would better promote this defendant's rehabilitation and amendment of life than would a lengthier term of incarceration.

In his dissent, Judge Hawkins remarked that the lack of federal authority concerning sentences involving public shaming might perhaps indicate that public shame sentences "have no place in the majesty of an Article III courtroom."

“When the district court initially imposed the sandwich board condition, wrote Judge Hawkins, the judge explained to Gementera that the court should have to suffer the humiliation of having to stand and be labeled in front of people coming and going from a post office as somebody who has stolen mail. Hawkins also did not argue the majority's conclusion that the sandwich board condition was reasonable because it was “coupled with more socially useful provisions.” “The majority cites to no provision in the Sentencing Reform Act and to no case law indicating that conditions on supervised release should be reviewed as a set and not individually, or that humiliation somehow ceases to be humiliation when combined with other punishment,” wrote Hawkins.

Hawkins concluded by noting that while he believes the district court should be reversed because the sandwich board condi- tion violates the Sentencing Reform Act, he also believes that public shame sentences are simply bad policy. A fair measure of a civilized society is how its institutions behave in the space between what it determines the power to do and what it should do.

To affirm the imposition of such punishments recalls a time in our his- tory when pillories and stocks were the order of the day. Gementera's attorney has vowed to appeal.

Maricopa Lawyer

Using a payroll company helps firms become more profitable

When a small to mid-sized firm grows by adding new employees, payroll challenges often follow. The featured expert this month is David Bass, a district sales manager for Paychex Inc., a leading national provider of payroll, human resources and benefits outsourcing solutions for small-to-medium-sized businesses. The company offers comprehensive payroll services, including payroll processing, payroll tax administration, and employee pay services, including direct deposit and check signing. Bass explains the importance of categorizing new hires as either employees or independent contractors.

As I begin to hire employees for my busi- ness, is it solely my decision to categorize new hires as “employee” or independent contractor?

Small businesses often do not understand the ramifications of incorrectly categorizing workers as either employees or independent contractors. To clarify this issue, the IRS provides guidelines that assist businesses in properly classifying workers.

Identifying workers as either employees or independent contractors depends upon the extent to which the person receiving the services has the right to direct and control the service provider. To help determine the degree of control and direction, the IRS uses “categories of evidence” based on behavioral control, financial control, and the relationship between the parties. In general, the greater the degree of control, the more likely it is that an individual is an employee.

Misclassifying an employee as an independ- ent contractor may result in penalties and interest double the amount that the business would ordinarily pay. The exposure for unintentional misclassification of an employee is serious, but not as serious as the risk for an intentional misclassification. To reduce the risk, seek professional advice or ask your accountant.

I am considering outsourcing as an option to handle my payroll. What should I look for in a payroll provider?

Productivity and profitability are the keys to a successful business. Business owners are increasingly looking to outside help to improve these bottom line results, including turning to payroll processing services for assistance.

Payroll preparation involves more than just payroll checks. It includes the year-round preparation of federal, state, and local tax returns and deposits, up-to-date recordkeep- ing, and ever-changing tax laws — all of which take time and energy that might be better spent elsewhere in the company, especially for a small business that uses manual or in-house computer payroll processing.

Most business owners understand how much work is required to take care of payroll preparation, employment taxes, and record- keeping. Outsourcing your payroll keeps you in control of your payroll without the headaches. With some savvy shopping, you can find a payroll company that best fits your needs.

Here's a checklist of questions to keep in mind when shopping for a payroll service provider:

Company Integrity

➤ How long has the payroll service provider been in business?
➤ Do any trade associations endorse the payroll provider?
➤ Do any local CPA firms recommend the payroll provider?
➤ Does the payroll service provider publish a price list for its services?
➤ Will the payroll service provider guarantee its accuracy and timeliness?

Basic Payroll Service

➤ What does the basic payroll service include?
➤ What payroll reports are included?
➤ Is my payroll information kept confidential?
➤ Does the payroll service provider offer federal, state, and local tax filing?
➤ If a penalty is assessed, who pays the penalty and any interest?

Methods of Reporting Payroll and Receiving Payroll

➤ What are my options for reporting payroll data to the payroll service provider?
➤ Do the options include reporting by phone, fax, personnel logon, and the Internet?
➤ Can payroll be reported 24 hours a day?
➤ Will I be assigned a specific person to service my account, or will I talk with a different person each time?
➤ How is my payroll delivered to me?
➤ If I have it delivered, what is the cost?
➤ Can my payroll be sent via the Internet?

— See Expert on page 16

Accepting Applications for Lawyer Representatives

Each year, the judges of the United States District Court for the District of Arizona select lawyers with federal court experience to serve as representatives to the 9th Circuit Judicial Conference. Arizona's Lawyer Representatives are expected to attend the annual Judicial Conference and to meet periodically with Arizona's District Court judges, Bankruptcy Court judges, and Magistrate judges to discuss potential improvements to court operations and procedures. In addition, the Lawyer Representatives help organize the annual Arizona District Conference for federal judges and practitioners. Lawyer Repre-sentatives serve a three-year term.

If you are interested in serving as one of Arizona's Lawyer Representatives, please send a resume and letter explaining your qualifications and interest in the position to:

Scott Bales, Chairperson
Arizona Lawyer Representatives
Lewis and Roca LLP, 40 North Central Avenue, Phoenix, Arizona 85004

Applications should be received by
October 15, 2004

Call Scott Bales with any questions at (602) 262-5365

Poster: Keeping Your Payroll Data Secure

Most businesses have some form of payroll data on file, including payroll information and tax information. The security of these files is critical. Here are some tips to keep your payroll data secure:

1. Use strong passwords and change them regularly.
2. Use encryption to protect sensitive data.
3. Limit access to payroll data to authorized personnel.
4. Keep payroll data storage devices secured.
5. Regularly backup payroll data.

— See poster on page 17
Understanding Islamic law may help narrow divide between cultures

By N. Mark Kramholtz
Special to Maricopa Lawyer

Current events in the Middle East have brought Islam and its legal system to the often-disapproving and puzzled attention of Western legal observers. The popular media presents images of chaos and forms of physical discipline such as stoning. The impression given is that the judicial process is simplistic, ineffective and arbitrary. Under closer scrutiny, however, the Islamic legal system contains the elements necessary for it to be logical and fair.

I have two purposes here, one analytic, the other prophetic. Although I cannot claim that Islamic law has any particular connection to an attorney’s daily practice in Arizona, we are empowered by learning about the legal system (or more importantly for this article, the basis of influences on that system) of a society and culture we are currently at odds with. In addition, I propose that a movement within Islam (or more importantly for this article, the basis of empowered by learning about the legal system Islamic law has any particular connection to an be logical and fair.

In the Islamic criminal system, transgressions can be broken down into three major categories: 1) Had crimes, 2) Tazir crimes, and 3) Qesas crimes. Had crimes are the most serious, and Tazir crimes are the least serious. A rough analogy is that Had crimes are like felonies, and Tazir crimes are similar to misdemeanors. Qesas crimes are those which afford the victim a right to seek retribution and retaliation. The exact punishment for each Qesas crime is set forth in the Qur’an.

Although the Islamic legal system grounds its ultimate legitimacy in religious doctrine, it has not imploded under the weight of rigidity and intolerance. Clearly there must be some concealed equilibrium in Islamic religious life and law, a balance between rigidity and flexibility, that can explain its longevity and popularity.

A person-centric legal system

The Islamic legal process pays more attention to the person who makes assertions than to the “facts” that might be found. In this system, it is the person who makes things believable, not the other way around. Thus, court notaries are used as “reliable witnesses” who understand that they have the burden of proof, as stated to be so; documents are treated as if they were oral statements, the believability of the maker rather than the form of the document being crucial; and court appointed experts determine many facts on the bases of their knowledge of the locale and the circumstances of the parties.

Therefore, where in the West the legal system focuses largely on the discernment and evaluation of “facts,” in Islamic law the emphasis is on the assessment of persons — the set of connections, the customs used to form them, and the consequences that actions have within structure of the negotiated obligations by which any person operates. This is a commonsense approach, free of the illogical exclusionary rules of our system, such as the inadmissibility of prior convictions and past misdemeanors.

As a result, both Islamic and Western common law systems possess a kind of legal relativity, a sense that the categories of the law must fit decisions at any given moment, while taking into account the current cultural conditions on which their techniques and legitimacy reside may be subject to variation.

The Sufi experience

One such cultural variation came to my attention by way of an Arabian horse, specifically the writings and religious practices of the namesake of my sister’s childhood steed, Omar Khayyam.

Omar Khayyam (1040-1131 or 1023-1123) was a mathematician and minor poet who became known to Western audiences in the Victorian era through his poetic masterpiece, the Rubaiyat, which commences “Awake! for morning in the bowl of night, has flung the stone that puts the stars to flight.”

The frequent allusions to women and wine in translations of his work made it popular in the Western world. What may have been missing, then was the realization that his phrasing was a highly evolved symbolic language used to present, and represent, Sufi experience.

Sufism is a term generally applied to mystical currents in Islam. Contrary to the perception that Islam is only preoccupied with punishment, love is the central concept of Sufism. While religious authority sought to establish the rules of society through the Shari’a, Sufism offered an inner way, and a form of devotion that took into account the spiritual freedom of the individual.

The origin of Sufism can be traced to the 8th century, when Rabia of Basra (d. 801) introduced the concept of pure love of God one should act without hope for paradise or fear of hell, only out of love. The Sufis invent new forms to convey this love, especially through poetry, Sufis embraced music, which could lead to a frenetic whirling dance (the “whirling dervishes”), although music and dance were frowned upon by the orthodoxy. In addition, the Sufis’ claim to knowledge of God through means other than those put forward by conventional theology has resulted in persecution. Mansur al-Hallaj’s most famous earthly utterance “I am the Truth,” led to his martyrdom.

Got an itch to write more than motions?

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Even if you don’t want to write the article, the editorial board welcomes story ideas as well as information for our Legal Moves and People in Law columns.
Attorney Lori L. Winkelman was the final hope for a gentleman wedged in a swamp of financial quicksand. She is being recognized as the Attorney of the Month by the Volunteer Lawyers Program for her diligence with a case to which she devoted approximately 200 hours during the last two years.

A bankruptcy attorney with Quarles & Brady Streich Lang, Winkelman was conducting intake interviews at the VLP when a client described how, in financial desperation, he had fallen prey to false and misleading offers and signed over the deed to his house to a company that promised to help save his home from foreclosure. However, the arrangement faltered shortly thereafter. The client sought help from VLP when he was notified that the first mortgage was in default and he would not be able to assert his legal rights without the VLP. She says volunteering is rewarding because it is important to help out in the community and to the client is clearly in the right, but you keep running into roadblocks. I just wanted him to be relieved of his worry.

In the end, the demand for payment was dropped and the deed was signed back to the victim.

Originally from Brookings, South Dakota, Winkelman had a degree in commercial economics but decided law was more interesting and challenging. She became a paralegal and worked at Streich Lang while attending law school. She graduated from Arizona State University law school in 2001 and is still with the firm, now known as Quarles & Brady Streich Lang.

Winkelman said in many cases victims would not be able to assert their legal rights without the VLP. She says volunteering is important to both the community and to the victim.

“Although we all get busy in our lives, it is important to help out in the community,” she said. “It’s surprising how rewarding it can be.”

Fortunato: Economist Schumpeter described capitalism’s creative destruction. Sadly, most new businesses fail, but the continuing struggle of countless entrepreneurs reflects the beauty of or whether further government intervention is required. It is difficult to argue at this point that no governmental intervention was required after the fall of the market. However, the question that the election presents is whether further regulation is needed. Those who believe that further regulation is required will put pressure on the candidates to present such legislation. Because of the weight of other issues that are before the presidential candidates, it appears that corporate governance issues have been a back-burner position to issues such as health care, the economy and the war in Iraq.

Spitzer: It is my hope that decisions such as knowing with corporate misconduct and preserving the integrity of our capital markets not be politicized. Business regulation needs to be firm, fast and fair. There are important legal issues in need of clarification. Many arise from the complex world of tax and accounting. These technical matters are not well addressed in a political environment. Congress needs to work with state and federal regulators to craft laws that are understandable, and then empower regulators to enforce those laws.

The Corporate America Scandals: What happened? seminar will be held from 2-4 p.m. on Thursday, December 16, at the ASU Downtown Center in Phoenix. The MCBA member cost to attend is $50 for attorneys and professionals and $35 for paralegals and public lawyers. The self-study package for members is $30. The non-member cost to attend is $70 for attorneys and professionals and $50 for paralegals and public lawyers. The self-study materials for non-members are $70. Two CLE credits may be earned at this seminar. To register, visit the MCBA Web site at www.maricopabar.org or contact Geoff Cummings at (602) 257-4200 ext. 107.

Expert... Continued from page 14

➤ Can I pick up my payroll?

Employee Pay Options

➤ What employee pay options are available through the payroll service?

➤ Are services such as direct deposit, check signing and debit card care available?

Additional Services

➤ Is general ledger reporting to my accounting software available? If so, with which accounting packages is it compatible?

➤ Does the payroll service provider offer human resource services such as retirement plans, section 125 plans, workers’ compensation insurance, or health benefits?

Researching the answers to these questions can help to identify a payroll provider who makes running a profitable, productive business easier.

David Bass can be reached at 602-263-7172 or via email at dbass@paychex.com. Paychex’s Web site is www.paychex.com.