Scheduling Conference Panel Established

By J.W. Brown
Maricopa Lawyer

The Superior Court is establishing a Scheduling Conference Panel after a year-long suspension of the previous Criminal Continuance Panel, because the number of pending cases has reached an unacceptable level.

In mid-September, Presiding Judge Barbara Rodriguez Mundell alerted the Superior Court bench that a record number of criminal cases were being sent to case transfer—a sign that judges were overloaded and overbooked.

Recently, 19 cases were awaiting reassignment from judges unable to try the cases as scheduled. Court officials believe this is the highest number of cases ever awaiting transfer to a different judge.

“Although criminal case filings have increased, this alone does not account for the backlog,” Mundell said, noting that other contributing factors include the growing volume and length of continuances, an unmanageable number of calendar settings and a loss of trial date certainty.”

Mundell said justice suffers when cases are not tried as scheduled. Court officials believe this is the highest number of cases ever awaiting transfer to a different judge.

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U.S. Supreme Court Nominations Often Unsuccessful

The Honorable Patrick Irvine
Special to Maricopa Lawyer

What do William Hornblower, Ebenezer Hoar and Robert Bork have in common? Each was an unsuccessful nominee to the United States Supreme Court. In fact, over the course of our nation’s history, almost one in five Supreme Court nominations have been rejected, withdrawn, postponed or simply ignored by the Senate. Each nominee started with the full support of the president of the United States, but confirmation by the United States Senate proved elusive.

The first rejected nominee was John Rutledge, nominated by George Washington in 1795 to succeed John Jay as chief justice. Modern presidents should remember that not even one of the founders of our country could always get the Senate to go along with his wishes! Rutledge had previously been appointed as an associate justice, but did not attend any court sessions. As a delegate to the constitutional convention, he strongly defended slavery, but this was not regarded as a disqualifying position at the time, and Rutledge was considered by the president to be a loyal Federalist. Rutledge served five months as chief justice under a recess appointment, participating in two cases, but was ultimately rejected because of his public opposition to the administration’s own diplomatic policy, as well as reports of his insanity.

Senate-driven failures

During the nineteenth century, a Senate controlled by the opposing party, or political opposition by one or more senators, was the common background of many failed nominations. John Tyler succeeded to the presidency upon the death of William Henry Harrison, but had little support from any party in Congress. Of the five nominations he sent to the Senate, one was rejected outright, while three were either withdrawn after consideration was postponed or the Senate simply never acted.

President Andrew Johnson, another unrelected president, got a similar lack of action from a hostile Senate for his sole nomination. In Johnson’s case, the hostility between the president and Congress was so intense that Congress passed legislation reducing the number of justices from ten to seven, to occur through attrition, so that Johnson could not make any appointments. After Johnson left office, the number was almost immediately increased to allow additional appointments.

Johnson’s successor, Ulysses S. Grant, had somewhat greater success with a Senate dominated by his own party, but even he ran into opposition for his choices. Considering the legendary corruption of the Grant administration, it is not surprising that at least one of his nominees should run into trouble on ethical grounds, but Ebenezer Hoar’s nomination was rejected because he was not corrupt enough! As Grant’s attorney general, Hoar refused to go along with certain senators’ demands for patronage appointments, and they repaid him by rejecting his appointment to the Supreme Court. Appointing a chief justice to replace Salmon Chase proved to be tough for President Grant. Numerous possible candidates refused to be appointed, two names (George H. Williams and Caleb Cushing) were actually sent to the Senate but withdrawn within days or weeks. By the time, Morrison Waite was nominated and confirmed it was clear to all that he was not high on the president’s original list!

Democratic presidents ran into similar problems. Twenty years after Grant, the Senate rejected Grover Cleveland’s nominations of William Howard and Wheeler Peckham because of the opposition of a New York senator who had been offended by them in the rough and tumble of New York politics.

Likeminded success

Nominees had better luck in the twentieth century. From 1900 to 1967, only one nomination was rejected: John Parker who was nominated by President Herbert Hoover in 1930. By that time the stock market crash and its aftermath had seriously weakened Hoover’s presidency, and the Senate rejected the nomination in the face of organized opposition from labor and civil rights groups. More than forty other nominees in this period were confirmed, in large part because the president and the Senate were generally of the same party.

But even a friendly Senate was not enough to save every nomination, particularly when the president was a lame duck. In the summer of 1968, President Lyndon Johnson nominated Abe Fortas to replace retiring Earl Warren as chief justice. Although the Senate was controlled by the Democrats, Johnson was not a candidate for reelection and the Republicans believed that the election could go in their favor and allow a Republican president to appoint the next chief justice. As the months passed without a nomination, ethical questions about Fortas became the focus of the debate. When the Senate leadership’s attempt to force an end to debate through a cloture vote failed, the nomination was withdrawn. As a result, newly-elected President Richard Nixon appointed Warren Burger to be chief justice, a post he held until 1986.

This initial success by the new administration was short-lived. After Fortas resigned in 1969, two of President Nixon’s nominees to replace him were rejected—Clement Haynsworth and G. Harrold Carwell. Carwell’s professional qualifications were the subject of much debate in the Senate, leading to one of the most memorable comments in

See Scheduling page 16
See Court Watch page 4
See Supreme Court page 3
William H. Rehnquist: Champion of an Independent Judiciary

Get Ready to Vote

October YLD Potpourri

The fall catalogs in my mailbox signal that the seasons should begin changing any minute now. In Arizona, we welcome a return to double digit temps but are a tad envious of those enjoying autumn's crisp colorful leaves, pumpkin soup, and chilly afternoon college football games. Luckily, that doesn't mean we can't play along, so grab a flannel blanket and enjoy some October potpourri:

- Kudos to our volunteers for October's Necessities Drive as they tackle domestic violence. Thanks again to local donors as we look ahead to next year's roster of events to promote domestic violence awareness.
- Thanks all for volunteering for the Phoenix legal community's organized effort to help the Katrina victims who were relocated to our own backyard. We quickly responded to the governor's office's call for help and several attorneys gave free legal advice.
- And, finally, we are giddy to announce our first YLD 5K Run, Race Judicata, on Sunday, November 6th, at Papago Park, near the Phoenix Zoo. The legal community is invited to run or walk to help raise money for YLD's many yearly projects—Domestic Violence Committee, Law Week 2006, Membership Committee, and more. Thanks to our event sponsors: Lex Soluto, Hawkins & E-Z Messenger Service, Snell & Wilmer, Fenimore Craig, Gallagher & Kennedy, Bonnett Fairbourn, and Cirle K. Please register yourself, your family, or a group in your office. Kids are welcome and we have a Kids' Dash immediately following the race. Cost is $20 for MCBA members and teams (10 or more runners) and $25 for non-MCBA members. Kids (under 18) are $10, and everyone gets a goody bag and a T-shirt, with grub & awards following the Kids' Dash. Please mark your calendars for what we hope will be the start of another fun and successful YLD tradition.

voting eligibility can be directed to Monica Rapps at membership@maricopaparalegals.org.

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Hurricane Katrina Volunteer Update

The MCBA extends an enormous thank you to all the legal professionals who donated their time, energy and money helping the victims of Hurricane Katrina. Volunteers’ efforts were outstanding. We also wish to recognize the MCBA Young Lawyers and Paralegal Divisions, who put great work into collecting items and coordinating volunteer efforts. The MCBA encourages each of you to continue volunteering, as we have many daily ongoing needs in our local community.

Domestic Violence Necessities Drive 2005

The MCBA Young Lawyers Division will be holding its annual Domestic Violence Necessities Drive on October 21, 2005. Donations are being accepted now through October 14. The Committee is seeking monetary contributions as well as donations. To donate or volunteer, please contact Mona Fontes at (602) 257-4200 x131 or mfontes@mcbabar.org.

MCBA YLD Race Judicata

Please join the MCBA YLD by running or walking at its first Race Judicata on Sunday, November 6, 2005 at 7:30 a.m. at Papago Park. The race will raise money for the Young Lawyers Division to benefit its community service committees. Children are welcome! MCBA members cost $20, Non-Members pay $25 and anyone registered on a team pays $20. For more information, or to register, please contact Mona Fontes at (602) 257-4200 x131 or mfontes@mcbabar.org.

MCBA 2005 Annual Meeting

The Maricopa County Bar Association 2005 Annual Meeting will be held on Tuesday, November 15, from 5:30 to 7 p.m., at the America West Arena Pavilion. Event attendees will gain invaluable networking opportunities at the unique membership reception, which will feature hors d’oeuvres, a no host bar and a visual presentation highlighting the numerous contributions of outstanding MCBA members. There is no cost for MCBA members to attend and a $25 cost for non-members. We kindly suggest a contribution to benefit the Justice Learning Center and Museum as well as the MCBA Young Lawyers Division’s Hurricane Katrina efforts to help displaced law students.

Save the Date: 2006 Barristers Ball

The 2006 MCBA Barristers Ball and Silent Auction will be held at The Phoenician on Saturday, March 4. Mark your calendars and join us for this festive event. The 2006 Ball’s beneficiary will be Arizonans for Children, a group that serves the unmet needs of abused, neglected, and abandoned children and supports the work of the Court Appointed Special Advocates (CASA).
Apples and oranges

Means moved to dismiss, arguing that the court had no jurisdiction. He testified that the difference between an Oglala-Siouan and a Navajo is like the difference between an American and a French person. He also could never become a Navajo member because that required at least one-quarter Navajo blood. He found it difficult to find work because of tribal preferences given to Navajos. He claimed that tribal restrictions made it hard for non-Navajos to find employment and participate in civil life. The court rejected Means' challenge, and the Navajo Supreme Court agreed. It noted that the Navajo reservation is larger than many states and foreign countries, is inhabited by over 9,000 non-navajo Indians, and had problems with domestic violence. It was important for the tribe to "exercise criminal jurisdiction over all who enter the Navajo Nation," not just Navajos. It acknowledged that Means could not become a Navajo and faced certain economic barriers but noted that he was a "hadane," an in-law with connections to his wife's clan.

Means sought habeas corpus in district court, but was denied. The Ninth Circuit affirmed, Means v. Navajo Nation, No. 01-17489 (9th Cir. Aug. 23, 2005).

Judge Andrew J. Kleinfeld first turned to cases on limitations of the Indian tribes' criminal jurisdiction, and Congress' response. Oliphant v. Suquamish Indian Tribe, 435 U.S. 355 (1974), held that "federal statutory recognition of Indian status is 'political rather than racial in nature.'" Therefore, there need only be a rational basis for the different treatment. And Kleinfeld found it: allowing the tribes to prosecute non-member Indians promoted Indian self-government.

Ordinary conduct

Kleinfeld noted the size of the Navajo Nation and its need to maintain order within its borders. "The 1990 Amendments ... were meant to protect Indians, as well as others who reside in or visit Indian country; against lawlessness by nonmember Indians who might not otherwise be subject to any criminal jurisdiction."

"The Navajo Nation," he wrote, "has a sophisticated body of published law, and an experienced court system in which trained trial and appellate judges adjudicate thousands of cases per year."

Means finally relied on the "bad men clause" of the Treaty of 1868 that ended the war between the U.S. and the Navajo Nation. Under it, the U.S. agreed to prosecute "bad men among the whites, or among other people subject to the authority of the United States, [who] commit any wrong upon the person or property of the Indians."

Kleinfeld reconciled the treaty with the 1990 Amendments. "The treaty obligates the United States to arrest and punish offenders against the Navajo, under federal law," he wrote, "but it does not say that the Navajo cannot do so on their own, and there is nothing in the treaty language inconsistent with ... concurrent jurisdiction ..."

Joining Kleinfeld were Circuit Judge Johnnie B. Rawlinson and District Judge Justin L. Quackenbush.

... The other decision touched on the interrelationship between the jurisdiction of Navajo and Arizona courts.

In a special action, Division One held that a state court need not defer to a Navajo, under federal law, he wrote, "but it does not say that the Navajo cannot do so on their own, and there is nothing in the treaty language inconsistent with concurrent jurisdiction ..."

Joining Kleinfeld were Circuit Judge Johnnie B. Rawlinson and District Judge Justin L. Quackenbush.

Lara v. Reina

Carl v. Reina, 495 U.S. 676 (1990), held that tribes lacked criminal jurisdiction over non-member Indians. "[A]l American citizens, Indians were entitled not to be subjected to the criminal authority of sovereigns of which they were not and could not become members," Kleinfeld wrote.

Blood thinner than water?

In 1990, Congress amended the Indian Civil Rights Act to provide "the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians."

By judicial gloss, "all Indians," as American citizens who are not Indians. But Lara v. Reina, 514 U.S. 193 (2004), held that "Congress does possess the constitutional power to lift the restrictions on the tribes' criminal jurisdiction over nonmember Indians as the statute seeks to do."

It concluded that "the Constitution permits tribes, as an exercise of their inherent tribal authority, to prosecute nonmember Indians."

But Lara left open whether the 1990 Amendments comport with equal protection, and Means argued that they discriminate against him because of his race. Kleinfeld conceded the argument's force, noting that "although the 1990 Amendments permit the Navajo tribe to criminally prosecute its own members and members of other Indian tribes, the Navajo cannot constitutionally prosecute whites, blacks, Asians, or any other non-Navajos who are accused of crimes on the reservation."

"This," he wrote, "makes Means' case different from, say, an Alaskan who threatens and batters his father-in-law in Los Angeles, and then is prosecuted by the State of California."

Kleinfeld nevertheless rejected the argument because any discrimination was not based on race, Morton v. Mancari, 417 U.S. 535 (1974), held that "federal statutory recognition of Indian status is 'political rather than racial in nature.'"

The reason they filed the parallel proceeding was to meet the Arizona statute of limitations, should the Navajo court determine that it lacked jurisdiction.

The children moved for a stay in the Superior Court proceedings, pending the Navajo court's resolution of the issue. The Superior Court refused. They then petitioned the Court of Appeals for special action. Relying on federal precedent, they contended that the Superior Court should defer to the Navajo court due to comity and respect for Indian courts.

Exhaustive measures

The Court of Appeals disagreed. Judge G. Murray Snow distinguished the interrelationships that Indian courts have with the federal courts, on the one hand, and state courts, on the other. Because federal courts may review Indian courts' determinations of jurisdiction over non-members, litigants must exhaust their Indian-court remedies before turning to the federal courts. Quoting the Supreme Court, Snow wrote that a federal court therefore "stays its hand until after the tribal court has had a full opportunity to determine its own jurisdiction."

By contrast, state courts do not review jurisdiction rulings of Indian courts. "Members of tribes are citizens of the United States and of the state in which they reside and thus have the right to bring actions in state court," Murray wrote, quoting the Arizona Supreme Court. "Thus," he concluded, "when an Indian plaintiff files suit in state court against a non-Indian defendant, there is no need to invoke the exhaustion requirement to protect the ability of the tribal court to determine in the first instance the facts and the law pertaining to whether it has jurisdiction."

Snow concluded that the decision to grant a stay was therefore discretionary, and the Superior Court had not abused its discretion. One factor was the passage of time. The Navajo court heard oral argument on the cross motions in March 2004. As of August 20, 2005, it still had not ruled. "[T]he Superior Court must consider the right of the defendants to have their case resolved in a reasonably timely manner," Snow wrote. Furthermore, "[t]he Superior Court is also entitled to consider the time it must keep a pending but inactive case alive on its own docket."

Snow also noted that the Jackson children had brought the problem on themselves. "While Petitioners may have a preference to have this matter heard by the Navajo Nation District Court, it was their decision to also file in the Superior Court of the State of Arizona as a 'jurisdictional backstop' to ensure that they could bring their claim in some forum."

Joining Snow in denying relief were Judges Patricia K. Norris and John C. Gemmill. ■
When a Little Bit of Online Piracy is a Good Thing

By T.J. Ryan, Esq.
Special to Maricopa Lawyer

Editor’s note: This month’s Law Office Computing is written by attorney T.J. Ryan, Winston Wood will return next month.

In 2002, I authored an article in the Arizona Law Review entitled, “Infringement.com: RIAA v. Napster and the War Against Online Musical Piracy,” 44 Ariz. L. Rev. 495 (2002). In it, I discussed the background of copyright law and how it was clashing with the upspring of a peer-to-peer file sharing program called Napster. (Ever heard of it?) Napster allowed millions upon millions of users to share and download music files, audio books and any other conceivable audio that could be compressed into the MP3 format. Within months of its debut, Napster gained millions of users and the exchange of files increased monthly at an exponential rate. As one might well expect, the recording industry took notice and fought back. The Recording Industry Association of America sued Napster for contributory and vicarious negligence in facilitating the illegal distribution of millions of copyrighted files. Ultimately, the case led to the end of Napster’s life as a free music sharing tool. (Note: Napster has rebuilt itself and is now a monthly fee-based system with approximately one million songs in its library, and can be found at www.napster.com.)

In the wake of Napster’s demise, a host of alternative file sharing programs sprung up in its place. Gnutella, WinMX, Kazaa, Morpheus, LimeWire, BearShare, and AudioGalaxy were among the best recognized. Most programs utilized the Gnutella peer-to-peer network, while some tried to distinguish themselves with innovative features like automatic meta data assignment, supernodes, and theatre view. Regardless of what client each person used, the unspoken collective roar from the users was “we will never stop downloading!” In fact, I closed my 2002 law review article with a quote from Chuck D of the rap group Public Enemy who said trying to stop file sharing was like “trying to stop the rain.”

Which brings us to the point of this article: it’s not going to stop and that’s okay. The fact of the matter is that the people who are out downloading music aren’t the market these distributors are interested in; in fact, one could argue that someone who downloads a See Computing page 6

New Law Calls for Required Vehicle Impoundment

Gerald F. Moore
Special to Maricopa Lawyer

Previously, a peace officer had the discretion to impound a motor vehicle under certain circumstances (pursuant to section 28-3511). Effective October 31, 2005, peace officers are now required to either immobilize or impound a motor vehicle whenever the operator’s driving privilege is revoked for any reason or is suspended because of either a DUI conviction, driving on a suspended, revoked, cancelled or refused license, failure to pay a fine, violation of the implied consent law or a failure to appear at a scheduled court appearance. Under the new law, impoundment will also occur where there has been a suspension by the Motor Vehicle Division for multiple moving violations, where a valid driver’s license has never been issued in this or in any other jurisdiction, where there is an accident causing property damage, injury or death, and the operator has no valid current driver’s license or insurance or where probable cause exists to arrest the driver for a violation of section 4-244(33)(p) (person under 21 driving with any spirituous liquor in body), section 28-1382 (extreme .15 DUI) or section 28-1383 (aggravated or felony DUI).

There are other violations which may result in a suspension of one’s driving privileges but are not grounds for impoundment. These violations include failure to have an ignition interlock device when required; fraudulent or unlawful use of a license; a medical, psychological or physical inability to operate a motor vehicle, and nonpayment of a civil judgment relating to a motor vehicle accident, among others.

An exception to the required removal, immobilization or impoundment of a vehicle is if it can be shown that the vehicle is currently registered and properly insured, the spouse of the driver is with the driver at the time of arrest, and the spouse has a valid driver license, is not impaired, and notifies the police officer that the vehicle will be driven from the place of arrest to the driver’s home or other place of safety. A second exception is if the car is owned by the driver’s parent or guardian and there is probable cause for an arrest under section 4-244(33), but this exception does not apply for a violation of sections 28-1382 or 28-1383. 30-Day Period

The period of impoundment is 30 days. The owner of the vehicle, the spouse of the owner or any other person identified on the Motor Vehicle Division record as having an interest in the vehicle can request a hearing. The immobilization and impounding agency is required to release the vehicle to the owner before the 30-day period expires if the vehicle was stolen, rented, subject to a lien or a lien on the vehicle presents satisfactory proof that his driving privileges have been reinstated, or the spouse or co-owner of the vehicle agrees in writing that if a second impound occurs within one year, the vehicle will not be released within the subsequent 30-day impoundment period.

If the impounding agency will not release the vehicle and does not provide for a hearing, the justice court has jurisdiction to hear the matter and order its release. If the vehicle is required to have a certified ignition interlock device, the vehicle cannot be released without the device. After the 30-day period expires, the vehicle can only be released to an owner or owner’s agent who has a valid driver license and proof of current registration. The owner must pay all immobilization, towing, storage and administrative charges incurred.

Each impounding law enforcement agency must establish procedures for post-impoundment hearings. Administrative charges cannot exceed $150, which does not include impoundment and storage charges. The purpose of the hearing is to determine whether the impoundment was proper or to consider any mitigating circumstances.

Those entitled to a hearing are the owner, the spouse of the owner, and any other person having a record interest in the vehicle. An agent of the owner or interest holder can request and/or participate in the hearing. If the impounding agency does not provide for a hearing, a justice court must do so. The purpose of the hearing is to determine whether the vehicle is to be released within the 30-day impoundment period.

The impounding agency must inform all those with a record interest in the vehicle of the impoundment within two days. Service of the notice is complete upon mailing. Notice to the owner may be by mail or personal delivery. A hearing must be requested within 10 days of the date of the notice. The hearing is requested by contacting the impounding agency in person, or in writing or by filing a request with the justice court. The filing fee is the same as a small claims answer. If the impounding agency does not provide a hearing, the notice directs the owner to the justice court. The hearing must be conducted within five days of a request. After the 30-day impoundment period ends, section 28-3515 directs the person in possession of the vehicle to submit an abandoned vehicle report if no claim has been made for return of the vehicle.

See New Law page 6

Write a Letter!

We welcome letters to the editor. Letters generally should be no more than 300 words long. Maricopa Lawyer reserves the right to edit all letters for length. Letters to the editor can be e-mailed to kbrieske@mnbabar.org or mailed to: Editor, Maricopa Lawyer, Maricopa County Bar Association, 303 E. Palm Lane, Phoenix, AZ 85004.
CD likely would have never purchased that CD anyway, but since the barrier to obtain the good is zero, nothing is lost in obtaining it.

MP3 is a “lossy” format, meaning that some audio information is lost when the files are compressed from the source (i.e., the CD) to the digital file, the result being a significantly smaller file size. One could go as far as to say that piracy increases the potential market by quickly and efficiently distributing lower quality sample packaging of the new product, allowing listeners to experience the work without having to incur a surcharge for doing so. Then, those who want the real thing have an impetus to go buy the work. One could even venture the argument one step further to say that it encourages artists to create entire albums of quality content, rather than writing singles in order to sell whole albums, since they know the public will be exposed to the entire work (and not only what is passed to them by radio or MTV/VH1 exposure) before choosing to buy.

More succinctly explaining this phenomenon and why it’s actually good, Chris Anderson, the editor-in-chief of Wired Magazine, in his blog, The Long Tail, explains:

“The usual price-setting method is to look at the entire potential market, from the many at the economic lower end to the few at the top, and set a price somewhere in between the top and bottom that will maximize total revenues. But if you cede the bottom to piracy, you can set a price between the top and the middle. The result: higher revenues per copy, and potentially higher revenues overall.” (http://longtail.typepad.com/the_long_tail/2005/08/just_enough_pir.html)

Anderson further argues that too much constraint on the market, by the use of over-burdensome digital rights management technology, can suffocate it, driving away consumers. Thus, Anderson argues, just enough piracy allows the producers to set higher prices and capture more profits from the market by ceding the bottom levels to piracy. Notably, Anderson notes that Microsoft’s own internal analyses have revealed that not only is online piracy inevitable, but, as we discuss, economically optimal.

Anderson, channeling my feelings perfectly, closes by saying:

“Most consumers see the value in paying for something of guaranteed quality and legality, as long as you don’t treat them like potential criminals. And the minority of others, who are willing to take the risks and go to the trouble of finding the pirated versions? Well, they probably weren’t your best market anyway.”

As an integral part of the RIAA and movie industry’s war against online piracy, their lawyers play a large role in maintaining the balance between allowing piracy to run rampant and maintaining Anderson’s balanced approach. Clearly, shutting down wholesale infringement sites such as Napster, whose simple and efficient design allowed countless copyrighted files to be exchanged by the non-technophile user, keeps the vast majority of consumers running to the store rather than their computer to obtain the latest musical releases. However, when the lawyers are instructed to quash each and every instance of peer-to-peer file sharing technology that comes down the pike, regardless of the impact upon the distribution and sale of copyrighted works, they have gone too far and disrupt the balance that allows retailers to enjoy the benefits of the “fattened call” of the market over and above those who choose to pirate the works.

While we cannot predict the future, history would dictate that for every action there is an equal and opposite reaction. For every attempt at quelling the peer-to-peer file sharing revolution, someone, somewhere will develop a way around it. For every digital rights management technology and protection scheme, someone will break it. And, to borrow Chuck D’s words, the rain will keep falling. But then again, maybe that’s not such a bad thing after all.
How a Flying Egg Hatched an Attorney

Before landing in Arizona, attorney John Flynn was Midwest-bred, born in Illinois and stopping along the way in Indiana, Michigan and Iowa.

Flynn began college as a pre-med student at the University of Iowa, on an academic scholarship.

Flynn's thoughts on the development of the college mind differed from his school.

“The university thought regularly attending organic chemistry, biology, calculus and other classes was best. Working, having money, and a fully developed social life, sprinkled with periodic class attendance and major cramming, worked best for me.”

Fueled by his mindset, Flynn moved west and enrolled in Arizona State University. His major moved from pre-med to business to organizational communications.

Rotten egg

Flynn's reason for going into law was nothing short of a life-changing blow.

“Shortly after arriving in Scottsdale, I was involved in an accident that stopped me dead in my tracks but also served as the impetus for my renewed academic drive and decision to become an attorney.”

As Flynn and his brother were driving to their parents' house for dinner one evening, some high school kids were throwing eggs at cars. Traveling at about 60 miles per hour, one egg was aimed at their car's front windshield.

The egg missed the car and instead came in the open front passenger window, striking Flynn directly in the eye—blowing him out of the front seat and into the back window.

The force of the egg caused his eye to be driven back in to his head.

Flynn spent that summer in the hospital and then in bed, unable to see or eat. Over the next three years, he had numerous surgeries to reconstruct his eye and face.

Ultimately the accident left him legally blind in one eye, with no working nerves in the upper right quarter of his face.

Justice served

Flynn's brother and father raced back to the scene, engaging in a high speed chase to catch the kids.

Flynn hired an attorney and the case settled shortly before trial. Along the way, he watched the attorney work on his case, read everything he received, and sat through an all-day deposition.

“That experience solidified in my mind the fact that the work—the requirement to push yourself intellectually, the opportunity to work on your feet and react to serious matters in the protection of others—caused me to press on with school and pursue a new goal of becoming an attorney.”

On the fast track

Needless to say, Flynn graduated college with a strong desire to get on to law school as fast as possible.

He received his law degree from the University of Arizona and began his law career at a small boutique practice in Phoenix, where he developed litigation skills and his own labor practice as well as an understanding of marketing.

The experience led Flynn to Tiffany & Bosco, P.A., where he has practiced for the last eight years, with a client base in labor and employment, commercial litigation, and general risk management and legal representation.

Physical attraction

“In general, I was drawn to practicing law because I enjoy problem solving and pushing myself intellectually and physically everyday.

“Surprisingly, the latter has been a natural benefit because of the intensity of the demands of the practice—the challenging hours expended while multi-tasking and moving constantly.”

Flynn is driven by an “overly developed competitive streak.”

To maintain that competitive nature, he works out every morning. In addition, he loves to snow ski and will play any sport he can. He is also entering his fourth year as a baseball coach.

Golden rule

The most important wisdom Flynn incorporates into law is treating people with respect.

“Nobody matters how heated and contentious the clients’ dispute, Flynn believes in remaining courteous, professional and accommodating.

“That doesn't mean you water down the aggressive advocacy you undertake for your client; in fact, it is the exact opposite; you focus on the facts and pay attention to what it means to win.”

Healthy perspective

Flynn and his family are involved in many nonprofit organizations, including the American Cancer Society, United Cerebral Palsy, United Way, American Red Cross and the Boys and Girls Clubs of Scottsdale.

“Given how incredibly blessed we are to have all of our family in good health, it is incredibly important to help support worthy causes.”

Flynn also values demonstrating through action so his children grow up with the desire and appreciation to help.

Time machine

Ten years ago, Flynn was beginning both his personal and professional life. He and his wife now have three children. And with the perspective of time, Flynn couldn’t have hoped things would have turned out any better.

In another ten years, he hopes to be spending more time with his family and friends, while continuing to practice law at Tiffany and Bosco.

“Actually, it would also be nice if we were sipping a pint in County Cork, Ireland, with some of our cousins.”

With all his energy, that wish will most likely be lived out.

Court Rules

The Arizona Supreme Court has requested comment on a retooling of the rulemaking process. The purpose of the potential change is to simplify the rulemaking process and enhance the public's understanding of it. Under the proposed change, rule petitions will be considered only once per year, with the exception of emergency matters or other compelling circumstances. The new schedule would alter the present feature under which the court meets to discuss rule change proposals three times per year. The new schedule is intended to eliminate confusion caused by frequent rule changes and varying effective dates, and would allow all rule changes to be published in the annual volume of the Arizona Rules of Court.

Comment on the new proposed annual schedule was requested by September 15, 2005. If adopted, the new schedule will be implemented beginning in December 2005. The new schedule would incorporate the following dates:

- Deadline for filing rule change petitions: December 1
- Deadline for circulating rule change petitions for comment: February 1
- Deadline for comments to rule change petitions: May 1
- Deadline for responses to comments: June 30
- Court consideration of and action on petitions: September
- Effective date for all new rules adopted by the Arizona Supreme Court: January 1
- Other changes being considered include requiring rule change petitions to be filed with one CD or 3.5 disk in PDF format. More changes would provide alternative means for public comment, including filing of one CD or 3.5 disk in PDF format and, as soon as technology permits, electronic filing and/or public hearings. The requirements of Rule 6(c), Arizona Rules of Civil Appellate Procedure would be relaxed, as to the form of filings.
October 2005

Same-day CLE registrations/payments, $15 additional.

3 Maricopa Lawyer Editorial Board (B), 5:15 p.m.
5 Family Law Meeting (Fresh Start), 5:30 p.m.
6 Construction Law Section, noon
11 Public Lawyers Division Board (B), noon
   VLP (A), noon
   Scottsdale Bar (Scottsdale Athletic Club), noon
12 MCBA Executive Committee (A), 7:30 a.m.
   Environmental Board (A), noon
   Solo Practitioner Section (A), 5:30 p.m.
   Hayzel B. Daniels Bar (B), 6 p.m.
13 Maximize Your CPA’s Litigation Support Services to Your Clients and Your Firm & Related Ethics Update
   9 to 11 a.m., ASU Downtown
   CLE: 2 hours including .5 hours ethics
   In this intermediate seminar, attendees will learn how to maximize the litigation support received from CPAs including: hiring considerations, the variety of specialized services that CPAs can provide, and new ethical requirements of CPAs. Attendees will also find out how CPAs are trained to perform business valuations, damage calculations, forensic accounting services and how these services can assist you on your cases.
   Cost: MCBA member attorneys, $50; member paralegals and public lawyers, $35; non-member attorneys, $70; non-member paralegals and public lawyers, $55
17 YLD Board (A), noon
   Paralegal Board (A), 5:30 p.m.
19 Due Process and Ethical Considerations in Probate Litigation
   1 to 4:30 p.m., ASU Downtown
   CLE: 3 hours including 1.5 ethics
   This comprehensive seminar will present a range of discussions with a specific focus on procedural points, ethical considerations and special areas pertinent to estate planning.
   Topics include probate court jurisdiction, instances when service of process is required, the use of lawyers as witnesses and the ownership of records. Additionally, we will examine special areas, such as challenging the appointment of fiduciaries and the burden of proof in will contests.
   Cost: MCBA member attorneys, $75; member paralegals and public lawyers, $55; non-member attorneys, $105; non-member paralegals and public lawyers, $75
20 Personal Injury/Neg Section (A), noon
   MCBA Board (A), 4:30 p.m.
21 MCBF, 7:30 a.m.
   Second Annual Leadership Institute – Part 1
   2 to 5 p.m., ASU Downtown
   CLE: 3 hours general
   The first of this two-part series will focus on important aspects of leadership styles. It will also get into the legal and practical considerations for board service and board governance.
   Cost: MCBA member attorneys, $75; member paralegals and public lawyers, $55; non-member attorneys, $105; non-member paralegals and public lawyers, $75
24 Task Force Meeting (C), noon
25 Employment Law Board (C), 11:30 a.m.
   CCD Board, 4:30 p.m.
   Litigation Board (A), 5:30 p.m.
26 Criminal Law Section (C), 7:30 a.m.
   Paralegal Division Quarterly Meeting, 5:30 p.m.
27 Estate Planning/Trust Board (C), 7:30 a.m.
28 Second Annual Leadership Institute – Part 2
   2 to 5 p.m., ASU Downtown
   CLE: 3 hours general
   The second of this two-part series will focus on important aspects of meeting management. It will also give an overview of financial oversight.
   Cost: MCBA member attorneys, $75; member paralegals and public lawyers, $55; non-member attorneys, $105; non-member paralegals and public lawyers, $75
Lindsay Jones, an associate at Gust Rosenfeld, was elected to the Board of Directors of The University of Arizona Law College Association, where she will serve a five-year term. The Law College Association provides support and financial assistance to the college of law and serves as the alumni association for the college.

Jones (J.D., 2001, UA) focuses her practice on education and employment law.

Abbie Shindler, also an associate at Gust Rosenfeld, was elected to the Board of Directors of the Central Arizona Estate Planning Council, where she will serve a two-year term. Comprised of professionals involved in the estate planning process, the council’s focus is to gain a broader perspective of pertinent issues in order to better shape and protect their clients’ estates.

Shindler (J.D., 1999, California Western Law) practices in the areas of trusts and estates and business law.

Perkins Coie Brown & Bain partner Samuel A. Thumma has been appointed as an adviser to the American Law Institute’s Restatement (Third) of Torts: Liability for Economic Loss project, which will focus on economic torts over the next several years to provide assistance to courts and practitioners in addressing difficult legal issues in such cases.

The American Law Institute strives “to promote the clarification and simplification of the law and its better adaptation to social needs, to secure the better administration of justice, and to encourage and carry on scholarly and scientific legal work.” Members include judges, attorneys and legal scholars from the United States and foreign countries, selected on the basis of professional achievement and demonstrated interest in the improvement of the law.

Thumma (J.D., 1988, University of Iowa) concentrates his practice on commercial litigation defense, with a current emphasis on professional liability, general tort and contract litigation, and client counseling.

Brent Peugnet, an attorney with Fennemore Craig, was elected to the Western States Chiropractic College Board of Trustees. The college, which is based in Portland, Oregon, is accredited by the Council on Chiropractic Education and the Commission on Colleges of the Northwest Association of Schools and Colleges.

Peugnet (J.D., ASU, 1999) practices in the areas of medical and professional malpractice defense, workers’ compensation, products liability and general liability defense. He was a chiropractor before earning his law degree and regularly presents seminars on risk management to chiropractors across the country.

Steve Brown & Associates, LLC

Is pleased to announce we have completed the move into our new building

1414 E. Indian School

We also welcome the arrival of our new associate

Caryn Rabe

Caryn joins our practice specializing in Commercial Litigation, Bankruptcy and Creditors’ Rights

All Telephone, FAX Numbers & E-Mail remain the same

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The Real Worth of Appraisals

The featured expert this month is Corrine Cain, a certified personal property appraiser. With thirty years of experience, Cain is the co-creator of both the appraisal exam for Fine Arts as well as Native American Arts. Cain is a senior accredited member of the American Society of Appraisers and possesses a master of fine arts in arts administration and a master of business administration in finance.

Cain discusses tips for hiring and working with an appraiser and outlines the benefits of getting an appraisal that will stand up in court.

Q: Why do I need an appraiser?
A: No matter what type of law you practice, chances are that at one time or another you have had to get an appraisal for a client. Appraisals are needed to value personal items, property, or businesses for wills, estates, divorce settlements, insurance claims, civil cases, mergers and acquisitions, etc.

There are just as many appraisal specialties as there are specialists. Appraisers are certified in one of six disciplines: gems and jewelry, business valuation, personal property, machinery and technical specialties, real property, or appraisal review and management.

Q: Why is it important to get a professional appraisal?
A: Your clients may think that because they have seen appraisal television shows, they can get an item appraised in 10 minutes or that it may even be free. However, the same is true in the appraisal world as it is everywhere else—you get what you pay for. It may be possible to get a quickie appraisal, online or from a dealer, but that isn't something that will stand up in court. Plus, that dealer may not be someone you want as an expert witness down the road. Certified appraisers usually use a fee structure similar to most lawyers; they charge by the hour.

By hiring a certified appraiser who has no connection to the client and no interest in purchasing the property being valued, you will receive an independent, unbiased value for the item or business. It is very important to prove to the court or the IRS that there was no conflict of interest in the valuation of an item.

Another benefit to hiring an appraiser from a professional society is there is a strongly held ethical tradition and a built-in dispute process. If for some reason you or your client feels that the appraisal is inaccurate, you can dispute the appraisal through the professional society. The appraisal will be reviewed by peers.

Q: What do I look for when I hire an appraiser?
A: It is important to hire an appraiser who is certified in his field. Ask the prospective appraiser for his professional affiliation and credentials. Professional organizations like the American Society of Appraisers (ASA) require that members pass extensive training and peer review to become members as well as have a minimum of five years of experience. Be sure to choose an appraiser who is certified in the correct area. Make sure he is certified in the area you are working in, i.e. gems and jewelry, business valuation, personal property, machinery and technical specialties, real property, or appraisal review and management. Then check to see if they are specialists in the specific type of property you are working in. For instance, within the personal property discipline there are specialists in a range of things from oriental rugs, to antique airplanes, to eighteenth-century American silver.

You can find a specialist in your area by going on to the Web sites of professional appraisal organizations. Once you have located an appraiser who practices in the discipline you want and the specialty area, ask the prospective appraiser to supply a resume and references. Every certified appraiser will provide this information. You shouldn't hire someone who doesn't readily provide this information.

Q: What can I expect during the appraisal process?
A: It is helpful to understand the basics of the professional appraisal process so that you can explain it to your client and know that you are getting a quality appraisal that will stand up to scrutiny.

A professional appraisal begins with research, which may include asking the client about the item's history, inspecting the property in person, requesting all relevant documentation, spending time researching the property using books and databases, and then analyzing comparable sales.

The appraiser then prepares a comprehensive report that must, at a minimum, clearly state the kind of value being determined, such as: fair market, liquidation, replacement, reproduction, etc. describe the property being valued, detail the procedures used to estimate the value, and include a signature from the appraiser as well as details of the appraiser's credentials.

That report then serves as formal documentation for the IRS and the legal system, should the value of that item, property, or business ever be questioned.

Where litigation is involved, an appraiser can also be used to enhance the attorney's acumen in dealing with other appraisal experts.

Essential questions posed during the discovery process yield greater clarity for all involved. Appraisers can be utilized to review other appraisal documents, proposed interrogatory questions as well as depositions. This insight shared ahead of any court appearances can be helpful.

Corrine Cain can be reached at (602) 906-1633 or corinecain@yahoo.com. Her mailing address is: 326 West Harmont Drive, Phoenix, Arizona 85021.
Andrew J. McGuire and Mark J. Langlitz have joined Gust Rosenfeld PLC in its growing municipal law practice.

McCrie (J.D., 1995, Gonzaga University) previously served as city attorney of the City of Avondale and town attorney for the Town of Fountain Hills.

Langlitz (J.D., 1985, Albany Law School of Union University) previously served as town attorney for the Town of Oro Valley and assistant city attorney for the City of Albany, New York.

William F. King has joined Bonnett, Fairbourn, Friedman & Balint, P.C. as an associate.

King (J.D., 1995, Creighton University) focuses on complex commercial business arrangements. He was formerly a director at Fennemore Craig, P.C., as well as Special Assistant Attorney General of the Arizona Attorney General's Office, Assistant United States Attorney, and an associate of Brown & Bain, P.A. from 1989 to 1995.

Also joining Perkins Coie Brown & Bain are Jennifer Lefere, David LaSpaluto and Craig Morgan, all as associates.

Lefere (J.D., 1999, Loyola Law School) will focus on business counseling, licensing and technology; and mergers and acquisitions in the firm’s national business practice. LaSpaluto (J.D., 2000, University of San Diego) and Morgan (J.D., 2004, Syracuse University) both join the firm’s national litigation practice group.

Penny Willrich, a former Maricopa County Superior Court judge serving in the juvenile, criminal and family departments, has joined the faculty at Phoenix International School of Law.

W illrich (J.D., 1982, Antioch School of Law) specializes in legal writing, collaborative law, criminal law, domestic relations, evidence, juvenile justice, mediation, public policy, race and justice, trial advocacy and voting rights. She received her master of science degree in community psychology and currently is pursuing a doctorate of philosophy in interdisciplinary arts and sciences.

Randall Lindsey has joined Greenberg Traurig as an associate in its corporate and securities department.

Lindsey (J.D., 1994, ASU) will focus his practice on domestic and international business transactions including partnership law, mergers and acquisitions, joint ventures, project development, and other strategic business arrangements.

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An application process is being finalized for lawyers in private practice who want to take advantage of express lanes at entrances of Superior Court facilities in Maricopa County.

Last year, security bypass cards for attorneys were discontinued as part of enhanced security measures at all court facilities. In the interim, court officials have met with lawyers and evaluated security policies in other courts to find a way to accommodate lawyers who frequently conduct business with the court and are frustrated with delay caused by waiting in line with other court customers to proceed through the security screening process.

“I understand the lawyers’ frustration with delays every time they come to court to punctually attend scheduled proceedings, file papers and attend meetings,” Presiding Judge Barbara Rodriguez Mundell said. “We are ready to launch a process to better accommodate their need to get into court buildings without unnecessary delay. The express screening process still requires a visual check of brief cases and handbags.”

Lawyers who want to take advantage of the Private Attorney Screening System (P.A.S.S.) will soon be able to apply by requesting a Non-Employee ID Badge Request Form from the Court Security Department. A $25 fee will be charged and must be paid to the court solely by money order or certified check. Cash cannot be accepted. Payment is due when the screening identification card is issued. Payment in advance will not be accepted.

For the past 15 years, The Courthouse Experience program, created by Superior Court, has given Maricopa County students an opportunity to personally meet lawyers, judges and get a first-hand view of court proceedings and the judicial branch.

The program’s success is due greatly to volunteer attorneys who provide valuable time to lead student groups varying from sixth grade through college age on a personal tour of the court. A Courthouse Experience often includes talking with judicial officers and staff, observing interesting proceedings including trials, visiting the jury assembly room, touring the law library, and participating in informative question and answer periods.

This year, there has been a slower response than usual from lawyers registering to participate. Without sufficient attorneys willing to provide their expertise and time, The Courthouse Experience may be unable to meet its mission of introducing and educating students about Arizona’s judicial system.

Traditionally, the program has taken place in the four-courthouse complex in downtown Phoenix. This year, the program is expanding to include visits to regional court facilities in the Northwest, Northeast and Southeast centers throughout the county with Superior Court and Justice Court courtrooms.

An information packet, offering instructive guidelines and suggestions, is provided to all volunteer attorneys to help make the tours well-paced and valuable.

You are asked to consider providing your legal expertise to the program, to help make it successful again this school year.

If you are interested, please complete the accompanying form and fax it to (602) 506-7867. Or you may call Karin Philips, Program Coordinator, at (602) 506-3206, or e-mail her at philipsk@superiorcourt.maricopa.gov

Send an information packet to the following address:

NAME: ____________________________
FIRM: ____________________________
MAILING ADDRESS: ______________
DAYTIME PHONE: _________________ FAX: __________
E-MAIL ADDRESS: __________________

☐ I have previously participated in The Courthouse Experience

☐ This will be my first time participating in The Courthouse Experience

Send an information packet to the following address:

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Domestic Violence Shelters Provide More Than Just a Way Out

By Julia Acken
Special to Maricopa Lawyer

Hundres of Arizona’s women and their children currently reside in modern apartments with little or no furniture or clothing of their own. Their addresses and phone numbers are confidential and they are often protected by extensive alarm systems or even armed guards and security gates. Some of the women have been forced to leave their jobs and many of the children have changed schools, perhaps multiple times. They depend almost entirely on the kindness of strangers for meals, transportation, housing, clothing, school supplies and toys. These individuals are not members of the witness protection program; rather, they are regular members of your community who have been victims of domestic violence.

Unfortunately, the same barriers that are established to protect these women from their abusers also can hide the realities about the prevalence and severity of domestic violence from the community. As such, few are aware that, according to the Center for Disease Control, approximately 5.3 million women over the age of eighteen are victims of violence at the hands of their intimate partners each year. In fact, according to the FBI’s Uniform Crime Reports, approximately 12.5 percent of murder victims in 2003 were killed by family members.

Even when people hear these statistics, they often are left asking, “why don’t they just leave their abusers?” Questions such as this, however, illustrate the misconceptions prevalent in our community regarding the nature and effect of domestic violence. It is relatively easy to see and understand the physical repercussions of domestic violence. It is much more difficult, however, to understand the complex psychological and emotional issues that accompany the physical abuse.

By definition, domestic violence involves abuse within a family, particularly between spouses or intimate partners. Domestic violence victims, like most members of intimate relationships, often have a certain level of trust in and love for their abusers that formed before the actual violence began. Some also grew up in families that were plagued by domestic violence and the victims simply may not be aware that the abuse they are suffering is abnormal or inappropriate. In either situation, the victim is likely to suffer severe emotional and psychological trauma in addition to physical abuse. Studies have shown that victims of domestic violence are more likely to suffer from lower self-esteem, overwhelming feelings of guilt and shame, alcoholism, drug abuse and a limited understanding of their life options than the general public.

In addition to the psychological and emotional harm inherent in domestic abuse, victims often have financial concerns. Victims might be dependent upon their abusers, at least in part, for financial support. This can be particularly problematic for women with children, who may believe they will not be able to support their children if they leave the perpetrator. These problems are compounded by the fact that, as described above, women leaving abusive partners might be forced to leave their homes, belongings, jobs and community support systems to avoid physical harm.

Domestic violence shelters often provide those victims who are fortunate enough to leave their abusers with their only resources for building a new life. Shelters provide these women with much more than just housing and meals. For example, before a victim can support herself and her family, she likely will have to receive treatment for both the medical and emotional damage she has suffered at the hands of her abuser. Once these most basic needs are met, she may need assistance locating employment opportunities or obtaining job skills, clothing, child care, transportation and to and from interviews. Even after she obtains a job, she may require transportation to and from work and daycare for her children. Many victims rely on domestic violence shelters for some, if not all, of these services. The shelters, in turn, rely upon well-trained staff, dedicated volunteers and the generosity of those who donate the goods and funds required to operate the shelters.

In recognition of the invaluable services these shelters provide, the Maricopa County Bar Association’s Young Lawyers Division is sponsoring its Annual Necessities Drive, which provides toiletries, food items and clothing to domestic violence shelters in the Phoenix area. This year, MCBA will be joining forces with NewsChannel 3, Two Men and a Truck, Conair, and Bashas’ to make this drive a community-wide effort. If you are interested in making a financial contribution to the Necessities Drive, or if you would like to volunteer for the drive, please contact Domestic Violence Committee Chair Julia Acken by e-mail at jacken@cox.net or contact the Maricopa County Bar Association directly at (602) 257-4200 ext. 131.

Hurricane Katrina: Lessons Learned

By Jennifer Holman
Maricopa Lawyer

In the aftermath of what has been called the worst natural disaster in the history of the United States, the legal profession has not escaped the hurricane’s wrath. No one could have predicted the emotional impact the stormy evacuation, power loss, flooding or property damage had throughout the Gulf coast region. Further, due to the devastation, it has become nearly impossible for attorneys to comply with court imposed deadlines, locate files or important documents and complete work for clients.

Many legal professionals were proactive in relocating offices and support staff, storing and backing up files, getting extensions and contacting clients regarding the status of their cases. This early preparation likely occurred after the terrorist bombings on September 11, 2001. The development of emergency procedure plans by both court systems and law firms likely saved the legal practices of thousands of attorneys.

However, they were partially prepared for the hurricane, but have only recently understood the implication of the storm on the legal profession. For example, the 5th U.S. Circuit Court of Appeals, based in New Orleans, backed up and secured files in anticipation of the hurricane, but was unprepared for the devastation after the storm. After this realization, the court began making plans to relocate on a more long-term basis and to get the computers online as quickly as possible. While re-grouping and trying to get its computers back up, the court reverted to using paper docket sheets for only the most pressing cases; mainly motions for stays of execution and stays of deportation. “We can't handle anything except emergencies,” said Carolyn Dinen King, who as chief judge is also responsible for the district and bankruptcy courts in Louisiana, Mississippi and Texas.

Yet, despite the success stories, early reports suggest that the response was reactionary and simply came too late. As evidenced, many legal professionals have maintained the “it can't happen to me” attitude. As a result of the too little, too late response, there is no doubt that the profession will be responding to the hurricane’s aftermath for years.

As recently detailed in The Arizona Republic, Arizona has started the development of an emergency procedure plan for the state. The plan will likely encompass the state’s response to potential wildfires near metropolitan areas, the potential for a nuclear reactor explosion, drought or serious flooding. So too should attorneys be developing emergency procedure plans to respond to the potential disasters.

How would your office respond to a disaster that caused all telephone and voice mail systems to stop working, Internet access to be terminated or the mail to stop being delivered? What would you do if your office had to be evacuated? How would you comply with court imposed deadlines, lose your computers and electricity, an important element of your practice? Unfortunately, many attorneys learned that backing up data in an off-site and safe location is a must. First, testing backup tape drives and computer systems to ensure the data is being recorded should be completed often. Second, finding a safe environment (free from explosions or weather based disasters) is the tricky part. Thousands of documents and originals have been destroyed in the flooded and burned buildings of Louisiana and in New York with the collapse of the Twin Towers. It is likely that the attorneys using the off-site locations believed them to be safe. Experience, however, has shown us otherwise.

It is only with extreme preparedness for potential disasters that legal professionals will be able to maintain their legal practices. Back up and contingency plans are critical. Although Hurricane Katrina was an extremely sad and terrible event, let us learn from those who have lived through the type of disaster we have only dreamed of.

Tell Us!
Have you won an award? Is your law firm involved in an interesting community project? Send information for our People in Law Column to Maricopa Lawyer, MCBA, 303 E. Palm Lane, Phoenix, AZ 85004; fax to 602-257-0522; or e-mail to: kbrieske@mcbar.org
POSITIONS

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U.S. Fifth Circuit relocates to Houston after Hurricane Katrina; Arizona Supreme Court Administrative Order issued to assist displaced attorneys

80 employees of the U.S. Court of Appeals for the Fifth Circuit, along with 14 executive staff, several staff attorneys and nine automation employees have been forced from the John Minor Wisdom U.S. Courthouse in New Orleans after the devastation caused by Hurricane Katrina. The Circuit was expected to reopen for business from Houston on September 21.

All Fifth Circuit filing deadlines falling on or after August 24 through September 30 have been automatically extended until October 10, 2005. Attorneys and litigants having business with the Fifth Circuit are counseled to consult the Fifth Circuit’s Web site frequently for more specific and updated information.

In response to the legal jurisdictional issue posed by the relocation of Louisiana courts, Congress enacted Public Law 109-63, which allows any federal district or bankruptcy court to relocate when emergency circumstances require it.

Similarly, on September 12, 2005, the Arizona Supreme Court issued an administrative order allowing attorneys displaced by Hurricane Katrina to practice law in this state for six months, in order that they may continue to represent clients displaced from the attorney’s state of licensure, as well as other clients with whom the attorney has an ongoing attorney-client relationship. All attorneys practicing pursuant to the administrative order must abide by the Rules of the Arizona Supreme Court and must provide their names, contact information, and professional license numbers to the State Bar of Arizona within five days of engaging in the practice of law in Arizona.

Drug dealer wins, then loses big

A three-judge panel of the Fifth U.S. Circuit Court of Appeals has ruled that the government can seize $10 million dollars won by a convicted Texas drug dealer, who used drug proceeds to buy his winning lottery ticket. The panel noted that federal law allows the government to seize all property and proceeds obtained from drug trafficking, and also upheld the drug dealer’s conviction and sentence of more than 24 years in prison.

Religious freedom extended to Wiccans

A unanimous Indiana Appellate Court has upheld a parent’s right to share non-mainstream religious beliefs and rituals with their children, after an trial court judge ordered divorcing Wiccan parents to shelter their son from the Wiccan religion. Although commonly misperceived as Satan-worship, Wiccan ideologists say the religion is a form of paganism whose members hold the Earth sacred, and celebrate its cycles and seasons.

While the Indiana Civil Liberties Union argued the case on constitutional grounds, the appeals court decided the case on state law grounds, which prohibits courts from limiting parental authority unless the child is at risk of becoming physically or emotionally impaired from the actions of the parent. Cale Bradford, the superior court judge who signed off on the divorce decree put together by a court commissioner, said that there were initial concerns that some of the Wiccan rituals might endanger the boy’s health, but after a more thorough review, he now knew that wasn’t the case. “I have nothing against the Wiccans of the world,” said Bradford. “I wish them all the best.”
Don’t Miss Upcoming 2005 MCBA Leadership Institute

On Friday, October 21, and Friday, October 28, the Maricopa County Bar Association will be holding its second annual MCBA Leadership Institute. Attend this two-part series to learn the ins and outs of becoming a successful leader.

This innovative series focuses first on important aspects of leadership styles as well as the legal and practical considerations for board service and board governance. Understand what styles of leadership exist and discover your own leadership personality. Learn which conflicts of interest exist as a board member, and how the roles of a board, committees and staff are defined.

The second session highlights important aspects of meeting management and an overview of financial oversight. Run an effective meeting while engaging attendees. Learn how to read a financial statement and identify what is important to pay attention to as a board member.

Faculty includes: Brad Preber of Grant Thornton, Sam Coppersmith of CopperSmith Gordon Schermer Owens & Nelson, P.L.C., Gary Smith of McGladrey & Pullen, and Patrick Paul or Snell & Wilmer, LLP.

Each session may qualify for up to three hours of CLE credit.

The second annual MCBA Leadership Institute will take place on Friday, Oct. 21 and Friday, Oct. 28 from 2 to 5 p.m. each day. Both sessions will be held at ASU Downtown, 502 East Monroe in Phoenix. The cost to attend (per session) is $75 for MCBA member attorneys; $55 for MCBA member paralegals and public lawyers and $105 for MCBA non-member attorneys; $75 for non-member paralegals and public lawyers. For more information, or to register, contact Mona Fontes at (602) 257-4200 x131 or mfontes@mcbabar.org.

A Really Very Clearly Written Primer on Writing Persuasively

If you almost stopped reading this article because of the words “really,” “very,” and “clearly” in the title, then the following point will come as no surprise. The clarifying adverbs “really,” “very,” and “clearly” have little, if any, persuasive power in a document. Instead of relying solely on these clarifying adverbs to emphasize his point, a good legal writer uses the following positions to emphasize his point:

1. Position Within the Document
   When reading a document, readers tend to be most attentive at the beginning, less attentive at the end, and least attentive in the middle. Because readers remember better that information they read first and last, favorable information should be placed at the beginning and end of the document. Unfavorable information should be placed in the middle of the document. In other words, a writer should always lead with his strongest argument. It is also helpful to end with a strong argument.

2. Position Within the Sentence
   If a legal writer wants to emphasize information, it is best to place that information in the main clause of a sentence and to put that main clause at the end of the sentence. If a legal writer wants to deemphasize information, it is best to place that information in a dependent clause and to put that dependent clause at the beginning of the sentence. A good de-emphasizing dependent clause usually begins with one of three words: although, while, or despite. Here is an example in which the legal writer is emphasizing the driver’s decision:

   Although the passenger had purchased beer for the driver, the driver was responsible for his decision to drive while drunk.

   Here is the same example rewritten to emphasize the passenger’s activities:

   Although the driver was responsible for his decision to drive while drunk, the passenger had purchased the beer for the driver.

3. Position Within a Series of Sentences
   Because readers tend to remember information placed in short sentences better than information placed in longer sentences, a good legal writer places the most favorable information in short sentences. After several long sentences, a short ending sentence can have a dramatic impact on a reader.

   Words are that powerful.
Self-Service Center: One Decade and One Million Customers Later

By Bob James
Special to Maricopa Lawyer

O ctober 5th marks the 10-year anniversary of the Self-Service Center, a court program that has served more than one million people in Maricopa County and revolutionized how courts throughout the United States serve the public.

The Self-Service Center’s original site opened in the downtown Phoenix complex of the Superior Court on Oct. 5, 1995, launching the country’s first court program focused on the needs of self-represented litigants. It is now the most replicated program by courts throughout the nation to better serve litigants without lawyers.

Superior Court judges, administrators and staff will celebrate the 10-year anniversary on Oct. 5 at all four Self-Service Centers: at the downtown location and the Southeast, NorthWest and Northeast Court Facilities. Special recognition is planned for the innovators who formulated a program that provides resources for people representing themselves.

The program’s creators focused on the concept of self-help while providing value-added services that wouldn’t jeopardize the court’s neutrality. To achieve that, they looked to other examples of self-help, doing their best to emulate them. The result is a blending of services, resources and information that provide litigants with a better understanding of the court processes that they must face.

The center has more than 500 forms for procedures in Family Court, Probate, Civil, and Juvenile Court. Assembled packets are designed to help a litigant navigate a process from beginning to end, and communicate effectively and efficiently with the court. In addition to forms necessary for filing, there also are instructions on how to complete the forms, as well as what to do to move a case forward. The documents are very understandable, with common English terminology and easy-to-read formatting. Packets can be purchased at all locations, and each facility has copiers, fax machines and public phones.

Staff is available to answer procedural questions, provide directional assistance, and educate customers on the aid and availability of community resources, including the value of some contact with a lawyer. Fliers about lawyer services, including MCBAA’s Lawyer Referral Service, are also provided, and rosters of lawyers willing to provide limited scope representation are on display. This information is also available on the court’s Web site.

Many of the people designing the Self-Service Center knew that its services should be available beyond the walls and hours of a courthouse. Within the first year of opening, all products and services of the center became accessible around the clock at www.superior-court.maricopa.gov/ssc.

Customers can also learn more about available court processes and services by calling the center’s automated phone system 24 hours a day, seven days a week at 602-506-SELF.

Improvements to the self-help service continue. The eCourt project provides a computer prompt system, available at courthouses or on the Web, for customers to fill out forms necessary for filing in various procedures. In the future, that program will replace all paper forms and provide an even easier interface for court users.

Bob James is Director of Public Access for the Trial Courts in Maricopa County.

Scheduling
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When originally created, the panel was unpopular with some criminal lawyers. However, it was effective during its four-year run—with 93 to 95 percent of felony criminal cases brought to trial or change of plea within 180 days of arraignment.

“The Continuance Panel proved to be highly effective in keeping our court’s high-volume criminal cases on track to a timely disposition,” Court Administrator Marcus Reinkensmeyer said.

Now, with Scheduling Conference Panel in effect, trial judges again will rule only on requests for continuances of five court days or less. Requests for a longer delay will be resolved by one of the judges from the panel, who rotate on the daily docket of continuance requests. Attorneys will be expected to show extraordinary circumstances exist and that delay is indispensable to the interest of justice, pursuant to Rule 8.5 of the Rules of Criminal Procedure.

Express Screening
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Every lawyer applying for an express screening badge needs to make an FBI Identification Record Request. It costs $18 and can take six to eight weeks to be processed. Information is available at the FBI Website: www.fbi.gov/hq/cjisid/fprequest.htm.

The initial step for the FBI criminal screening is to be fingerprinted and obtain a fingerprint card at a local police agency (such as the Department of Public Safety, Sheriff’s Office or local city police department). Plan ahead, because most police agencies provide this service on limited days and times. It is best to call and check cost and hours of operation.

Attorneys applying for the express screening I.D. must request the FBI report be sent directly by certified mail to Bill Duffy, Court Security Director, 201 W. Jefferson, Phoenix AZ. 85003.

For additional information contact the Court Security Office at (602) 506-7034.