Supreme Court’s Newest Justice Opens Up
By Faith Klepper
Special to Maricopa Lawyer

Governor Janet Napolitano recently appointed W. Scott Bales, a partner with Lewis and Roca, to replace outgoing Justice Charles Jones on the Arizona Supreme Court. Bales previously served as Arizona’s solicitor general and as an assistant U.S. attorney. After graduating from Harvard Law School in 1983, he served as a law clerk to Ninth Circuit Judge Joseph Sneed III and Supreme Court Justice Sandra Day O’Connor.

Reaction to Bales’ appointment has been overwhelmingly positive in legal circles. Paul McMurdie, who worked with Bales at the Attorney General’s Office, said: “Scott is an excellent lawyer. He is intelligent, listens to different viewpoints before making a decision and has that natural calm demeanor that bodes well for being a good judge.” Former State Bar of Arizona President Ernest Calderón also hailed the appointment, noting that “Scott has a unique ability to distill down the arguments in order to determine what is fair to the average citizen.”

Klepper: Why did you want to be a Supreme Court justice?

Bales: There are several reasons. One is that I’ve always wanted to do some form of law enforcement. I’ve always thought that it’s important to serve the public by improving the legal profession.

See Newest Justice page 12

New Chief Justice Taking Arizona Courts From Good to Great
By Cari Gerchick
Maricopa Lawyer

On June 10, retiring Chief Justice Charles E. Jones passed the gavel to new Chief Justice Ruth V. McGregor in a ceremony at the Arizona Supreme Court. In turn, McGregor swore in Justice Rebecca White Berch as vice chief justice.

McGregor became the second woman in the state’s history to serve as chief justice of the Arizona Supreme Court. Appointed to the court in 1998 by Governor Jane Dee Hull, McGregor previously served on the Arizona Court of Appeals, including two years as chief judge. Prior to her service on the bench, McGregor practiced law privately and clerked for Justice Sandra Day O’Connor after O’Connor was first appointed to the U.S. Supreme Court.

At the ceremony, McGregor outlined the court’s goals for the next five years. “Good to Great,” by Jim Collins, provides the theme for the 2005-2010 Strategic Agenda. The book examines a number of corporations to determine why some that were good remained just that—good—while others moved from good to great.

“Through working together, the community and the courts can move the justice system from very good to truly great.”

McGregor announced that as one part of this process, the court will visit areas around the state to hold a series of Town Hall meetings to obtain community input on areas of improvement.

Sought input includes providing access to swift, fair justice, including a special focus on the needs of crime victims and looking at ways to improve case processing, especially in the area of DUI; and protecting children, families, and the community by finding better ways to process child abuse and neglect cases and protect victims of domestic violence.

Also of community focus are improving communication and cooperation with the community, other branches of government, and within the judicial system so that the public better understands court system operations; being accountable; and serving the public by improving the legal profession.

McGregor attributed the court’s strong foundation to the leadership of Arizona’s past chief justices, particularly retiring Chief Justice Charles E. Jones.

She paid tribute to the justices who “played an essential role in guiding the courts through enormously challenging changes, both in size and in responding to expectations very different from those that existed some years ago.”

“Through calm, determined leadership, courts have weathered many challenges and have continued to move ahead.”

Under McGregor’s tenure, the court plans to continue to progress with input from the general public, the legal community, and other branches of government.

Law: A Colorful Science
By Daniel P. Schaack
Maricopa Lawyer

The law is a human institution. That it will never be an exact science was perhaps illustrated in the latest opinion from the Arizona Supreme Court. The Justices split 3–2 over the interpretation of a constitutional provision that some saw as black-and-white, while others perceived shades of gray.

The case that split the Court arose from the flames of a crash at Firebird Raceway on a July night in 2001 when Charles Phelps lost control of his dragster. It hit the wall and was engulfed in flames. Phelps suffered severe injuries. He sued the raceway, alleging that the raceway’s crew was negligent in its rescue efforts and emergency medical care.

Before the race, Phelps had signed two releases that acknowledged that racing is an inherently dangerous activity with a high possibility of serious injury or death, and that any injuries might be compounded by “negligent rescue operations or procedures.”

Firebird used the releases to obtain summary judgment, which the Court of Appeals affirmed. Phelps v. Firebird Raceway, Inc., 207 Ariz. 149, 83 P3d 1090 (App. 2004). It held that Article 18, Section 5 of the state
Pay Tribute to Outstanding Paralegals

Hear Ye! Hear Ye! The MCBA Paralegal Division is now accepting nominations for its second annual Arizona Paralegal of the Year and Division Member of the Year awards.

The Paralegal Division seeks to praise, honor, and showcase extraordinary Arizona paralegals for the specific practices and activities that they have initiated or expanded for the good of others. These commendable deeds may have been done for the benefit of employers, clients, individuals, communities, the paralegal profession, or the Paralegal Division. All positive actions and contributions by paralegals are open to consideration.

Your recognition of paralegals through the nomination process is invaluable. Words of thanks, perks, and even monetary bonuses, cannot match the feedback that comes to a person through an award nomination. This is the best that they can be. It encourages them to do it for. It also instills camaraderie among people who take an interest in each other’s achievements.

There are many paralegals in Arizona that deserve such recognition. Between now and July 31, 2005, you can help the Paralegal Division identify and reward the two most deserving paralegals. Please take some time to fill out a nomination form and share your admiration for a paralegal that sets her or him apart. You can find the awards criteria and nomination forms on the division’s website at www.maricopaparalegals.org. For additional information and inquiries, you can also send an e-mail to awards@maricopaparalegals.org.

Winners of this year’s Arizona Paralegal of the Year and Division Member of the Year awards will be announced and presented with their awards at Arizona Paralegal Conference 2005, which will be put on by the MCBA Paralegal Division on Friday, September 23, at the Phoenix Airport Marriott. On that day, it is estimated that 200 of their fellow paralegals will celebrate the skills, passion, and vision the winners have demonstrated to those in Arizona’s legal community.

Close the Door Gently to Open New Ones

Recently our YLD and MCBA Membership co-hosted a panel discussion on career transition and what to think about when you are considering leaving your job. Attorneys from different practice areas discussed their career paths, why they left certain jobs, and why they’ve stayed put. They also discussed how to leave when you decide to resign. It seemed that on this topic, one point rang loudly in my ears: be nice. Break up, but still be friends. It seems like a no-brainer, but I’m sure we’ve all heard other dramatic departures and acrimonious exits, but don’t make yours one of them. Go lightly into that good night.

1. Before formally announcing you are leaving, be sure to meet with partners or supervisors to tell them separately that you’re leaving. Thank them for the opportunity you’ve had to work with them.
2. Let the support staff who have helped you know that you’re leaving personally, rather than word-of-mouth.
3. Give at least two weeks’ notice. We’re not sure who came up with two weeks, but it’s certainly the standard and in our busy practices, it’s the least you can do. Here’s a rough example: an attorney worked at my office for at least five years. This attorney worked really hard, was very polite to everyone, and won plenty of tough cases. When it came time to leave, this attorney gave ten days’ notice. NO! NO! NO! Why would you work so hard for five long years earning a stellar reputation and then have people remember you for sprinting out the door?
4. Write a formal letter stating your resignation, and include some words of appreciation to your employer or supervisor.
5. Do not “bad mouth” your soon-to-be-former employer. Common sense should prevail here—this work experience (for better or worse) will be on your resume forever. Why not reap the positive experiences?

The Maricopa County Bar Association’s CLE Committee encourages all individuals with CLE seminar ideas, topics and suggestions to send them to clesuggestions@mcbabar.org.

The MCBA CLE Committee will consider all received emails for future CLE seminars.

The Maricopa Lawyer Editorial Board is looking to increase its panel of experienced writers. Those interested in writing on topical, relevant legal and judicial issues are encouraged to join the editorial board. The committee meets once a month to plan upcoming issues.

For more information, contact Kathleen Brieske at (602) 257-4200 x106 or kbrieske@mcbabar.org.
Judicial Retirements in Superior Court Impacts Rotations

By J.W. Brown
Maricopa Lawyer

The recent retirement of eight Superior Court judges has created a ripple effect, shuffling some of the planned rotations of judicial assignments currently underway.

Judges Stephen Gerst, Robert Gottsfield and Barbara Jarrett retired this spring, followed by Judges Jeffrey Cates, John Foreman, Michael O’Melia, William Sargeant, and most recently, Penny Willrich.

Former Presiding Judge Colin F. Campbell, whose five-year-term expired on June 30, formulated the rotation plan with current Presiding Judge Barbara Rodriguez Mundell months ago and prior to the majority of the retiring judges’ announcements that they were leaving the bench.

Campbell is one of the judges whose reassignment had to be amended. Originally he was going to assume Judge Edward Burke’s family court calendar on July 1. Instead he assumed Judge Cathy Holt’s civil calendar on June 27 and will move to the new Northeast Court facility when it opens in September, assuming a family court calendar there.

Burke keeps his family court calendar downtown through the summer and then assumes Cates’ downtown criminal calendar in the fall. During the summer, Judge Michael Wilkinson is handling Cates’ calendar. In September, Wilkinson takes a newly created family court calendar in downtown Phoenix. Also in September, Judge Jeffrey Hotham moves to family court to assume Burke’s calendar.

Newly appointed Judge Helene Abrams has been assigned to the civil department to take over retired-judge Jarrett’s calendar, which

See Rotations page 14

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@mcbabar.org or mailed to: Editor, Maricopa Lawyer, Maricopa County Bar Association, 303 E. Palm Lane, Phoenix, AZ 85004.

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Court Watch continued from page 1

constitution—which leaves assumption of the risk to the jury—does not apply to contractual assumptions of risk.

The provision at issue is written in very broad language: “The defense of contributory negligence or of assumption of risk shall, in all cases whatsoever, be a question of fact and shall, at all times, be left to the jury.”

Whether the section is clear and unambiguous or whether it is subject to interpretation is the question that split the court.

Clearly understood
Justice Michael D. Ryan, writing from himself and Justices Rebecca White Berch and Andrew D. Hurwitz, found the provision too clear to require any interpretation. “Article 18, Section 5 unambiguously requires that the defense of assumption of risk be a question of fact for the jury ‘in all cases whatsoever’ and ‘at all times.’”

If the law is clear and unambiguous, the court is supposed to simply apply it. Thus, that would seem to have been the end of it. But it seems that in the law, nothing is ever totally clear, and Ryan was compelled respond to contrary arguments.

He first rejected Firebird’s contention that “assumption of risk” is susceptible of differing interpretations because it encompasses more than one category, and thus the framers of the constitution only intended it to apply to assumption of risk. “[E]xpress contractual assumption of risk has always been an important category of assumption of risk,” he wrote.

Ryan continued that “the fact that assumption of risk encompasses several different categories, or may take different forms, supports an expansive reading of [the provision], not a restrictive one.” He explained: “If the framers had intended… that assumption of risk did not include express contractual assumption of risk—a well-recognized form of assumption of risk—they would not have used such expansive language.”

“The decision below,” Ryan continued, “effectively amended the constitution to provide that assumption of risk is a question of fact for the jury only ‘in some cases’ and ‘at some times.’ As judges, we are not free to rewrite our fundamental document in this fashion.”

Ryan did not “anticipate that this opinion will subject a whole new cadre of cases to jury consideration.” He also expressed confidence that juries will reach appropriate results in “all cases whatsoever” and “at all times.”

Intentionally able
Vice Chief Justice Ruth V. McGregor dissented, in an opinion that Chief Justice Charles E. Jones joined. She agreed that Article 18, Section 5 is very broadly written to apply to “in all cases whatsoever” and “at all times.”

“By the time of the drafting of the Arizona Constitution,” she wrote, “the defense of assumption of the risk had developed into an amorphous concept defined in a variety of ways by commentators and courts. ‘Courts… struggled during this period to determine the contours of the doctrine.’”

“The question,” McGregor wrote, “is not whether Article 18, Section 5 can be interpreted as applying to both implied assumption of the risk and express contractual waiver of liability; one can, of course, adopt that interpretation. ‘To her, “[t]he question is whether the framers intended that Article 18, Section 5 extend to express contractual waivers.” She found “compelling” evidence that they did not.

 “[T]he debate [at the constitutional convention] provides strong evidence that the delegates were keenly aware of the distinction between express contractual waivers and the common law defenses of assumption of risk and contributory negligence,” McGregor concluded. “Moreover, the concerns raised by the delegation over the likelihood that a provision broadly inhibiting the right to contract would violate the federal constitution explains why the framers chose to deal with express contractual defenses more cautiously than they dealt with implied assumption of risk.”

Although acknowledging the contrary argument,” McGregor wrote that she “would hold that the more reasonable conclusion to draw from the history of Article 18, Section 5 is that the framers viewed assumption of risk and express contractual liability waivers as distinct concepts.” Thus, the provision would not apply to the releases that Phelps signed, and both the Superior Court and the Court of Appeals had gotten it right.


Selective hearing
Sometimes you have to be careful what you ask for. And sometimes, you just have to listen. One wonders whether Jose Maria Sandoval-Lopez will get the message in United States v. Sandoval-Lopez, No. 03-055994 (9th Cir. June 6, 2005).

Authorities caught him with fifteen pounds of heroin hidden in his truck. He had told an informant that he regularly smuggled heroin into the country. He was indicted for possession with intent to distribute. His attorney succeeded in bargaining the charges down to a seven-year sentence for two minor felonies.

Sandoval-Lopez agreed to the plea bargain and signed the appropriate waivers of his rights, including the right to appeal. About year into his sentence, he filed a pro se petition for habeas corpus, arguing ineffective assistance of counsel, claiming that his attorney had ignored his demand to file an appeal. The district court dismissed the petition. The Ninth Circuit reversed, but very reluctantly.

Judge Andrew J. Kleinfeld ruled that, because no evidence was taken, the court had to assume that Sandoval-Lopez had asked his lawyer to appeal and his lawyer did not do as he asked. “As contrary to common sense as it seems, we are compelled by the law to reverse the district court.”

But Kleinfeld found the result troubling. “An appeal would most probably have been dismissed because it had been waived,” he noted. “Had it not been dismissed, we are in the dark about how Sandoval-Lopez could have prevailed.”

Throwing it all away?
Kleinfeld also observed that Sandoval-Lopez stood to lose more than he would gain. “[I]f he were to prevail and get a new trial on his original indictment for possession of heroin for purposes of distribution, his odds seem high of spending much more time in the federal penitentiary than the seven years his lawyer worked out for him.”

“So,” Kleinfeld continued, “supposing that he telling the truth and his lawyer simply refused when he said I want to appeal,” he was probably lucky to have a lawyer who exercised such wise judgment.” And “even though no one would think a doctor incompetent for refusing to perform unwise and dangerous surgery, the law is that a lawyer who disregards specific instructions from the defendant to file a notice of appeal acts in a manner that is professionally unreasonable.”

Kleinfeld reluctantly concluded that an evidentiary hearing was necessary to dispose of Sandoval-Lopez’s claim. But he noted that the government might forego contesting the petition in favor of letting him appeal “to free itself from the restraint of the plea bargain, or because getting the appeal dismissed would be less work than an evidentiary hearing.”

Fair gamble
Reading the end of the opinion, you could almost sense Kleinfeld reaching out and shaking Sandoval-Lopez to ask him what he meant when he pleaded guilty. He wrote: “[T]he client has the constitutional right… to bet on the possibility of winning the appeal and then winning an acquittal, just as a poker player has the right to hold the ten and queen of hearts, discard three aces, and pray that when he draws three cards, he gets a royal flush.”
My Stupid Mistakes

Peter D. Baird
Maricopa Lawyer

At the 2003 Arizona Bar Convention, I was pleased to receive the Walter E. Craig Award but I knew, in my heart of hearts, that I didn’t deserve it. Although giving an acceptance speech awash in “awe shucks” generalities was tempting, I decided to be specific and confess my stupid mistakes in front of 400 judges and lawyers who gave me the cold shoulder after reading my name. I didn’t even expect them to applaud. However, after I hit the button, the room was filled with air. Never mind standing ovation. After practicing law for nearly 40 years, I have made some real doozies.

Arizona Superior Court 1975

It was a bench trial and I represented a paper company and the dispute was over a newspaper print that had been sold but not paid for. Apart from the salesmen’s testimony that he sold everything “from wipe to write,” the evidence was dull and the judge had every right to be bored. However, in closing argument, I fixed that.

As I rambled on about how the evidence favored the paper company, my brain mindlessly switched from a courtroom speaking mode into an office dictation mode. Suddenly, I started punctuating my argument and said, “Furthermore comma Your Honor comma.”

I don’t remember how the case turned out, only how I felt when the guffaws erupted.

United States Supreme Court 1970

The first time I appeared before the United States Supreme Court I was 29 years old. Nervous but cocky, I thought I was on a roll because, just before flying off to Washington, D.C., I had scored a surprise victory in small claims court against a non-lawyer opponent.

Although my client had graduated from Stanford Law School and had been number one on the Arizona Bar Examination, the State Bar would not admit her because she had refused to answer a question on the application that asked whether she had belonged to any organization that advocated the overthrow of the government by force and violence. She had listed all of the organizations that she had ever belonged to and they were, “Girl Scouts, Church Choir, Girls Athletic Association, Young Republicans, Young Democrats, Law Students Civil Rights Research Council, and Stanford Law Association.” However, that listing wasn’t sufficient for the bar examiners.

According to them, she had to answer the question so they could determine what her “political beliefs” were and, if those beliefs were “not acceptable,” then they would not admit her. From her perspective, bar applicants could hold any political beliefs they chose because conduct and competence were all that mattered. Moreover, she wanted to take the oath to support the Constitution, which, according to an old Supreme Court case, protected political beliefs because they were “inviolate.” Nevertheless, we faced some long odds. Justice Earl Warren had retired; President Nixon had replaced him with Chief Justice Warren Burger; Associate Justice Abe Fortas had resigned under fire; and the United States Supreme Court, in a similar case a few years earlier, had ruled for the California Bar Association. Moreover, the Vietnam War was raging and America was there, the Johnson and Nixon Administrations told us, to fight communism.

Seated next to me at the oral argument was my senior partner who had argued many cases to the court, who had helped write the briefs and who gave me a “thumbs up” sign when I stood up and took the lectern. After I identified myself but before I could say another word, the questions came at me like hot bullets. “Why do you think a Communist should practice law?” “Wouldn’t a Communist lawyer undermine our justice system?” “How can a Communist belief be compatible with the Constitution?”

At first unsettled by the barrage, I stammered that political beliefs were “inviolate” and pointed out that there were hundreds, if not thousands, of lawyers who were racists and, even though those beliefs were incompatible with the Constitution, those lawyers had been admitted to the bar. My arguments didn’t seem to satisfy some of the more aggressive justices who kept firing questions at me and who, after relentless assaults, succeeded in getting under my skin.

Finally, I had had it with the black-robed aggressors. Out-of-control and out-of-my-mind, I blurted, “if you won’t let my client be a lawyer because of her possible beliefs, then you ought to disbar President Nixon because of his actual belief in an unconstitutional war!” There was a stunned silence; my partner buried his face in his hands; and the marble floor trembled beneath my feet.

Two things have stayed with me from that oral argument. First, the satisfaction I felt when President Nixon later resigned in lieu of disbarment. Second, the lesson I learned that every lawyer should know: never piss off the United States Supreme Court.

United States District Court, Northern District of Illinois 1987

It was a trademark infringement and antitrust case that involved dozens of deposition items, multiple motions, two appeals, an order to show cause, and two contempt trials. At one point during the turbulence, I was in court, arguing something to an exhausted and seemingly distracted federal judge when suddenly he was alert, leaning forward and staring down at me with rapacious attention. Naturally, I ascribed his interest to my spell-binding oratory, which I put even more energy into until the judge pointed at my chest. I stopped talking, looked down and saw what had attracted his attention.

It was a large, blood-red splotch in my white shirt over the left side of my chest. Before standing up, I had been sitting at counsel table writing with a red felt-tipped pen and, when I stood up to address the court, I had inadvertently put the cap on the wrong end.

See Mistakes page 16

Superior Court Going Paperless

The Maricopa County Superior Court is taking a major step toward a paperless court system.

Presiding Judge Colin Campbell has ordered each court department to implement an e-filing system to be phased in over the next two years.

On June 20, two civil divisions eliminated paper filings in certain cases and began accepting only electronically filed documents. Once these two civil divisions are fully operational on a paperless system, additional civil divisions will be added until both departments, civil and tax are entirely paperless.

The phase-in paperless filing will be complete in all court departments by 2007. "Currently, if a judge needs a case file it can take anywhere from a few hours to a few days to receive the file," Campbell explained. "With electronic filing, the court can download the entire file in less than two minutes.”

See Paperless page 11
The featured expert this month is Jared S. Marks, Esq., division director of Robert Half Legal. Robert Half Legal, which is located in major markets throughout North America, specializes in the full-time and project placement of highly qualified legal professionals, including attorneys, paralegals and legal secretaries.

Marks addresses the issue of recruiting candidates to accept a job with your firm. The following are some issues to consider.

**What effort and planning should be done to persuade top candidates to accept a job with my firm?**

Carefully consider how you present the job and your firm to these individuals. If you find that you’re losing the best talent to other offers, try to determine why. The following are some issues to consider:

- **Are you really selling the position?**
  You should be highlighting specific benefits and perks of the job at every opportunity. One approach is to have candidates meet with staff members who can offer an insider’s perspective on the growth opportunities and positive work environment at your firm.

- **Is the compensation package competitive?**
  It’s usually better to pay a little more than your competitors. You can research salary ranges through a number of sources, including classified listings, professional and trade associations, human resources consultants and specialized staffing firms. Look for a salary guide with starting compensation levels for attorneys, paralegals, legal secretaries and other legal professionals that also classifies salary ranges by firm size and candidate experience level.

- **How attractive is your corporate culture?**
  Many companies have initiated programs designed to create a more supportive atmosphere. Simple practices such as an open-door management policy and frequent praise and recognition of staff can make a big difference.

- **Are you being decisive enough?**
  Careful hiring is critical, but don’t be overly cautious when making a decision on a top candidate. It’s easy to lose a job seeker’s interest if you delay making an offer.

- **Are you pursuing references promptly and aggressively?**
  A drawn-out reference-checking process can inadvertently send a negative message to an otherwise enthusiastic candidate. If you’re having trouble contacting references, let the candidate know and solicit his or her help communicating with them.

- **By analyzing each step of your staffing process and making improvements where necessary, you increase your chances of finding and keeping top talent.**

Now that I have scheduled an interview for a great candidate, what should I do?

The interview is easily the most important step in the hiring process. A strategic approach to these meetings can help you identify and attract the best talent for your team. The following are strategies for conducting a successful job interview:

- **Prepare in advance**
  Develop an approach you’ll use with all candidates. Rank job requirements in order of importance, and prepare a list of questions that will enable you to assess applicants’ talent and expertise in these areas. Be sure to include questions designed to gauge interpersonal skills and problem-solving abilities.

- **Make your candidate comfortable**
  Start by engaging in small talk – you can gain insight into the candidate’s personality and also put him or her at ease, increasing the likelihood that you’ll receive candid responses.

- **Ask diverse questions**
  To assess the candidate’s work style and compatibility with your firm’s culture, vary the style of your questions. Ask closed-ended, factual ones (“How many years did you work for Firm A?”); open-ended questions (“Can you describe your major accomplishments?”) and hypothetical, job-related scenarios (“How would you handle constructive criticism?”).

- **Make a pitch for your firm**
  The interview works both ways, so be sure to emphasize the positive aspects of your company to prospective legal professionals. Benefits such as employee recognition programs, subsidized training courses and on-site facilities such as a health club can all be strong selling points.

- **Don’t fall victim to the “halo effect”**
  Don’t let one aspect of a candidate’s background – such as the fact that you went to the same school or that he or she worked for the same law firm you worked for – blind you to reasons he or she may not be right for the job. This common phenomenon is called the “halo effect.”

- **Streamline the hiring decision**
  Don’t get too many people involved in the final decision. If you hire “by committee,” you may find the least offensive candidate, rather than best person for the position.

  Conducting an effective job interview isn’t always as easy as it may at first appear. You can greatly increase your chances of getting the most insight out of these meetings by planning ahead, taking good notes and evaluating each candidate objectively.

Jared S. Marks, Esq. can be reached at 602-977-0505 or via email at jared.marks@roberthalflegal.com. The Robert Half Legal website is www.roberthalflegal.com.
Laughter All the Way—An Attorney’s Path to Success

Born in Kansas City but raised in Lincoln, attorney Michael Manning had always dreamed of playing football at Nebraska. Bob Devaney, the college’s coach, just laughed when Manning told him, “I want to be your new middle linebacker on a ‘Big Red’ scholarship.”

This experience, though unknowingly at the time, directly contributed to his success in law. “Lawyers must have a high tolerance for rejection. I developed that early in life.”

At his law school, Manning did end up going to college on a football scholarship, just not at Nebraska. He instead was back in the land of Oz, at Kansas’ Emporia State University. Which proved quite the place to be. His senior year, Manning was elected executive vice president of the National Association of Student Governments, which required him to move to Washington, D.C. just before graduation.

Go long

Manning went from football to politics. After his term expired, he returned to Kansas and ran, unsuccessfully, for Secretary of State in 1972.

At that time in his life, like many fellow Baby Boomers, Manning was a crusader. “But, unlike those in my generation who thought that the best way to effect change was with the toss of a Molotov cocktail or engage in violent street protests, I saw the best pathway to change was through the electoral process.”

The 26th Amendment—18-year-old voting—was brand new in 1972. I ran, in part, to encourage young people to become involved and invested in government and politics.

Lucky break

Referencing Garth Brooks’ song, “Thank God for Unanswered Prayers,” Manning says losing that race was the best thing that ever happened to his career. “I thank God and the Kansas electorate for that loss!”

“Had I won that race, I would have remained in politics forever and would never have gone to law school.”

The legal world is thankful too. “The Department of Justice and FBI declined to investigate but the White House got the Postal Department to start an investigation. The investigation that started included me and two others involved in organizing and running those conferences and rallies.

“Then, Deep Throat exposed the White House’s involvement in Watergate in the nick of time. When the Watergate trail started to wind its way through the West Wing hallways, the political investigations and prosecutions were abandoned.

“If not for Deep Throat, the Watergate investigation would have been successfully obstructed and those political investigations would have been pursued.”

And who knows where Manning would have ended up. Or his legal ambitions. These days, Manning gets his political fill on the morning Stairmaster, immersing himself in biographies and books on U.S. and European leaders and history.”

“I remain very interested in politics but keep a safe enough distance to never tempt the addiction.”

Deep ties

As if Manning doesn’t have enough to be thankful for, Deep Throat saved him from a politically motivated investigation. “In 1971 and 1972. I was active in organizing rallies all over the country urging 18 to 25-year-olds to register and vote. Thousands of students attended these rallies in various metropolitan areas.

“The Nixon White House was mightily offended by these efforts, considering them to be partisan ‘Dump Nixon’ rallies because many of the U.S. Senators and Congressmen who spoke were antiwar.

“But, Nixon was reelected by a landslide— even after the Watergate fiasco. In 1973, after Nixon was reelected, White House staffers H. R. Haldeman and John Ehrlichman urged the Department of Justice to investigate certain people on the White House’s enemies list.

Laughter matter

For such a dynamic figure, what really shines through is Manning’s sense of humor. Which is, of course, the secret to his success. “I take my cases very seriously but have never taken myself too seriously.”

And not forgetting the professional tactics: “I always try to be more prepared than my adversary. I never discourage my opponent from underestimating me—verdicts are usually better than settlements. I am also very passionate about my cases but never become blind to their weaknesses. I am also not risk adverse; well played risks usually pay great rewards for your client.”

Manning’s cases have been chronicled in the book “Inside Job” and “Trust Me.” When asked about the appropriate title for a book written on his life, Manning provides “Only in America – If Mike Manning Can Succeed Like This, Anyone Can!”

There is not a doubt that humor has truly been the golden ticket for the boy who wanted nothing more than to play football at Nebraska. The boy who has the last laugh now.
This calendar includes CLE seminars presented by MCBA as well as MCBA meetings, luncheons and events and those of other voluntary bar associations and law-related organizations. The divisions, sections and committees listed here are those of the MCBA, unless noted otherwise. Everything takes place at the MCBA office, 303 E. Palm Lane, Phoenix, unless noted otherwise. Other frequent venues include the University Club, 39 E. Monte Vista, Phoenix, Arizona State University Downtown (ASUD), 502 E. Monroe, Phoenix; and the Arizona Club, 38th floor, Bank One building, 201 N. Central Ave., Phoenix. For more information about MCBA events or to register for any of the MCBA seminars, contact the MCBA at 602-257-4200 or visit www.maricopabar.org.

**MCBA Calendar**

**JULY 2005**

7  Paralegal Conference Committee Meeting (Greenberg Traurig), 5:30 p.m.
11  Maricopa Lawyer Editorial Board Meeting, 5:15 p.m.
    Paralegal Board Meeting, 5:30 p.m.
12  Scottsdale Bar (Scottsdale Athletic Club), noon
19  Bankruptcy Section Meeting, noon
25  Task Force Meeting, noon
27  Criminal Law, 12:15 p.m.

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**People In Law**

Lonnie J. Williams Jr., a partner at Quarles & Brady Streich Lang LLP, has been selected as a new member of the 2005-06 Martindale-Hubbell/Lexis-Nexis Legal Advisory Board. The Legal Advisory Board was formed to ensure that Martindale-Hubbell and Lexis-Nexis are responsive to the constantly changing needs of the legal profession. Attorneys are selected from the private, corporate and international sectors of the legal profession to comprise the board.

Williams (J.D., 1979, Yale University) works in the firm’s labor and employment group, focusing on civil litigation with an emphasis on employment related matters, tort, banking, and real estate disputes.

Roger N. Morris, also a partner at Quarles & Brady Streich Lang, was named Pharmacist of the Year by the Arizona Pharmacy Alliance. The Arizona Pharmacy Alliance is committed to serving and representing all pharmacy professionals in all practice settings. The alliance fosters safe and effective medication therapy, promotes innovative practice and empowers its members to serve the health care needs of the public.

Morris (J.D., 1989, University of Pittsburgh, chair of the firm’s health care group, represents health care providers and other employers emphasizing health care and pharmacy law, employment law, pharmaceutical and medical device and products liability cases.

Denise McClain, an associate at Quarles & Brady Streich Lang, is a new board member of The Susan G. Komen Breast Cancer Foundation Phoenix Affiliate. The Komen Foundation began in 1983 as a result of a promise between two sisters. Phoenix is one of 118 affiliates in the United States. Twelve members from the community make up the Valley.

McClain (J.D., 1998, ASU), part of the firm’s trusts & estates group, practices in the areas of estate planning, probate and trust administration, guardianships and conservatorships, general business and corporate transactions, as well as taxation.

Michael Patterson of Titus, Brueckner & Berry, PC, has been selected by State of Arizona Commissioner Elaine Richardson to serve on the Department of Real Estate’s new Cross-Border Transactions Committee.

Twelve members were selected to serve on the committee, which will focus on how Arizona consumers’ interests will be addressed when purchasing property outside of the United States. The terms run for one year.

Patterson (J.D., 1995, ASU) practices in business and securities transactions. He spent four years living and working in Mexico City, both in a missionary capacity and as a United States lawyer primarily assisting U.S. companies in managing their legal needs there and throughout Central and South America.

Robert A. Mandel of Greenberg Traurig has been elected to serve on the Crisis Nursery’s Board of Directors. Crisis Nursery is a nonprofit that exists to provide hope and support, through prevention and protection, to children threatened with abuse, neglect or homelessness. Each child is offered protection, nurturance and a safe haven while families receive support through crisis intervention, counseling and referrals to community resources.

Mandel (J.D., 1993, University of Michigan) is an associate in the firm’s litigation department. He previously practiced law for ten years in New York City.

José A. Cárdenas, chairman of Lewis and Roca, was appointed to The Virginia G. Piper Charitable Trust’s Board of Trustees. The Virginia G. Piper Charitable Trust is committed to honoring Virginia Piper’s legacy of making grants available to nonprofit organizations whose work enhances the lives of Maricopa County residents. Since 2000, it has awarded more than $129 million to Maricopa County nonprofit organizations.

Cárdenas (J.D., 1977, Stanford Law School), a partner in the firm’s business litigation group, focuses his practice primarily on transactional and commercial litigation matters, with a special emphasis in the international arena.

Sam Thumma of Perkins Coie Brown & Bain has been elected as a member of the National Committee on Resolutions for the American Red Cross.

The purpose of the 21-member committee is to review and recommend dispositions of resolutions submitted by chartered units. The committee’s key responsibilities are to review proposed resolutions regarding significant corporate policy issues submitted by chartered units, to assimilate information regarding the resolutions and to make recommendations for disposition of the proposed resolutions.

Thumma (J.D., 1988, University of Iowa) is a partner in the firm’s commercial litigation practice group.

J. Vincent González, a partner at Nirenstein, Ruo & González, PLC, has been appointed to a three-year term as a member of the Conflict Case Committee by the State Bar of Arizona.

Appointed by the State Bar’s Board of Governors, González will process, investigate and prosecute all aspects of disciplinary cases involving members of the State Bar’s Board of Governors, State Bar staff, Supreme Court Disciplinary Hearing Officers, and members of the Court’s Disciplinary Commission.

González (J.D., 1997, UA) practices in family law with an emphasis on assisting clients in the prosecution and defense of domestic orders of protection and injunctions against harassment, criminal domestic violence violations, and general family law litigation.

Snell & Wilmer attorney Ronald Messerly has been selected by The Board of Governors of the State Bar of Arizona as its annual Member of the Year.

The award is given to an individual who has made significant contributions to the work of the Bar during the year. Messerly was selected for his work in negotiating, drafting and then monitoring performance of contracts for the renovation of the new State Bar building.

Messerly (J.D., 1990, Willamette University) practices in construction and design law, insurance law (as it relates to the construction industry and design professions), government contracting, and complex real estate development transactions.
Governor Appoints Two Attorneys to Superior Court

Governor Janet Napolitano appointed Bruce Richard Cohen and Helene F. Abrams to the Maricopa County Superior Court.

Cohen, a Republican, currently owns a family law practice in Phoenix, specializing in divorce, custody, legal separation and post-dissolution proceedings. He has also practiced criminal prosecution, criminal defense, juvenile law and civil litigation during his legal career.

Cohen received a bachelor of arts from the University of Arizona and juris doctorate from Arizona State University.

Abrams, an Independent, acts as the juvenile division chief for the Office of the Maricopa County Public Defender, where she manages approximately 50 attorney and staff positions. She has served as a public defender since 1981.

Abrams received her bachelor’s and juris doctorate from the University of Arizona.

Cohen replaces retiring Judge Stephen Gerst and Abrams replaces retiring Judge Barbara Jarrett.

Cohen and Abrams will take the bench this summer.

Garcia was appointed by Governor Janet Napolitano in April, and is assigned to the Family Court department in downtown Phoenix. Immediately prior to joining the bench, she spent 12 years as an assistant attorney general, in the liability management section. She worked in private practice from 1990 to 1993. Her investiture was held on June 7.

The six commissioners who were sworn-in to office during June 13 ceremonies in a packed auditorium include: Michael D. Hintze, Casey Newcomb, Pamela Svoboda, Lisa VandenBerg, Eartha K. Washington and Donna Williams.

Svoboda, VandenBerg and Washington are assigned to the criminal department in downtown Phoenix; Hintze hears probate and civil cases downtown; Newcomb hears civil and family and probate cases and Williams is assigned to the family court department at the Northwest Court Center in Surprise.

Governor Appoints Two Attorneys to Superior Court

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Terri Schiavo in Retrospect

David R. Frazer
Special to Maricopa Lawyer

N ewspaper and magazine columnists, television reporters and radio talk show hosts devoted more time and space to the Terri Schiavo “live or die” dilemma then almost any issue that has been covered since September 11.

Emotionally, it is understandable since potentially every family could be faced with a similar dilemma with a child, spouse, parent or grandparent at some time in the future.

Unfortunately, based upon the misinformation that we were subjected to by the media, becoming educated on the “right to die” issue was close to impossible.

To begin with, as an estate planning attorney for the past 40 years, it is upsetting and disappointing that our president, the Senate and the House of Representatives became involved in what most people and constitutional scholars believe is a private family matter.

If there is a family dispute on when to pull the plug, it should be left to state court judges to hear the case and to arrive at a reasonable solution. This is not a matter for federal judicial jurisdiction, nor is it a matter for Congress or the president to dictate a solution (the latter parties have not been able to solve the budget deficit, reform social security or meaningful reform of the Internal Revenue Code). Why should we have confidence that politicians could solve the complicated case of Terri Schiavo?

Secondly, and equally upsetting, is the misinformation which emanated from media persons of high repute. On March 24, 2005, in a column written in the Arizona Republic by syndicated columnist Thomas Sowell, he asserted that Terri Schiavo’s “right to die” has evolved into a right to be killed. He argued that pulling the feeding tube would result in the agony of starvation. Sowell cites as evidence that people starving in India were reported “as dying often clutching pandemic stomachs.” That, he says, would almost certainly be declared “cruel and unusual punishment” in violation of the Constitution.

If Sowell is right, then every “right to die” plug pulled in Arizona would have to be considered cruel and unusual punishment. Why? Because our living will statute, which is typical of statutes in most of our 50 states, provides that all artificial means of sustenance, including heart and lung machines and food and water can be pulled except for pain medicine to allow for comfort care. In my experience, every hospital and every attending doctor provides pain medicine so that the patient dies with dignity and comfort.

There is no agony of the kind described by Sowell (and others), nor would thousands of families who directed that the plug be pulled have done so if there was any chance that the death of a loved one would be cruel or painful.

It has also been argued by many, that somehow judicial due process was lacking in Schiavo’s case. Consider the facts. The original court petition was heard on the merits in February 2000 before Judge George Greer in a Florida Circuit Court. Greer relied upon an earlier Florida Supreme Court case which stated that a key test is that the “evidence of this patient’s oral declaration is reliable.” Greer then heard testimony from medical expert Michael Schiavo, his brother and sister-in-law that Schiavo expressed on several occasions that she did not want to be kept alive by artificial means. Greer subsequently heard testimony from a well respected neurologist and faculty member at the University of Minnesota Center for Bioethics, as well as from Schiavo’s parents. Greer finally concluded that Michael Schiavo’s case rose “to the level of clear and convincing evidence.”

In the five years since Greer’s decision, there have been 21 rulings supporting him, including eight rulings in the Florida Appeals Court, five rulings in the Florida Supreme Court, five rulings in the U.S. Federal Courts and three rulings in the U.S. Supreme Court. In light of this history, due process appears to be legally fulfilled.

Finally, what does Terri Schiavo’s case instruct us for future “right to die” cases? Here are a few thoughts:

1. Living wills and medical powers of attorney are not only desirable but absolutely essential. Moreover, sufficient detail is necessary in these documents to reveal how the signer wishes to be treated.

2. Even if you sign a living will and a medical power of attorney, your designated agent under the medical power may suffer legal stress by a family member who claims that the agent of the medical power didn’t exercise the power reasonably and thus should be held liable civilly or even criminally. This sounds extreme but so are those who wanted to overturn 21 rulings from four different state and federal appellate courts.

3. We should recognize that the judicial branch of government is not perfect. Some cases are wrongly decided. Fortunately, most cases are decided reasonably and with appropriate judicial wisdom.

4. What we do not need are new state laws (like Texas, California and Virginia) in which doctors and hospital ethics committees who see no hope for a patient’s recovery can overturn the decisions of family members.

5. Hopefully, as time passes and more people understand and experience this important aspect of family law, the extremes on both sides will calm down and reason will again prevail.

David Frazer is the founder and senior partner in the law firm of Frazer, Ryan, Goldberg, Arnold & Gitter, L.L.P. in Phoenix, where his practice includes estate and corporate tax planning, exempt organizations, income tax litigation and estate administration.

Terri Schiavo in Retrospect

David R. Frazer
Special to Maricopa Lawyer

On e need simply look to President Bush’s own words to determine what kind of jurists he is seeking to become Federal Court judges and Supreme Court justices. In October of 2000, during his first presidential campaign, Bush promised the following of his Supreme Court picks:

“The voters will know I’ll put competent judges on the bench, people who will strictly interpret the Constitution and will not use the bench to write social policy. And that’s going to be a big difference between my opponent and me. I believe that—I believe that the judges ought not to take the place of the legislative branch of government, that they’re appointed for life and that they ought to look at the Constitution as sacred. They shouldn’t mirror their bench. I don’t believe in liberal activist judges. I believe in—I believe in strict constructionists. And those are the kind of judges I will appoint.” (Editor’s note: taken from a CNN transcript of the October 3, 2000 presidential debate.)

Two successful elections later, opponents of the judicial filibuster contend that the president has earned the right to nominate judges to the federal bench, including the Supreme Court of the United States, unimpeded by the inherently undemocratic “judicial filibuster.” Such opponents correctly argue that the filibuster is nothing more than a last ditch tactic used by those in the Senate’s minority camp whose collective vote has been rendered impotent, to delay and ultimately sabotage even mildly controversial judicial nominees.

So what is one to make of the Senate minority’s aversion to controversial picks? More importantly, should those in the Senate minority be permitted to use the filibuster to essentially sabotage controversial nominations? It cannot be reasonably contested that some of the most important decisions in this country’s history have been written by judges who were so controversial at the time of nomination they would not have stood a chance if the filibuster had been used then as the minority intends to use it today. This is true not just of controversial conservative picks, but of some of the high court’s most influential liberal nominees as well. For example, Justice Louis D. Brandeis, who wrote Erie vs. Tomkins and other groundbreaking decisions, would likely have not been nominated today. Prior to his arrival on the bench, Brandeis, championed the then-controversial cause of minimum wage, and was a notorious left-leaning lawyer who battled big companies while protecting the rights of laborers. Moreover, as a Jewish nominee at a time of institutional anti-semitism, Brandeis was then the epitome of controversy. Nevertheless, a vote was eventually cast, and Brandeis obtained the requisite majority vote from the Senate.

As attorney Steffen Johnson cleverly wrote in a recent article called “How Filibusters Drain Quality” published in the May 18, 2005 edition of Washington Times: “It [the filibuster] enables the majority party to blackball any nominee with any record of distinction, since any nominee worth his or her salt will have offended one or another interest group in the course of prior government or academic service. This means the courts will be filled with undistinguished, ineffective ‘moderates’ rather than a diverse group of the most talented judges from both parties.”

If used as intended by the current minority, the filibuster will conveniently limit the constitutionally mandated majority vote used to confirm nominees, to dull, middle-of-the-road, uncontroversial, mediocre picks. An up or down vote on the strict constructionists that Bush consistently promised to the electorate will always be averted. And to all of those who cast a vote for Bush based upon the promise to appoint strict constructionists, the judicial filibuster acts a giant muzzle on their collective vote.

David J. Hartt is an attorney at The Davidson Law Firm, P.C., where he practices commercial litigation, construction, community association, zoning, and real estate law. He is licensed to practice in New York & New Jersey.
Matthew J. Salmon, a former Arizona United States congressman, has joined Greenberg Traurig as a director of governmental affairs, where he will continue to work with clients on federal issues as well as Arizona state and municipal matters.

Salmon (M.P.A., Brigham Young University) began his career in public service as an Arizona state senator. He then served as U.S. congressman from Arizona, serving on the International Relations, Education, Small Business, and Science committees.

David Weissman has joined Sleep America to its Phoenix office. Weissman (J.D., 1997, Loyola University) has an extensive background in business litigation, specializing in labor and employment law. He was formerly with Jenner & Block LLP, a Chicago based law firm.

Weissman has joined the law firm of Burch & Cracchiolo, P.A. as an associate attorney. Reiman (J.D., 2000, University of Akron), a part of the firm's litigation area, will focus on personal injury and commercial litigation.

Lewis & Roca has named five attorneys into partnership; Ed Barkel, Stephen Hart, Linda Parkis, Celeste Steen, and Matthew Sweger.

Barkel (J.D., 1988, University of Detroit) practices with the firm’s securities litigation group, concentrating on defending broker-dealers and individual brokers in arbitrations and litigated matters.

Hart (J.D., 1985, University of California-Berkeley) is a member of the firm's government relations and administrative practice and concentrates on Indian law, gaming law and government relations.

Parkis (J.D., 1997, University of Southern California) practices with the firm's real estate group and focuses primarily in the areas of real estate finance, acquisition and development, improved and unimproved real property.

Steen (J.D., 1996, University of Pittsburgh) practices in the firm's Tucson office with a concentration in real estate law and has experience assisting clients in land acquisition and development, portfolio acquisitions, commercial leasing, land use, mortgage lending and other real estate finance transactions. Sweger (J.D., 1998, University of Pittsburgh) practices in the firm's Tucson office and is a member of the firm's business section, where he focuses on counseling businesses and investors in connection with mergers and acquisitions, joint ventures, equity and debt financing, securities offerings, formation and start-up, and general commercial activities.

Kenneth W. Abbott will join the faculty of the College of Law at Arizona State University in January 2006 as a professor of law and is a member of the firm's business section, where he focuses on counseling businesses and investors in connection with mergers and acquisitions, joint ventures, equity and debt financing, securities offerings, formation and start-up, and general commercial activities.

As soon as a court document is electronically filed with Clerk of the Court, that document is immediately available to the judge from any computer. This will eliminate any wait for a paper case file to be retrieved and delivered.

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The new electronic storage system is a “jukebox” that holds 250 optical disks. Each disk can hold 2.1 gigabytes of images. Approximately 260,000 pages of paper (over 500 reams) can fit onto one 5.25-inch optical disk as electronic images.

Clerk of the Court Michael Jeanes said, “Electronic filing is a tool that will enable us to cost effectively process the ever increasing volume of documents with the speed and accuracy which litigants and the legal community need.”
of public service. Second, I deeply admire the two judges I clerked for, Justice O’Connor and Judge Sneed. Also, having served as a solicitor general, I came to understand and have a high regard for the role of the Supreme Court not only in deciding cases, but in terms of its broader responsibilities and the administration of the judicial branch more generally. Finally, as a lawyer, one of my strengths and something that I enjoy is thinking about and writing about legal issues.

K: Do you think you’ll miss doing litigation work?

Bales: I guess the prospect of not doing oral argument is something I’ll miss. Another thing I really enjoy in the different jobs I’ve had is working with the various colleagues. Focusing on the last few years, I’ve worked with the newer associates and I’ve found it very satisfying to work in a role where you are able to help other lawyers learn the ropes. As a judge, you have law clerks, so there is a parallel relationship between an experienced attorney and a new attorney, but I’m sure it’s different.

K: What goals do you have for the court?

Bales: From my point of view, my first priority is to make sure that I’m doing the best I can to be a productive and effective member of the court and then second, as a junior justice, try to help implement the strategic agenda that the Chief Justice has identified.

K: How do you think you can improve the public image of lawyers and judges?

Bales: Well with respect to the courts in general, I think it is important that they do a better job of explaining to the public how they work and what their role is in our structure of government. By saying that, I’m not talking about explaining the outcome or the reasoning in a particular case. I think that’s done in the opinion that’s issued in that case. But I do think there is a role for the courts to try to better educate the public about how it is that issues come before the courts how they are addressed, what the constraints are on courts and their decision making.

K: You were described in the governor’s press release as an “avid outdoor adventurer and athlete.” Where did that come from?

Bales: You’d have to ask the governor’s office about that one! I think it’s their shorthand way of saying that I do enjoy a lot of outdoor activities. I regularly run and hike and swim and also mountain bike to some extent. Last month, I was on a four day backpacking trip in the Grand Canyon. When I saw it, I told them some of my friends would probably take issue with whether I’m truly an athlete or not.

K: Do you plan to keep doing things like that?

Bales: I do. In fact, I’m hoping to include some version of another backpacking trip between my leaving my law firm and my starting work at the court.

K: Is there any place you want to go but haven’t been yet?

Bales: By an odd coincidence, I missed a trip to Costa Rica with my wife and daughter who had gone down to work on a Habitat for Humanity project because it overlapped with the nominating commission’s interview. They both came back just in love with Costa Rica so I would like to down there.

Klepper is an MCBA Board Member.

Newest Justice
continued from page 1

The Law Firm of
Warner Angle Hallam Jackson & Formanek PLC

is pleased to announce that

Bobby O. Thrasher, JR.

and

Steven R. Napoles

have joined the Firm as Associates

Mr. Thrasher, a graduate of Arizona State University College of Law 1997, will practice in the areas of Real Estate and Commercial Transactions.

Mr. Napoles, a graduate of the University of San Diego School of Law 2000, will focus his practice in Civil Litigation.

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Company’s creation of Supreme Court Nomination blog spawns Anti-SCOTUS blog

Goldstein-Howe, the Washington, D.C., law firm responsible for the creation of SCOTUSblog, has fashioned yet another blog for the sole purpose of tracking the development of events and speculation surrounding a possible replacement for Chief Justice William Rehnquist, should he retire. The blog already contains many interesting journal entries, including a list of the most often mentioned candidates for a U.S. Supreme Court judgeship, contemplation of events such as the probability of elevation of an existing Supreme Court justice to fill Rehnquist’s seat, as well as profiles on many of the potential nominees.

But at least one blogger questions how Tom Goldstein, whose firm specializes in Supreme Court cases, can offer an objective and balanced approach to discussion involving the Supreme Court nomination process. This quandary has inspired an entity who calls himself the “conservative cowboy” to create “The Anti-SCOTUS Blog,” a web log “devoted to correcting the mistakes, omissions, and downright nonsense on www.scotusblog.com and www.sctnomination.com/blog.” The Anti-SCOTUSblog is located at: http://anti-scotusblog.blogspot.com/.

Deceased serial killer sends note to psychiatrist

Michael Ross, a serial killer who waived further appeals to stop his execution, did so at the opposition of psychiatrists who testified that Ross was not mentally competent to waive further appeals. One of the psychiatrists, Stuart Grassian, testified that Ross was narcissistic and that his desire to be executed became a game that he was trying to win. In his report, Grassian likened Ross’ actions to that of “playing a game of chess.” Several days after Ross’ execution, Grassian received a note that the dead man had written three days before his execution. The note read: “Dear Dr. Grassian, Check, and mate. You never had a chance! Yours truly, Michael Ross.”

Court says low blood sugar must be taken into account in man’s attempt to kill wife

On June 13, 2005, the Colorado Supreme Court ruled that a diabetic man who hit his wife on the head with a hammer and then ran over her with a van should have been able to present a defense that involuntary intoxication, brought on by the defendant’s failure to eat properly after injecting himself with insulin, affected his rational thought processes and prevented him from forming a genuine intent to harm her.

The defendant, Steve David Garcia, injected himself with a large dose of insulin in anticipation of eating cake and ice cream at his teenage daughter’s afternoon birthday party, but then did not eat anything afterward. During his trial, he did not dispute that he attacked his wife in a store parking lot as they ran errands before the party. Three days before the party, Garcia’s wife told him that she wanted a divorce.

Although the decision is the first of its kind in Colorado, Texas and Washington state courts have accepted insulin-induced hypoglycemia as a defense.

Rotations continued from page 3

is in the Southeast Court facility in Mesa. In addition, newly appointed Judge Bruce Cohen is assigned to the Southeast Court facility, handling Judge Linda Akers’ family court calendar. Akers assumed the downtown criminal calendar of retired Judge Foreman.

Another shift at the Southeast Court Facility is the move of Judge Connie Cotes from the juvenile facility—where she handled an integrated family court calendar (which combined family and juvenile cases involving one family to be heard by one judge)—to a family court calendar in the Adult Court building.

The retirement of O’Melia impacted on the plan that he move to Juvenile Court to assume Judge Linda Miles’ calendar. Instead, Judge Jonathan Swartz assumed that calendar which is assigned to the Juvenile Court Durango facility in south Phoenix.

Juvenile Court was further impacted by retirements. Judge Michael McVey has taken the juvenile calendar that had been assigned to retired Judge Gerst and Judge Ron Reinstein is handling the juvenile calendar of retired Judge Sargeant. These two calendars are heard in the Adult Court facility in downtown Phoenix. New Judge Michael Kemp is assigned to the juvenile calendar at the Durango facility, which previously was heard by McVey.

The Criminal Department also was affected by the revisions. Judge Margaret Honey now has the criminal calendar of Judge Frank Galati, who has been given a criminal special assignment calendar. Judge Roland Steinle assumed the criminal calendar of Hothon, instead of a previous plan to take a special assignment criminal calendar. Judge Thomas O’Toole assumed a special assignment criminal calendar, which had been assigned to retired Judge Foreman.

Although Gottsfield retired, the court didn’t lose him. Instead it gained a full-time pro tem judge. His retirement was mandatory upon reaching 70 years of age, but he didn’t quit. Instead, he is assigned to a criminal special assignment calendar.

There are still five vacancies created by retirements that are to be filled by gubernatorial appointment. Superior Court commissioners are serving as pro tem judges to fill the void until those appointments are finalized. There are also two newly created judgeships awaiting appointments—which will bring the number of Superior Court judges in Maricopa County to 93.

As these pending judicial appointments are made, they will generate new calendar assignments which may create additional rounds of changes in the current assignment scheme.

An efficient way to determine judicial assignments is to go to the Superior Court Web site: www.superiorcourt.maricopa.gov and then click on “judge information,” and then click on “judges” to access a directory that includes judges’ names, assignments, locations and phone numbers.

J.W. Brown is the Communications Director of the Trial Courts of Arizona in Maricopa County.
Volunteer Lawyers Program

Thanks Attorneys

The Volunteer Lawyers Program thanks the following attorneys and firms who accepted these cases during the past two months to assist 81 low-income families. Each attorney receives a certificate from the Maricopa County Bar Association for a CLE discount.

Assistance to Non-Profit Organizations:
Susan Reichman Gilman
Jaburg & Wilk

Bankruptcy:
Steven M. Brechner
Arboleda Brechner
Randy Nussbaum
Jaburg & Wilk
Donald W. Powell
Carmichael & Powell

Consumer:
Bert Acken
Lewis and Roca
David C. Auther
Sole Practitioner
Stephen Banta
Sole Practitioner
Frank W. Busch, III
First National Bank of Arizona
Katie Carty (2 cases)
Sole Practitioner
Greg S. Como
Lewis Brisbois Bisgaard & Smith
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Gallagher & Kennedy
David Funkhouser III
Quarles & Brady Streich Lang
Isaac Gabriel
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Employment:
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Martin & Bonnett
Francis Fanning
Sole Practitioner
Richard K. Mahrle
Cammage & Burnham
Rosval Patterson
Sole Practitioner

Family Law/Domestic Violence:
David Abney –2 cases
Skousen Skousen Gulbrandsen & Patience
Michael E. Hurley
Sole Practitioner
Clair W. Lane
Sole Practitioner
Scott McCoy
Jennings Strouss & Salmon
DeShon Pullen
DeShon & Associates
Paul C. Riggs
Gilson Ferrin & Riggs

Guardians Ad Litem for Children in Family Court:
Amy Abdo
Fennemore Craig
Irene Boland
Aris J. Gallous & Associates
Jessica M. Cotter
Law Office of Bruce D. Brown
Helen R. Davis
The Cavanagh Law Firm
Bernard P. Lopez
Sole Practitioner
Terrance C. Mead
Mead & Associates
William R. Wingard
Cole & Wingard

Guardianships of Minor Children:
Herbert M. Bohlman
Sole Practitioner
James Condo
Snell & Wilmer
Sandra Creta
Quarles & Brady Streich Lang
Jerome Froimson
Sole Practitioner
Christy Jensen
Snell & Wilmer
Clarence Matherson
State Bar of Arizona
Troy McNemar
Sole Practitioner
Yvonne D. Moss
Quarles & Brady Streich Lang
Michael Ross
Meyer Hendricks & Bivens
Bryan Sandler
Swenson Storer Andrews & Frazelle
Lori Zirkle
Bowman and Brooke

Guardianships of Incapacitated Adults:
Joseph F. Causey
Sole Practitioner
Ray Hayes
Sole Practitioner
Candess Hunter
Hunter Humphrey & Yavitz
Wayne P. Marsh
Mull & Marsh

Health Issues:
Michele Feeney
Mohr Hackett Pederson Blakley & Randolph

Home Ownership Issues:
Mark D. Bogard
Jaburg & Wilk
Neal Booksan
Jaburg & Wilk
Jeremy Butler
Sole Practitioner
Donna L. Gallinkey (3 cases)
Snell & Wilmer
Thomas F. Hickey
Keller & Hickey
Kevin O’Malley
Gallagher & Kennedy
David A. Paige
Quarles & Brady Streich Lang
John M. Randolph
Mohr Hackett Pederson Blakley & Randolph

Tenants’ Rights:
Joshua Forrest
Fennemore Craig
Katherine McLeod
Sole Practitioner

Tort Defense:
Charles F. Richards
Sole Practitioner

Lewis and Roca LLP
congratulates our newly elected lawyers into the partnership

Ed Barkel
Stephen Hart
Linda Parkis
Celeste Steen
Matthew Sweger

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Mistakes
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and had pushed the exposed felt tip into my left shirt pocket. Slowly, the red ink soaked into my white shirt and spread until it looked like a bleeding chest wound.

At that moment, I would have preferred a chest wound.

Arizona Superior Court 2002

Voir dire has never been one of my strengths. When the court permits questions from counsel, I always feel as though I’m flying blind. All too often, I later wish that I had kept my mouth shut.

One such occasion occurred in a legal malpractice case I was defending and, as the voir dire process began, I could see several “I-hate-lawyers” expressions on the panelists. The most hateful expression was worn by a lanky, middle-aged man who, in response to a question from the court, angrily announced that he had been through two divorces and, each time, he had despised his lawyers and his wives’ lawyers too. Unbidden, he went on to say that, if he were in a boat in the middle of a lake and if a lawyer happened to be out there floundering, he would let that lawyer drown.

When my turn for voir dire came, I should have ignored the malcontent and should have been content to strike him. However, being unable to control myself and forgetting that I should say positive things about lawyers, I turned on him and said, “Oh don’t worry about a lawyer ever drowning because we can all swim. Didn’t you know we’re sharks?”

I never asked my client how he liked being called a shark.

Arizona Superior Court 1999

I have known lawyers who can go to trial without notes, show up with little more than smiles on their faces and vanquish their opponents with memory, charm and guile. These lawyers are few in number and are positively rare in the dull, sprawling tangles of commercial litigation. Anyway, I am not one of those lawyers.

For me, notes are as vital as oxygen for openings, closings and examinations. My notes are detailed with handwritten headings, subjects, deposition pages, exhibit numbers, case citations and even a few specifically worded questions, explanations, quips and quotes. As a result, I am a fanatic about making sure that my notes always go with me to court and I always compulsively check my briefcase for them before I leave the office. Never once have I left them behind. However, as I learned to my horror, preparing notes and taking them to trial do not always insure access to them in the courtroom.

After a difficult, four-week jury trial in a dangerous securities case that our client had refused, re-refused and re-re-refused to settle, the time came for closing argument and, although I was worried about a bad outcome, I was nonetheless prepared for the closing and had my notes with me. Indeed, I knew these notes were in my briefcase because I had, as usual, checked on them before leaving the office.

My briefcase was one of those large, black, heavy-duty affairs with wheels and a combination lock that was frozen in place by a red plastic pin. I never knew the combination because I have a lousy memory for numbers and, besides, I never lock my briefcase. However, on my way to court that day, I must have bumped the briefcase against something because the red plastic pin somehow fell out, allowing the combination dial to rotate.

Imagine the panic of a note-dependent lawyer like me when my opponent had finished his closing argument and I reached down to open my briefcase and found that it was locked. “Mr. Baird, you may proceed,” the judge said, as I frantically twisted the dials first to my birthday, then to my social security number and then my telephone number. No luck.

When the reality sank in that I would never get the combination, I stood up, bent over the briefcase, reached under the lid with both hands and, while visible to everyone in the courtroom, yanked with all my might. Instantly, the lock broke off with a loud “WAAAP,” whereupon I grabbed my notes and rushed to the lectern.

As it turned out, “WAAAP” was the only thing the jury remembered about my closing or my case.

United States District Court, District of Arizona 1986

This blunder is one that I fortunately caught at the last minute but it could have done permanent damage to my client, Presbyterian Church U.S.A., a major Protestant denomination. The case was a First Amendment free exercise of religion action that Janet Napolitano (now governor of the state of Arizona) and I filed on behalf of the Presbyterian Church U.S.A. against the federal government and certain undercover agents who had infiltrated and secretly recorded Presbyterian worship services.

What had happened was that, during the civil wars in Central America in the late 1980s, several Presbyterian churches were taking in Central American refugees who had fled for their lives. However, since the United States supported the military regimes in those countries, the Immigration and Naturalization Service or “INS” had refused, in most instances, to grant these Central Americans politcal refugee status for temporary asylum. Moreover, the Justice Department had also gathered evidence for a criminal prosecution against some of the clergy and congregants by hiring Hispanic undercover agents to pose as worshippers who then, without warrants or probable cause, had secretly recorded prayers, sermons, worship services and confessions of faith.

Our plan was to file a declaratory judgment action against the INS, the Justice Department and the undercover agents and seek a declaration that, before sending spies into worship services, the government had to obtain a warrant or have probable cause, had secretly recorded prayers, sermons, worship services and confessions of faith.

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