The Last Five Years: A Retrospective

By Hon. Colin F. Campbell
Special to Maricopa Lawyer

In 2000, when the Supreme Court selected the five-year term as presiding judge of Maricopa County, little did I know then what challenges would await the county courts. What followed were mandates from the Supreme Court to reform criminal case management and the limited jurisdiction courts; one of the worst state fiscal crises in the state's history; and increasing physical threats to judges. Let me share some of the major issues that have been prominent in my term as presiding judge.

Criminal justice

Upon appointment as presiding judge in July 2000, then Chief Justice Tom zakhet tasked the Maricopa County Superior Court to bring criminal case processing in line with Rule 8 of the Arizona Rules of Criminal Procedure, which now requires in-custody criminal cases to be tried in 150 days, and out-of-custody cases to be tried in 180 days.

The challenge was addressed with new ideas such as establishing regional felony centers, enabling us to eliminate 10 days of unnecessary delay in criminal case processing caused by binding-over cases from Justice Court to Superior Court, which accelerated many cases to early disposition. By establishing a contiguous panel to hear motions for continuing criminal cases, the court was able to enforce Rule 8, allowing continuances in criminal cases only in exceptional circumstances.

Within two years, Maricopa County was able to bring 94 percent of arraigned criminal felony cases to change of plea or trial within Rule 8 time disposition guidelines.

Consolidated court functions and specialty courts have allowed Superior Court to efficiently manage cases and keep up with increasing case filings during a time when court revenue was limited.

Regional felony centers were created to consolidate preliminary hearings, arraignments, pleas and sentencings. Probation revocation court was developed for all felony and misdemeanor probation revocations and a management unit now gets post-conviction relief petitions. A new consolidated court for felony driving-under-the-influence (DUI) cases opened in December 2003.

We are currently working with the 46 limited jurisdiction courts in Maricopa County to bring all misdemeanor DUI cases throughout the county to plea or trial within the same time frames. We are the first county in the state to require reporting of all DUI misdemeanor cases over 180 days old on a monthly basis by the limited jurisdiction courts.

An invaluable benefit of these consolidated courts is they bring the county attorney, public defender, probation officers and court judges together in one space, encouraging better communication between the agencies, early discovery, early plea and accelerated disposition.

Limited jurisdiction court reform

In July 2002, Chief Justice Charles Jones tasked the Maricopa County Superior Court to initiate and sustain reforms in the Limited Jurisdiction Courts of Maricopa County, working with the newly formed Limited Jurisdiction Court Oversight Council, the administrative operations of the Justice Courts have been reorganized, consolidated and strengthened. Collections and administrative operations have been improved in the 23 Maricopa County Justice Courts.

A lower court appeals calendar was also created, hearing all appeals from the 23 justice courts and the 23 municipal courts in Maricopa County, to establish consistent and uniform law. A 2003 Maricopa County local rule change allows the lower court appeals judge to publish noteworthy opinions, allowing for the first body of substantive law for lower courts from the Superior Court appeals calendar.

Family court

During my tenure as presiding judge, we have aggressively moved to strengthen our family court department, allocating 50 percent more judicial resources to the family court. New programs, like the domestic violence centers and a family court ombudsman program, were created. We have begun an attorney case manager program that allows for early settlement conferences with an attorney case manager, particularly in pro per cases.

In 2004, a consultant's report made recommendations for family court, which Chief Justice Jones asked the Superior Court to implement. A primary recommendation for a new uniform case management plan was being implemented, along with other changes, such as a default on demand calendar that allows parties and lawyers to call the court and set a default or consent hearing as early as the next day.

Let the Experts Decide: Racial Profiling

By Daniel P. Schaack
Maricopa Lawyer

Racial profiling has been a hot topic in Arizona lately. The Arizona Supreme Court recently spoke out on the subject. But it did not address the grand issue; all concerned agreed that profiling is wrong. Rather, the court addressed a more nuts-and-bolts topic: to what tools is a suspect entitled to help prove profiling.

Anthony James Jones, who is Black, and Louis Rodriguez-Burgos and Jose Altatragia Rodriguez, who are Latino, were among a number of minority drivers stopped by DPS officers on I-17 in Yavapai County during a drug-interdiction effort. Officers found drugs in their cars and charged them with possession.

Expert proof

Claiming that the officers had selectively enforced the traffic laws, the defendants requested the court to appoint an expert witness to help them prove racial profiling. Their chosen expert had reviewed data about

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Illegal Immigration Bills Stir Debate...see page 3.
How Using a PI Can Affect a Trial’s Outcome...see page 5.
History & Hearsay: Pioneer Attorneys Battle for Female Juror Rights...see page 12.
**Juries Matter and Are Good for You**

I am asking for trouble here, because this may not be on the top of your wish list for the summer. But along with weekends in Arizona’s mountains, visiting our local resorts with their off-season kama'aina rates, or the pilgrimage to San Diego, I have a summer idea that is good for you and good for our community.

I am talking about jury service. How many attorneys have actually served on juries? Personally, I have tried cases in state and federal courts, handled appeals up through the U.S. Supreme Court (okay, it was a “cert. denied” case), but I have never made it past voir dire in the jury box.

Along with judges, court staff and lawyers, the evidence suggests that juries do their job and that citizens believe that the jury system works. In a recent ABA study, 78 percent of the American public polled agreed that “the jury system is the most fair way to determine a guilt or innocence of a person accused of a crime.” And 97 percent of 594 federal judges recently surveyed stated that they agree with jury verdicts “most or all of the time.”

Trial by jury is guaranteed in the Fifth, Sixth, and Seventh Amendments. Nearly a million Americans serve on a jury each year and approximately five million Americans report to their local courthouse for jury duty. As Thomas Jefferson stated, “I consider trial by jury as the only anchor yet imagined by man by which a government can be held to the principles of its constitution.”

As lawyers, we need juries and are in a unique position to promote jury service as a privilege and a responsibility. The ABA-sponsored survey says that most of our fellow citizens who have served on a jury consider it a privilege and would like to do it again.

What about us? Okay, so maybe we cannot volunteer for jury service. We have to wait until we receive the juror summons and make sure that we are not one of the 20 percent who simply ignore the summons.

But we can also encourage our friends and neighbors to honor the summons when they receive it and promote a system of justice where the law is administered by the people. We can thank them and tell them, “good for you,” when they report for duty.

A jury of one’s peers is a fundamental concept of our American democracy. Along with voting it is one of the main ways that we take part in public life. And unlike voting, there is no absentee ballot—you have to show up.

So look for that jury summons this summer. I’ll be expecting mine any day now. I hear the facilities are well air conditioned.

Jay Zweig, who promises to be “fair and impartial and listen to all of the evidence before reaching any conclusions” can be reached at jz@gnet.com or 602-530-8407.

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**Early Lessons**

I have been a prosecutor for just six-and-a-half years, and the time has been filled with mostly expected outcomes and plea agreements, but as in any career, I think attorneys remember the “raise your eyebrows is this really happening” moments that could only take place in a court of law. I suppose they can be transformed into a column of “don’ts”:

1. Do not call an older male judge “dad” during a settlement conference. Your face will turn bright red and the prosecutor will find it rip-roariously funny and not be able to contain herself, even in discussing a serious case. She will giggle even minutes after the moment passes.

2. If you are on trial for vehicular manslaughter and come into court every single day of pre-trial motion hearings and all eight days of trial in a wheelchair, after tearfully testifying that you hope someday to walk again, do not get caught on tape WALKING into a Starbucks and LOUNGING in a cushy chair sipping your Frappuccino.

3. Do not ask a witness to plead guilty to anything. A poor unsuspecting non-English-speaking witness (Witness) shows up for trial and defendant is supposed to plead. Court calls the case and Witness stands up when he hears defendant’s name. He scurries to the podium and we begin the change of plea. We were ten minutes into the proceeding before we (with hat-in-hand) apologize profusely and told Witness the defendant must’ve bench warrant. Gulp!

4. If you are charged with DUI and claim you were not driving, do not ask a blind man to be your star alibi witness if he will say that he was in the car with you while you were driving, and that you offered to buy him a “very nice dinner” if he’d lie on the stand for you.

5. Do not ask your pregnant girlfriend and your wife to approach the prosecutor asking to dismiss charges. Do not do this when the two have never met and especially after your wife has submitted a lengthy memo entitled “Let’s Fix This Mess” with band-aid clip art below it.

We’re halfway through our year now and I decided to give you all a break from the “please join YLD and volunteer” columns. I thought we’d roll out a light-hearted piece. Have a great month!

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**MCBA Announcements**

The Maricopa County Bar Association’s Task Force on the Recruitment and Retention of Minority and Women Lawyers will be hosting its annual Summer Associate Social on June 29, from 5:30-7:30 p.m., at the MCBA Offices. The annual community-building event welcomes summer associates to Arizona, giving them the opportunity to meet judges and associates from different law firms as well as the MCBA Board of Directors and leaders of affiliated bar associations in Maricopa County.

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 board meets once a month to plan upcoming issues.

For more information, contact Kathleen Brieske at (602) 257-4200 x106 or kbrieske@mcbabar.org.

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**Maricopa Lawyer**

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

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Civil Rule Adopted to Address Motion in Limine Practice  
By Brian Cieniawski  
Maricopa Lawyer

In limine in compliance with Rule 7.2 shall not operate as a waiver of the right to object to evidence at trial. The comment to Rule 7.2 contains useful information. The comment explains the purpose of a motion in limine is to obtain a pretrial ruling on evidentiary disputes and to avoid admission of unduly unprejudicial evidence to a jury, citing State v. Superior Court, 108 Ariz. 396, 499 P.2d 152 (1972). The comment further explains that where a sufficiently specific motion in limine is made and ruled upon on the merits, the objection raised in that motion is preserved for appeal, without the need for specific objection at trial, citing State v. Burton, 144 Ariz. 248, 697 P.2d 331 (1985).

Rule 7.2’s comment explains that subsection (a) imposes a requirement that parties meet and confer about evidentiary issues likely to arise at trial. One purpose of that requirement is to eliminate motions in limine that are directed to evidence the opponent does not intend to offer or are otherwise unnecessary. The comment further explains that the parties should provide the court with a written report of agreements reached at the conference so the court can enforce such agreements at trial. At least one court in Maricopa County has denied motions in limine where the parties did not have the required conference to discuss the issues pertaining to motions in limine.

The comment also explains that leave of court is not necessary to file a motion in limine earlier than 30 days before the date trial is to begin. The comment to the rule explains that a response to a motion in limine should be filed in accordance with the Rule 7.1. Rule 7.2(c) explicitly prohibits moving parties from filing a reply in support of a motion in limine.

Rule 7.2(b) explains that all motions in limine submitted in accordance with subsection (b) shall be ruled upon by the court before trial, unless the court determines a particular issue of admissibility is better considered at trial. Rule 7.2(c) states that motions in limine not filed in accordance with subsection (b) shall be deemed untimely and shall not be ruled upon before trial, except for good cause shown. Subsection (f) of the rule explains that the failure to file a motion in limine in compliance with Rule 7.2 shall not operate as a waiver of the right to object to evidence at trial.

Legislative Bills Aimed at Illegal Immigrants Stir Debate

State legislative bills aimed at illegal immigrants have prompted debate among state legislators, activists and members of law enforcement. The following are examples of bills that have made their way through the legislative process.

HB 2259

HB 2259 was signed into law on April 18, 2005, and allows a person’s illegal immigration status to be considered an aggravating factor when deciding sentencing for an offense. HB 2259’s primary sponsors were Reps. Chuck Gray (R-19), Marian McClure (R-30) and Russell Pearce (R-18).

During committee hearings, Eleanor Eisenberg, executive director of the Arizona Civil Liberties Union, contended that there is no nexus between one’s legal status in this country and the commission of a crime. But Gray, one of the bill’s sponsors, argued otherwise, testifying that there is a nexus because a person who enters the country illegally has violated federal immigration law, while law-abiding citizens who are in this country legally are not affected by the legislation.

SB 1167

A strike-everything amendment to SB 1167 supplanted a measure concerning salvage vehicle title with one that would have established that English is the official language of the state of Arizona. The strike directed government officials to “preserve, protect and enhance the role of English” and required official functions of government to be conducted in the English language. Pearce, who also chairs the House Appropriations Committee, introduced the striker at an April 11, 2005 House Appropriations Committee hearing.
Court Watch
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DPS traffic stops in Yavapai County and had concluded preliminarily that there was a colorable claim of racially discriminatory enforcement.

The judge denied the request, concluding that selective enforcement of traffic laws is not a defense to drug charges, at least not as far as Criminal Rule 15.9(a) is concerned. Rule 15.9(a) allows the Superior Court to appoint an expert if it is "reasonably necessary to present a defense adequately at trial or sentencing." In a unanimous opinion by Justice Andrew D. Hurwitz, the Supreme Court decided that racial profiling does qualify under Rule 15.9(a).

Cause of action
The state conceded that racial profiling is unconstitutional but argued that its remedy is a civil-rights suit. Hurwitz acknowledged that the victim of racial profiling may have a cause of action under § 1983, but he responded that it is not the exclusive remedy. He pointed to Yick Wo v. Hopkins, 118 U.S. 356 (1886), where a Chinese man had been convicted of operating a laundry without a required government permit. But because Yick Wo showed that the government had granted permits to many non-Chinese while denying all applications filed by Chinese launderers, the Supreme Court threw out his conviction. From Yick Wo, Hurwitz concluded that racial profiling can be remade in the case itself because "violation of the Equal Protection Clause by authorities enforcing a facially neutral law can result in dismissal of resulting criminal charges."

Hurwitz also rejected the state's contention that the definition of "defense" in Criminal Rule 15.9(a) does not include claims of racial profiling. The case on which the State relied, United States v. Armstrong, 517 U.S. 356 (1996), interpreted a similar federal rule. Hurwitz declined to interpret the state rule as narrowly as Armstrong had interpreted the federal one. He opted instead for "the common understanding of the term—any set of identifiable conditions or circumstances which may prevent a conviction for an offense."

The state fared no better in arguing that Rule 15.9(a) applies only to trial issues, not pretrial ones. Hurwitz held that the rule "encompasses the whole of a criminal proceeding at the trial court: the pretrial phase, the trial phase, and the judgment and sentencing phase." To hold otherwise, Hurwitz wrote, would be to wade into a possible constitutional thicket. Because denying an expert witness to a criminal defendant can violate the Due Process Clause, a broad interpretation was in order: "When we can, as here, avoid constitutional doubts by interpreting a rule in a manner that does no violence to its text, we will adopt that interpretation."

Hurwitz held that the Superior Court had erred in holding that proof of selective enforcement cannot be a defense to a criminal conviction. But for several reasons, Hurwitz counseled caution in applying that holding. Rule 15.9(a) requires appointment of an expert when it is "reasonably necessary for the defense. Claims of selective enforcement are easy to make and expensive to fend off. Furthermore, the powers to arrest and prosecute are the special province of the Executive Branch, outside the ken of the Judicial Branch.

Demanding evidence
Hurwitz and the court therefore adopted a demanding standard, requiring the defendant to demonstrate that state action both had discriminatory effect and was motivated by a discriminatory purpose. And supporting statistics must be both relevant and reliable: "They must show not a disparity in the number of motorists of each race stopped by police, but rather that police treated the defendants differently than other similarly situated motorists of another race." The Supreme Court sent the case back to the Superior Court to make its decisions based on the newly announced standards.

Special suit
In a decision that is likely to affect in which court certain types of lawsuits will be filed, the Ninth Circuit has refused to recognize and apply an evidentiary privilege established by Arizona law. In Agster v. Maricopa County, No. 04-15466 (9th Cir. Apr. 28, 2005), the court refused to recognize a peer-review privilege in a case arising from the death of a prisoner.

In 2001, Charles Agster III was arrested and taken to the county jail. He was placed in a restraint chair where he had problems breathing and developed an irregular heartbeat. After attempts to resuscitate him, he was taken to a hospital where he was placed on life support. He died three days later.

Correctional Health Services provided medical care to Agster while he was at the jail. Under CHS' own policies and a standard established by the National Commission on Correctional Health Care Standards for health Services in Jails, CHS was required to conduct a mortality review. It did so and produced a Critical Incident Report which was kept confidential.

Agster's parents sued the county for wrongful death. They brought the suit in Arizona Superior Court, but the defendants removed to federal court.

During discovery, the plaintiffs sought a copy of the Critical Incident Report. The defendants objected, claiming the Arizona statutory privilege found in A.R.S. §§ 36-445 and 36-445.01. Under these statutes, a privilege attaches to the peer review of "the professional practices within the hospital or center for the purposes of reducing morbidity and mortality and for the improvement of the care of patients provided in the institution."

The district judge rejected the claim of privilege and ordered production. The county appealed.

New privileges
Writing for a unanimous panel, Circuit Judge John T. Noonan wrote that the Ninth Circuit was not bound by the Arizona statutes and noted the defendants' own choice to litigate in federal court. He recognized that the court had the common law power to recognize a new privilege if "the normally predominant principle disfavoring testimonial privileges" were transcended by the public good that would come from recognizing one. He also acknowledged that "the protection of confidentiality in peer review... has been recognized by most states."

Nevertheless, Noonan refused to adopt a peer-review privilege. He wrote that two considerations counseled against it; one general, the other particular.

The general concern was the court's reluctance to establish a privilege where it is evident "that Congress has considered the relevant competing concerns but has not provided the privilege itself." Noonan found such evidence in the Health Care Quality Improvement Act of 1986. The Act immunized the parties who participate in peer reviews "but did not provide the privilege resulting from the process."

Prison welfare
Of more particular concern to Noonan was the fact that the defendants urged a privilege in a case involving the death of a prisoner. Noonan concluded that in ordinary hospitals it might be necessary to immunize peer-review reports because "the first object of all involved in patient cases is the welfare of the patient." He contrasted that goal with the prison context, where, he wrote, "the safety and efficiency of the prison may operate as goals affecting the care offered." He concluded that under the circumstances, "it is peculiarly important that the public have access to the assessment by peers of the care provided."

Noonan continued this line of logic, finding that the demands for public accountability that adhere to prisons diminish the need for a privilege, the purpose of which is to encourage candor in peer-review sessions. These demands, he wrote, "seem likely to guarantee that such reviews [will] take place whether they are privileged or not."

Joining Noonan in rejecting the claimed privilege were Circuit Judges Sidney R. Thomas and Raymond C. Fisher.

In June 2004, Court Watch reported on State v. Secord, No. 2 CA-CR 2002-0093 (Ariz. App. May 3, 2004), where a split panel of Division Two held that prosecutors may, during pretrial plea negotiations, withhold evidence that they would eventually have to turn over to the defense if the case went to trial. On April 19, the Supreme Court denied review but depublished the opinion.
Private Investigator Can Prove Significant to Trial Outcome

The featured expert this month is John D. Waugh, an Arizona licensed private investigator at Lochmoor Investigations, LLC. Waugh is a retired FBI special agent with over 30 years of law enforcement experience. Lochmoor Investigations, which employs only former FBI agents, specializes in providing support to civil litigation and probe matters as well as providing services to both private and public corporations and businesses.

Waugh addresses the purpose and benefits of working with a licensed private investigator and when attorneys should consider involving a private investigator.

Q Why hire a private investigator?
A One of the most significant decisions an attorney can make is how and when to hire a private investigator. A good PI can sometimes be the difference between a prosperous and dismal outcome. Ask any successful trial attorney and more often than not, they will unofficially praise the work of their investigator.

An experienced PI can provide a vast array of services. In today’s “high-tech” society, many agencies specialize in providing computer-based research such as locating debtors; conducting pre-employment or pre-marital screenings; identifying hidden or moved assets; and conducting criminal background checks.

Most PI firms, however, rely upon people skills in providing services. These include surveillance, interviewing, and other unique services. It is important to keep in mind that private investigators are extremely adept at the artful task of gathering information that is either unknown or unavailable to the non-professional (including paralegals). An experienced, qualified investigator has well developed “people skills” that enable him or her to obtain information from many sources.

Many PIs have prior law enforcement experience, and thus are well versed in dealing with and talking to a wide variety of people. A PI’s interviewing skills and the ability to establish rapport with all types of people can provide a potential wealth of information to the attorney.

For example, by identifying, locating, and interviewing potential witnesses, the PI saves time and effort and provides an assessment as to the potential value that an individual might provide in a deposition or trial situation. The PI’s written interview report provides a preview of potential testimony, and alerts the attorney as to the person’s attitude, demeanor, and ability to articulate his or her thoughts. Oftentimes, interviews can clarify facts early enough in the litigation process that effective strategic decisions and strategies can be formulated—saving time, effort and money.

Q What types of information can an investigator obtain?
A Although PIs are generally limited to public records sources, most also subscribe to one or more internet data bases which contain credit header and other information not generally available to the public. This information can be particularly useful when attempting to identify or locate individuals. By combining information from several such sources, fairly complete background can be developed on an individual. This can be very useful when the attorney is making an assessment of a potential witness or attempting to locate a person.

By contacting and interviewing potential witnesses, the PI can not only verify previous statements, but oftentimes provide the attorney with a great deal of new information. This can lead to not only the discovery of previously unreported facts but also of completely new sources of information such as additional witnesses or previously unknown historical background information.

Other services that the investigator can provide include physical surveillance, asset searches, and due diligence investigations. Certain technical specialties, such as checking for wiretaps or other forms of electronic surveillance, as well as computer forensic examinations, are offered by a limited number of qualified PI firms.

Q How do I choose a qualified investigator?
A In Arizona, all PIs must be licensed by the Arizona Department of Public Safety. In order to be the owner of a PI firm, or Qualified Party, an individual must demonstrate they have extensive investigative experience, undergo a background investigation, and be bonded. The DPS Licensing Unit investigates all complaints against PIs, and will disclose any record of complaints or disciplinary action they have on file against an individual or PI firm. When contemplating the hiring of a PI, ask about their affiliations with professional organizations, such as the Arizona Association of Licensed Private Investigators, or the Society of Former Special Agents of the FBI.

It is a good idea to formally interview the prospective investigator to ensure that his or her skills directly relate to your area of expertise. PIs, like attorneys, usually specialize in specific areas. By making such an inquiry, you can retain the services of a PI well matched to your needs.

In the area of compensation, it is also important to note that whether the attorney or the client retains the investigator will impact the status of the privileged nature of the investigator’s work product.

John D. Waugh can be reached at 480-694-5095 or lochmoor@cox.net. His mailing address is P.O. Box 1304, Scottsdale, AZ 85252-1304.

PDF Training Available for E-Filing

Beginning this August, attorneys filing in the District of Arizona will be required to file their cases electronically as Adobe Portable Document Format (PDF) documents. To help attorneys and other legal professionals prepare for the mandatory transition, the Maricopa County Bar Association is partnering with ICM, Inc. to offer hands-on technical classes on how to use Adobe with e-filing.

The basic class will show how to create and modify PDF files to prepare multiple documents in a single file for e-filing. It will also provide ways to manage workflow more effectively.

Classes are offered on a monthly basis. The basic level class will run from 8 a.m. to noon. Classes may qualify for 4 hours of CLE credit. The cost to attend is $550 for MCBA members and $700 for non-members.

To register or for more information, contact Mona Fontes at (602) 257-4200 x131 or mfontes@mcbabars.org.

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9a–12:00p Cyber Terrorism (3 hrs) $75............$105
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1:30p–3:30p Going Global: Protection of Your Client’s Trademark (2 hrs) $50............$70
1:30p–3:30p Assessing the Impact of Wiggs v. City of Phoenix (2 hrs) $50............$70

Thursday, June 2, 2005

9:00a–12:00p Mold and the Indoor Environment (3 hrs) $75............$105
9:00a–12:00p Bankruptcy and Divorce (3 hrs including 1 hr ethics) $75............$105
1:30p–4:30p Understanding the New Mold Remediation Standards (3 hrs) $75............$105
1:30p–4:30p ADR for Families (3 hrs ethics) $75............$105

Friday, June 3, 2005

9:00a–12:00p The State of Vehicle Safety and its’ Impact on Litigation (3 hrs) $75............$105
9:00a–12:00p Ethical Dangers and Defenses (3 hrs ethics) $75............$105
1:30p–4:30p Top 4 Difficulties Facing a PI Attorney (3 hrs including 1.5 ethics) $75............$105
1:30p–4:30p Class Action Litigation (3 hrs) $75............$105

Saturday, June 4, 2005

9a-12:00p Mandatory Electronic Filing in Federal Court (3 hrs) $75............$105
9a-11:30a IV-D Child Support Program (2.5 hrs) $65............$90
1:30p–4:30p Appellee Update on Opinions Concerning Civil Litigation (3 hrs) $75............$105
1:00p–4:30p The New Family Court in Maricopa County (3 hrs) $75............$105

Monday, June 5, 2005

9a–12:00p Got Billable Hours? Increase Them By Effectively Using Support Staff (3 hrs including 1 hr ethics) $75............$105
9a–12:00p Computer Forensics (3 hrs) $75............$105
1:30p–3:30p Preparation & Presentation of Motions: What Do Judges Expect? (2 hrs) $50............$70
1:30p–4:30p The Impact of Media and What You Can Do About It (3 hrs) $75............$105

Tuesday, June 6, 2005

9a–12:00p Leadership Institute – Part 1 of 2 (3 hrs) $75............$105
9a–12:00p Perspectives/Strategies on Pretrial Release in Felony Cases (3 hrs including 1 hr ethics) $75............$105
1:30p–4:30p Leadership Institute – Part 2 of 3 (3 hrs ethics) $75............$105
1:30p–4:30p The Hidden Penalties of Criminal Proceedings (3 hrs) $75............$105

Wednesday, June 7, 2005

9a–12:00p The Secrets of Success – Part 1 (3 hrs ethics) $75............$105
9a–12:00p Finance Basics: Tools to Help You Help Your Clients (3 hrs) $75............$105
1:30p–4:30p The Secrets of Success – Part 2 (3 hrs ethics) $75............$105
1:30p–3:30p Government Benefits: What Do You Ask? (2 hrs) $50............$70

Thursday, June 8, 2005

9a–12:00p The Secrets of Success – Part 3 (3 hrs ethics) $75............$105
9a–12:00p Effective Non-Deposition Discovery Methods and Practices (3 hrs) $75............$105
1:30p–4:30p Labor & Employment Law for Non-Labor & Employment Law Attorneys (3 hrs) $75............$105
1:30p–4:30p Forensic Psychiatry to Document Examiners: Detecting Fraud (3 hrs) $75............$105

Friday, June 9, 2005

9a–12:00p Income Tax Aspects of Estate Planning (3 hrs) $75............$105
9a–12:00p Mold and the Indoor Environment (3 hrs) $75............$105
1:30p–4:30p A Potpourri of Ethics for the Estate Planner (3 hrs ethics) $75............$105
1:30p–3:30p Arizona Pollutant Discharge Elimination System: Storm Water (4 hrs) $100............$130

Saturday, June 10, 2005

9a–12:00p Top 4 Difficulties Facing a PI Attorney/Negligence Attorney (3 hrs including 1.5 hrs ethics) $75............$105

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All sessions held at the COFCO Executive Suites Conference Room at the Chinese Cultural Center 668 N. 44th Street, 2nd Floor

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Monday, June 20, 2005

9:00a–12:00p Bankruptcy and Divorce (3 hrs including 1 hr ethics) $75............$105
1:30p–4:30p ADR for Families (3 hrs ethics) $75............$105

Tuesday, June 21, 2005

9:00a–12:00p Ethical Dangers and Defenses (3 hrs ethics) $75............$105
1:30p–4:30p Mandatory Electronic Filing in Federal Court (3 hrs) $75............$105

Wednesday, June 22, 2005

1:30p–4:30p Appellee Update on Opinions Concerning Civil Litigation (3 hrs) $75............$105
9:00a–12:00p Got Billable Hours? Increase Them By Effectively Using Support Staff (3 hrs including 1 hr ethics) $75............$105

Who says there’s no such thing as free CLE?
Interested in earning free CLE? Agree to act as a moderator for one of the above film fest sessions and receive a certificate for a future CLE. Check the box on the registration form if you are interested and someone will call you with additional information.
Mental health court

Construction and remodeling of new mental health hospitals by the state of Arizona and Maricopa County allowed the Superior Court to build a courtroom at both hospital sites and create the first full-time mental health calendar in the state at Desert Vista Hospital in Mesa. There, a dedicated mental health judicial officer not only hears initial civil commitment cases, but also holds report and review hearings after commitment to follow the progress of patients and their treatment. This mental health court allows us to hold mental health providers accountable for the care and treatment of court wards.

This full time mental health court also lays the groundwork for a consolidation of all mental health cases, criminal (competency and restoration to competency cases, mental health probation court) and civil, into one integrated mental health department. These changes will take place in 2005.

Through grant funding, the Superior Court also created a mental health probation calendar, enabling the court to monitor defendants on probation who have mental health issues to assure that their mental health needs are addressed to avoid a relapse into illness and crime.

Technology

Technological issues regarding case management, financial systems, information exchange and courtroom technology have been prominent in the last five years.

Technology is now being used to present evidence and capture the record in most all family and juvenile proceedings, high volume criminal proceedings and many civil proceedings. The court now has 75 courtrooms where the record is captured digitally. In the Juvenile Durango facility, the record is captured, video and audio, from a control room where staff auto-log and index the proceeding. This same technology will be used in the new Northeast courthouse.

Paper files are now being converted by the clerk of the court into electronic files. In civil, criminal and family courts, the judge can access almost all of a file on-line from the clerk's electronic document management system.

The e-filing pilot for complex civil litigation is expanding. I am issuing an administrative order to bring the whole Superior Court to electronic filing over the next several years.

Space planning

Maricopa County has explosive growth, and the pace of growth is accelerating. During my term, a space plan for court needs out to 2015 was created in collaboration with the county.

A new downtown criminal tower is one of the court's highest needs and is in the master space plan. Last fiscal year, the court handled 36,000 felony cases. The two downtown court towers were built in the 1960s and early 1970s, are functionally obsolescent and inadequate for how the court is now processing cases. Plans also call for remodeling the existing towers into a modern court center.

New regional state of the art court facilities are being built in Maricopa County to bring together four to five justice courts at each site to improve service to the public and achieve operational efficiencies. The first regional justice court in the Northeast (Union Hills and the Piestewa Freeway) opens in September 2005 and Northwest (Litchfield Park Road and Greenway) opens in January 2006.

Construction has begun on a new downtown Phoenix regional justice court center (Jackson and 6th Ave.). A contract has been awarded to build the Southeast Justice Court Center at Chandler, and bids are out for a Southwest Justice Court Center in Avondale.

Jury duty

A jury scofflaw court was created in 2003, jurors who do not respond to a jury summons are brought to court on an order to show cause for contempt. The jury scofflaw court has brought greater public attention to the responsibilities of citizenship, and increased the citizen participation rate for jury duty in Maricopa County.

Formation, fairness and management standards

In my last year as presiding judge, the court has begun a formation program for new judges. Each month, newly appointed judges now meet to participate in programs ranging from listening skills to cultural diversity to budget and case management. We anticipate this will develop into a one to two year program for all new judges and commissioners.

The court, with a consultant's assistance, embarked on a fairness study to evaluate perceptions of users of the court system as to whether they believe that they were listened to, had adequate time to present their case and whether the result was fair. The court is committed to measure core performance standards for the court and whether the court is achieving its primary mission: justice.

The court is also engaged in a project to measure 10 core performance standards for trial courts developed by the National Center for State Courts to also assess whether the court is achieving its primary mission. These performance measures include assessments of fairness, case aging, jury utilization, keeping of records and employee satisfaction, among others. Maricopa County may be the first trial court in the country to measure all 10 core performance standards.

It has been a high honor and an exciting challenge to have been the presiding judge over the last five years. As Judge Barbara Mundell assumes the office on July 1, 2005, let us support her both as a bench and bar for the many new challenges that await her.

Judge Colin Campbell was among six applicants for the Arizona Supreme Court vacancy created by the retirement of Chief Justice Charles Jones (the appointment process had just begun at press time). Upon finishing his five-year term as presiding judge in Maricopa County, plans were for him to take a Family Court calendar.
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 (ASUJD), 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.

June 2005

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

1 The Big Five: Top Five Federal Financing Programs for America's Small Businesses
1 to 4:30 p.m., ASU Downtown Center
CLE: 3 hours general
This seminar will provide a detailed and easy-to-understand analysis of the business, financing and legal issues surfacing under the Federal Government's five most important small business financial programs. Additional topics will include lending criteria, basic program standards and sizes, and financing options.
Cost: MCBA member attorneys, $75; member paralegals and public lawyers, $55; non-member attorneys, $105; non-member paralegals and public lawyers, $75

2 International Estate Planning: What You Need To Know
1 to 4:30 p.m., ASU Downtown Center
CLE: 3 hours general
This intermediate seminar will give estate planning, probate and trust attorneys an introduction to U.S. estate and gift tax rules, as they apply to persons not domiciled in the United States at death. Areas covered will include concept of domicile versus residency, determination of taxable estate and imposition of tax, Qualified Domestic Trusts. Our speaker will also cover taxable gifts and imposition of gift tax, effect of treaties and foreign trust rules.
Cost: MCBA member attorneys, $75; member paralegals and public lawyers, $55; non-member attorneys, $105; non-member paralegals and public lawyers, $75

3 Using Technology for Your Depositions and Courtroom Presentations
1 to 4:30 p.m., ASU Downtown Center
CLE: 3 hours general
This seminar will focus on how technology can help your practice. Some of the topics that will be covered include why technology in the courtroom, visual tools you need for trial and litigation software.
Cost: MCBA member attorneys, $75; member paralegals and public lawyers, $55; non-member attorneys, $105.00; non-member paralegals and public lawyers, $75

4 YLD Panel Discussion (A & B), 5 p.m.

5 Family Law Meeting (Fresh Start), 5:30 p.m.

6 Maricopa Lawyer Editorial Board, 5 p.m.

7 MCBA Executive Committee, 7:30 a.m.
Environmental Board, noon
Solo Practitioner Section, 5:30 p.m.

8 An Overview of Forensic DNA Analysis
1 to 4:30 p.m., ASU Downtown Center
CLE: 3 hours general
This intermediate seminar will give attendees an overview of forensic DNA analysis. Topics covered will include current forensic DNA testing systems, evolving forensic DNA testing systems, a discussion regarding DNA mixtures and the use of statistics in forensic DNA testing.
Cost: MCBA member attorneys, $75; member paralegals and public lawyers, $55; non-member attorneys, $105; non-member paralegals and public lawyers, $75

9 YLD Board, noon
Paralegal Board, 5:30 p.m.

10 Scottsdale Bar (Scottsdale Athletic Club), noon
VLP, noon

11 LRS Committee, noon

12 Personal Injury/Negligence Section, noon
Public Lawyers Board, noon
MCBA Board, 4:30 p.m.

13 YLD Board, noon
Paralegal Board, 5:30 p.m.

14 Scottsdale Bar (Scottsdale Athletic Club), noon
VLP, noon

15 LRS Committee, noon

16 Personal Injury/Negligence Section, noon
Public Lawyers Board, noon
MCBA Board, 4:30 p.m.

17 MCBA Board, 7:30 a.m.

18 Corporate Counsel Division Board, 4:30 p.m.

19 Criminal Law Section, noon

20 Commercial Motor Vehicles in Litigation: A Guide to State and Federal Regulations
1 to 4:30 p.m., ASU Downtown Center
CLE: 3 hours general
This seminar will teach you how a Certified Divorce Financial Analyst (CDFA) can assist you and your clients during a divorce by determining which assets to allocate to satisfy the goals and objectives of your divorcing clients. By providing financial projections showing the effect of each settlement offer, you are providing evidence of the suitability of any offer and creating negotiating power. Other topics covered will include the tax analysis and planning of the asset division, insurance issues and QDRO planning and other financial issues.
Cost: MCBA member attorneys, $90; member public lawyers, $75; non-member attorneys, $90; non-member public lawyers, $75

21 Task Force Meeting, noon

22 Task Force Summer Social, 5:30 p.m.

23 Estate Planning/Trust Board, 7:30 a.m.

24 How a Certified Divorce Financial Analyst Can Assist You & Your Clients with the Divorce Process
1 to 4:30 p.m., ASU Downtown Center
CLE: 3 hours Family Specialization
This seminar will teach you how a Certified Divorce Financial Analyst (CDFA) can assist you and your clients during a divorce by determining which assets to allocate to satisfy the goals and objectives of your divorcing clients. By providing financial projections showing the effect of each settlement offer, you are providing evidence of the suitability of any offer and creating negotiating power. Other topics covered will include the tax analysis and planning of the asset division, insurance issues and QDRO planning and other financial issues.
Cost: MCBA member attorneys, $75.00; member paralegals and public lawyers, $55.00; non-member attorneys, $105.00; non-member paralegals and public lawyers, $75.00

25 Paralegal Division Quarterly Meeting, 5:30 p.m.

26 YLD Board, noon
Paralegal Board, 5:30 p.m.

27 Task Force Meeting, noon

28 Employment Law Board, 11:30 a.m.

29 Criminal Law Study Group (East Court Building), 12:15 p.m.

30 Task Force Summer Social, 5:30 p.m.
Snell & Wilmer attorney Dustin C. Jones has been elected to the Governor’s African American Advisory Council.

The council is a bi-partisan commission of community leaders who advise the governor on issues affecting the African-American community, including education, employment, economic development and social services.

Jones (J.D., 1999, UA) concentrates his practice in zoning with extensive experience in developing and implementing land use visions for clients.

Brian J. Schulman, of counsel in Greenberg Traurig’s litigation department, has been asked to join KAET Channel 8’s newly created Development Leadership Committee.

The committee, comprised of business and civic leaders, was created by KAET to ensure the financial stability and future success of Arizona public television.

Schulman (J.D., 1993, University of Kansas) is the former general counsel for the Arizona Securities Division.

Burch & Cracchiolo, P.A. founder Dan Cracchiolo received an honorary degree of Doctor of Humane Letters at the May 14, 2005 Commencement of the University of Arizona.

Nominated by the College of Humanities, Cracchiolo was awarded the degree by the university’s faculty senate in recognition of his promotion of worthy educational and cultural institutions and commitment to advance diverse initiatives in the colleges of medicine, humanities, and law.

Cracchiolo (J.D., 1952, UA) practices in the areas of general corporate and business litigation, high profile family law matters, personal injury and real estate litigation.

Norman Miller and Ronald Larson were appointed as judges of the Arizona Court of Military Appeals by Governor Napolitano.

The five member court has appellate jurisdiction over court-martial proceedings arising under the Arizona Code of Military Justice, modeled after the federal Uniform Code of Military Justice. Arizona statutes require members of this court to have been judge advocates in the armed forces of the United States.

Miller (J.D., University of Michigan) retired as a Navy Reserve Captain and senior judge of the U.S. Navy-Marine Corps trial judiciary. Larson (J.D., ASU) retired as an Army Reserve Lieutenant Colonel. Both are sole practitioners.

Mr. Wales has practiced law in Phoenix, Arizona, since 1991 and is also licensed to practice in California. Mr. Wales will associate his general practice with Mann, Berens & Wisner and will continue to represent contractors, owners, architects, engineers, community associations and small businesses in cases involving contract, construction and financial disputes.

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mwales@mbwlaw.com
Changing Ways: A Lawyer’s Love of Life

McBA Member Profile

Attorney Faith Klepper likes change. She likes it so much it led her to become a lawyer.

On a practical level, she figured that “the diversity of challenges in the legal profession would keep me interested for a long time.”

There was another factor that drove Klepper to become an attorney. Theoretically, she considers herself a product of the “social engineering aspect” of the law that entices many people into law schools every year.

“Without Brown v. Board of Education, I wouldn’t have had the educational opportunities I was able to take advantage of. Without Harrison v. Laveen, I wouldn’t have the right to vote in this state. Without Loving v. Virginia, I probably wouldn’t even exist. So naturally, I owe a lot to those ‘activist’ judges and lawyers who came before me and, on some level, felt compelled to pay it forward.”

After growing up in Houston, Klepper attended Brown University in Rhode Island, where she graduated with Bachelor of Arts degrees in international relations and political science. She made her way to Arizona to attend law school at Arizona State University.

The growing state offered Klepper enough to stay, and after graduating, she took a job at the Maricopa County Public Defender’s office for three years. She then moved to the Maricopa County Attorney’s Office, where she served as deputy county attorney from 2001 until just recently.

Private life

This past March, Klepper welcomed another change in her career, and a big one at that. She is now an associate at Calderón Law Offices.

The transitions from criminal to civil practice and from large to small firm have been easy for Klepper, thanks to the support she has received from her present and previous colleagues.

For Klepper, the biggest difference in becoming an attorney in private practice has been keeping account of her time, something she didn’t have to do in public practice.

In her new role, Klepper focuses primarily on defense litigation in the areas of employment and education law.

Her favorite part of private practice so far is what she also loved most about public practice—the people she works with.

When asked about shaping career moments, Klepper responds that the best is yet to come. She does offer that her “ability to simultaneously assess a case objectively while still strongly and effectively advocating on behalf of the client” has served her well over the years.

Individual fit

As a Maricopa County Bar Association board member, Klepper has a close view of the organization. Her priorities and expectations of MCBA haven’t changed in her transition from public to private practice.

When asked what stands out about the MCBA, she points to its focus on providing access to legal services through the Lawyer Referral Service program and affordable CLE to members.

She feels the benefits of belonging to the MCBA depend entirely on the individual.

“Each attorney finds and prioritizes the benefits of their participation in MCBA in different ways. Some find the affordable CLE most beneficial; some prefer the networking opportunities; others just like the information on local court happenings in the Maricopa Lawyer.”

Life is but a dream

Outside of work, Klepper challenges herself by taking rowing classes on Tempe Town Lake, which for her is challenging on many levels: “physically, mentally, individually, collectively.”

She also uses it as a temporary escape from her computers, cell phone and Palm Pilot.

“There is no room for them in the boat and even if there was, they’re not waterproof.”

Klepper also brings variety into her life by traveling. She tries to visit two new places each year—one abroad and one in the U.S. Though she hasn’t been anywhere yet this year, she is considering Ireland, Italy, Seattle and Hawaii.

Carpe diem

Concerning where she sees herself in five to ten years, Klepper learned a long time ago that life is fleeting, so she focuses on what she can accomplish today.

“It’s more important to me to enjoy the journey than worry about making it to any particular destination.”

Combined with her love of change, Klepper has the perfect attitude.

Consider Joining Over 300 Lawyers as a Judge Pro Tem

Don’t miss the deadline to become—or continue—serving as a Judge Pro Tem for Trial Courts in Maricopa County, which include Superior Court and the Justice Courts. The deadline for submitting applications is 5 p.m., Friday, August 5.

The required forms are available on the Internet at www.supercourt.maricopa.gov. Go to the index on the home page and scroll to Judges Pro Tempore to find the applications and additional information.

The deadline is the same for lawyers submitting new applicants, as well as existing Pro Tem Judges who are asked to submit a renewal application for 2006. Letters are being sent to attorneys on the active Pro Tem list, which will include application forms to facilitate their reaplication process.

Pro Tem Coordinator Kathryn Wallace (602) 506-6826 can answer questions about requirements and the appointment process.

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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The Tyranny of High Tech Revisited: A Country Boy's Lament

This article was originally published in 1995 just as the dot-com revolution was beginning. The 10 years that have passed since its original publication in a now defunct online journal have not changed my opinion one whit. Every five years or so I roll it out to see what has changed and I remain fascinated by information technology and stunned by the impact that the microchip has had on our society and the world. My five children and three grandchildren live in a very different world from the one I grew up in. I would like to believe that on balance the changes have been good, but in truth, I think they probably have not. But the changes are what they are and we have to live with them.

Decade old thoughts

It seems that all too often people operate from the assumption that computers, the Internet, and the digital revolution have transformed the world in only positive ways. This is no doubt true, in part.

It is clear, for example, that the development of democracy throughout the world has been aided substantially by the digital revolution. It is also true that vasty expanded access to information has promoted democracy in this nation. Technology has indeed made many changes in our lifestyle. The Internet has changed business and commerce in many fundamental ways—we do more in less time and we have more money to spend than ever before. Times are good, are they not?

Story time

Let me tell you a few stories... When I was a boy growing up in the mid-section of the country fifty years ago, I would often walk out the back door of my house, cross the cornfield and go into the woods with my gun and my dog. I sometimes stayed in the woods all day and even into the night. My mother and father never had to worry. I drank water from the creek and, to put a modern law office management aphorism into a realistic frame, I ate what I killed. Things were pretty simple and we lived pretty well. We had a TV set and we had pretty much everything.

City life

We eventually moved from Centerville into the city—the city of Bloomington, Indiana, that is: population 10,000, with a major university that added another 10,000. Bloomington, believe it or not, was filled with urban delights: a world-renowned, university music school; an opera company second only to Julliard's in the United States; and scores of exotic people from countries all over the world. In the 1953-1954 season the Indiana University basketball team won the national championship and put Bloomington on the map. Bloomington was the world's smallest big city.

Simple life

I recently saw an article in the paper about the rising populist backlash against the ubiquitous computing vision of digital lifestyle. The story, out of Santa Clara, reported on the many young high tech executives fleeing to homes that are aptly described as “Luddite” havens. These are homes where no technology
Pioneer Women Lawyers Blaze Legal Trails

To the “pop-eyed” amazement of courtroom onlookers, Justice of the Peace Harry E. Westfall, of the East Phoenix Precinct Justice Court, swore in Arizona’s first women jurors in the early afternoon of Friday, March 9, 1945. Less than three hours earlier, Governor Sidney P. Osborn had signed House Bill No. 12 and officially ended nearly three decades of struggles by Arizona’s women to win the right to serve as jurors. The six women were recruited by the constable from the weekly lunch meeting of the Business and Professional Women’s League. They heard a case of child neglect and after 40 minutes of deliberation found Wanda Taylor not guilty.

Let the battle begin

Some of the earliest skirmishes in the battle for the right of women to serve as jurors in Arizona courts were likely fought between two distinguished law partners in Suites 17 and 19 of the Amster Building in downtown Globe. From late 1912 through the spring of 1914, the intellectual crosstraff of defining the parameters of women’s rights in Arizona played out in the book-lined, spacious law offices of Sorin and Birdsall.

The senior partner, Sarah Herrring Sorin, was Arizona’s first woman lawyer. She arrived in Arizona from New York and joined her family in Tombstone in 1882, a few months after the infamous gunfight at the OK Corral. Initially, she worked as a clerk and stenographer in her father, Col. William Herrring’s law office, located near other lawyers’ offices in Tombstone’s “Rotten Row,” on Toughnut Street. Sorin was considered beautiful, and was acknowledged for her “exceptional literary attainments and [for being] a musician of rare ability.” She was also a noted horsewoman and poet.

Eventually, Sorin began studying law in her father’s office. After a year, she applied for a license to practice law in the Territory of Arizona. Reportedly, Sorin was subjected to an “awful” examination, which she passed with the most distinguished honors.” After her somewhat uncontroverial admission to practice in early 1893, she returned east to attend New York University’s School of Law. She graduated fourth in her class at NYU, earning an L.L.B. in 1894. She returned to Arizona to practice with her father and distinguished herself as an expert in mining law and advocate for mining companies.

Opening the door

In 1906, Sorin, on her father’s motion, became the first Arizona woman, and the twenty-fourth woman overall, admitted to practice before the U.S. Supreme Court. In 1912 she moved her practice to the booming mining town of Globe and became the chief legal counsel for the Old Dominion Copper Company. Her crowning legal achievement came in November 1913, in the case of Werk v. United Globe Mines, when she became the first woman to argue before the U.S. Supreme Court, unassisted and unaccompanied by male counsel. Sorin won her case in an opinion dated January 5, 1914, and her “brilliant” legal arguments permanently opened a door through which many women lawyers would pass to argue the nation’s most important legal issues.

Only a few decades earlier, the court had denied the right of Myra Bradwell to be licensed to practice law in Bradwell v. State of Illinois, 83 U.S. 130, 139 (1873). In its practice before the U.S. Supreme Court, the court recognized a “wide difference in the respective spheres and destinies of man and woman,” and noted the “timidity and delicacy which belong to the female sex” and concluded that “divine ordinance…indicates the domestic sphere as…the domain and functions of womanhood.”

Ten years after Bradwell, there were only 75 women lawyers in the United States, but action by Congress in 1879 amended the Supreme Court rules to allow women admission to the bar. By 1900, there were more than 1,000 female attorneys. When Sorin was admitted to the bar in Arizona, she joined 208 female lawyers in the United States (out of a total legal community of 89,422).

Sorin was a Republican who staunchly opposed women’s suffrage. Reportedly, “she held well defined opinions on the great questions and issues of the day,” presumably including the right of women to serve on juries. Only four months after her Supreme Court triumph, after a drive from Globe to Phoenix for a hearing before the State Tax Commission, Sorin, “the most famous woman lawyer in the United States,” contracted bronchial pneumonia and died after a short illness at age 53.

Opposites attract

Sorin’s law partner in Globe was Alice Maybeth Birdsall. Birdsall was a Democrat, an ardent supporter of women’s suffrage and an vociferous advocate for the right of women to serve on juries. At the time of their unusual partnership in Globe, Sorin and Birdsall were the only women practicing law in Arizona.

Other women had hung out their shingles in various parts of the state over the years, but few had the longevity and success of Sorin and Birdsall. Notable pioneer women lawyers included Mary Wupperman, who in 1902 practiced with her husband Henry in Yuma, and two women whose names appear on the official roll of the Territorial Supreme Court in January 1903 were likely Maricopa County’s first women lawyers, Vivian and Beatrice Hopson of Phoenix.

Birdsall practiced in Globe with Sorin for two years and in her own Maricopa County practice from 1915 until her retirement in May 1958. Birdsall, a future treasurer of the Maricopa County Bar Association, moved from Waterloo, Iowa to California in 1900 at the age of twenty. There, she worked as a law clerk for her brother in a large law office and became active in the Business and Professional Women’s Club. After several years, she applied and was admitted to one of the nation’s first law schools primarily for women, Washington College of Law in Washington, D.C. (later merged with American University).

She completed the three-year course in one year of night school and graduated with the highest marks ever received by a student at the law school, before or after her attendance. Upon graduation, she moved to Arizona, passed the bar examination in 1912, and began practice in her husband’s offices. After her partner’s death in 1914, Birdsall moved to the Adams Hotel in downtown Phoenix and opened her law offices in the Fleming Building at 16 North First Avenue. Birdsall shared the fourth floor with ten other lawyers’ offices. In addition to her legal practice, Birdsall served as the official reporter of decisions for the Arizona Supreme Court from July 1915 until 1934.

Intimidation factor

Birdsall initially encountered an all-male bar that didn’t quite know how to deal with her. When confronted by a male lawyer who admitted that he “wouldn’t know how to treat a woman lawyer in a case,” she encouraged him to “do or say anything your heart desires and I’ll take care of myself.” Many of her contemporaries admired and feared her willingness to make her client’s problems her own, her absorption with the case and her dedication to her chosen cause. More than one reported, “I’d just as soon have any other attorney in the state across the table from me as Alice Birdsall.”

Over the years, Birdsall argued effectively for the rights of children, counseled clients in complex bankruptcy matters and led in the fight for women jurors. Her offices eventually moved to the eighth floor of the Luhr’s Tower and she moved her home to the San Carlos Hotel in 1933.

Mixing up the jury

Arizona’s pioneer women lawyers made their mark in the territorial and federal courts long before they were given the right to vote in 1912. Progressive Arizona voters elected women to statewide and federal offices in the 1920s and 30s. But, in spite of persistent pressure by the Business and Professional Women’s Club, Birdsall and others, legislation to permit women jurors did not receive serious consideration until three female members of the Arizona House of Representatives and a male colleague introduced H.B. 14 on January 14, 1943 (32 years after the state of Washington first granted this right to its female citizens). According to reports, despite the state’s progressive history, the strong sentiment among the male legislators of the day was that a “woman’s place is in the kitchen.” Energetic efforts of the bill’s sponsors and lobbyists like Birdsall failed to win approval prior to adjournment of the legislature in 1943 and again in 1944. Claire Phelps, one of the bill’s original sponsors and a representative of Maricopa County, promised that her fellow legislators had “not heard the end of this.”

Phelps, and Carroll Hudson, another Maricopa County representative, reintroduced the bill in January 1945. Despite vocal opposition and considerable ridicule, the bill passed both houses as an emergency measure and became law on March 9. With the help of many male and female lawyers, politicians and business leaders, Alice Birdsall and Arizona’s women, after a 30-year battle, were finally able to experience a jury of their peers.
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Attenuated right-wing conspiracy?

Want a job at the Department of Justice under the Bush administration? Vanessa Blum of Legal Times has analyzed what it takes to realize such an undertaking. Blum reviewed the credentials of prominent Justice Department officials and found the following recurring similarities:

- References from former Whitewater Independent Counsel Kenneth Starr;
- Membership in the Federalist Society;
- A degree from a law school like the University of Chicago;
- Being a male applicant (in terms of senior political appointees, men outnumber women 5 to 1 at Main Justice);
- Prestigious clerkships with Supreme Court Justices Antonin Scalia, Clarence Thomas, and Anthony Kennedy;
- A GOP staff post at the Senate Judiciary Committee;
- Formerly employed in the Appellate practice run by Kenneth Starr at the Law Offices of Kirkland & Ellis; and
- Clerkships with Senior Judge Laurence Silberman of the U.S. Court of Appeals for the D.C. Circuit or Judge J. Michael Luttig of the 4th Circuit Court of Appeals.

Blum says that a president making appointments based on political connections is not necessarily nefarious or unusual, but some government advocates like New York University Public Policy Professor Paul Light believe that stacking the ideological deck with such similar backgrounds can have a cost. “It creates an echo chamber effect and weakens dissent,” remarks Light.

Blum reports that dissent within an administration can help serve as an internal check on the balance of power of the executive branch. “Some observers see the controversial Justice Department memo on torture as an example,” writes Blum.

“The tragedy of the torture memo is that it didn’t get caught at a much lower level much more quickly. Had that memo received a broader look, there is no question that people would have said this is just wrong, as the administration later admitted it was,” remarks Bingham McCutcheon, a Justice Department official under President Bill Clinton.

When Blum asks whether the appointment dynamics were any different under the Clinton administration, the response is “yes and no.” NYU professor Light says that while the Bush administration has been more disciplined in its approach, “the Democrats were a little messier, a little more tolerant of dissent.”

Eric Holder Jr., a deputy attorney general from 1997 to 2001, observes that “[t]here wasn’t the same degree of uniformity. People did tend to have Democratic connections, but there was a pretty vast diversity within that universe as to what they did before and where they came from. Saying that were we hiring Republicans? Probably not.”

**Judge orders Yahoo! to hand over contents of deceased marine’s email account**

A California probate judge ordered email provider Yahoo to produce and deliver the contents of a deceased marine’s email account to his family. After U.S. marine Justin Ellsworth’s death in Iraq on Nov. 13, 2004, his father asked Yahoo to provide him with his dead son’s email account password, but Yahoo refused, citing a policy Justin had to agree to when opening his email account. That policy stated that Justin’s Yahoo account was non-transferable and any rights to the account’s ID or any contents within the account terminated upon his death.

Ellsworth’s case is a glaring example of what occurs when email privacy rights collide with the rights of family members who may want access to the deceased’s email account. Yahoo spokeswoman Mary Osako states: “[e]mail involves many individuals who have privacy expectations as to the content of their communications,” while others like Chicago-kent College of Law professor Harold Krent point out that common law does not provide senders of traditional mail with any copyright or rights of privacy. Krent’s reasoning likens a deceased’s email account to other possessions that would naturally go to an estate’s executor.

Legal experts expect to see more cases like this one, as Internet service providers try to figure out the best way to handle such situations. But privacy advocates suggest that cases like this can be avoided if email providers develop clearer email policies that allow account holders to designate whether they want account information passed on to heirs in case of their death. George Washington University law professor Daniel Solove sums the controversy up by saying: “[i]t’s not about what Yahoo wants or what the family wants. It’s about what the deceased wanted.”

**Status of Article III judicial nominations**

Are you interested in keeping informed of the status of President Bush’s nominees for the federal bench? The United States Senate Committee on the Judiciary tracks the status of vacancies and nominations for Article III judgeships. Nominations, hearings and testimony as to nominees may be obtained at the Committee’s website: http://judiciary.senate.gov/.

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MCBA Law Week 2005

Judge Patrick Irvine presented awards to MCBA Law Week 2005 essay contest winners. The contest, which focused on the important role the American jury plays in law, awarded gold, silver and bronze medals to seventh, eighth and ninth graders at Valley schools participated.
It's Time for a New Family Court

By Jack Levine
Maricopa Lawyer

There are some needs that are so obvious that they are frequently overlooked. Such is the case for the establishment of a unified Family and Juvenile Court, separate and distinct from the Superior Court. For many years almost no one has been happy with the present system in which family law cases are heard by Superior Court judges who, for the most part, dislike their assignments and count the days until they can rotate into the more desirable civil or criminal dockets. We often hear complaints about “burn-out” from judges who have had a tour of duty on the family court bench due to the highly charged emotions in family court cases, together with feelings of irritation and frustration over having to deal with pro se litigants who make up 85-90 percent of the family court docket each day.

Because very few judges have had any family court experience as lawyers before their appointment to the bench, they must “wing it” during the first year or two of their family law assignment. Furthermore, after a period of time when they have finally gained some degree of familiarity with their duties, they are reassigned and replaced by yet another judge who may also have little experience in making vital decisions that so profoundly affect Arizona families. To make matters worse, it is this very unwillingness of our judges to voluntarily accept family law assignments that drives the entire rotation system at the courthouse, resulting in obligatory rotation in all of the other divisions of the court, as well.

If there were a separate family court presided over by motivated and dedicated family court judges, the need for judicial rotation in the other divisions of the court would be unnecessary. This could result in greatly improved judicial performance and service to litigants.

Although our Superior Court has received numerous awards through the years for its innovations and efficiency, there have been no awards for its quality of judicial decisions. Admittedly, measuring judicial decision making is not an easy undertaking. However, it is possible to gain some insight into this sensitive and controversial issue by measuring the scores that merit selection judges, who are up for retention every two years, receive from lawyers who rate the judges on their knowledge of the law, the rules of evidence, and the rules of civil and criminal procedure. Historically, judicial scores in these areas have been consistently below the scores that judges receive in the other judicial categories that are required to be measured in the retention process. Another indication that the quality of judicial decision making at the Superior Court has been below expectations is that the scores achieved by our appellate court judges in the same categories as those measured at the trial court level, have always been substantially higher than scores achieved by our Superior Court judges.

A dedicated family court, which would also have jurisdiction in juvenile matters, could be staffed by judges who would be separate and distinct from Superior Court judges. These family court judges would be assigned solely and exclusively to the family court. With an appropriate amendment to the Arizona Constitution, family court judges could be selected either through a merit selection process; directly elected by the people; or appointed by the County Board of Supervisors or the governor. Ideally, judicial appointments to a family court should be for a lengthy term of years, with the opportunity for re-election or re-appointment at the end of each term.

Because a family law assignment is generally considered to be more stressful than judging in other areas, increased compensation and benefits should be paid to those willing to serve in this critical judicial assignment.

Although most Superior Court judges presently shrink from an assignment to a family law division, this does not mean that everyone would do so. Ironically, under our present system of selecting trial court judges, judicial applicants who are family law specialists are frequently rejected by the Commission on Trial Court Appointments because they have no jury trial experience, a background that is not required in a non-jury, equity based family law court. The ranks of family law practitioners would seem to be the ideal place to recruit judicial family law applicants. Presumably, if a lawyer likes family law matters enough to practice it on a day to day basis, he or she would probably enjoy the challenge of making decisions which would have the potential for accomplishing so much good for Arizona families. In addition, there would be attractive incentives in the form of prestige and financial benefits that such a position would provide. Also, with the addition of juvenile matters to a separate, dedicated family court, such a mix should provide enough variety to prevent burnout and encourage a high quality of judicial decision making.

Furthermore, once all of the emotionally charged family law matters are removed to a separate family law courthouse with appropriate security precautions, perhaps the remaining Superior Court judges will be less “edgy” about the risk of lawyers bringing concealed weapons into their courtrooms, so that those who practice in the civil and criminal areas can again be granted unrestricted access to the courthouse without undergoing the demeaning experience of having their brief cases searched or having to go through metal detectors.

The creation of a separate dedicated family court with exclusive jurisdiction over divorces, child custody and juvenile matters is long overdue. In truth, these issues should have been addressed decades ago. We must not put it off any longer.

Jack Levine is a sole practitioner whose practice emphasizes family law; personal injury law; employment law; worker’s compensation and general litigation.

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Legislative Bills
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House Appropriations Committee minutes reflect that one person (representing himself) was present in support of the bill, and that the bill was opposed by representatives from the Arizona Civil Liberties Union, the Arizona Catholic Conference, and the Arizona Education Association, as well as a private citizen. The strike-everything amendment passed the Appropriations Committee by a 9-5 margin. After divisive voting took place in both Houses (32-24 House; 17-13 Senate), the bill was transmitted to the governor, who vetoed it.

SB 1306
Like SB 1167, SB 1306 is the product of a strike-everything amendment offered by Pearce in the House Appropriations Committee. The committee adopted the striker by a 9-5 margin, replacing a proposed child abuse measure with one having to do with the local enforcement of federal immigration laws.

SB 1306 authorizes peace officers to investigate, apprehend, detain or remove aliens in the enforcement of immigration laws of the United States. The measure contains a statement of legislative intent which provides that law enforcement agencies and personnel must fully comply with the measure's requirements concerning illegal aliens in order to supplement the efforts of federal law enforcement agencies.

At a House Appropriations Committee hearing, Chairman Pearce explained that "the problem is that law enforcement officers are not doing their job and removing people that have broken laws from the community." According to House Appropriations minutes, Pearce continued by asserting that:

[the] officers hide behind sanctuary policies and do nothing to stop illegal aliens. Neighborhoods are being destroyed by violent gangs of which illegal aliens may be members, and when law enforcement officers do not do anything to stop it, it is the equivalent of malfeasance.

In response to Pierce's assertion that law enforcement officers do nothing to stop illegal aliens involved in violent crimes, Edwards stated:

[law enforcement routinely arrests illegal aliens if they are committing violent crimes. Many times, law enforcement requests that the aliens not be deported. If the aliens are deported, they simply cross back into Arizona and usually commit more crime.

He later reiterated that he "does not know of any law enforcement agency in Arizona that will not take action against an illegal alien that is involved in a violent crime."

After passing in the House (32-25), SB 1306 first failed in the Senate by a 14-16 vote; however, the bill later passed in subsequent floor action by a 16-11 vote, with three senators not voting. SB 1306 was transmitted to the governor on May 11, 2005, where it awaits action.

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