House Judiciary Chair Speaks Before Judicial Conference

By Joan Dalton
Maricopa Lawyer

House Judiciary Chair James Sensenbrenner (R-Wis.) spoke in March before the United States Judicial Conference, a group comprised of federal judges from across the country and headed by U.S. Supreme Court Chief Justice William Rehnquist.

Sensenbrenner began by telling the gathering of federal judges, in reference to the recent court-related dayings in Chicago and Atlanta, that he “will work closely with the Judicial Conference with the goal of ensuring that our federal courts are safe and that judges need not fear for their lives or the welfare of their families.” Sensenbrenner said that he intends to introduce a bill that will permanently authorize judges to redact personal information from public disclosure reports.

But Sensenbrenner's remaining observations were less supportive of the current functioning of the judicial branch. Remark- ing that after more than 30 years of debate over whether the Ninth Circuit Court of Appeals should be split, Sensenbrennner said it is time to act. “It is misleading for critics to assert that split proponents are motivated for the worst of reasons: that is, to change the Ninth’s case law or dilute its effect throughout the circuit structure. Congress is not going to 'punish' judges for writing opinions,” said Sensenbrenner.

Because of the Ninth Circuit’s size, Sensenbrenner said that he is greatly concerned with the Circuit’s inability “to do more of its work en banc on issues of great importance. It is not a question of if the Ninth Circuit will be split, but when,” said Sensenbrenner.

The committee chair next moved to the issue of judicial peer review. “I think all public servants, especially those with life tenure, must be accountable for their actions to co-equal branches of government as well as the American people,” said Sensenbrenner. He added that he looks forward to working with the Judicial Conference on this matter.

Sensenbrenner wrapped up his remarks by addressing the topic of citing foreign sources of authority in rulings. “Inappropriate judicial adherence to foreign laws and tribunals,” said Sensenbrenner, “threatens American sovereignty, unsettles the separation of powers, presidential and Senate treaty-making authority, and undermines the legitimacy of the judicial process.” Adding that it is the obligation of America’s elected representatives to ensure that American courts do not utilize foreign sources of law and international opinion to interpret the United States Constitution, Sensenbrenner urged the Judicial Conference “not to be indifferent to this concern.”

In closing, Sensenbrenner said that he “look[s] forward to working with the Conference during the 109th Congress.”

Today’s Law Leaders

MCBA President Jay Zweig and Treasurer Judge Louis Araneta joined American Bar Association President Robert J. Grey Jr. and President-Elect Michael S. Greco, at theABA Bar Leadership Institute in Chicago. The annual seminar, held last month, provides incoming local and state bar officials the opportunity to meet withABA officials as well as bar leader colleagues and executive staff. Also present was MCBA Executive Director Leandra Lewis. (Pictured from left to right: Grey, Araneta, Zweig, and Greco.)

Court Watch

Lemon Law Makes Lemonade for Lessees

By Daniel P. Schaek
Maricopa Lawyer

The Arizona Court of Appeals has ruled that two consumer-protection laws that help car buyers also protect car lessees. It reversed a Superior Court’s ruling that the federal Magnuson-Moss Warranty Act and the Arizona Motor Vehicle Warranties Act—better known as the Lemon Law—do not apply to automobile leases. Parrot v. DaimlerChrysler Corp., No. 1 CA-CV 04-0121 (Ariz. App. Feb. 24, 2005).

Bill Parrot leased a Jeep Cherokee from Pitre Chrysler Plymouth Jeep Eagle in Scottsdale. Pitre kept the vehicle title and immediately assigned the lease to the lender, Chrysler Financial Company. With the lease, Parrot got a manufacturer’s warranty that promised to fix any part but the tires.

The Jeep soon developed problems, primarily a mysterious noise from the rear end, and over the next two years Parrot followed the warranty and took the car to dealers for repair. They never did fix the problem. Fed up, Parrot gave them one last chance to fix the vehicle. A Chrysler rep inspected the Jeep and decided that the noise was normal. Parrot then hired a master mechanic, who found significant problems with the vehicle. He asked dealers to fix the problems but was not satisfied with their response.

See Court Watch page 4
Hit Reply at Your Own Risk

Please mark your calendar for MCBA Law Week, April 30-May 6. That week, an extension of the annual National Law Day, is designed to promote public awareness of our legal system. This year the focus is on educating our community about the uniqueness and benefits provided by the American jury system. MCBA’s Young Lawyers Division is sponsoring a number of programs, including an essay contest for seventh, eighth and ninth grade students; Ask-a-Lawyer Fair and Phone-a-Lawyer, both for members of the public to ask legal questions of practicing attorneys; and other opportunities for our members to promote respect for the law and the critical role that lawyers play in preserving the rule of law in our society. Contact Geoff Cummings at the MCBA if you would like to participate.

In addition to the opportunities that Law Week and other programs, such as Lawyer Referral Service, Volunteer Lawyers Program, and CLE seminars, provide MCBA members, we are always looking for new benefits. I personally tested an experimental member benefit, tentatively titled “E-Mail Freedom Day,” and, before we consider adopting it as an official program of the MCBA (it has not yet been sanctioned by the Board, the staff, or even our IT consultant), I invite you to provide your own analysis as to whether a day of respite from your Treo, Blackberry, or desktop inbox would be a personal and professional benefit.

Along with MCBA Executive Director Leandra Lewis and Treasurer Judge Louis Araneta, I recently attended the ABA’s Bar Leadership Institute in Chicago. I programmed a “rule” to my e-mail, which automatically responded to persons and spammers e-mailing me by replying that I would be out of the office and not able to respond to e-mail until my return.

The twist was that I forgot to remove the “bounce-back” message on the morning that I returned to the office. This did not turn out to be such a bad idea. An extra e-mail-less half day upon return from travel worked so well that I thought we should consider having an E-Mail Freedom Day as an additional MCBA member benefit. Any volunteers to test this concept on April 22, 2005? You need not to leave town. It is a week after the April 15th tax deadline. The Suns will be getting ready for the playoffs and the Diamondbacks start a three-game series with the Padres.

Will anyone really miss you? And if they do, there’s always fax, phone and snail-mail.

And if you don’t want to admit to participating in E-Mail Freedom Day, you could just program a bounce-back message that will leave them thinking you are responding “live.” Some standard replies like “thanks” or “maybe” seem to work well as responses to many of the e-mails I receive.

Reach Jay (247/364) at jaz@glnet.com.

Law Week Celebrates Power of a Jury

As a prosecutor at the County Attorney’s Office, I get the pleasure of presenting cases to juries almost two times a month. It’s quite the celebration of our legal system to have a glorious mixture of painters, doctors, stay-at-home parents, retired folks, math teachers, nuns, and college students decide the facts for us. As one judge who conducts a rather dramatic but never dull jury selection puts it, “the taxpayers pay me more than $100,000 a year to sit up here and wear this robe and make legal rulings… but don’t allow me to decide the facts. Our founding fathers decided that it’s your job.”

Law Week 2005 is right around the corner. The theme this year is “The American Jury: We the People in Action.” Back in the early 1960s, some ABA leaders decided we needed a week to acknowledge our great heritage of liberty, justice, and equality under law, and so Law Day was born. Congress blessed May 1 as the official annual day of celebration. As years have passed, MCBA has supersized Law Day to Law Week by planning a week’s worth of activities designed to both give back to our community and try to educate the public and students in some small way about what we do.

Look for our Ask-a-Lawyer Fair at Lamson College, Student Essay Contest, CLE regarding Jury Selection (celebrate Cinco de Mayo with CLE and Happy Hour) and more. Our Law Week committee will be sending out the siren for volunteers who want to grade essays and/or serve the community by giving free legal advice.

YLD News & Notes: Harts off to our Barristers Ball & Silent Auction, who will hand over its proceeds to the Justice Learning Center and Museum. Thanks to our generous ball-goers who purchased Moda Fina jewelry bags and silent auction items. We promise it was only coincidence that Superior Court Presiding Judge Barbara Mundell walked away with the big prize of the evening—a one carat diamond from Moda Fina Jewelers. We hope to see you all next year at the 2006 Ball.

Generating Ideas through Networking

I am what some business management gurus call an “idea practitioner.” I am constantly brainstorming and hunting for new ideas to help further the success of the Maricopa County Bar Association’s Paralegal Division. I like to gather ideas and develop ways to implement those that may be beneficial. Some of the ideas are my own, some are others’ suggestions, and some are derived from books and articles that I read. Lately the most exciting way for me to generate and share new ideas is through networking. This may seem obvious to some of you, but it was not to me. Like many others, I believed that networking was little more than a thinly disguised job-hunting tool. I was mistaken.

Networking is indeed a great way to gain potential employment leads, but it also serves another valuable purpose. It encourages the deliberate exchange of ideas and experiences with new or untapped contacts within a community. People are compelled to exchange ideas with new contacts because they learn, through networking, that those contacts have similar objectives or may be working on parallel projects. In this sense, networking is an extension of research that people perform when looking for ways to turn ideas into plans of action.

People who take advantage of information available through networking are more likely to accomplish what they set out to achieve. They also help to foster a deeper sense of community. These are things idea practitioners like me can appreciate.

Establishing professional relationships and becoming involved in a professional community, specifically the MCBA, has helped me to grow as an individual, a paralegal, and a leader of the Paralegal Division. Not only have I been introduced to a variety of interesting, valid viewpoints, I have become more comfortable sharing my own observations and perspectives. Let networking do the same for you.

Along with MCBA Executive Director Leandra Lewis and Treasurer Judge Louis Araneta, I recently attended the ABA’s Bar Leadership Institute in Chicago. I programmed a “rule” to my e-mail, which automatically responded to persons and spammers e-mailing me by replying that I would be out of the office and not able to respond to e-mail until my return.

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Volunteers Needed for MCBA Law Week 2005

Maricopa County Bar Association Law Week 2005: The American Jury: We the People in Action kicks off on Saturday, April 30 with its annual Ask-A-Lawyer, and will continue through May 6. In addition to the legal advice fair, the MCBA Young Lawyers Division will present this year’s Phone-A-Lawyer event and essay contest for seventh and eighth graders. All activities during this week are designed to educate the public about the role of law in the United States.

The Ask-A-Lawyer will be held on Spring and will be held once again at KAET TV. Channel 8. This year, the event will take place on Tuesday, May 3. Attorneys are needed to answer calls from the public about legal questions they may have.

The Young Lawyers Division will also be working with area junior high and high schools for an essay contest based on the theme: Seventh, eighth, and ninth graders will have the opportunity to write about the important role the American jury plays in law.

Volunteers are needed for all events! Want to make a difference in the community? The Ask-A-Lawyer and Phone-A-Lawyer are great exposure to helping the community. Interested? Please contact Geoff Cummings at (602) 257-4200 x107 or gcummings@mcbabar.org. Also visit www.maricopabar.org for up to date information on MCBA Law Week 2005.

VLP Ceremony Highlights

Commitment to Pro Bono Counsel

T hroughout the VLP Advisory Committee, the focus for the 2004 Phone-A-Lawyer event and essay content for Young Lawyers Division will present a Phone-A-Lawyer event and essay contest for seventh and eighth graders. All activities during this week are designed to educate the public about the role of law in the United States.

We were honored to have the opportunity to support VLP. The attention was focused on outstanding attorneys and law firms but, although the crowd was filled with legal luminaries, the attention was focused on the award recipients. VLP honored not only outstanding attorneys and law firms but, among others, Rachel Barrios, a volunteer since her first year in law school. Ramon Alvarez, owner of Case ‘n Point, was recognized for providing ongoing technical support to VLP.

For more information, please contact Geoff Cummings at (602) 257-4200 x107 or gcummings@mcbabar.org. Also visit www.maricopabar.org for up to date information on MCBA Law Week 2005.

By Lina Alvarez and Annette Alvarez

Special to Maricopa Lawyer

A n array of 350 people gathered at the Volunteer Lawyers Program’s “For Love of Justice” awards ceremony at the Hyatt Regency in Phoenix on February 18. The annual luncheon honors those whose exceptional pro bono work provided civil legal help to needy individuals.

Although the crowd was filled with legal luminaries, the attention was focused on the award recipients. VLP honored not only outstanding attorneys and law firms but, among others, Rachel Barrios, a volunteer since her first year in law school. Ramon Alvarez, owner of Case ‘n Point, was recognized for providing ongoing technical support to VLP.

See VLP page 16

Volunteers Needed for MCBA Law Week 2005

Retired Chief Justice Gordon introduced the keynote speaker, former Arizona Attorney General Grant Woods, as the man who “got the legislature to tweak the law that allowed lawyers to begin to do pro bono work.” Wood’s later explained, “Prior to [master...
Court Watch

continued from page 1

Lemon lawsuit?
So Parrot filed suit in Maricopa County Superior Court under the Magnuson-Moss Act and the Lemon Law. The Superior Court granted summary judgment to Daimler-Chrysler, ruling that both statutes applied to purchasers only, not lessees. Parrot appealed, and the Court of Appeals disagreed with the Superior Court.

Judge Susan A. Ehrlich looked first to the federal law’s definition of “consumer,” the party whom the Magnuson-Moss Act protects. To be a consumer, one must meet one of three standards. The first—a retail buyer—clearly did not apply to Parrot, so Ehrlich turned to the second and third prongs.

The second prong defined “consumer” as “any person to whom such product is transferred during the duration of an implied or written warranty…applicable to the product.” The third applied to “any other person who is entitled by the terms of such warranty…or under applicable State law to enforce against the warrantor…the obligations of the warranty.”

Although it seems that the Jeep was in-transit to Parrot, which thus seemed to qualify under the second prong, some courts have defined “transfer” under the Uniform Commercial Code, under which “transfer” requires the passing of title and therefore does not cover leases. Other courts find the Magnuson-Moss Act’s language clear enough to interpret on its own, without resorting to the UCC.

Leasing rights

Ehrlich opted for the second school of thought. She concluded that “transfer” under the act plainly refers to the “physical transfer of a consumer product and not to the legal transfer of its title.” The courts that interpret “transfer” to require a sale, she intimated, improperly forget that sales are already covered in the first prong. Her interpretation avoided this tension.

Ehrlich also determined that Parrot qualified under prong three. She held that Pitre—which owned the vehicle—had assigned its warranty rights to Parrot in its lease with him. “Indeed,” she wrote in rejecting Pitre’s contrary argument, “Chrysler conceded that, when it leases vehicles, the lessee gets ‘a full factory warranty and the right to enforce it.’” But she concluded that Parrot would qualify even if Pitre did not transfer its warranty to him because he was entitled to enforce it, and that was all that was necessary under the act.

Ehrlich then turned to the Lemon Law, which requires manufacturers and dealers to either replace a defective vehicle or allow the consumer to return it for a refund. The Lemon Law differs from the Magnuson-Moss Act because it is limited to motor vehicles, while the federal law applies to all consumer goods. On the other hand, it defines “consumer” pretty much the same way that Magnuson-Moss does. So Ehrlich had little trouble concluding that Parrot was a consumer under the Arizona statute.

She reversed summary judgment in favor of Daimler-Chrysler. She was joined by Judge Lawrence E. Winthrop and Superior Court Judge George H. Foster, Jr.

... 

Stayling in our vehicle, we turn from statutory protection against lemons to constitutional protection against unwarranted searches. The Fourth Amendment forbids unreasonable searches and seizures, and generally requires police to obtain a warrant before conducting a search. An exception arose in Chimel v. California, 395 U.S. 752 (1969), where the Supreme Court held that officers may search an arrestee’s person and the area within his immediate control. This warrantless search is justified by safety and law-enforcement goals: police officers need to find any weapons within the arrestee’s reach and find any evidence that the arrestee might hide or destroy.

The Ninth Circuit recently explored the limits of the search-incident-to-an-arrest exception in a case that arose in Phoenix. United States v. Osife, No. 04-10172 (9th Cir. Feb. 22, 2005). The issue, as the court stated it, was “whether the Fourth Amendment permits police to search an automobile after arresting its recent occupant, even when evidence related to the crime is unlikely to be found.” This dry statement of the legal question gave little hint of either the mundane and somewhat comic story behind the case, and little hint of the ironic source of the defendant’s argument.

Improper exposure

One day in 2003, Dale Osife drove his pickup truck to a grocery store, got out of the truck, urinated on the ground next to it, and went into the store. A citizen called the Phoenix police. Officers arrived and watched as Osife emerged from the store and put a plastic bag in the truck. When the tipster verified that it was Osife who had done the deed, the officers arrested him for public indecency. He was standing outside the truck when the arrest took place.

The officers handcuffed Osife and placed him in the back seat of their cruiser. They then searched the truck and found a pistol, which they discovered had been stolen. Osife was charged under federal laws prohibiting felons from possessing weapons. After his motion to suppress the gun was denied, he was convicted.

He appealed, arguing that the search of his truck violated the Fourth Amendment because it was not reasonably aimed at discovering evidence related to the crime for which he was arrested. Like the district court, the Ninth Circuit rejected his argument.

Judge Diarmuid F. O’Scannlain noted that the Supreme Court created a bright-line rule, holding in United States v. Robinson, 414 U.S. 218 (1973), that courts are not to decide case-by-case whether arresting officers’ safety is in jeopardy or whether evidence is in danger of destruction. Rather, the search is reasonable per se.

New York v. Belton, 453 U.S. 454 (1981), explained Chimel’s application to arrests connected with automobiles. “Belton laid down another bright-line rule,” O’Scannlain wrote, “holding that when the police arrest the occupant (or recent occupant) of an automobile, the area they are permitted to search under Chimel includes the entire passenger compartment of the car—including any containers—whether or not there is a reasonable chance of finding a weapon or evidence of the crime for which the occupant was arrested.” He explained that the Court justified this rule “by observing the need for clear standards to guide officers in the field and to allow citizens to understand the contours of their rights.”

Unpredictable turn

Osife admitted that the arrest for public indecency was proper and also admitted that he recently occupied the truck. To overcome the conclusion that the search was therefore valid, Osife turned to an unlikely ally, Justice Antonin Scalia.

In Thornton v. United States, 124 S. Ct. 2127 (2004), Scalia had expressed doubt about Belton. Joined by Justice Ruth Bader Ginsburg, Scalia rejected Belton’s rationale, given that police almost invariably search the automobiles after handcuffing the suspects and placing them in a locked patrol car. Given those circumstances, it is impossible for the suspect to get a hold of either a weapon or evidence from the now unreachable automobile.

Because Scalia couldn’t square Belton with Chimel’s reasoning, he argued for re-appraising the rule. “I would…limit Belton searches to cases where it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle,” he wrote in Thornton.

O’Scannlain expressed some agreement with Scalia’s position. “Osife is surely right that there was no reason for the police to think that evidence of his indecent public urination would be found inside his pickup truck,” he wrote. Moreover, he continued, “it seems to us that Justice Scalia’s view is more analytically sound than the prevailing approach, which relies on the legal fiction that a suspect handcuffed and locked in a patrol car might escape and grab a weapon from the passenger compartment of his own car.”

Indeed, Arizona judges have raised similar objections. In State v. Hanna, 175 Ariz. 30, 839 P.2d 450 (App. 1992), Judge John L. Claborne wrote that “the logic of extending a search incident to arrest to a locked glove compartment in order to protect the safety of police officers and the integrity of evidence from an arrestee who is handcuffed in the back of a police car twenty-five feet from his own vehicle and not in possession of the key to unlock the glove compartment escapes me.”

Search is over

But whatever the merits of Scalia’s position, O’Scannlain noted, it is not the law. The Thornton majority had rejected it and upheld a search similar to the one Osife suffered. O’Scannlain therefore left Osife to try to persuade the Supreme Court to take his case and adopt Scalia’s position.

Joining O’Scannlain in affirming Osife’s conviction were Judge Carlos T. Bea and Third Circuit Judge Robert E. Cowen.

In the March issue of the Maricopa Lawyer, the spelling of Arizona Supreme Court Justice Rebecca White Berch’s last name was incorrect. We apologize for the error.

Portrait unveiling ceremony

Hon. John R. Sticht, Ret.

Maricopa County Superior Court
April 22, 2005
12:30 – 1:30 p.m.
Central Court Building
Courtroom 402
Editor’s note: In a time when some law firms aggressively advertise on television and the Internet, Mr. Dick, who has been practicing family and probate law in Arizona for the past 50 years, offers some old-fashioned advice to practitioners.

As an attorney practicing in Chandler for almost 51 years, if someone would ask me what advice to give a newly practicing attorney opening his own office, I would offer the following:

Office space: Find an office in an area providing good exposure to the clientele you seek. The office does not have to be elaborate but should have a homey feel. The first impression is a lasting one. The office should give a sense of being important to the client, including personal hobby or collection displayed to show your human side.

Client arrival: When a client enters the office, go to the waiting room yourself, greet the client, and lead the client to your office.

Personal introduction: It is important that you introduce yourself. Above all, personally ask the client’s name. This gives the impression you are interested and welcoming. Once you have made the introduction, ask “what can I do for you?” Have a pen or pencil laying on a legal pad, but do not pick either up until later you wish to write details concerning the client’s needs.

Eye contact: Here is where new attorneys sometimes, in my opinion, miss the boat. Keep your gaze on the client the whole time, using his eyes as a focal point. This is the most important element of selling yourself to the client, as it indicates you are really interested. If there are two or more clients in at the same time, keep your eyes on the speaker. Even if you cannot solve the client’s problem, the client will know you are keenly interested. After all, as Abe Lincoln said, “your time and advice are your stock in trade.”

Returning calls: Answer your phone calls each day, or return them no later than the next day. This is very, very important.

Fee discussion: Do not let the client leave the office without discussing the fee. You will have less trouble collecting. A client is a consumer who, once he has an idea of what the fee will be, has the option of retaining you or not.

Dealing with attorneys: If the client is in a case where another attorney is involved, do not bad mouth other counsel or the judiciary. Lawyers have enough bad publicity without demeaning one another.

Mentor: It is important to look for a mentor you can call on to discuss any issue. I remember when I started the Honorable Henry Stevens was my mentor. He took a liking to me and assured me I could call on him day, night and weekend to discuss my problem—and I did.

Advertising issues: Money may be short, so how best can you advertise? Join a civic club. Every member is a potential client, but be there to work club projects. I have belonged to Kiwanis for 48 years and I have done legal work of some kind for each member. Also do volunteer work in the community—this kind of advertisement is free.

Ethics: If you have a possible ethics problem, call the ethics committee, ask your mentor, or attend a CLE on the subject.

Professional behavior: It is important to establish guidelines for professional behavior, which can be accomplished by staying current on professionalism.

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May qualify for 3.5 hours MCLE

Chair: Judit Dworkin, Managing Partner and Patty Ferguson, Sacks Tierney
- You need to know about jurisdiction, immunity and tribal law.

Panelists:
- Tom LeClaire, President, MGU Companies - Financing, developing, and managing hotels and casinos
- Jim Nearthood - Partner, Neathood Law - You need to know how to handle ground leases and development projects on and with the Tribes
- Representative from Devco/Salt River Pima Maricopa Indian Community

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$95 for non-members of the Scottsdale Bar Association
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For additional information please contact Jill Miller
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Growing Need for Certified Divorce Financial Analysts

The featured expert this month is Michael Phillips Black, CFP®, a certified divorce financial analyst who specializes in divorce financial planning, investment advisory and wealth management services. With more than 20 years experience, Black helps those that are going through a divorce understand all financial entitlements by performing an assessment of their needs before a settlement is negotiated.

Black addresses the purpose of working with a certified divorce financial analyst and when you should involve a CDFA in the divorce proceedings.

Q What is the goal of a CDFA?

A When working with an attorney, a CDFA’s goal is to give his client a clear understanding of all the financial issues, such as:
• Alimony and child support
• Personal vs. marital property
• Valuing and dividing property
• Retirement and pension values
• How to handle the division of real estate
• Tax problems and solutions
• Post divorce cash flow planning
• Giving the client the opportunity to analyze the effect of each asset allocation settlement option, in both its present and future financial effect

Many attorneys are advising their clients to work with a CDFA to ensure their clients are satisfied with the outcome of the settlement and that their future is secured. Satisfied clients boost the attorney’s reputation and encourage referrals.

Many experts are recommending CDFAs, including Fortune Magazine in an April 15, 2002 article titled “The latest must-have divorce accessory…specially trained Certified Divorce Planners.” The Wall Street Journal has even weighed in on the subject in article from February 2003 when it ran an article titled “How to Plan the Perfect Divorce: Hire a Specialist.”

CDFAs offer invaluable information on the forefront of divorce settlement so that a financially fair, equitable and just resolution can be achieved, not only for the moment but for the future.

Q What type of training is involved to become a Certified Divorce Financial Analyst?

A A CDFA graduates from the Institute for Divorce Financial Analysts and receives special training in the financial issues of divorce. They also fulfill continuing education requirements to meet the goal of providing sound financial advice in this area. The Institute for Certified Divorce Planners was founded in 1993 and was developed to fill a need for financial expertise in the area of divorce.

Michael Black can be reached at 480-525-0154 or via email at mpblack@mail.com
His website address is www.mpblack.com

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Justice Learning Center and Museum Benefits Greatly From Barristers Ball

By Jennifer Ratcliff  
Barristers Ball Co-Chair

This year’s Barristers Ball, hosted by Maricopa County Bar Association’s Young Lawyers Division, was a tremendous success—surpassing recent balls in both attendance and charitable proceeds! The 300-plus attendees raised a substantial amount for the Justice Learning Center and Museum, 2005’s selected beneficiary.

The money raised through the event will constitute approximately 10 percent of the Justice Learning Center and Museum’s budget for renovating the top floors of the Old Courthouse into a multi-media center aimed at educating the public about the Arizona justice system.

The Ball, held at the Arizona Biltmore Resort & Spa on February 26, featured a traditional silent auction during the cocktail hour and a live auction of a previously-owned vehicle from Avondale Toyota following dinner. Some of the more notable silent auction items included a basketball autographed by Phoenix Suns star Quentin Richardson, a bottle of Johnny Walker Blue Label Scotch, a week-long vacation in Flagstaff, and a set of actual jail bars from the Old Courthouse jail.

New to the Barristers Ball this year was the sale of “Mystery Bags” by local jeweler Moda Fina. For $50, purchasers received a cubic zirconia and entrance into a raffle for precious gems—ten half-carat sapphires as well as a one-carat diamond. Each bag purchase also included the chance to win a jewelry box or a $200 gift certificate. After dinner, Channel 3’s Olivia Fierro drew the numbers of the lucky winners of the gems.

The drawing concluded with the grand prize diamond going to none other than Maricopa County Presiding Judge Designee Barbara Rodriguez Mundell.

The following individuals worked hard to make the event a success: Jennifer Ratcliff and Erin McGuinness (Ball co-chairs), Julie LaFave (Silent Auction chair), Jeff Kuykendal (Corporate Sponsor chair), Kay Engler, Jennifer Green, Amanda Lorenz, Paige Martin, Anica Parker, Karin Philips, Kara Ricutpero, and Walter Ulrich. Thank you again for your incredible effort—we could not have done it without you!

Those interested in joining the 2006 Barristers Ball Committee, please contact Erin McGuinness at (480) 429-3026. Please stay tuned in the upcoming months for announcements regarding next year’s ball.

Jennifer Ratcliff acted as co-chair for the 2005 Barristers Ball. She is an active member of MCBA’s Young Lawyers Division, and works at Gallagher & Kennedy, P.A., practicing general litigation, with an emphasis on condemnation and valuation matters.

The Maricopa County Bar Association’s Young Lawyers Division 2005 Barristers Ball Committee, along with the Justice Learning Center and Museum, would like to thank all those who helped make this year’s Barristers Ball a resounding success:

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Jennings, Strouss & Salmon, P.L.C. welcomes inquiries from established Arizona attorneys with AV rating and substantial business who are interested in practicing in our new North Scottsdale office at the Promenade Corporate Center. Your interest may be directed in confidence to John C. West, Managing Attorney, at jwest@jsslaw.com.

Visit our website, www.jsslaw.com, for information about Jennings, Strouss and our practice.
### April 2005

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
<th>Time</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Mental Health Issues in Capital Litigation</td>
<td>1:00 p.m.</td>
<td>ASU Downtown CLE: 3 hours general</td>
</tr>
<tr>
<td>11</td>
<td>YLD Board Meeting, noon</td>
<td>5:30 p.m.</td>
<td>Scottsdale Bar (Scottsdale Athletic Club)</td>
</tr>
<tr>
<td>12</td>
<td>MBCA Executive Committee Meeting</td>
<td>7:30 a.m.</td>
<td>MCBF Board Meeting</td>
</tr>
<tr>
<td>13</td>
<td>Environmental Law Section Meeting</td>
<td>7:30 a.m.</td>
<td>MCBF Board Meeting</td>
</tr>
<tr>
<td>15</td>
<td>CCD Luncheon: Sarbanes-Oxley and the Privately Held Company</td>
<td>11:45 a.m.</td>
<td>University Club CLE: 1 hour</td>
</tr>
<tr>
<td>21</td>
<td>Personal Injury/ Negligence Board Meeting</td>
<td>4:30 p.m.</td>
<td>MCB Board Meeting</td>
</tr>
<tr>
<td>22</td>
<td>Estate Planning Judicial Reception</td>
<td>5:30 p.m.</td>
<td>CCD Luncheon: Sarbanes-Oxley and the Privately Held Company</td>
</tr>
<tr>
<td>27</td>
<td>Solo Practitioners Section Meeting</td>
<td>11 a.m.</td>
<td>Criminal Law Section Meeting</td>
</tr>
<tr>
<td>28</td>
<td>Estate Planning Probate and Trust Board Meeting</td>
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</table>

### MCBA Calendar

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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 maricopabar.org.
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(cost includes reception & 2 hours parking in Bank One garage)
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Registration: www.awla-maricopa.org
Questions: Mayar Daiza 602-506-8484

**MCBA ANNOUNCEMENTS**

City of Glendale Judicial Selection Advisory Board Needs Replacement
The City of Glendale is seeking a replacement for Richard Bellah on the Judicial Selection Advisory Board due to his move to the City of Phoenix. Per city code and the Judicial Selection Advisory Board bylaws, the board position represents “a member of the Maricopa County Bar Association who resides in the City of Glendale and who is appointed by the city council from among three nominees recommended by the Maricopa County Bar Association’s Board of Directors.” City of Glendale residents interested in serving on this board should submit one or two goals they hope to achieve it selected no later than the end of the business day on Wednesday, April 13, 2005, to Leandra Lewis at llewis@mcbar.org. You may also contact her at (602) 257-4394.

MCBA CLE Committee Members Needed
Volunteers are needed to serve on the Maricopa County Bar Association’s CLE Committee, which works hand-in-hand with staff to develop MCBA CLE programs. The goals of the committee include offering top quality programs on a wide range of topics as well as expanding on-line and non-traditional CLE delivery methods. Interested members should contact Mona Fonse at mfonse@mcbar.org or (602) 257-4200 ext. 131.

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

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

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Consider joining over 300 lawyers who serve as Judges 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.superiorcourt.maricopa.gov. Go to the index on the home page and scroll to Judges Pro Tempore to find the applications and additional information.

The August 5 deadline is for lawyers submitting new applicants, as well as existing Pro Tem Judges (more than 300) 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 reappplication process.

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

TRIAL COURTS OF ARIZONA
In Maricopa County

COMMISSIONER
The Trial Courts of Arizona in Maricopa County is accepting applications for Commissioners. This is a full-time Judicial Officer position, although part-time assignments may arise at the discretion of the Court. Commissioners may be assigned to the “24-hour” Initial Appearance Court located at the 4th Avenue Jail, Regional Court Centers and various other departments of the Court, including Criminal, Civil, Family, Juvenile, Probate & Justice Courts. Positions may be located at various valley sites.

Applicants must be Maricopa County residents, at least 30 years of age, duly licensed members of the AZ State Bar and shall have engaged in the active general practice of law for a period of not less than five (5) years immediately preceding appointment. Compensation may be up to 80% of the salary of a Superior Court Judge. Applicants from this recruitment may be used to fill other Judicial Officer vacancies occurring within the next six months. Applicants may receive the application form & instructions in one of three ways:

1) http://www.superiorcourt.maricopa.gov/openJobs
2) Disc (MS Word) or
3) Paper hardcopy. To receive the application form & instructions, please bring in a virus-free, formatted blank disc to be traded for a disc with the application on it, to:

Judicial Branch Human Resources
101 West Jefferson
East Court Building, 3rd Floor (Law Library)
Phoenix Arizona 85003

Office hours are 8 a.m. to 5 p.m. Monday - Friday.

For additional information, call Andreia Griego at 602-506-4473

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Deadline: Applications & 16 copies must be rec’d by 3:00pm on Friday, May 20, 2005. EOE.

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■ Lindsay E. Jones has joined the law firm of Gust Rosenfield in its education law practice.

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

■ Faith C. Klepper and Kelly K. Johnson have joined the firm of Calderón Law Offices as associates.

    Klepper (J.D., 1997, ASU) practices in the areas of litigation and general civil matters. Prior to joining the firm, she was a deputy county attorney with the Maricopa County Attorney’s Office. She also previously served as a deputy public defender with the Maricopa County Public Defender’s Office.

    Johnson (J.D., 2002, John Marshall Law School) was previously with Lorber, Greenfield, Polito & Pengilly, and prior to that, Burr & Associates.

■ Ira M. Schwartz and Michael A. Cordier have joined DeConcini McDonald Yerwin & Lacy, P.C. as shareholders, while Michael E. Neumann has joined the firm as an associate.

    Schwartz (J.D., 1985, Washington College of Law) practices in intellectual property, commercial litigation, computer and Internet law, and representation of emerging technology businesses, and Cordier (J.D., 1992, University of San Diego) practices in intellectual property, commercial and construction litigation, employment law, and corporate and business law. Neumann (J.D., 1997, California Western School of Law) focuses on commercial litigation and bankruptcy.

■ Sean M. Sabo and Melissa W. Rawlinson have joined Fennemore Craig as associates.

    Sabo (J.D., 1993, Pepperdine University) has joined the firm’s real estate practice, focusing on real estate and real estate finance, while Rawlinson (J.D., 2001, Brigham Young University) has joined the firm’s litigation practice, focusing on commercial litigation and business and personal injury torts litigation.

■ Gary R. Zwillinger, Pamela G. Georgelos, Scott H. Zwillinger and Colleen Goodell Knecht are all shareholders and Timothy R. Smock acts of counsel in the newly established firm Zwillinger & Georgelos PC. The firm specializes in the areas of real estate law, corporate and securities law and commercial litigation.

    Zwillinger (J.D., 1977, St. John’s University) is experienced in numerous corporate and real estate matters ranging from real estate development and finance to corporate mergers and acquisitions to securities law. Georgelos (J.D., 1991, UA) specializes in securities law and mergers and acquisitions along with real estate acquisition, sale, financing and leasing.

    Zwillinger (J.D., 1998, Brooklyn Law School) practices in the areas of commercial litigation, employment law and civil rights as well as select personal injury and wrongful death matters.

    Goodell Knecht (J.D., 2000, UA) specializes in real estate finance and real estate transactions along with corporate mergers and acquisitions.

    Smock (J.D., 1977, Indiana University) focuses on commercial trial practice, and possesses a background in litigation counsel, including real property, insurance and contract law and the enforceability of various forms of non-competition agreements.

■ Chad Freed has been named senior vice president, general counsel of Universal Technical Institute, Inc., a nationwide provider of technical training for marine, motorcycle and automotive technicians.

    Freed (J.D., Tulane University) will oversee legal, licensing and compliance standards within the education sector. Freed has served as legal counsel for UTI since 2003. He is also the company’s corporate secretary. Prior to joining UTI, Freed was with the firm Bryan Cave LLP.

■ Burch & Cracchiolo, P.A.

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The Business of Law: One Attorney’s Value-Driven Path

Attorney Keith Galbut is a Phoenix native who has seen first hand this city’s exponential growth. By the same token, Galbut has also lived in some of the world’s largest cosmopolitan metro areas and is confident that Phoenix’s business environment will continue to grow its connections to these national and international cities.

Galbut graduated from Arizona State University College of Law, and currently practices at Galbut & Hunter, PC, where he focuses on business formation and transactional law.

Having a keen awareness of Phoenix’s offerings, Galbut is passionate about its legal opportunities. He invests time and effort in a “growing environment conducive to developing a legal practice” – one he thinks will grow tremendously in the next couple of decades.

Galbut is quite familiar with Phoenix’s business world as well. With an undergraduate degree in economics and a Masters in International Management and MBA from Thunderbird, Garvin Graduate School of International Management, he possesses a financial and economics consulting background.

Best of both worlds

The transition from business school to law school taught Galbut how to merge two oftentimes seemingly opposing perspectives, that of the “detail-oriented lawyer and the results-oriented businessman.”

Though Galbut had always considered becoming an attorney, his shaping decision came with his growth of business knowledge. He has always valued the power of legal counsel in business, and as his own experience matured, he realized the value of providing legal counsel.

Initially at law school to gain a new skill set, Galbut soon came to “cherish the ability to add value to local businesses by consulting with them in order to maximize their business potential while mitigating risk.”

Higher learning

Galbut does not feel possessing an MBA is required to be a successful business-minded attorney. In his opinion, the secret is to blend business decisions with legal ramifications, keeping a sharp eye on how each option will affect clients and their businesses.

“It is necessary to open yourself to continuous exposure of the business environment, as it is always changing—the minute you stop learning is the minute you lose the ability to advise.”

To allow for ongoing growth, he identifies specific areas to focus on interactively with clients, takes business courses and seeks out mentors.

Galbut still continues his education process. CLE seminars, business forums, and speaking engagements provide opportunity to combine law with business, which “complement each other like hand in glove-treating each other as friends to make the best decisions possible.” He feels fortunate for his role as an occasional guest lecturer at Thunderbird’s Executive MBA International Law class. Through teaching, Galbut sees current existing business needs and fits those into the context of being an attorney. Even more, he benefits from working with the students.

Driving force

Galbut’s personal drive comes from working with entrepreneurs. While in business school, he helped small companies move into new markets, and that experience lent to the realization that business efforts need to be solidified with the legal process.

He grasps how legal advice protects a business and recognizes small companies can be left out of the globalization process without the luxury of in-house consulting or the ability to hire outside advisors. So he has taken it upon himself to wear a legal hat to provide security for his clients.

And that is his secret—Galbut believes success lies within value-driven business development. If there is one priority in forming new client relationships, it is to ask “how do you create value?”

He believes in forming relationships that require doing all he can to understand his clients’ needs, goals and expectations. He then takes it one step further and addresses their long term goals to ensure the present work they are accomplishing leads them to where they want to be in the future. By looking at each relationship as an ongoing, lasting partnership, Galbut is able to genuinely identify his clients’ needs and maximize value.

Great expectations

In his first year of practicing law, Galbut realizes the power of being a new attorney. Galbut’s concept of his role includes one where he identifies areas of value to his clients that “oftentimes lay beyond the four corners of the statute books.”

Recognizing the level of competition that exists to succeed, Galbut feels practicing law needs to be balanced with operational management, efficient technology and marketing strategies.

“Today’s attorneys need to become involved with all aspects of running a practice as soon as they begin their careers.”

Galbut views networking to be a high priority in the changing legal competitive landscape—a tool that identifies skill development areas, allows for relationships with mentors and peers, and enables active involvement in an attorney’s daily career.

He values the Maricopa County Bar Association for such networking power. “There is a challenge for young attorneys to gain as much expertise as possible, and MCBA provides an existing infrastructure system that creates room for discussion and career development.”

Power of effort

Though he certainly possesses an impressive background, it is Galbut’s genuine drive and commitment that lead the way to his success. Every day, in each task he performs, he looks for value to his clients that is above and beyond expectation.

And in five years, where will Keith Galbut be?

He sees himself working with the same clients while continuing to grow his practice with the same core approach he is taking now—maintaining a value-driven mindset.

And he sees himself still in Phoenix, a city “possessing a rich and continually developing marketplace.”

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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.
ASSOCIATE ATTORNEY – needed for 10-attorney, AV-rated firm with a general civil practice, focusing in the areas of regulatory, natural resources, utility and municipal law. 5+ years experience preferred. The firm desires an attorney who works well in a team environment and who will contribute to a positive atmosphere. Send resume to Susan D. Goodwin, 2712 No. 7th Street, Phoenix, AZ 85006.

ASSOCIATE POSITION – Hoopes & Adams, PLC, seeks associate with 1-2 years experience for its growing Chandler commercial litigation and business practice. Send resume/ inquiries to jhoopes@halaw.com.

ATTORNEY GENERAL’S OFFICE – Are you looking for a job as an attorney where you can make a difference and help children and families in Arizona? The Child and Family Protection Division/Protective Services Section (PSS), has full-time trial attorney positions in Phoenix and Mesa. PSS represents the Division of Children, Youth and Families (DCYF) of the Department of Economic Security. PSS trial attorney responsibilities include representing DCYF in dependency, severance, guardianship, and adoption matters statewide. These positions regularly conduct bench and jury trials, mediations and other child welfare hearings in juvenile court. These positions require regular travel for court hearings and client contact, and may require additional in-state travel. Seeking candidates with one to a maximum of 15 years experience in the practice of law. Juvenile law and/or trial experience or a demonstrated interest in children’s issues is preferred, but not required. Admission to and good standing with the Arizona State Bar is required (include on resume date(s) of admission in Arizona and any other states). The Attorney General’s Office does not discriminate on the basis of disability, and persons with a disability may request a reasonable accommodation. Please make such requests as early as possible to allow time to arrange the accommodation. All inquiries will be handled in strict confidence to the extent provided by law. These positions will be open until filled. For more information or to download an application, visit our website at www.azag.gov. Contact Julie Moy, Lewis and Roca LLP, jmoy@lrlaw.com or fax materials to (602) 734-3930.

JENNINGS, STROUS, & SALMON welcomes inquiries from established Arizona attorneys with AV rating and substantial business who are interested in practicing in our new North Scottsdale office at the Promenade Corporate Center. Your interest may be directed to John C. West, Managing Attorney via e-mail (jwest@jslaw.com). Visit our website, www.jslaw.com, for information about Jennings Strouss and our practice.

KASDAN SIMONDS RILEY & VAUGHAN, LLP – an AV-rated plaintiff construction defect law firm seeks litigators with construction defect experience and superior academic credentials. Construction defect experience preferred. Arizona admitted required. Recent JD Graduate w/ Bar and JD w/ 1-3 years experience. Please send resume, cover letter and writing sample demonstrating legal reasoning ability to Stephen Weber cover letter by mail, fax or email. 2425 E. Camelback Rd Suite 550 Phoenix, AZ 85016, 602 224 7801, sweber@kasdansimonds.com.

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Dear Editor,

As a judicial member of the State Commission on Judicial Performance Review, I take issue with several of the statements and opinions expressed by Mr. Jack Levine in his article published in the February Maricopa Lawyer.

Mr. Levine's suggestion that the Commission on Judicial Performance Review does not make the "unabridged numerical scores" attained by judges available to the voters is inaccurate. To the contrary, the Commission makes all of the voluminous data and scores (numerical and percentage) from attorneys, litigants, witnesses and jurors available to the public in an easily understandable format on its website, in press releases and in a publicity pamphlet published by the Secretary of State and mailed to all registered voters in the State of Arizona.

Mr. Levine's suggestions that the members of the Commission on Judicial Performance Review should not participate in voting because judicial prestige and influence has a chilling or coercive effect on the non-judicial members is not supported by my experience on the Commission. I have not witnessed one occasion when the judges could be said to have dominated the discussion or the voting on any issue or candidate for retention. The judges do not take positions as a group and frequently express disagreement with each other on a variety of matters under discussion. The non-judicial members of the Commission, including attorney members, freely and often strongly announce their opinions without regard to the participation of the judicial members.

Judicial membership on the Commission on Judicial Performance Review does not inhibit frank discussion and informed decision-making regarding the performance of the state's judiciary.

Mr. Levine finds fault with merit selection and apparently would like to return to the election of judges, requiring them and their opponents to go into the community to "press the flesh" with the voters to ask for their support. In 1960, when Mr. Levine began the practice of law, there were ten Maricopa County Superior Court judges and five Pima County Superior Court judges. Contested elections may have then been a rational approach to the selection of the best candidates for judicial office in counties with relatively sparse populations, allowing judges to interact with the community. However, there are now 94 Superior Court judges in Maricopa County and 28 Superior Court judges in Pima County, serving more than 4 million people. Does Mr. Levine believe that the 100 candidates for 50 Superior Court judgeships up for a contested vote every two years in Maricopa County will be able to present the voters with meaningful information to "compare and evaluate" their qualifications and records? Or, instead, will each candidate spend $250,000 or more on street signs, billboard space and radio ads proclaiming they are smarter, of better character and tougher on crime than their opponents?

Mr. Levine desires a return to the good old days when, as he states, the "chief advantage of the elective system was that judges were always courteous and polite to those appearing before them, particularly members of the bar." According to Mr. Levine, judges who acted in a manner deemed appropriate by the bar "could look forward to a long tenure on the bench" because lawyers who attempted to run against such judges "were ostracized" by the legal community. In other words, judges who were nice to politically connected lawyers and law firms would keep their jobs. Judges who were not nice to the lawyers and law firms who mattered would lose their jobs. The problem with Mr. Levine's argument is that the judicial branch of government does not exist to serve only the bar. It also serves the constituent parts of our complex and diverse society and those who want access to justice, including criminal defendants, victims of crime, injured plaintiffs, businesses and professionals accused of tortious conduct, children, families torn by divorce, citizens with grievances against the government and poor people who cannot afford the services of those lawyers and law firms who would like to assure the election of judges deemed worthy.

The merit selection and retention/JPR system, while not perfect, works well in our urban counties. The Commissions on Trial and Appellate Court Appointments, composed of citizens and lawyers selected from a cross-section of the community, effectively serve to assist the governor in making judicial appointments based on merit. The judicial performance review process helps voters evaluate the performance of judges and justices standing for retention, facilitates the self-improvement of all judges and justices subject to retention, protects judicial independence and fosters public accountability. Our state judiciary has a national reputation for excellence and will continue to do so as long as we do not accept anachronistic and unwise proposals to degrade it.

Sincerely,

Charles S. Sabalos
Judge, Pima County Superior Court

In the January issue of the Maricopa Lawyer is an interview with new County Attorney Andrew Thomas. In it he is quoted to have said: "[j]ail is a place for lost souls to rediscover their Maker, and to reassert one's priorities before the sands of life are poured out."
Cocktail Parties and Lawyer Advertising

By Jack Levine

The insurance industry and their corporate allies, not unmindful of the public’s plummeting respect for lawyers and accident victims, have produced and marketed, in tandem, their own advertising campaign. We are assailed with such sound bytes as “jury verdicts have gone through the roof.” “Accident victims are seeking to win the litigation lottery;” “Jury and a willingness to do so in return for a percentage of the recovery.” These messages create the public perception that lawyers are encouraging people to bring personal injury claims they otherwise might not bring, and that lawyers are seeking to profit from the misfortunes of their prospective clients.

Role reversal

As bad as things are, it is not too late to reverse this distressing trend. In fact, the experiences of the last 25 years of personal injury advertising, with an accompanying decline in the public’s respect for lawyers, may have been necessary in order to demonstrate that there are values that may be worth preserving even at the expense of some infringements to commercial speech. Certainly, public respect for the legal profession and preservation of our tort system, which holds individuals and corporations responsible for their wrongdoing, would be high on this list.

At the present time, based on their last expression on this subject, a majority of the Justices on the U.S. Supreme Court, (Rehnquist, O’Connor, Scalia, Thomas, and Breyer) would ban personal injury advertising if sufficient evidence were presented which would demonstrate that such advertising was harmful to the public or was impairing the public’s confidence in the legal profession. In Florida Bar v. Went For It, 515 U.S. 618 (1995), the court banned direct mail solicitation of accident victims conducted within 30 days of an accident event. The court in that case relegated commercial speech to its proper place among the constellation of First Amendment Rights.

“Nearly two decades of cases have built upon the foundation laid by Bates. It is now well settled that lawyer advertising is commercial speech and, as such, is accorded a measure of First Amendment protection. * * * Such First Amendment protection, of course, is not absolute. We have always been careful to distinguish commercial speech from speech at the First Amendment’s core.”

In Went For It, the Florida Bar submitted the results of a two-year study on the effects of advertising and solicitation on the public’s perception of lawyers to support its position. Such evidence was deemed essential by the court to justify curtailment of commercial speech. The court recognized that the bar has a legitimate interest in preventing “the demonstrable detrimental effects that such ‘offense’ has on the profession it regulates.”

Furthermore, the court in deferring the argument that its decision intrudes too heavily on the First Amendment said:

“Speech by professionals obviously has many dimensions. There are circumstances in which we will accord speech by attorneys on public issues and matters of legal representation the strongest protection our Constitution has to offer. * * * This case, however, concerns pure commercial advertising for which we have always reserved a lesser degree of protection under the First Amendment.

Moreover, the court in language that may have implications for the future of lawyer advertising observed:

“The bar has substantial interest both in protecting injured Floridians from invasive conduct by lawyers and in preventing the erosion of confidence in the profession that such repeated invasions have engendered. The bar’s preferrred study, unrebutted by respondents below, provides evidence indicating that the harms it targets are far from illusory. The palliative devised by the bar to address these harms is narrow both in scope and in duration. The Constitution, in our view, requires nothing more.”

Reliable sources

For those who believe that lawyer advertising plays a valuable role in providing information to the public for selecting a lawyer, such information can easily be made available on a registry maintained by the State Bar, with the names of lawyers rotated each day so that everyone on the registry has an opportunity to be selected. Since it was the State Bar that played such a major role in initiating the current nightmare that began with Bates v. State Bar of Arizona, it would be appropriate for it to take the initiative to end it.

The leadership of the State Bar and Supreme Court has been silent far too long, while the public and the profession increasingly suffer from the devastating effects brought about by lawyer advertising in personal injury cases. Surely we can expect more from those who have the responsibility to uphold our legal system and the dignity and standards of our profession. A study should be commissioned, without delay, to determine the extent to which the public’s attitude has been poisoned by lawyer advertising and the effect that such advertising has had on the tort system and the image of our profession.

Jack Levine is a sole practitioner and practices in the areas of personal injury, employment law and family law. He is a past Chairman of the State Bar’s Trial Practice Section and a past President of the Arizona Trial Lawyer’s Association.

Have News to Share?

Has your law firm named new partners? Send information for our Legal Moves column to Maricopa Lawyer, MCBA, 303 E. Palm Lane, Phoenix, AZ 85004; fax to 602-257-0522; or e-mail to kbrieske@mcchabar.org.

OPINION

Maricopa Lawyer and the MCBA do not necessarily endorse the views expressed by contributors.

VOTE FOR JACK LEVINE

If you don’t like the way things are . . .

Vote for me for State Bar Board of Governors

VOTE FOR JACK LEVINE

Jack Levine

Platform

• Substantially reduce the size and cost of the State Bar
• Abolish mandatory CLE
• Improve judicial decision-making by eliminating rotation of judges

Maricopa Lawyer • April 2005
The desired result is that the changes help reduce delay and expedite resolution of the disputes.

Initial changes began in November with Southeast and were followed by changes for the Northwest Judicial District. Downtown changes followed in March. Cases now also are being designated for the Northeast Judicial District, even though that facility is not expected to open until September (at 40th Street and Union Hills). The judge whose calendar will be reassigned to the new Northeast court currently is hearing those cases.

Judge Campbell noted "zip codes used by the U.S. Postal Service allow for easy definition of judicial districts and assignment of cases to the judicial district in Maricopa County." Assignment to the four distinct districts is based on the address zip codes indicated on the initial filing of the petitioning or plaintiff party. When an attorney represents the petitioner or plaintiff, then it is the attorney's address zip code that will be used to designate the judicial district to which the case is assigned.

The filing location does not determine where the case will be assigned. All filings can be accepted at any Superior Court location, but will be assigned to the appropriate judicial district.

The following charts define the assignment designations.

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**VLP continued from page 3**

The great need for assistance in family law matters produced a wealth of awards. While working at Bryan Cave in 2004, Jamee Klein accepted five guardianship cases from VLP’s Children’s Law Center. She also helped recruit and mentor other volunteer attorneys. Paul B. Harvey received a Family Lawyers Assistance Project award for providing 168 hours of advice and assistance to more than 300 unrepresented parties in family court. Family law attorney Harry Friedlander was named VLP Attorney of the Year for many pro bono endeavors, including complex litigation in multiple domestic violence and custody cases, counsel to pro per, being a mentor to other volunteer attorneys, and presenting CLE programs.

The Hon. Hugh Hegyi, a commissioner for the Maricopa County Superior Court, received the John P. Frank Advocate for Justice Award for a lifetime of commitment to equal access to justice. A longtime advocate for consumers, he helped to write and pass legislation to protect Arizona residents. As a member of VLP, he trained others, developed educational materials and served as a consultant. As chair of the State Bar Legal Services Committee, Commissioner Hegyi drafted and helped win approval from the Board of Governors for major rule revisions promoting increased pro bono services.

The Maricopa County Volunteer Lawyers Program is now in its twenty-fourth year. Until recently, the annual luncheon was attended mostly by award recipients, their closest colleagues, and core VLP supporters. Peggi Cornelius, VLP Programs Coordinator, noted an increase in event sponsors and general attendance since Justice Sandra Day O’Connor delivered the keynote address in 2004. “I think the event has gained prominence, and that serves to increase awareness of the need for this public service in our community.”

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**Letter to Editor continued from page 14**

His response included the following: "I’m an advocate of faith-based ministries (along with President Bush) as effective tools of fighting recidivism. We should explore alternative forms of punishment effective in deterring future criminal behavior.”

It would appear that he wants to push Christianity onto the prison population. This would be in direct violation of Article 2 Section 12 of the Arizona State constitution. Section 12 states in part: “[n]o public money or property shall be appropriated for or applied to any religious worship, exercise, or instruction, or to the support of any religious establishment.” His faith-based ministries in the prisons to get the inmates to “rediscov-er their Maker” would be using both state funds and state property to support religious beliefs.

Sincerely,
Monty L. Gaither Sr.
Arizona State Director of American Atheists

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