Gideon 50 years later

By Paul G. Ulrich

Introduction

On March 18, 1963, Gideon v. Wainwright, 372 U.S. 335 (1965), unanimously reversed Clarence Gideon's felony conviction because the trial court had denied his request for appointed counsel.

Justice Hugo Black's majority opinion instead held the Sixth Amendment right to counsel was a "fundamental right" essential to a fair trial. The Fourteenth Amendment's due process clause therefore required appointed counsel in state-court noncapital felony trials.

Gideon also overruled Betts v. Brady, 316 U.S. 455 (1942), which had held the Fourteenth Amendment did not require appointed counsel for defendants in such trials in every case. Instead, "special circumstances" were required.

The Court had appointed Abe Fortas to represent Gideon. Three years later, Fortas became a justice. He cast the decisive fifth vote reversing Ernesto Miranda's conviction. Miranda v. Arizona, 384 U.S. 436 (1966) and wrote the majority opinion establishing due process rights for juveniles in another landmark Arizona case, In re Gandy, 387 U.S. 1 (1967).

History confirms the Gideon and Miranda decisions were both accidental and inevitable.

The right to counsel from Powell to Douglas

Powell v. Alabama, 287 U.S. 45 (1932), applied the Sixth Amendment's right to counsel in state-court capital criminal trials as a "fundamental right" under the Fourteenth Amendment's due process clause. Johnson v. Zerbst, 304 U.S. 458 (1938), then applied that right in all federal criminal trials, as a necessary ingredient of a fair trial.

The constitutional battle leading to Gideon began with Betts. The petitioner there was convicted of robbery and sentenced to eight years in prison. However, the Court's majority refused to apply the Sixth Amendment right to counsel to the states in such cases because of the historic diversity of state practices, and concerns that the right might extend to misdemeanors and civil cases.

It instead held whether defendants were denied "fundamental fairness" under the Fourteenth Amendment's due process clause had to be decided based on each case's circumstances.

Justice Black's dissent, joined by justices Douglas and Murphy, would have applied the Sixth Amendment right to counsel to the states in cases involving serious crimes through the Fourteenth Amendment as a "fundamental right." Doing otherwise would "defeat the promise of our democratic society to provide equal justice under law." An appendix to his opinion confirmed most states then required counsel for indigent defendants in noncapital, as well as capital criminal cases.

Betts was immediately criticized as a denial of fundamental rights. See Anthony Lewis, GIDEON'S TRUMPET: 8, 112 (1964). However, in Foster v. Illinois, 332 U.S. 134, 139 (1947),

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Swann, held that despite Moreno's failure to cite the statute underlying her request, she had nevertheless complied with the rule. Moreno had asked the court of appeals to consider "her financial resources" and "the reasonableness of the positions each party has taken throughout the proceedings." This sufficed, according to Gemmill, who found it a clear allusion to A.R.S. § 25-324, a statute providing for fees in dissolution proceedings. It allows the court to award fees "after considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings."

The fact that Moreno's request echoed the statutory language satisfied Gemmill. "Because this request states the precise language of A.R.S. § 25-324, [Moreno] has complied with ARCAP 21(c)(1)," he wrote. He added that "the legal basis for [Moreno]'s request for an award of fees on appeal is quite clear
As I write this column, our legal community is still grappling with the loss of one of our own—Mark Hummels. Unfortunately, I did not have the honor of meeting him, but by all accounts from friends, colleagues and peers, he embodied every quality of a good attorney.

Mr. Hummels was undoubtedly a rising star in one of our most prestigious law firms—Osborn Maledon—and he was recognized by “Benchmark Litigation” as a “Future Star” in litigation. He was also a productive, valuable and contributing member to the betterment of our profession, serving as president of the Phoenix Chapter of the Federal Bar Association and providing pro bono legal services to the poor and indigent.

Mark Hummels also took an interest in the community in which he lived, serving on the training committee for Arizona Town Hall. And, above all else, he was a devoted husband and loving father of two young children.

Making this tragedy even worse is that Mr. Hummels was simply doing what each and every one of us do on a daily basis—vigorously representing a client and upholding the letter and spirit of the law. Nothing about the events that occurred on Jan. 30, 2013, are fair, and no one could have predicted that an aggrieved litigant might act out so violently.

Nonetheless, I think many of us paused during the last few days of January to reflect upon potentially dangerous or heated situations we may have been involved in during the course of our practice. I know I did.

We have all grown accustomed to metal detectors at our state and federal courthouses, and no one would legitimately argue that our judges, jurors and court staff are not entitled to these basic protections. Regardless, it seems as though our judges pro tempore, court-appointed arbitrators or those that insert themselves into dangerous situations between feuding parties should be afforded the same protections. But, what about those involved in the most basic litigation matter that has moved beyond a civil dispute and into an all out war of emotions and principles? We cannot let Jan. 30, 2013 define us, but we should try and learn from these tragic events.

To this end, and like most people, we at the MCBA have asked ourselves, “How can we help?” Well, we think a good, first start is to offer a program focusing on situational awareness and the importance of an individual’s own safety and wellbeing. This program will be offered free of charge to attorneys, the public, and anyone else who might benefit from such a program. Please be on the lookout for more information about this programming, and please join us if you can.

Finally, we typically promote our March 9 Barrister’s Ball in this issue of the Maricopa Lawyer. It seems tough to focus on such a celebration in times like these, but I also strongly believe that now, more than ever, we need to come together as a legal community. We must stay the course in our never-ending pursuit of truth and justice. Above all else, please stay safe and please stay vigilant.

OPINION
Taking the bar early: Making law students ‘practice ready’

By Jason Forcier

The beginning of 2013 brings with it a number of rule changes by the Supreme Court of Arizona. Notable is the change to Rule 34, Application for Admission. The rule change is the result of an initiative from the deans of each of the three law schools: Phoenix School of Law, University of Arizona, and Arizona State University.

The experimental change, set to expire at the end of 2015, allows law students to take the February bar exam during their final semester, so long as students meet certain qualifications and are within 120 days of graduation. This change effectively allows students to begin transitioning from legal to legal practice. View the court’s order amending Rule 34 at http://www.azcourts.gov/Pages/20/2012Rules/R120512/R120002.pdf.

Although Arizona’s change is unprecedented, it is potentially revolutionary in how it will allow law students to approach their legal education and graduation strategy. Rule 34 effectively allows Arizona’s law schools to create a voluntary certification program for their students.

To take the bar exam early, the school must certify that the student is (1) expected to graduate within 120 days of the examination, (2) in good standing, (3) has satisfied all graduation requirements, except for no more than eight semester hours at the time of the examination, (4) is not enrolled in more than two semester hours prior to the examination, and (5) the student’s school determines he or she is academically prepared for the examination.

While supported by the State Bar of Arizona, all three deans of Arizona’s law schools, and members of the legal community, opposition from the Attorney Regulation Advisory Committee (ARC) to the rule change led to the compromise approved by the Supreme Court of Arizona, on Dec. 10, 2012.

This compromise included a stipulation that students must limit themselves to two semester hours during their final semester, graduate “practice ready” in May with bar exam results (hopefully passing) in hand, and shortly thereafter, be admitted to the state bar.

This old maxim is well-known by students and lawyers around the country: “First year they scare you to death; second year they work you to death; third year they bone you to death.” Rule 34 may be the first nail in that coffin, putting an end to Arizona’s 3L’s dreaded death-by-boredom. I look forward to being one of the first students eligible for this new program in February 2014.

Take the bar exam early: Making law students ‘practice ready’

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This compromise included a stipulation that students must limit themselves to 2 semester hours the month of and preceding the bar exam (January and February), and no more than 8 semester hours after the bar exam. The concern of the ARC was that bar exam would interfere with the student’s course of study and potentially lead to disruption in the classroom.

The rule change may present serious logistical obstacles for a law school to overcome. ABA guidelines require that students have a minimum class attendance of 85%; otherwise the student must be withdrawn and given a failing grade. Therefore, the schools will likely need to revise their class schedules and curriculum to balance ABA requirements with Rule 34 restrictions.

Potentially, this issue could be resolved by providing accelerated classes to be completed either before or after the bar exam. While this issue is problematic, it is not insurmountable. The beginning of the school year, preparing for the bar exam, I believe this is an excellent opportunity to streamline law school, reduce out-of-pocket expenses, and for those of us with the initiative, give us a head start on our legal careers.

In the past, graduating law school meant studying two more months for the July bar exam, then anxiously waiting until October for the results. With the rule change, students, through planning and hard work, may voluntarily enter into a certification process, which will allow them to take the February bar exam during their final semester, graduate “practice ready” in May with bar exam results (hopefully passing) in hand, and shortly thereafter, be admitted to the state bar.

This old maxim is well-known by students and lawyers around the country: “First year they scare you to death; second year they work you to death; third year they bone you to death.” Rule 34 may be the first nail in that coffin, putting an end to Arizona’s 3L’s dreaded death-by-boredom. I look forward to being one of the first students eligible for this new program in February 2014.
O ur friend and partner, Mark Hummels, died on the evening of January 31 from injuries he suffered during the senseless shooting in Phoenix on January 30. We are devastated at the loss of our beloved friend. Our deepest sympathy and support pour out to his wife, Dana, and their two children. The trust and affection Mark inspired in every reach of our law firm and with his clients are a lasting testament we will always cherish.

We are sad beyond measure also to have lost our long-time friend and client, Steven D. Singer, the CEO of Fusion Contact Centers, in this tragedy. Steve was a long-time client of the firm and an accomplished entrepreneur. Our thoughts and prayers are with Steve’s family as well.

Mark Hummels was the best kind of lawyer—a man who was highly capable in his practice and caring to his core about his community. Still in the early years of his career, Mark earned many accolades for his skill as an attorney. He was president of the Phoenix Chapter of the Federal Bar Association and highly regarded by the state and federal bench. He was recognized by “Benchmark Litigation” as a “future star” in litigation. To judges, attorneys and other professionals, he was a trusted counselor in outside for 15 minutes to clear your head and focus on your breathing. You will be amazed at how much better you feel.

Make it a priority to leave the office at a decent hour. At some point, you have to realize all of the work will never get done—even if you stay until midnight. This was never a concept I mastered when I worked for a private firm. I always felt if I didn’t stay to finish that one last thing, the firm would crumble and the client would fire us.

Now that I am required to leave at a certain time every night to avoid overtime, I have realized there really is nothing that is important that would require you to work until 9 or 10 pm. every night. Yes, I realize there will always be a circumstance that might make you work late, but it shouldn’t be a habit.

Put down your smart-phone when you get home. My rationale for continuing to email on the couch while watching American Idol was that it helped me get a head start on the next day. In reality, it stressed me out and made it harder for me to get a good night’s sleep.

You have to allow your mind to detox from the constant go, go, go, the legal profession demands of us. There is nothing that is more urgent that would require you to respond from your iPhone at 10 pm. Put down the phone, step away, and relax!

Spring has sprung! Time to clean up your work-life balance

Spring cleaning is my favorite time of the year. I love to organize and especially love getting rid of things. But spring cleaning doesn’t only apply to clutter and dust bunnies. It can mean that you clear your mind of clutter.

Spring cleaning can be a time for you to organize your day-to-day obligations. Spring cleaning can finally be when you accomplish the perfect work-life balance. I know what you’re thinking, “The perfect work-life balance doesn’t exist!” But before you use this article as a dart board, hear me out. For most of us in the legal profession, the concept of work-life balance is the equivalent of the Kardashian family acquiring actual talent—it’s never going to happen. However, I do believe there are a handful of small changes you can implement to achieve a semi-functional work-life balance.

One of the things I hear time and time again from paralegals and lawyers alike is that they don’t have time to take a lunch. I would venture to guess some of you are probably eating your lunch at your desk while working on a motion and reading this article all at the same time.

I cannot stress to you enough how important it is to unplug for 30-45 minutes a day and enjoy a meal. When I started my new job last year, I was required to take a lunch. For the first couple of weeks, it felt very foreign for me. But, as I got used to it, I saw how much more productive I was after this break.

It helped me refresh and come back focused. If your workload does not allow for you to step away for lunch, try at least walking at least 30 minutes a day. The health benefits are numerous, and it can help you feel more energized and focused in the afternoon.

Find something you love to do. Even if this is the only time you are able to master, it’s a start! I love to bake and when I’m stressed, I bake and bake and bake. I may be exhausted when I’m done but I literally bake the stress from my life away.

If your job has demanded so much of you that you don’t currently have a hobby for enjoyment, now is the perfect time to try something new: We all have that one thing we’ve always wanted to try but never have. Well, now is the time!

Work-life balance means different things to different people; however, the overall concept is the same. By changing the things we can control in our day, we can have a huge impact on our attitudes, on our health and on the relationships with those around us.

Hey, if it doesn’t work for you, you always have the option of return to your former habits of not taking a lunch, working late every night, responding to emails at 10 p.m. and not enjoying your life.
YLD President
Melinda Sloma

Calling all young (or new) lawyers!

The YLD
Within my first few weeks of moving to Phoenix in 2007, I, by happenstance, drove by the MCBA. I made the decision to look up the number and “cold call” the MCBA to see if there were any activities for young lawyers. I did so because I was new to the area, did not know anyone in the legal field and was educated at an out-of-state law school.

I was also waiting to be formally admitted to the bar and was looking for something productive to do while interviewing. Upon telephoning the MCBA, I was immediately put in touch with the 2007 YLD President, Jennifer Cranston (also the 2012 MCBA President). Jen was very welcoming and encouraged me to attend the next YLD lunch meeting. I did and was immediately struck by the board’s enthusiasm, pro-activity and the number of opportunities available. This enthusiasm and initiative remains key features of the YLD today.

The mission of the YLD is to involve young and new lawyers in serving the community and enriching the profession while focusing on the specific needs of young and new lawyers. From my first-hand experience it has done so. One of the great things about the YLD is that it gives young lawyers the opportunity to get out of their offices and to apply their legal skills in unique settings, including community outreach activities.

There are many ways to get involved with the YLD and consequently the community. To qualify as a young lawyer an individual must be 36 years of age or younger, or have been in the practice of law for five years or less, whichever occurs last. Membership in the YLD is free of charge and automatic once an individual joins the MCBA.

The committees
Barristers Ball: The YLD hosts an annual black tie charity gala each March (March 9, this year). There are typically 250-350 attorneys, judges, and other legal professionals in attendance. This year, the beneficiary is the Maricopa County Bar Foundation, which provides legal services and assistance to the needy and legal programs for school children.

Race Judicata: This committee organizes and plans the Race Judicata 5k Run that takes place the first Sunday of October and benefits the Domestic Violence Committee and the YLD. Most of the YLD members’ activities take place in the summer and fall leading up to the event.

Domestic Violence Committee: There are two main events that the DVC puts on every year. One is the Legal Assistance to Women and Shelters (LAWs) program that runs throughout the year and provides informational sessions to women and men in domestic violence and home-based shelters around the Valley. The other program is the Necessities Drive, which occurs in October. The Necessities Drive collects items to donate to Valley shelters.

Mock Interview: Mock Interviews generally occur once during the spring and once during the fall semesters at the two local law schools. The YLD coordinates and provides volunteers to pose as potential employers so that law students may practice their interviewing techniques.

Law Week: The Law Week Committee organizes events occurring during Law Week and is centered on the ABA’s annual Law Day theme. Law Day occurs on May 1, 2013. Early planning stages of Law Week begin in January.

Mentor/CLE: The YLD recently formed the Mentor Committee to assist law students and young lawyers as they transition into the legal profession. This year the YLD is planning a CLE for new lawyers and work/life balance.

Why you should join in
The YLD provides invaluable opportunities for young lawyers. I encourage anyone who qualifies as a young lawyer to contact me at msloma@slomalawgroup.com or Laurie Williams at the MCBA at lwilliams@maricopabar.org for more information. YLD Board meetings are held on the first Wednesday of the month at the MCBA offices from 12:00-1:00 p.m.

Paying attention to what comes last

Most writers remember learning the rule not to end sentences with a dangling preposition. This advice was standard (for me) starting in about sixth grade. Although I dutifully memorized and followed this rule in my writing, I somehow missed the larger message: pay attention to what you are saying at the end of each sentence.

What I know now is that the end of the sentence is a point of emphasis for the reader. What the reader reads in that position has a tendency to linger in the reader’s mind and focus the reader on what is to come. Bryan Garner, in his book *Legal Writing in Plain English*, reminds us to end sentences emphatically in order to “brighten the style” of any legal document.

Consider the following four sentences:

1. The telemarketing scam originated in Nevada, thus the Court has jurisdiction under section 407. Pursuant to section 407 and the origin of the telemarketing scam in Nevada, the Court has jurisdiction.

2. The defendant masterminded his scam in Nevada, and the Court should exercise jurisdiction under section 407 to bring this defendant to justice.

The fourth sentence is the one that uses the end of the sentence best. The sentence adds a point of emphasis for the reader with dovetailing transitions from one idea to the next. For example, the next sentence following the fourth sentence above could transition with the phrase, “While in Nevada . . . ." Although these points may seem small and picky to the writer, especially when going sentence by sentence, they add up to big points with the reader!\[\]
Getting to know the Arizona Supreme Court’s Newest Member

Justice Ann Timmer

Justice Ann Scott Timmer previously served on the Court of Appeals from 2000 until her appointment to the Supreme Court in October 2012. She received her JD at Arizona State University (1985) and BA from the University of Arizona (1982).

Q: Before joining the Court of Appeals and then the Supreme Court, you spent 15 years in private practice. Describe how your career in civil litigation prepared you for your judicial career?

When I started practicing it was back before people were really pushed to specialize in something, so I was very fortunate that the firms that I worked with initially—especially my first firm—encouraged a variety of different experiences. They had a philosophy of “jump in, get your feet wet get experience and you’ll find what you’re good at and what you like to do and you can develop that.”

I was able to work on lots of different kinds of cases from the administrative level, to city court in zoning matters, to justice court for orders of protection, and also federal court and state court—it was a wide variety, which was wonderful experience.

The firms that I went on to work for were very generous in letting me take on different cases. After I finished a federal anti-trust case, I was asked to take on a federal habeas case, and then I was asked to second chair a murder trial that was death penalty at the superior court level.

The firm was very nice to let me do that. It was for a much more reduced hourly rate, but it gave me three months of jury trial experience in a criminal matter. By the time I was appointed to the court of appeals, I was probably one of the very few that had practiced civil and criminal and tried cases in both arenas.

You have a better sense of what goes on in court rooms, what are the practical implications of some of the rules, and why procedures are followed. It’s very helpful to get that sense so when you’re an appellate court judge, you know how they are applied.

Q: Who has been the biggest inspiration in your legal career?

William P. French, whom I met at Storey &Ross (now Squires Sanders and Dempsey, LLP). I was assigned to work with him and we really hit it off. It was a great relationship in that I saw early on the right way to do things. He was very professional. He would always say you have to keep your reputation. Your reputation is everything. There is no case or client worth sacrificing your reputation for—for being anything other than a professional, solid, good, and moral attorney.

Young attorneys face pressures to maybe be a jerk, because litigation is tough and you see it around, and everyone else is doing it. I think particularly for young attorneys, they think they need to establish themselves with a client, or a judge, or opposing counsel by being tough and kind of mean-spirited sometimes.

For example, you’ll see that you’ll need a broad range of experience. If you’d like to be a trial court judge, you’ll see that you’re going to need to answer the question of how much jury trial experience you’ve had.

So for many young attorneys, particularly if they are in private civil firms, it is difficult to get jury trial experience these days. So maybe you’ll want to do a stint at the county attorney’s public defender’s office to get some of that. Or, before you go into practice, or when you’re in practice, do some pro bono work through VLP. That will get you some more experience.

If you want to go into appellate work, you are going to have to demonstrate that you can write very well. So if you don’t write well, learn to. You can do that by focusing your CLE on writing courses or trying to draft more of your own stuff instead of just editing other people’s work. Try to take on stuff you normally wouldn’t. Get out of your comfort zone, do pro bono, or take on that administrative hearing. Anything that will give you a different experience will be helpful.

Q: What kind of art do you like?

My oldest daughter is an artist. I like modern art, but I love all kinds of art. We’ve always made it a point to visit lots of different art museums. (Hanging in her office is a signed Salvador Dalí print, Slave Market with the Disappearing Bust of Voltaire (1940) that she bought at a silent auction.) Favorite art museum? The Borghese in Rome, because of its manageable size. The art it has is fabulous plus hey—you’re in Rome!

Q: What are your plans for the future?

I have none except to do a good job here.

New Arizona Supreme Court Justice Ann Timmer talks with Maricopa Lawyer Editorial Board member Megan Pfallow in her office.

MARCH 2013 CALENDAR

All events at MCBA Office, unless otherwise specified.

1  Estate Planning, Probate & Trust Section Board meeting 7:30 a.m.
CLE: Family Law Fundamentals Session I: Working with DSS - Helpful Hints 11:30 a.m.

4  Litigation Section Board meeting Noon
Maricopa Lawyer Editorial Board meeting 5:15 p.m.

5  Awareness, Acceptance, and Action: Recognizing & Handling Dangerous Situations 4:30 p.m.

6  Young Lawyers Division Board meeting Noon

7  CLE: Triggers and Smoking Guns: Legal Holds in the Wild, Wild West – eDiscovery Noon

9  Barriers Ball 2013 6:00 p.m. - The Westin Kierland Resort & Spa, Scottsdale

11  Paralegal Division Board of Directors meeting 5:30 p.m.
Paralegal Division Conference Committee 6:15 p.m.

13  Environmental & Natural Resources Section Board meeting Noon

14  MCBA Executive Committee meeting 7:30 a.m.

15  CLE: Family Law Fundamentals Session II: Temporary Orders - Helpful Hints 11:30 a.m.

19  Family Law Section Board meeting Noon

20  Bankruptcy Law Section Board meeting 7:30 a.m.
Lawyer Referral Committee meeting Noon

21  Employment Law Section Board meeting Noon
MCBA Board of Directors meeting 4:30 p.m.

22  CLE: Fundamentals Session III: Changes: Modification of Parenting Time, Child Support & Maintenance 11:30 a.m.

25  Membership Committee meeting Noon

26  Public Lawyers Division Board of Directors meeting Noon

27  Maricopa County Bar Foundation www24reates Retreat 7:30 a.m.

29  CLE: Session IV: Understanding & Utilizing Family Services: Conference Center, ADR and MORE! 11:30 a.m.

Please watch your MCBA E-News for updated information about meetings and events.
Revolutionizing the Child Welfare System

By Vincent Funari

In less than two years, the juvenile court, with the aid of its partner, Maricopa County, has revolutionized the treatment of infants and toddlers in the child welfare system.

Former Presiding Juvenile Court Judge Edward Ballinger said, “Not long ago, young ones could spend years in a number of different homes, have their emotional mental health needs go untreated, and be denied the opportunity to achieve the parental bonding that is crucial to early childhood development.

“Today, we put in place a growing number of judges dedicated to meeting the needs of this innocent and vulnerable population. These judges, and the caseworkers and providers who work with them, have created a system that expedites infant/toddler case processing and mandates that each child’s needs are assessed and treated.”

Judge Ballinger was one of the original developers of the program in Maricopa County. “Cradles to Crayons is the part of this revolution that addresses the need to improve parent/child interaction. It supplies those involved with the juvenile court the opportunity to improve their chances of reuniting with their children.

“At the same time C2C provides judges with valuable information that aids in the court’s ultimate goal—quickly placing each child in a permanent, supportive, safe and loving environment,” Judge Ballinger said.

The C2C Child Welfare Center is the result of a collaborative effort of many public and private partners in Maricopa County. The goal of C2C is to provide infants and young children with stable, nurturing and forever families.

The various programs provided by C2C include Judicial Leadership, Expedited Court Oversight and Direction, Community Coordinators assigned to C2C judges, Community Services Resource Coordination, Early Childhood Preschool readiness, Mental Health Service Coordination including Child/Parent Psychotherapy and Supervised Family Time Coaching, and a Dependency Treatment Court.

In an effort to improve capacity and expertise in this area, internship opportunities have been developed for graduate students from several local universities to provide them with the unique opportunity to work with this population of children and families.

“Experts have known for years that infants and toddlers have languished in foster care longer than they should,” said Judge Aimee Anderson. “Research has also shown that these young children are at higher risk of developing mental health issues, developmental issues, and chronic illnesses. These little ones are also at great risk of having significant relationship problems later in life.

“Our focus at C2C—not just our new Child Welfare Center—but the court itself—is to address the significant needs of these young children and their families, in addition to getting them the permanency that they need and deserve. It is an exciting program to be involved with, as it is a result of a community coming together to help these babies.”

“The parents of young children who are in foster care face many challenges including substance abuse, domestic violence, and economic instability. Many of these parents did not have good role models for parenting,” said Juvenile Presiding Judge Colleen McNally. “At the C2C Child Welfare Center, well-trained professional staff work with these families supervising visits, coaching parents on taking care of their little ones and addressing the trauma that they have suffered.

“It is really great to see these parents interacting with their little ones in a whole new way. The Child Welfare Center is a pleasant, inviting environment located just down the street from the Durango Courthouse.”

Selected Superior Court judges preside over C2C cases at both juvenile court facilities in Maricopa County. The cases assigned to selected judges are exclusively limited to families where at least one child is under the age of three. These judges receive specialized training in areas of infant mental health, abuse, maltreatment and neglect. The judges provide expedited oversight to these cases, so that permanency can be achieved sooner than has been in the past.
New complex rules for conservators untangled at MCBA program

By Meagan Pollnow

While the probate community has previously been in the news for failing to oversee expenditures and fees incurred in incapacitated persons’ estates, changes to the Arizona Rules of Probate Procedure, effective September 2012, are designed to change all that.

That was made clear at a CLE sponsored by the Estate Planning, Probate and Trust Section in January when presenters Comr. Rick Nothwehr and former court accountant Laurie Doane discussed the new planning and budgeting rules for conservatorships.

Although these new rules have been in effect for a few months, most practitioners are only now facing their first deadline to assist their clients in complying with them. The first new requirement: a Conservatorship Estate Budget pursuant to Rule 30.3 of the Arizona Rules of Probate Procedure.

The devil is in the details

Prior guidelines and rules required conservators to file their first accounting of the conservatorship with the court about nine months after their appointment. This accounting was the court’s first opportunity to examine a conservator’s expenditures of an incapacitated person’s assets.

Now, in addition to the annual accounting, conservators must file a budget within 90 days of their appointment or when Letters of Conservator are issued. This budget must provide an estimate of monthly income, anticipated disbursements and expenses, including legal and fiduciary fees and outstanding debts.

Budgets must be completed using the forms and worksheets available for download from the Maricopa County Superior Court’s website. Required standard forms allow the court to assess each conservatorship according to the same criteria. Other forms in substantial compliance with the new rule may be used with permission from the court.

Sustainability required and if not, an action plan

Once the proposed budget is filed, the court will schedule a nonappearance hearing to determine whether it is reasonable, and most important, sustainable. The conservator is required to provide notice to all interested persons to provide them with an opportunity to object to the budget.

The budget, once completed, will reveal whether the incapacitated person’s assets will be sufficient to sustain their needs during the anticipated length of the conservatorship.

If not, the conservator must provide an asset management plan to curb expenditures or increase income or receipts to the incapacitated person’s estate.

The sustainability requirement is really a plan for managing a protected person’s estate not only within the first ten months but for the anticipated length of the conservatorship, said Comr. Nothwehr. “What we don’t want is for the monies to go out the door without that planning.”

Expenses will be monitored early and continually

Will these new requirements lead to increased legal and fiduciary fees to the incapacitated person’s estate? Perhaps in the beginning, but practitioners are encouraged to seek the services of a seasoned accountant to assist their clients in completing their Conservatorship Estate Budget, and perhaps, first annual accounting.

Conservators can save substantial fees and costs by engaging an accountant instead of relying on an attorney or paralegal to assist in compiling budgets or accountings.

Probate practitioners are also encouraged to stay in regular contact with their clients to ensure that they are complying with the budget. Within 30 days of anticipating that expenses in a single category will exceed 10% of the budgeted expense, or $2,000, whichever is greater, conservators are required to file an amended budget for the court’s review.

Probate bench will need some time to adjust

Although some grumbled at the level of detail and effort to compile a budget, the relative complexity of mandatory forms, ongoing obligation to monitor their client’s administration of the conservatorship, and likely increase in attorney’s fees incurred to the conservatorship, Comr. Nothwehr said that probate commissioners and judges can no longer wait nine or ten months for a conservator’s first accounting to learn how an incapacitated person’s assets were administered.

“We can’t afford to be surprised anymore,” he said. “We have to monitor it.”

The Judicial Farewell Gala on January 24 marked the retirement of three members of the Arizona bankruptcy bench. From left are Hon. Redfield T. Baum, Sr., Hon. Charles G. Case II, and Hon. James M. Marlar. The judges were feted at the Sandra Day O’Connor courthouse in Phoenix by over 500 judges, lawyers and friends. The MCBA Bankruptcy Section was a co-sponsor of the event.

Pro bono Financial Distress Clinic holds open house March 6

The Bankruptcy Section of the MCBA and the Volunteer Lawyers Program (VLP) in conjunction with the Phoenix School of Law have created a program that provides free legal assistance to low-income persons and families facing financial distress.

Volunteer attorneys and law students meet with clients at monthly clinics held at the Phoenix School of Law to provide legal advice and assistance on various debt-related issues including debt collection, litigation, post-judgment remedies, exemptions, non-dischargeable debts, and bankruptcy.

Volunteers assist clients with obtaining credit reports, stopping harassing telephone calls, negotiating settlements with their creditors, answering complaints, responding to applications for writs of garnishment, protecting their exempt assets, and, if necessary, filing for bankruptcy protection.

An open house for the Financial Distress Clinic will take place on the 20th floor of the Phoenix School of Law on March 6, 2013 from 4 to 6 p.m. Attorneys that currently participate in the Financial Distress Clinic will provide an overview of the program, its objectives, and the benefits of volunteering.

Sitting bankruptcy judges from the U.S. Bankruptcy Court for the District of Arizona will also be in attendance. Drinks and appetizers will be provided. Please RSVP with Maria Ramirez at mmr@eblawyers.com before March 1.

MCBA staff visited the Sandra Day O’Connor College of Law in January and Phoenix Law School in February for MCBA’s annual pizza law student recruitment. Among the over 50 students who signed up are (from left) Brandon Hinson and Carl Angstrom at Phoenix Law, and (top photo) James Sweeney and Ma Khin Pye Son at ASU.
JUDICIAL BRANCH OF ARIZONA
In Maricopa County

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For more information, contact Laurie Williams at (602) 257-4200 or lwilliams@maricopabar.org
**MARCH 2013**

**FAMILY LAW FUNDAMENTALS**

**FRIDAY LUNCH SERIES**  •  **MARCH 1, 15, 22, 29**

11:30 a.m. - 1 p.m.  •  Lunch included

May qualify for 6 credit hours (1.5 each session)

Register for all four sessions and save! Package of four (you save $55)

**SESSION I**  •  **FRIDAY  •  MARCH 1**

**Working with DES**

**Helpful Hints**

**PRESENTERS:**

Pamela Cotita, Assistant Attorney General - Child Support Enforcement Section

**SESSION II**  •  **FRIDAY  •  MARCH 15**

**Temporary Orders**

**Helpful Hints and Tips**

**PRESENTERS:**

DeShon Pullen, DeShon Pullen & Associates, PLC

**SESSION III**  •  **FRIDAY  •  MARCH 22**

**Changes:** Modifications of Parenting Time, Child Support and Spousal Maintenance

**PRESENTERS:**

Ronee Korbin, Ronee Korbin Steiner

Rebecca Marquis, Korbin Steiner & Marquis

**INDIVIDUAL PROGRAM PRICES**  •  **FAMILY LAW FUNDAMENTALS**

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**APRIL 2013**

**PERSONAL INJURY FUNDAMENTALS**

**FRIDAY LUNCH SERIES**  •  **APRIL 5, 12, 19, 26**

11:30 a.m. - 1 p.m.  •  Lunch included

May qualify for 6 credit hours (1.5 each session)

Register for all four sessions and save! Package of four (you save $55)

**SESSION I**  •  **FRIDAY  •  APRIL 5**

**Intake and Retention**

One of the most important aspects of doing personal injury work is deciding whether to take a case, especially if you are taking it on a contingency fee basis. Some of the more important issues to consider are basic: (1) clearing any conflicts of interest; (2) identifying who you represent or can represent, especially if there is more than one plaintiff in an accident that seeks your representation; (3) identifying potential defendants; (4) knowing the applicable statutes of limitation; and (5) assessing your potential client(s) at the initial meeting and making sure you obtain as much underlying information as possible to help you assess the merits and value of the case. Once you get the information and you decide to take the case, you are ethically required to document your retention with a written fee agreement. If you decide not to take the case, you should send a declination letter.

**SESSION II**  •  **FRIDAY  •  APRIL 12**

**Investigation**

Because “the devil is often in the details”, it is important to conduct a thorough investigation of your case. This means you must obtain and review all the key documents, which often include insurance policies (liability, UIM/UIM, MedPay, health), police, fire, and EMT records, medical and billing records, and employment records (if lost earnings are at issue). The assistance of a private investigator can often be of use to discovery among other things a defendant’s assets and liabilities, as well as civil and criminal backdrops. The more you know and the sooner you know it, the better position you will be in to settle or effectively try your case. Depending on the case, experts and other consultants may be needed to investigate the claim.

**ONLINE**

Register online at: www.maricopabar.org. Click on “Calendar of CLE & Events” or on the CLE program listing on the right side.

**DOWNLOAD PRINTED FORM**

Follow directions for online registration. Then, from the program’s online registration page, download a print registration form to mail or fax.

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**PROGRAM LOCATION**

Unless otherwise specified, all programs are held at the Maricopa County Bar Association office at 305 E. Palm Lane, Phoenix 85004.

**ATTENDANCE POLICIES**

**ADVANCE REGISTRATION**

Full payment must be received in advance of the program before you are considered registered.

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All registrations must be paid in full two business days prior to the program date or a late fee of $15 applies. For example, registrations for a September 17 program must be paid by September 15 in order to avoid the late fee.

**WALKINS**

You may register at the door if space is available; the $15 fee will apply. If you do not register at least two business days in advance of a program, MCBA cannot guarantee space or availability of materials.

**CANCELLATIONS/REFUNDS**

Refunds, less a $10 fee, will be issued only if the MCBA receives your cancellation, in writing by mail, fax at (602) 682-6801, or email to maricopa.phila@az.gov at least two business days prior to the program.

**NO SHOWS**

If you registered and paid, but could not attend, you may request that materials be sent to you, free of charge (allow 3-4 weeks). If audio media is available, registrations may be converted to a self-study package for an additional $15 charge.

**FAMILY LAW FUNDAMENTALS**

- Triggers and Smoking Guns: Legal Holds in the Wild, Wild West—eDiscovery
- Helpful Hints: Working with DES
- Non-Member: $102.50
- MCBA Student members: $10
- Non-members: $62.50
- MCBA members: $45
- MCBA: $410
- MCBA Student members: $10
- MCBA: $185
- MCBA members: $45
- MCBA: $102.50

**PERSONAL INJURY FUNDAMENTALS**

- Intake and Retention
- Investigation

**WEBCAST**

- Most CLEs are available for simultaneous webcast or later viewing through West LegalEd at http://tiny.cc/kg4cjw (icon indicates confirmed webcast)
Personal Injury Fundamentals
continued from page 10

SESSION III
FRIDAY • APRIL 19
Complaint, Discovery, Settlement and Liens
It is important to get an early handle on the appropriate legal claims to include in your Complaint. Once the lawsuit is filed, you need to get a handle on what facts you have and still need to prove those claims. This can be critical to understanding the strength of your case and its settlement value. This also helps you formulate your discovery plan. Often, the strength and correlating value of a case cannot be determined until after motions for summary judgment are decided. Thus, you need to make sure you have sufficient facts to overcome a motion for summary judgment. Other times the amount of available insurance and the defendant’s personal finances determine the settlement value of a case. But no matter the settlement, you must always be aware of, take into consideration and ethically dispose of any applicable liens that attach to a personal injury settlement.

SESSION VI
FRIDAY • APRIL 26
Trial
Unfortunately trial consists of way more than the fun time in court presenting the case to a jury. The pre-trial work is often the key to success. We will discuss all that is involved, including Motions in Limine, the Joint Pretrial Statement and Conference, Marking Exhibits, Proposed Jury Instructions, Verdict Forms, Voir Dire Questions and Jury selection.

MCBA Continuing Legal Education is your affordable option for top-notch programs on fundamentals and hot topics. Go to www.maricopabar.org for complete listings and immediate registration.

Awareness, Acceptance, and Action: Recognizing & Handling Dangerous Situations

TUESDAY • MARCH 5 • 4:30 - 5:30 PM

A free program for members, their staffs, and the general public

DEDICATED TO THE MEMORY OF MARK HUMMELS

The instances of violence that have affected so many communities across the country have been brought home to the Maricopa County legal community with the horrific tragedy that left MCBA member Mark Hummels and his client dead. In response we have put together this program for our members, their staffs, and the general public.

PANELISTS
Keith Manning, Deputy County Attorney
Joseph Prawdzik, Crisis Intervention Training Consultants

Admission is free, but please register your attendance at www.maricopabar.org or by calling (602) 257-4200.
BOOK REVIEW

My Brother Ron: A Personal and Social History of the Deinstitutionalization of the Mentally Ill

Author: Clayton E. Cramer
Reviewed by Ron Davidson

This is a powerful account of the tragic personal story of a young man who developed schizophrenia and the crisis in the public mental health treatment system. The timing of the book is fortuitous given the recent mass murders by alleged perpetrators with apparent serious mental health problems. The tragedies at Sandy Hook Elementary School and the Aurora, Colorado movie theater have renewed the nation's focus on the mentally ill and the failures of the public mental health system.

Clayton E. Cramer is an amateur historian, author, and software engineer. Cramer is also a gun rights advocate and has written extensively on the subject, as well as on American history. He is a conservative and generally viewed as a libertarian. These activities are off-putting to many and have brought him criticism from the political left; however his historical research is beyond reproach.

And though his book is self-published, it is a credible presentation, comparable to books written by more mainstream and credentialed authors such as Dr. E. Fuller Torrey, author of The Insanity Defense. Cramer's account is perhaps more compelling because he writes from personal experience.

Cramer's focus is the devastating effects wrought by the relatively recent policy of making involuntary commitment of seriously mentally ill persons extremely difficult. In My Brother Ron, Cramer marshals the results of his thorough research to create a book that effectively details the origins of this policy and its present-day effects.

Leaving no stone unturned, Cramer chronicles the history of the treatment of the mentally ill throughout the 250-year history of our country. But, in particular, he details the causes and result of the deinstitutionalization movement during the last 50 years. The population in state facilities peaked at 560,000 in the mid-1950s and has steadily declined to an estimated 35,000 today. When adjusted for population growth, this resents a decline exceeding 95%.

Cramer personalizes the deficiencies of the public mental health system by recounting experiences of his older brother, Ron. The story of Ron is so familiar as to be cliché. He is an intelligent young man who develops schizophrenia. We track the impact of his personal demons that lead him to social isolation, homelessness, violence, and victimization while traveling through the failed mental health system and a criminal justice system ill-prepared for the mentally ill. While Ron never achieves the normalcy, he does ultimately find a level of stability.

Cramer recognizes that the deinstitutionalization movement was well-intentioned but miserably planned. It is a tragic example of unintended consequences. While there were truly patient abuses in “snake pits” and inadequate care in state facilities, it is hard to argue that the current system is better for the treatment of the mentally ill and the safety of society.

The movement to restrict involuntary hospitalization and elimination of state institutions resulted from the convergence of disparate motives, including:

- Development of first-generation anti-psychotic medications, which permitted treatment outside of institutions;
- Civil libertarians desire to severely restrict, if not totally prohibit, involuntary admissions;
- Mental illness deniers who claimed that mental illness did not exist, while likening state facilities to the politically oppressive Soviet Union mental hospitals;
- Support of the Community Mental Health Center (CMHC) movement that envisioned effectively serving the mentally ill in their home communities;
- Financial motives of state officials to transfer the bulk of the costs from states to the federal government through Medicaid and block grants.

As a result of successful lawsuits and state legislation, involuntary admissions were severely restricted and nearly eliminated in some states. Regrettably, the community-based system never lived up to expectations. The CMHCs were inadequately funded and often did not effectively serve the seriously mentally ill. Proprietary nursing homes frequently housed the mentally ill but without effective treatment. Non-profit agencies were typically overwhelmed and lacked adequate resources. (This is a difficult admission for this reviewer to make, since he spent five years of his early career planning and implementing statewide community mental health plans in a Midwestern state.)

A spin-off of the deinstitutionalization movement was the introduction of the right of the severely mentally ill to deny treatment. As a consequence, troubled patients with obviously impaired judgment could determine their course of care—or more commonly, non-care.

The system Cramer describes has failed the severely mentally ill and given them the legal right to live a miserable existence. These individuals are frequently victimized and occasionally victimizers. Widely respected estimates are that 15% of the prison population and one-third of the homeless suffer from serious mental illness.

As is often the case in social movements, California led the way in mental health changes. The Lanterman-Petris-Short Act, effective in 1968, was hailed as model for the country and soon replicated in other states. Years later, Frank Lanterman recognized the disaster that resulted from the LPS Act. Cramer quotes him as declaring, “I wanted the LPS Act to help the mentally ill. I never meant for it to prevent those who need care from receiving it. The law has to be changed.”

Readers can find other accounts of the failed mental health system in Dr. E. Fuller Torrey’s book, The Insanity Defense. Torrey provides tragic anecdotes substantiated with statistical analysis of the relationship between deinstitutionalization and the increase in violent crimes committed by the mentally ill. Both Cramer and Torrey suggest system changes to better serve the severely mentally ill while offering greater protection to society.

---

Ron Davidson is a retired mental health and child welfare administrator. He is graduate of Arizona State University (BS) and the University of Chicago (MA).
Past Presidents’ Breakfast

MCBA past presidents and current board members gathered for the annual Past President’s breakfast on Jan. 10. Shown here are past president, Hon. James McDougall (ret.), MCBA’s ABA representative Chas Wirken, and board treasurer T.J. Ryan.

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**VLP ATTORNEY OF THE MONTH**
Non-traditional early years helped mold a community-minded lawyer

By Peggi Cornelius,
VLP Programs Coordinator

“One client cried tears of joy, after I gave her very simple advice.”

Attorney Christopher Van Mullem recalls the touching expression of gratitude he says is common among people he meets through his pro bono work with the Volunteer Lawyers Program. “People who could otherwise not afford legal counsel are so appreciative to have their questions answered and their legal issues resolved,” he said.

Van Mullem is the most recent recipient of VLP’s “Attorney of the Month” award. A graduate of Thomas M. Cooley Law School, he has spent four years establishing his civil law practice. Within months of being admitted in Arizona, he incorporated pro bono work into his professional endeavors, participating in a local television segment entitled “Lawyers on Call,” offering assistance to members of his church congregation, and seeking out the VLP to inquire about the needs of low-income clients.

Referring to himself as a “granola kid,” raised primarily on food his parents grew, Van Mullem describes his family heritage as a “blend of merchant and blue collar people.”

“Most of my childhood, the heating fuel in our Wisconsin household was firewood.”

Perhaps the discipline and hard work of his life close to the land, helped shape Van Mullem’s sense of community and his early choices as a young adult. “During high school, I participated in a Law Satellite Program in which I observed and wrote about court cases in the Milwaukee County Courthouse. As a result of an educational desegregation lawsuit, I volunteered to be bussed across district lines to attend an inner city school.”

Speaking of a later forestry job he held before attending law school, Van Mullem says, “The work removing trees and vegetation encroaching on electrical distribution lines was often very dangerous, but it provided a great sense of camaraderie.”

With an appreciation for the challenges others face, and an awareness that overcoming difficulties is more easily accomplished when people work together, Van Mullem joined VLP in 2009. At that time, requests for advice related to indebtedness were dramatically increasing.

Van Mullem attended CLE programs, observed other volunteer attorneys conducting debt counseling interviews, and soon began providing advice to people whose meager incomes were protected by law from garnishment. He also became familiar with Arizona’s Residential Landlord & Tenant Act, so he could advise tenants regarding their rights and legal remedies for common disputes with property owners or managers.

By 2012, one of the areas in which Van Mullem had begun to focus his practice was family law. VLP’s Family Lawyers Assistance Project (FLAP) was a natural place for him to turn his volunteer efforts, and he has donated more than 100 hours in less than a year.

FLAP Coordinator, Karen Jackman, describes Van Mullem as empathetic toward people who can’t afford to hire an attorney, diligent in researching legal issues, generous in assisting unrepresented litigants beyond the time he spends at FLAP, and particularly compassionate and understanding in custody matters involving domestic violence.

Van Mullem notes he has especially enjoyed collaborating with other volunteer attorneys, mentioning a current case in which an estranged spouse has denied the client access to jointly held income and settlement proceeds that are the client’s sole and separate property. “To colleagues who may not be engaged in pro bono work, Van Mullem comments, “Give it a try. You may be surprised.”

**VOLUNTEER LAWYERS PROGRAM THANKS ATTORNEYS**

The Volunteer Lawyers Program thanks the following attorneys and firms for agreeing to accept pro bono referrals from VLP to help low-income families. VLP supports pro bono service of attorneys by screening for financial need and legal merit and provides primary malpractice coverage, donated services from professionals, training, materials, mentors, and consultants. Each attorney receives a certificate from MCBA for a CLE discount.

For information about ways to help please contact Pat Gerrich at VLP at 602-254-4714 or paggerich@clsaz.org.

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**Get-a-Member Campaign**

(Gets you free CLE and maybe a $100 gift card!)

WE’D LIKE TO ENCOURAGE YOU TO RECRUIT NEW MEMBERS FOR THE MARICOPA COUNTY BAR ASSOCIATION.

Here’s how it works:

All recruited new members (hasn’t been a member for at least a year) receive a certificate for one hour of free CLE. If you recruit one new member, you receive one hour of free CLE. For every new member you recruit up to four, you receive additional hours of free CLE. And, if you bring in five new members, you receive four hours of free CLE plus a gift card for $100.

Certain restrictions apply. Contact info:
Call the Membership Department for details at (602) 257-4200 or check the MCBA website at www.maricopabar.org.

**PRO BONO SPOTLIGHT ON CURRENT NEED**

Volunteer attorneys and volunteer law students are needed to assist families who have problems with debts, debt collection or need to file a new case involving 7 bankruptcy or need to stop loss of their limited wages.
Court rescues unwary litigant

CourtWatch, continued from page 1

because it was presented in the exact language of the statute, [Moreno] specifically cited § 25-324 when requesting fees in family court, and § 25-324 is generally applicable in family court cases.

Gunnell disagreed with what he called his "dissenting colleague's view that ARCAP 21(c)(1) requires a bluebook citation even though the brief otherwise 'specifically states' the statutory basis for the award." In his dissent, Judge Andrew W. Gould did not actually argue that litigant must use proper citation form. But he did argue that it requires the litigant to actually identify the underlying authority. Calling the rule's requirements "clear and unambiguous," he wrote that Moreno had "cited no substantive basis for her fee request, and as a result she is not entitled to an award of fees."

"I recognize that [Moreno] has alleged in her brief the requisite grounds for recovery of fees under A.R.S. § 25-324(A)," Gould wrote. "However, she has not cited A.R.S. § 25-324(A), the statutory basis for the fee award. While some may view this as an overly mechanical approach," he continued, "I view it as a bright-line rule that has been clearly laid out for over 25 years. If the rule seems harsh or unfair, the proper remedy is to amend the rule," Gould concluded.

Wig and fake mustache approved to shield witness's identity

Some time back, during the televised cover- age of William Kennedy Smith's rape trial, the face of his accuser was obscured on TV as she testified. An electronically generated blue dot was superimposed over her face to help ensure her anonymity.

But what do you do when you don't want the people actually in the courtroom to recog- nize a witness? How do you shield his identity without still allowing the jury to assess his true- ness? In a federal criminal trial recently con- ducted in Arizona, the solution was to allow the witness to don a light disguise. The Ninth Circuit affirmed the district court's solution in United States v. Jesus Casteneda, No. 11-10397 (9th Cir. Jan. 30, 2013).

The government charged Jorge de Jesus-Casteneda with possession of methamphetamine with intent to distribute. Jesus-Casteneda was one of the government's key witnesses at his trial, but his identity was unknown to the jury. To shield [his] identity, "so too does a jury assess a witness's credibility by watching the actor's demeanor," Bea wrote, citing four factors.

First, the witness "was physically present in the single topic of mobile transformation. Paul lead article," Transformation," discusses how the rise of mobile devices, cloud computing, and social media are revolutionizing society and the practice of law. Located in the Phoenix office, Paul is an experi- enced business litigator and partner in the firm's Litigation Practice Group. He is an expert in technology law, and has written two books and numerous articles on various technology subjects.

ACHIEVEMENTS

Lewis and Roca, LLP announces that litigator George L. Paul served as editor of a special double issue of SciTech Lawyer Magazine (Winter 2013). This is the first time in the magazine's more than nine-year history that a special double issue has been devoted to the single topic of mobile transformation. Paul lead article, "Transformation," discusses how the rise of mobile devices, cloud computing, and social media are revolutionizing society and the practice of law. Located in the Phoenix office, Paul is an experi- enced business litigator and partner in the firm's Litigation Practice Group. He is an expert in technology law, and has written two books and numerous articles on various technology subjects.

Awards

The Foreclosure Mediation Unit at the Sandra Day O'Conner College of Law at Arizona State University has received the 2012 Outstanding Practical Achievement Award from the American Bar Association Commission on Racial and Ethnic Diversity in the Profession. Lynk is the only African-American faculty member at the law school and the second in the history of the law school to receive tenure.

Before attending Harvard Law School, Lynk served as a volunteer with Volunteers in Service to America and lived in a public housing project in St. Louis to assist its residents with employment, housing and nutritional needs. He was a founding member of the District of Columbia's Conference on Opportunities for Minorities in the Legal Profession, which works with law firms to foster greater minority re- cruitment, hiring, retention and promotion practices.

Promotions

BERK & MOSKOWITZ, PC, a Scottsdale-based law firm, announces that Daphne Reaume and George Smith have become shareholders of the firm. Both have general civil litigation practices and have been recognized by Super Lawyers for their expertise in personal injury, and real estate disputes. George Smith is an associate in Lewis and Roca's Business Transactions practice group. His practice focuses on mergers and acquisitions, business entity formation, corporate governance, regulatory compliance, and shepherding deals from initial negotiation to a successful close as well as franchise law and entertain- ment law.

LEWIS & ROCA, PLLC is pleased to announce that attorney Matthew Engle was recently named President of the Phoenix Sympho- ny Young Professionals (PSYP). Engle's term began in January 2013 and extends through the Phoenix Symphony's 2013-14 season. As President, he is responsible for the overall vision and direction of PSYP, overseeing its boards and committees, and serving as the group's liaison with the Phoenix Symphony.

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Mergers

Mariscal, Weeks, McIntyre & Friedlander, P.A., based in Phoenix, and Dickinson Wright PLLC, with offices in Michigan, Arizona, Nevada, Ohio, Tennessee, Washington, D.C., and Toronto, Ontario, have announced, effective Jan. 1, 2013, the combination of their law practices. In Arizona the combined firm will operate under the name Dickin- son Wright/Marisical Weeks. The combined firm will remain at its current location at 2001 N. Central Ave., Suite 200, in Phoenix.

The combined firm will have approximately 300 lawyers in North America, covering more than 40 practice areas. Gary L. Birnbaum, managing director of Matical Weeks, and several other shareholders will be appointed to leadership roles in the administration of the combined firm. Remaining with the combined firm in Phoenix will be existing Dickinson Wright partners Tom C. Arendt and Victoria L. Orze.

Matical Weeks was founded more than 40 years ago in response to Arizona's growth in litigation forces and evolved into one of Arizona's largest firms with approximately 60 lawyers and over 20 practice areas. Dickinson Wright, PLLC provides comprehensive legal services to a broad range of clients, from Fortune 500 companies to small business, new ventures, individuals and governmental units. The CEO of Dickinson is William T. Burgess.

If you are an MCBA member and you've been promoted, hired an associate, taken on a partner, or received a promotion or award, we'd like to hear from you. Talks, speeches (un- less they are of national stature), CLE presentations and political announcements are not accepted. In addition, the Maricopa Lawyer will not print notices of honors determined by other publications (e.g., Super Lawyers, Best Lawyers, etc.). Notices are printed at no cost, must be submitted in writing, and are subject to editing. Items are printed as space is available. News releases regarding lawyers who are not MCBA members in good standing will not be printed.

BULLETIN BOARD POLICY

If you are an MCBA member and you’ve been promoted, hired an associate, taken on a partner, or received a promotion or award, we’d like to hear from you. Talks, speeches (unless they are of national stature), CLE presentations and political announcements are not accepted. In addition, the Maricopa Lawyer will not print notices of honors determined by other publications (e.g., Super Lawyers, Best Lawyers, etc.). Notices are printed at no cost, must be submitted in writing, and are subject to editing. Items are printed as space is available. News releases regarding lawyers who are not MCBA members in good standing will not be printed.
Justice Frankfurter made clear the Court was sticking to Betts’ “flexible” rule, since “abrupt innovation” of a universal counsel requirement “would furnish opportunities hitherto not contemplated for opening wide the prison doors of the land.” Several cases thereafter found special circumstances lacking.

The Court’s last decision affirming a state-court criminal conviction involved the case of a defendant in claims of arrest in 1950. It thereafter found special circumstances requiring counsel in every such claim it agreed to hear, sometimes where the legal questions presented “were often of only routine difficulty.”

Justice Black began challenging Betts in 1960. Hadn’t v. North Carolina, 363 U.S. 697, 704 (1960), then held counsel was constitutionally required because of possible prejudice. Justice Clark’s dissent, joined by Justice Whittaker, argued the Court’s opinion, “without so much as mentioning Betts v. Brady, cuts serious inroads into that holding.”

Justice Whittaker’s majority opinion in McNeal v. Cohen, 365 U.S. 109 (1961), reversed an assault conviction based on “special circumstances.” Justice Douglas’s concurring opinion, joined by Justice Brennan, argued for overruling Betts, since it “is so at war with our concept of equal justice under law. Are we to wait to overrule it until a case arises where the indigent is unable to make a convincing demonstration that the absence of counsel prejudiced him?”

Two other cases reaching the Court in 1961 provided opportunities to overrule Betts. However, before the first such case, Carnley v. Cochran, decided, Justice Whittaker retired effective April 1, 1962. Four days later, Justice Frankfurter was hospitalized with disabling strokes. He retired in August 1962. Lucas A. Poe Jr., The Warren Court and American Politics 205, 209 (2000); Lewis 116.

By early 1962, Chief Justice Warren was “amorous” to overturn Betts and looking for the proper case. A majority of the remaining justices were also ready to do so, but unwilling to use Carnley as that case. The Court therefore filed a unanimous “special circumstances” opinion by Justice Brennan reversing Carnley’s conviction on April 30, 1962. Carnley v. Cochran, 369 U.S. 806 (1962), Justices Black, Douglas and Warren’s concurring opinions stated their “disdain” for Betts. Justice Douglas’s opinion also noted Justice Brennan had previously favored overruling Betts.

The second case, Douglas v. California, involved the right to appointed counsel for indigent defendants, both at trial and on appeal. It was argued on April 17, 1962, the day after Justice Byron White replaced Justice Whittaker. The Court then had the votes to overturn Betts. Five justices had joined Justice Douglas’s draft opinion doing so in Douglas by mid-June 1962. However, with only two days remaining in its term, the Court set Douglas for re-argument during the next term at its final conference on June 22, 1962. It then also had appointed Fortas to represent Gideon. Justice White therefore concluded and the other agreed that Fortas “should have the privilege of arguing the case that interred Betts, rather than arguing a pro forma case after Douglas.” Douglas therefore was put over so Fortas could win Gideon.

Douglas was reargued the day after Gideon and decided on the same day, with the same result. However, Douglas was decided primarily on equal protection grounds. Gideon thus won in the Supreme Court before his case was ever briefed or argued. Fortas’s efforts on his behalf were simply “window dressing, following the forms of justice at the Supreme Court.”

Gideon’s background

Clarence Gideon undoubtedly was unaware of this history. He was 51, indigent, white, appeared prematurely aged and frail, and had limited education. He was not a professional criminal, but violent. He had been in and out of prison much of his life, based on four felony convictions. He made his way by gambling and occasional thefts.

Gideon was charged with breaking and entering a pool room on June 3, 1961, with the intent to commit a misdemeanor; breaking and entering (burglary). He requested appointed counsel at his trial, stating, “the United States Supreme Court says I am entitled to be represented by counsel.”

The court denied that request because Florida law required appointment of counsel only in capital cases. Gideon did not argue any “special circumstances” requiring appointed counsel. His request therefore was then legally incorrect.

Gideon participated actively in his trial. He briefly cross-examined the prosecution’s two witnesses and called eight defense witnesses. He also made a short closing argument emphasizing his innocence. He did not make any objections, request or object to any jury instructions, or press any favorable lines of defense. However, there appeared to be no “special circumstances” requiring appointed counsel.

The jury convicted Gideon. The court imposed the maximum five-year sentence on August 25, 1962. Gideon filed a hand-written habeas corpus petition from prison with the Florida Supreme Court, claiming the trial court’s refusal to appoint him counsel denied his rights “guaranteed by the Constitution and the Bill of Rights.” That court denied him all relief, without an opinion.

Supreme court proceedings

Gideon’s timing was crucial to his success. His five-page, penciled certiorari petition and motion for leave to appear in four weeks arrived at the Court on January 8, 1962. The petition repeatedly asserted his conviction violated the Fourteenth Amendment’s due process clause because, as a poor man, he was tried for a felony without a lawyer. However, it did not allege any “special circumstances” or otherwise attempt to come within Betts. Nothing indicated Gideon had ever heard of Betts. Florida did not initially respond to the petition. After Chief Justice Warren’s “watchful clerks” preliminarily reviewed it, the clerk therefore requested a response. That 13-page typewritten response assumed Betts remained inviolate. It argued Gideon had not claimed any exceptional circumstances, unfairness or lack of fundamental justice in his trial.

However, it did not consider the possibility the Court might be prepared to overrule Betts. Gideon’s four-page penciled reply again simply argued he did not receive a fair trial because the court had refused to appoint him an attorney. “It makes no difference how old I am or what color I am or what church I belong to or if any.”

The Court granted Gideon’s petition on June 4, 1962. Its order also stated counsel’s briefing and arguments should discuss, “Should this Court’s holding in Betts v. Brady, 316 U.S. 455, be reconsidered?” Although Gideon did not then have counsel and had not argued Betts should be overruled, the Court finally had found the case to do so.

When the Court granted Gideon’s petition, the clerk’s office also advised him that, assuming he desired appointed counsel, he needed to file such a motion. Gideon did so in a response received on June 18, 1962. The Court immediately appointed Fortas as such during its June 22, 1962 conference. request of defense to any jury instructions and “doubt as to form” at Arnold, Fortas & Porter in Washington, D.C. He was a “high powered” lawyer, an “outstanding appellate advocate” and skilled in Supreme Court advocacy. He belonged to a committee appointed by Chief Justice Warren to recommend changes in the Federal Rules of Criminal Procedure. He was Lyndon and Johnson’s “old friend and counselor,” leading to his appointment to the Court in 1965. He also was a friend of Justices Black, Brennan and Douglas. Fortas resigned from the Court and returned to private practice in 1969. He died in 1982.

Gideon 50 years later

After the Court granted Gideon’s petition, Florida invited all of its state attorneys-general to file briefs in the case. Instead, 23 states filed an amicus brief calling for overruling Betts and making many of the same arguments Fortas had made for Gideon. The ACLU also filed an amicus brief supporting Gideon. Only Alabama and North Carolina filed an amicus brief supporting Florida.

The Gideon decision

A layman therefore “requires the guiding hand of counsel at every step in the proceeding against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.”

The Court therefore finally overruled Betts because it “departed from the sound wisdom upon which the Court’s holding in Powell v. Alabama rested.” It also agreed with the 23 amici’s argument that Betts was “anachronism when handed down” and “should now be overruled.”

Justice Harlan’s concurring opinion agreed Betts should be overruled, but argued it should have “a more respectful burial.” Although the Court had continued to give lip service to the special circumstances rule, its substance had been “substantially and steadily eroded,” since the mere existence of serious criminal charges created circumstances requiring counsel at trial. The Betts rule thus was “no longer a reality” and therefore should be abandoned.

Gideon’s effects

Gideon has been considered “the Warren Court’s only popular criminal procedure decision,” based on the Goldman’s Trumpet book and television movie starring Henry Fonda as Gideon and Jose Ferrer as Fortas. Gideon was acquitted at his August 1963 retrial after appointment of local trial counsel. He died of cancer in 1972.

In response to Gideon, steps were taken nationally to provide and pay for lawyers for poor defendants, including state legislation, creating public defender offices, paying for court-appointed counsel, and preparing rosters of lawyers available for court appointments. Liva Baker, Miranda: Crime, Law and Politics 82 (1983). How Gideon led to such later decisions as Miranda will be discussed in this article’s concluding installment next month.

Paul G. Ultra recently retired as a Phoenix lawyer. His former practice emphasized civil appeals and related litigation. Between November 1965 and October 1969, he was one of the lawyers at Lewis and Rasa who represented Ernesto Miranda. Viewpoints to the cases and books noted in the text have been removed for space reasons. This article with all citations included is available on request from the editor at davidson@maricopapub.org.
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