2006 Drive to Help More

By Julia Acken
Special to Maricopa Lawyer

Each October, as part of Domestic Violence Awareness month, the MCBA Young Lawyers Division sponsors and conducts a needs drive to assist women and children residing in shelters in the greater Phoenix area.

The drive provides women with basic necessities such as toiletries, paper products, and beauty products to support them and their children in their fight to leave violent situations and become self-sufficient. By providing these basic goods, the drive permits these women to focus on more important and challenging aspects of their recovery, such as securing housing and employment.

Bigger and better

Last year, the YLD Domestic Violence Awareness Committee was able to provide necessities to almost 200 women and children. This year, thanks to an influx of grant monies and other support, it hopes to help at least 300 women and children.

In addition, the committee revised its Survivor’s Guide, a pamphlet containing basic legal information relevant to women leaving violent situations and who will distribute the guides to all of the women in the drive this year. The committee has formed several community partnerships, including Conairs, Bashas’, Two Men and a Truck, AlphaGraphics and NewsChannel.

See DV page 5

Courts Spreading Across Valley Like a Legal Blanket

By J.W. Brown
Maricopa Lawyer

Look in almost any direction from the Superior Court complex in downtown Phoenix, and beyond the line of sight, is an array of new court facilities in the planning or construction phases.

The building nearest completion is the Justice Center at Jackson Street and 7th Avenue in downtown Phoenix. It is expected to open before the end of the year.

Expected to be finished in spring 2007 is the San Tan Justice Court Center, at Chicago and Delaware Streets in Chandler, which will include four justice courts. Remaining court building projects include construction of an addition at the Southeast Court Facility in Mesa and a possible addition to the Northeast Regional Court Facility in Phoenix. Last spring, a new wing opened at the Northwest Regional Court Facility augmenting the existing four Superior Court courtrooms with four Justice Court courtrooms.

An additional regional court building is proposed for the Southwest Valley, which would provide the final compass-point of the county’s northeast, southeast, northwest and southwest scheme to provide accessible court service everywhere across the entire Valley.

Regional court facilities already exist in the northeast (Phoenix), northwest (Surprise) and southeast (Mesa) corners of the county. For now, county officials are working on finding a viable site for the southwest facility, with Tolleson being the front runner.

Public access

In planning for the future, Maricopa County leaders decided to maximize public use of new court buildings by incorporating a variety of court services and programs into the design and construction of the new court facilities. At present, seven justice courts, which had been separately located in rental sites, have been moved into two county-owned courthouses that are also occupied by Superior Court courtrooms. The dual jurisdiction court buildings have helped improve service to the local community.

The new downtown Justice Center has a new twist on the multi-use philosophy. The five-story, five-courtroom building will hold five justice of the peace courtrooms on the first floor, as well as a variety of court-related support operations on the remaining floors. No Superior Court courtrooms are located there. But there are a lot of other court-related functions moving into the building.

The county Public Defender’s Office is moving out of rental space in the Luh’s building on Jefferson and First Avenues to the new facility, about six blocks away.

Administrative offices of the Clerk of the Superior Court are relocating from the Central Court building on Jefferson, between First and Third Avenues. Superior Court’s training center, computer technology services, court interpreter and translation services, and adult probation are among other departments moving to the new building.

Alltogether, nearly 2,500 justice system employees will relocate to the new building. Parking will be available at the garage across Jackson Street.

After the clerk’s administrative offices move from the second floor of Central Court building to the new building, some remodeling of those offices will begin. When done, criminal court administration will move into the remodeled second floor location. Early Disposition Court is proposed to move from the basement of the East Court building to the basement of the Central Court building, after some needed remodeling is finished.

See Courts Spreading page 12

A Courtly Matter: Finding Its Place

Two recent opinions issued a day apart examine courts’ role in resolving constitutional issues.

What is the role of the judicial branch when the legislative and executive branches butt heads? The Arizona Supreme Court faced that question when it was asked to resolve a dispute between Governor Janet Napolitano and the Legislature over the way the former wielded her veto pen. Forty-Seventh Legislature v. Napolitano, No. 06-0079-SA (Ariz. Sept. 12, 2006).

The Legislature recently passed House Bill 2661, which raised state employees’ pay and appropriated money for the raises. After passage in both houses, they sent the bill on to the governor.

Napolitano was mostly pleased with HB 2661, stating that “Arizona’s state employees have waited long enough for a real pay raise.” But she objected to part of section five, which exempted some corrections officers from the state merit system. Napolitano believed the
Healthy Work Environments!

As the boom in the Phoenix economy continues to increase the workload for lawyers, firms are poised to lose associates who are seeking to achieve healthier work environments. To mitigate against the “flight syndrome,” firms must focus on effective retention strategies. Below is a list of “Do’s and Don’t Do’s” that firms should eliminate to create a healthier work environment, since lawyers don’t leave firms—they leave people.

Do #1: Embarrass an associate in public. Many lawyers have observed an associate being ridiculed in front of staff, in a meeting, or in the courthouse. Public humiliation is indicative of classic authoritarian management style. Unfortunately, it is still commonly used and associates are demoralized, which contributes to the flight syndrome.

Don’t Do #2: Don’t follow up on new ideas. Innovative associates thrive on providing new ideas and feedback to better firm management or case handling, but often those ideas are ignored by firm management. Forward-thinking associates are disappointed and feel their efforts to convey ideas were a waste of time.

Don’t Do #3: Don’t give praise. Anually, the Gallup Study asks thousands of employees to cite indicators of a good workplace. Most frequently reported was, “I have received praise during the last seven days at work.” Giving associates sincere praise is a simple action that many partners are unable to perform. In such situations, associates are left to read the “tea leaves” to ascertain their value in the firm and eventually they leave.

Don’t Do # 4: Don’t promote professional growth needs. All firms encourage associates to attend CLEs. Often, however, young associates are not directed to the expensive practice area trainings or networking opportunities provided by trade organizations that last over several days or weeks. Many associates are denied such opportunities because a partner has said that a program lasted too long or was too expensive.

Don’t Do #5: Don’t give clear and concise direction. Partners can often communicate with assumptions, generalities, lack of direction, and, especially, impatience. Associates, consequently, are given assignments without clear guidance as to the partner’s expectations. When an assignment is turned in, the partner may say, “No, that’s not it” without identifying what aspect of the work product is deficient.” Most associates cannot excel with such instructions and begin a greener pasture search immediately.

Don’t Do #6: Don’t show that you care. The bulk of horror stories reported by associates in law-related publications are descriptions of uncaring partners. Examples cited include situations wherein an associate seeks help from a mentoring partner and is told, “That’s the way it is around here.” Such uncaring attitudes are most contributive to associate departure.

Don’t Do #7: Don’t say you’re sorry or wrong. Because the practice of law can be stressful, there is ample opportunity for miscommunication and unintended mistakes between associates and partners. Often partners are unable to apologize when they make a mistake or miscommunicate. When such situations become a common occurrence, resumes begin to fly.

If some of these are prevalent in your firm, make a concerted effort to eliminate such behavior to create a healthy firm environment.

Your Vote Counts

It is that time of year again for membership of the MCBA Paralegal Division to cast their vote for the upcoming leaders of 2007. The positions to be filled include president-elect, secretary, treasurer, and three seats for director. These positions, together with the president and three other director seats already filled for 2007, make up the board of directors.

The board is responsible for the general affairs of the MCBA Paralegal Division in fulfillment of its mission statement and the furtherance of the paralegal profession. Each year, the board is comprised of talented paralegals who volunteer their time and expertise to the advancement of the paralegal profession. This year is no exception. The 2006 board of directors has accomplished great things thus far with the time and expertise that each board member has given for the benefit of the division, the association, and the paralegal profession. I hope that you, too, will take the time to give the nominees for the 2007 board of directors your consideration by submitting your vote for the candidate you feel best meets the qualifications for office.

To find out more about each candidate, the positions which they are seeking, and the qualifications for office, you can log on to our website at www.maricopaparalegals.org. If you have any questions about your eligibility to vote, then contact Paula Tilson, CP, the MCBA Paralegal Division’s Membership Committee chair, at members@maricopaparalegals.org. If you have any other questions regarding board governance issues, feel free to contact your incoming president Monica Rapp, CP, at president-elect@maricopaparalegals.org.

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2ND ANNUAL MCBA RACE JUDICATA

Date: Sunday, December 3, 2006

Time: 6:30 a.m. Check-in and registration
8 a.m. 5K race (Kids’ Dash and award announcements to immediately follow the race.)

Location: Kiwanis Community Park (Sister City Garden Area) 5500 S. Mill Ave., Tempe, AZ 85283. (Follow the signs to parking at the All American Way Bridge.)

Entry Fees: MCBA members and immediate family members: $20, Non-members: $25, Teams of 10 or more: $20 per participant, Kids (under 15): $10, Late registration (after November 19, 2006): $30

Every paid entrant receives a goodie bag, a Race Judicata T-shirt, and free food and drinks after the race.

Food/Entertainment: Breakfast food and drinks. In addition to the Kids’ Dash, there will be a bouncy play area, music, and balloons.

Awards Ceremony: Awards will be given for the following categories:
Three fastest females and three fastest males in each age group
Fastest Team
Biggest Team
Golden Gavel Certificates will be given for the following categories:
Fastest Judge
Fastest Criminal Practitioner
Fastest Paralegal
Fastest Legal Secretary/Assistant
Fastest Civil Practitioner (Partner)
Fastest Civil Practitioner (Associate)
Fastest Law Student or Law Professor

Register: Register and pay online at www.active.com OR register by mail: fill out the form on page 12 or download the registration form at www.arizonarunningeventsco.com.
Fall is the perfect time to increase your business!

The MCBA Lawyer Referral Service is taking more calls than ever and needs experienced attorneys to ensure clients receive quality representation.

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To join the MCBA Lawyer Referral Service, please contact Linda Pena at (602) 257-4200 x117 or lpena@mcbabar.org.

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Don’t Be Taken In

By Jack Levine
Marcopla Lawyer

I will never forget the brave and resilient woman from Kingman, with four young children, who had just lost her husband as a result of a negligently maintained roadway, which threw his vehicle into an uncontrollable skid, causing it to overturn, throwing him from the vehicle and crushing him to death.

I also remember, as if it were yesterday, a young mother, holding her two-year-old daughter, who had a severe case of cerebral palsy as the result of the administration of a powerful uterine contraction drug without any necessity, other than to hasten the delivery, so that the doctor could return to watch the end of a televised football game.

Then there was a third client that I shall always remember. She was a shy and introverted young Israeli woman who had just recently arrived in this country to start a new life with her husband, a Phoenix physician, who had fallen in love with her while he was visiting Israel to attend a medical conference.

One day, while returning from a ski trip, he was stopped at a roadblock south of Flagstaff, while several emergency vehicles were attempting to return a large truck to the roadway after it had skidded and overturned during a snow storm.

As the young physician was stopped at the roadblock, an 18-wheel North American Van Lines truck, coming down a steep grade without any brakes and operated by an inexperienced driver, plowed into his vehicle at a speed in excess of 90 miles per hour. The force of the impact hurled the doctor’s vehicle off the roadway and down a ravine as if it were a matchbox toy, resulting in fatal injuries.

No consolation prize

These days it has become fashionable for people to complain about frivolous lawsuits and the litigation lottery. Although my clients each received a substantial sum of money to compensate them for their loss, I believe I can safely say that neither of the two women, while visiting the graves of their husbands or the young mother while holding her spastic baby, felt in any way like they had won the litigation lottery.

Because we are a nation governed by the rule of law, there are, of course, many millions of lawsuits filed each year in our nation’s courts. There were 155,000 lawsuits filed last year in Maricopa County alone. Few people realize that out of these millions of lawsuits about 80 percent are brought by businesses, involving such things as contract disputes, patent and trademark infringements and debt collections. Out of all these lawsuits, it is not difficult to find a frivolous or outrageous case here and there. Because a few cases out of the many are frivolous or outrageous, they tend to draw publicity and because of this, it is easy to come away with the false impression that our legal system is hopelessly broken and in need of major repairs.

Everyone, of course, has heard about the famous McDonald’s coffee case where a jury awarded a 79-year-old woman named Stella Liebeck 2.9 million dollars when she spilled coffee on herself while attempting to remove the lid. What most people did not hear was that it was shown that McDonalds had over 700 previous complaints from customers who had been scalded by their coffee, which was dispensed in Styrofoam cups at temperatures as high as 190 degrees. By contrast, coffee that is served at home or at most restaurants is generally only 135 or 140 degrees.

The scalding liquid caused third degree burns over six percent of her body, mostly on her thighs and genitals, resulting in an 8-day hospitalization and multiple skin grafts. The woman had offered to settle her claim for only $20,000 before the trial but McDonalds refused.

The jury awarded $250,000 to compensate the woman for her injuries. However, this was reduced to $160,000 because she was found to be 20 percent at fault for spilling the coffee on herself. Because McDonald’s had ignored the more than 700 complaints from other scalding victims, the jury also awarded 2.7 million in punitive damages, which was equal to only two days’ worth of McDonald’s coffee sales worldwide.

After the verdict, the judge reduced the punitive damage award down to only $480,000. Yet despite these reduced awards, which many believe to be quite reasonable given all of the circumstances, to this day, Stella Liebeck remains the poster child for groundless and frivolous lawsuits.

Distorted reality

The truth should be easy to spread around, but today there are those who seem to have lost all regard for the facts. Corporate and insurance interests and their powerful political allies continue to press their anti-consumer agenda with distortions and sometimes outright lies, in a campaign to turn the American people against their own civil justice system, a system that has served as a bulwark against corporate and business greed and oppression for hundreds of years.

Everyone should be responsible for their own wrongdoing, corporations as much as individuals. When a company’s product causes harm to someone or when businesses pollute the environment and make people ill, they should have to pay for the harm they cause. Civil lawsuits provide protection for widows, orphans, and their families. Economic loss and injuries can tear families apart. Jury verdicts allow ordinary Americans to hold more powerful wrongdoers accountable and prevent them from causing future harm.

Every thinking lawyer should be outraged by the current efforts to weaken or destroy our civil justice system. It is not only a veiled attack on lawyers, but also on judges, juries, and ultimately on the American people themselves. We should not be taken in by the current political rhetoric about the need for tort reform.

Due credit

We should not forget that it was our civil justice system that put an end to the horrors of the thalidomide babies in the 1950s; the intrauterine cancers of the Dalkon Shield in the 1960s; the dangers lurking in our automobile tires in the 1990s; and the agony caused in the past by asbestos inhalation poisoning. Also, let us not forget that it was our civil justice system that exposed and, for the first time, weakened the addictive grip that the tobacco industry had held on so many millions of Americans for so many years.

When we hear cries for tort reform, let’s not be misled by the self-serving propaganda of the insurance industry and its influential corporate and business allies. As lawyers, we should not be willing to give up our clients’ right to hold wrongdoers accountable. Once lost, this valuable right could be gone forever.

Jack Levine is a sole practitioner. He is a past chair of the State Bar’s Trial Practice Section and a past president of the Arizona Trial Lawyers Association.
Arizona native Charles “Chas” W. Wirken certainly knows how to color his life brightly.

After graduating from the University of Arizona with both an undergraduate and law degree, he moved back to his hometown of Mesa and practiced there for 22 years before joining Gust Rosenfeld in 1997.

Wirken first thought he wanted to be a lawyer during career week in his eighth grade homeroom class. Two college law classes, constitutional and business law, rekindled his interest.

“With my business degree in hand at the age of 20, I wasn’t ready to leave the college cocoon,” Wirken reminisced. He chose law school over an MBA program because he found law more interesting and exciting than business management.

Formula of success

Wirken is passionate about his chosen practice areas, appeals of all kinds, and commercial litigation and is continuously driven by both a desire to do his best and a competitive nature.

The best lesson he has learned thus far in his legal career? “The satisfaction of helping a deserving and grateful client lasts a lot longer than the fees earned.”

He served as president for both the Maricopa County Bar Association in 1989, and the State Bar of Arizona in 2004-05. He considers those roles his biggest career accomplishments and biggest challenges.

Wirken attributes his success to taking pride in whatever he does as well as his attempts to always get it right. He admits he has yet to figure out how to say “no” when asked to do some volunteer work.

Play time

Wirken admits he has too many hobbies and interests. Among his favorite are cars. “I’m interested in most anything about cars and race a Porsche on local tracks and in neighboring states.”

He also loves the outdoors and experiencing new places and learning new things. To get a taste of the richness in his life: he fly fishes for trout, salmon and saltwater fish from Alaska to Mexico and beyond; hunts big game and quail; shoots skeet and sporting clays competitively; rides horses and a motorcycle; plays some tennis and golf; enjoys travel, wine, plays and art galleries; and dabbles in photography while pursuing my other interests.

And yes, he really does have a full-time job as an attorney!

Time marches on

Wirken has a great take on his new status: “Although I consider myself ineligible to be a grandfather because I’m too young and I’m single, my daughter and son-in-law recently had a son.” Regardless of the title he chooses to use, he undoubtedly has a lot to share with the new life.

Fortune teller

Ten years ago, Wirken could not have imagined being invited to join Gust Rosenfeld. He feels very fortunate for the opportunity. “The firm has made the growth and success of my practice possible, while generously supporting my additional bar activities.”

In another ten years, he plans to look back happily on the previous decade and contemplate the next one—while most likely picking up some new hobbies along the way!

Finding Success by Balancing Work and Play

3. These sponsors, combined with dedicated volunteers from the MCBA, help to increase both the number of women served and the number of items provided to each woman. The committee’s goal is to be able one day to assist all of the major shelters in the greater Phoenix area. To achieve this goal, however, it is essential to continue to increase the amount of funding and number of volunteers from the community. If you are interested in donating or otherwise volunteering to assist with the drive, please contact Julia S. Acken at jacken@cox.net. Any assistance you can offer will be greatly appreciated by both the committee and the admirable women it serves.

Julia Acken is the chair of the MCBA Young Lawyers Division’s Domestic Violence Awareness Committee.

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change “would have created an additional expense to the state unrelated to state employee salaries” because the newly exempted employees would accrue more annual leave, which the state would have to reimburse when they left state employ. Napolitano therefore vetoed that small portion of the bill.

Article 5, section 7 of the Arizona Constitution grants the veto power to the governor. It provides a limited line-item veto power: “If any bill presented to the governor contains several items of appropriation of money, [s]he may object to one or more of such items, while approving other portions of the bill.”

Displeased with the governor’s action, both the speaker of the House and the Senate president persuaded their respective bodies to authorize a suit challenging the line-item veto. They filed a special action directly with the Supreme Court.

Legal politics
Before getting to the merits, the court first had to determine whether to take the case. In her opinion for the court, Chief Justice Ruth V. McGregor noted that this involved examining the question of whether the petition presented a political question, which the courts generally shun, or a legal question that was within the court’s bailiwick: “The [g]overnor . . . argues that we can resolve the issues presented only by enjoining the political arena and that the Legislature has attempted to transform a political dispute into a constitutional question.”

McGregor disagreed. “Political questions,” she wrote, “involve decisions that the constitution commits to one of the political branches of government and raise issues not susceptible to judicial resolution according to discoverable and manageable standards.” For example, “[a] governor’s decision whether to exercise a veto and a legislature’s decision whether to override a veto clearly are political questions; both involve decisions committed to their respective branches of government.” But this case presented a different type of question: whether the governor had the power to exercise her veto here. “To determine whether a branch of state government has exceeded the powers granted by the Arizona Constitution requires that we construe the language of the constitution and declare what the constitution requires,” McGregor wrote. “Such questions traditionally fall to the courts to resolve.”

Money matters
McGregor therefore addressed the merits. The question was whether section 5 of HB 2661 was an appropriation of money, qualifying it for a line-item veto. McGregor noted that section 5 did not on its face appropriate any money from the general fund, but that did not matter. Whatever mattered was its effect. “The legislature can authorize spending from the general fund or it can authorize payments of ascertainable amounts from a special fund.”

Thus, if the section set aside revenue from a specific source other than the general fund, it would qualify for the fine point of the governor’s veto pen. The answer to this question raised a fine point of its own. McGregor acknowledged that section 5 requires the state to pay more to reimburse retiring exempt employees for their accumulated vacation time. But this is an obligation, not an appropriation. “Section 5 fails to specify any fund from which payment for accrued leave or, more generally, payment to exempt employees may be made,” she pointed out.

Entertaining section 5 of HB 2661 is not an appropriation, the [g]overnor’s item veto of that provision exceeded her constitutional authority and is invalid.” Joined by the rest of the court, she accordingly “order[ed] that Section 5 be given full force and effect.”

Rather than a little girl’s adventures in a land of wonders, Lewis Carroll might well have been describing the latest twist in the strange appellate saga of convicted murderer Robert Charles Comer, where the Ninth Circuit Court of Appeals decided an appeal even though it conceded that Comer had validly waived his appeal rights.

In 1987, in a campground at Apache Lake, Comer killed Larry Prichard by shooting him and stabbing him in the eye. Comer then assaulted Jane Jones and Richard Smith, who were camping nearby. Posing as a narcotics officer, he ordered them out of their tent at gunpoint and bound them with wire and duct tape. He raped Jones, forcing Smith to watch. Jones and Smith escaped, and Comer was caught. He was tried and convicted of first-degree murder, armed robbery, aggravated assault, kidnaping, sexual assault and sexual assault. He was sentenced to death for the murder, and to 339 years for the other crimes.


State of mind
Comer later petitioned for habeas corpus, thus beginning his journey through the federal courts. The district court denied the petition in 1997, and the case was appealed. While the case was on appeal, Comer wrote to the Attorney General’s Office, stating that he wanted to terminate the proceedings and proceed with the execution. The state accordingly moved to dismiss the appeal, a move Comer supported with a motion of his own. His counsel objected. The Ninth Circuit suspended the appeal and ordered the district court to hold an evidentiary hearing to determine: whether Comer was competent to fire his attorneys and waive his right to further appellate review; and, whether his decision was involuntary in light of the conditions of his confinement. Comer v. Stewart, 215 F.3d 910 (9th Cir. 2000).

The district court held the hearing and in 2002 issued a 90-page opinion finding Comer competent and his decision voluntary. The case went back up. The Ninth Circuit recently issued its opinion. Comer v. Schriro, No. 98-99003 (9th Cir. Sept. 13, 2006).

Now at odds with their client (or former client: Comer had Lacorsa counsel urged the court that the district court had erred in finding that Comer competently and voluntarily waived further review. Judge Warren J. Ferguson’s opinion spent ten pages rejecting their argument. He concluded that the [c]ourt did not clearly err in determining that Comer competently waived his habeas appeal right,” and that “the [d]istrict [c]ourt did not err in determining that Comer voluntarily waived his habeas appeal right.”

Unjust power
But Ferguson, joined by Judge Harry Pregerson, then made a ruling that mooted the entire competency–voluntariness hearing. Conceding that courts “lack jurisdiction to entertain appeals where there was a valid and enforceable waiver of the right to appeal,” he nonetheless wouldn’t allow Comer to “arbitrarily waive… review.” He refused to dismiss the appeal, holding that the waiver was invalid under the Constitution’s prohibition against cruel and unusual punishment. “Permitting a state to execute a capital defendant without a full adjudication of his previously filed federal habeas appeal amounts to an Eighth Amendment violation,” he wrote.

Quoting the Pennsylvania Supreme Court, Ferguson wrote that “while a defendant may normally make an informed and voluntary waiver of rights personal to himself, his freedom to so do must give way where a substantial public policy is involved…. Because imposition of the death penalty is irreversible in its finality, it is imperative that the standards by which that sentence is fixed be constitutionally beyond reproach.” Ferguson added that “[t]o allow a defendant to choose his own sentence introduces unconscionable arbitrariness into the capital punishment system.”

To reach this conclusion, Ferguson had to get around some tough precedent. In Gilmore v. Utah, 429 U.S. 1012 (1976), the defendant did not seek habeas corpus. The Supreme Court rejected a petition from his mother, holding that she lacked standing because her son had chosen not to seek review. Comer’s case was different, Ferguson decided, because Comer had initiated proceedings in federal court. Once the constitutional issues were before the court, Ferguson refused to allow them to be withdrawn.

Unsettling grounds
Ferguson then concluded that Comer’s due-process rights had been violated at the sentencing hearing. Comer had absented himself from most of the trial. He appeared in court for sentencing, but his appearance was most unusual. He was shackled to a wheelchair. Except for a towel covering his genitals, he was naked; this revealed him to be covered with tattoos. There was blood oozing from a wound in his head. And he seemed to be only semi-conscious.

Based on these circumstances, Ferguson held that the sentencing violated the Due Process Clause. “[T]he appearance of this naked, bleeding, shackled man was a severe affront to the dignity and decorum of the judicial proceedings,” he wrote. “The sentencing of Comer without such dignity or decorum is unacceptable.”

Judge Pamela Ann Rymer dissented from the refusal to dismiss the appeal. “[T]his case is over,” she wrote. “What matters here is whether Comer’s waiver of further review of his habeas claims leaves no live controversy remaining between Comer and the State of Arizona.”

She opined that the Supreme Court had mandated dismissal of this case. Gilmore, she wrote, “made clear… that courts lack jurisdiction to consider unresolved constitutional issues underlying a death sentence when the defendant competently and voluntarily waives his right to pursue an appeal.”

By its decision, the majority “thumbs this court’s nose at the United States Supreme Court,” she continued. “I dissent from this raw imposition of judicial power.”
Delegating Your Way to the Top

To whom can it be delegated? Staff members can handle repetitive, easily completed tasks. Associates can handle more substantive work, provided the requisite skills have been developed. Advanced lawyers should handle less defined elements of a project that require application of more advanced critical thinking skills.

Define the project deliverables and deadlines. The worst mistake delegating attorneys make is to ineffectively define what is expected. What may seem obvious to you is not to a less experienced individual. The same holds true for deadlines. Less experienced people need more time to become efficient. Give them specific and reasonable guidance on your expectations.

Estimate the time the delegated task should take. Providing the delegate an estimate of how long a task should take sets parameters around the task, as well as provides a yardstick to use while doing the work.

Align your attitude/expectations. It’s almost always more efficient for you to simply do the work yourself. However, there are only so many billable hours in the day. Aligning your expectations with the work and the person to whom you’re delegating it will return a much better result for you both.

Schedule enough time to meet. The better you explain the work, its background, and your expectations the first time, the fewer mistakes will be made and the less repetition that will occur.

Delegate ownership. Let your delegate know they want them to make decisions on their own. You can always assist them if they hit a roadblock, but challenge them to work through the problem before coming to you.

Obtain feedback for confirmation. When discussing the project, make sure you’re getting feedback that confirms that they understand what you’re saying. Similarly, feed back to them what you’re hearing to ensure you understand what they’re saying.

Engage in progress updates. Make time to check the progress of the project. Just confirming for the delegator that you’re interested in their progress will (a) give them more pride in the work and (b) provide ample opportunity to facilitate the work being performed.

Debrief if appropriate. Debrief with the person you assigned work to if the project merits it. What went well? What could have gone better? These are opportune moments to greatly improve both the work product and the working relationship.

What do you tell clients looking to improve their delegation skills?

I’ve constructed a repeatable framework I recommend clients use. Here’s what I advise:

Organize your work. You can’t possibly delegate work effectively or efficiently if you don’t have your own house in order. The “messy desk is a sign of a great mind” cliche is just that—a cliche. Get organized.

What can be delegated? Determine what components or projects can be delegated. Factors in this decision include skill set(s) required to accomplish tasks, interest or challenge in the work, and best use of available personnel. For example, a routine filing can be delegated but a key merger negotiation cannot.

What is the most important thing to do after assignments are delegated?

To keep track of the projects. The Vision Mechanix is a project management tool. Delegation is a learned managerial skill. Through delegation is a critical-path management tool. Burton brings a wealth of experience in the skill of delegation is a learned managerial skill. Through delegation is a critical-path management tool.

Why do lawyers struggle with delegation?

There are a number of reasons:

- Lawyers are individualists and don’t tend to play well with others. Delegation requires the acceptance of a team environment and lawyers just aren’t accustomed to that way of thinking.
- Lawyers fear delegation because (a) it questions their value if another can do the work, and (b) the delegator is exposed to negative consequences if the delegatee fails to accomplish the work properly. As for (a), the lawyer’s worth is tied to the quality of their work, not the quantity. As for (b), developing good delegation skills eliminates this risk.
- Lawyers believe that if they give away the work, their compensation will be adversely affected. The reality is that leveraging the skills of others allows the delegator to engage in other value-added activities, including higher value work, business development, etc.

What is the most important thing to do after assignments are delegated?

To keep track of the projects. The Vision Mechanix is a project management tool. Delegation is a learned managerial skill. Through delegation is a critical-path management tool.

What can be delegated? Determine what components or projects can be delegated. Factors in this decision include skill set(s) required to accomplish tasks, interest or challenge in the work, and best use of available personnel. For example, a routine filing can be delegated but a key merger negotiation cannot.

What do you advise a delegating lawyer to keep track of after assignments are delegated?

The delegator should keep track of what was delegated, to whom it was delegated, and the progress of the project. The Vision Mechanix Web site is www.visionmechanix.com. The Vision Mechanix Web site is www.visionmechanix.com.
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, 3003 N. Central Ave. Suite 1850, Phoenix 85012, unless noted otherwise. Other frequent venues include the University Club, 39 E. Monte Vista, Phoenix, Arizona State University Downtown (ASU-D), 502 E. Monroe, Phoenix; and the Arizona Club, 38th floor, Chase 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.

OCTOBER 2006

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Editorial Board Meeting (A), 5:15 p.m.</td>
</tr>
<tr>
<td>3</td>
<td>Litigation Section (A), noon</td>
</tr>
<tr>
<td>4</td>
<td>Family Law Meeting (Fresh Start), 5:30 p.m.</td>
</tr>
<tr>
<td>5</td>
<td>Construction Law Meeting (A), noon</td>
</tr>
<tr>
<td>9</td>
<td>MCBA Office Closed</td>
</tr>
<tr>
<td>10</td>
<td>Public Lawyers Division Meeting (A), noon</td>
</tr>
<tr>
<td>11</td>
<td>Executive Committee Meeting (A), 7:30 a.m.</td>
</tr>
<tr>
<td></td>
<td>Environmental Law Meeting (Ryley, Carlock &amp; Applewhite), noon</td>
</tr>
<tr>
<td>12</td>
<td>PI/Negligence Meeting (A), noon</td>
</tr>
<tr>
<td>16</td>
<td>YLD Board Meeting (Bryan Cave), noon</td>
</tr>
<tr>
<td>17</td>
<td>Employment Law Meeting (A), 11:30 am</td>
</tr>
<tr>
<td></td>
<td>VLP Meeting (B), noon</td>
</tr>
<tr>
<td>18</td>
<td>MCBA Environmental Law Luncheon CLE: Recent Amendments to ADWR’s Assured &amp; Adequate Water Supply Rules for New Subdivisions Noon - 1:30 p.m., Ryley, Carlock &amp; Applewhite</td>
</tr>
<tr>
<td>19</td>
<td>MCBA Board Meeting (A), 4:30 p.m.</td>
</tr>
<tr>
<td>20</td>
<td>MCBF Meeting (A), 7:30 a.m.</td>
</tr>
<tr>
<td>23</td>
<td>Minority/Women Task Force (A), noon</td>
</tr>
<tr>
<td>25</td>
<td>Criminal Law Section (Old Courthouse), noon</td>
</tr>
<tr>
<td>26</td>
<td>Estate Planning (Farley Robinson &amp; Larsen), 7:30 a.m.</td>
</tr>
</tbody>
</table>

Computing

continued from page 7

Of course you can buy two Hewlett-Packard Pavilions for the same price as a single Mac and if you are purchasing in bulk that is something to consider. I put Microsoft Office on the Mac and it was very much like an XP machine. It has a keyboard that lights up at night so you can use it in the dark but I found the touch pad mouse to be impossible and I had to hook up a Microsoft mouse through the USB port.

If you want to impress all the people at Starbucks it might be the way to go. If you want to do some work, though, I think you can do it as well if not better on the Pavilion. I await the howls of derision from the Macists.

Both the Apple and the Hewlett-Packard machines had the new built-in wireless configuration that allowed me to walk into my hotel room or down to the lobby and hook up to high speed Internet immediately. That feature, which worked perfectly on both machines, is one that I would never again want to be without!

Gateway Tablet

In recent months my main laptop, however, has been the new Gateway Tablet notebook. It is a great little machine and perfectly adapted for courtroom use. I will report on it in my next column.
Lauren (Larry) J. Caster, a shareholder at Fennemore Craig, has been elected the 2006-07 chair of the American Bar Association’s Section of Environment, Energy and Resources. The 10,000-member Section of Environment, Energy and Resources is the premier forum for strategies and information for environmental, energy and resources lawyers. It tracks trends in those areas, including court and administrative decisions, legislative initiatives and enforcement actions.

Caster (J.D., 1976, University of Nebraska) counsels clients on water and related natural resource issues, representing clients in general stream adjudications and interstate stream conflicts.

Linda R. Parkis, a partner at Lewis and Roca, has been appointed to the Arizona Humane Society Board of Directors. Founded in 1957, the Arizona Humane Society is the state’s largest nonprofit animal welfare and protection agency, taking in more than 43,000 unwanted, sick, abused and injured animals annually. Its mission is to build healthy relationships between people and animals.

Parkis (J.D., 1997, University of Southern California School of Law), a member of the firm’s business section, practices in the area of real estate law, focusing on real estate finance and acquisition, and development of improved and unimproved real property.

Mark Briggs, a partner in Quarles & Brady Streich Lang LLP, has been appointed to serve on the Phoenix Historic Preservation Commission. The commission consists of nine members appointed by the mayor and city Council for three-year terms. Each member is a resident of Phoenix and has demonstrated special interest, knowledge or experience in the field of historic preservation.

Briggs (J.D., 1994, University of Iowa), part of the firm’s corporate services group, assists companies and business owners to become more successful in various industries, including manufacturing, distribution, biotech, and software.

Neal Kurn, a director at Fennemore Craig, has been selected to receive The Greater Arizona Chapter of the Association of Fundraising Professionals’ award for Outstanding Volunteer Fund Raiser. The Association of Fundraising Professionals grants this award to a person who demonstrates exceptional volunteer leadership skills for major fund raising projects for more than one charitable organization over multiple years. The award is one of five Philanthropy Leadership Awards presented annually by AFP and will be presented in November.

Kurn (J.D., 1963, UA) practices law primarily in the areas of corporate and income tax law and business, estate succession and charitable planning.

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Arizona: Always a Red State

Maricopa County and its lawyers in the decade after statehood were generally more conservative than their peers in the rest of the state, yet progressive politics did make its mark on the local legal community.

Political potpourri

Political diversity was the hallmark of the state in its early years. Besides Republicans and Democrats, the state was a magnet for activist socialists, communists, anarchists, and syndicalists. Labor and trade unions, representing miners, railroad workers, immigrant laborers, and skilled tradesmen, were major forces in the early politics of the state. This diversity was a source of some internal disputation. In the spring of 1914, Phoenix's relatively conservative socialists joined the Phoenix Trades Council in denouncing the local labor union representatives of the Industrial Workers of the World (Wobblies). The more conservative comrades accused the Wobblies of being "syndicalists, anarchists or just plain freaks."

Maricopa County lawyers represented political clients of all stripes. The Phoenix firm of Bullard & Jacobs joined Tucson lawyers Frank Curly and Eugene Ives in championing Governor Hunt in his epic legal battle with Republican Governor Campbell (represented by R.E. Sloan and J.L. Gust, both of Phoenix) to determine the winner of the 1916 gubernatorial election.

Maricopa County attorneys Benton Dick, O.T. Richey and E.B. Goodwin defended a group of 5 alleged Mexican anarchists in champi

The anarchists down the block

Among the most colorful potential clients for Maricopa County's politically-inclined lawyers in the first decade of statehood was the husband of Lizzie Turner. Turner was the sister of the notable British anarchist, John Turner. Her brother, in turn, was a mentor for the famous activist lecturer and publisher of Mother Earth magazine, Emma Goldman.

At a lecture by Goldman at the Murry Hill Lyceum in New York, in 1903, John was arrested and held on Ellis Island pending resolution of his case and his eventual deportation back to England for his anarchist philosophies. He appealed his deportation all the way to the Supreme Court.

In U.S. ex rel. Turner v. Williams, the court held that Congress indeed had the authority to exclude aliens and prescribe the terms and conditions of their admission even where the basis for such exclusion might be unconstitutional if applied to citizens (i.e., alien is not entitled to First Amendment rights of free-dom of association, speech, religion).

Lizzie's husband, Thomas Hastie Bell, was a big-headed Scotsman, with a bushy beard, who had relocated to Phoenix in 1911 from New York to become a lawyer. Tom and Lizzie tried farming a plot of land on the east end of Washington Street, near what would now be 18th Street.

Tom later worked as a bookkeeper for Pratt-Gilbert Co., a farm implement seller on the southwest corner of Madison and Central, and for McAurthur Bros. Auto Sales. Before leaving Arizona for California in the early 1920s, Tom worked as a Spanish teacher at the Arizona School of Music, located at 410 North Central.

While still in Europe, Tom Bell had lived a somewhat more spiritual life. He acquired fluency in at least five languages as a ship's engineer, visiting ports throughout the Mediterranean, in Africa, South America and North America (where he spent time as a cowboy near the Mexican border). He used his linguistic and writing skills to become a propagandist of "great zeal and daring" on behalf of anarchist causes.

He was declared to be "too dangerous a man to be allowed loose in France" after padlocking himself to a lamp post cross piece in one of Paris' busiest squares, and speaking until his voice gave out. After handing the key to the padlock to the Gendarmerie, he was arrested for "insults to the Army and the law," and expelled.

When Tsar Nicholas II visited Britain, Bell was able to penetrate heavy security and upon reaching the Tsar's carriage window, shouted in the surprised world leader's face "Down with the Russian tyrant! To hell with all empires!"

Asthma eventually quelled Bell's fiery speeches and he took a job as secretary to Frank Harris—a London "gentleman" famous for his sexual exploits and friendship with poet and playwright Oscar Wilde.

After seven years associating with the likes of George Bernard Shaw, Wilde and other celebrities of the day, Bell left Harris and wrote a now lost biography, "Oscar Wilde Without Whitewash," describing his perceptions of the persecution/prosecution of Wilde for "committing acts of gross indecency with other male persons" (flowing from an affair with the son of the Marquess of Queensbury of boxing rule fame).

As an anarchist, Bell was an advocate for free speech, free love, birth control and homosexual rights. While in Phoenix, Bell seemed to keep a low profile, but maintained his friendships with Emma Goldman, Alexander Berkman and other luminaries of the anarchist pantheon.

Rising red tide

The left-leaning inclination of many of the state's voters is reflected in the elections of 1912—Arizonans elected a progressive Democrat from Globe, George W. P. Hunt, as the first governor, gave the vote to women and amended its brand new constitution to permit impeachment of judges.

In the Arizona presidential vote that November, Republican candidate William Howard Taft finished fourth. Woodrow Wilson, the Democrat winner garnered 44 percent of the vote. Theodore Roosevelt, the progressive Bull Moose candidate had about 30 percent, and the Socialist Eugene V. Debs picked up 13.5 percent. Nationally Debs only pulled about six percent of the vote.

From the first, Arizona was a "red" state, but in the early years, not because it was voting Republican, but because it leaned so far to the left. In fact, there were serious discussions after the election of 1912 of disbanding the Republican Party in Arizona. Each election cycle, through 1918, the Socialists put forth a full slate of candidates for state office.

Progressive penology

Although the voters of Arizona were on the leading edge of many progressive issues, one of Governor Hunt's highest priorities never gained popularity. Hunt was a forceful prison reformer and was the president of a national anti-capital punishment league.

Under his leadership, Arizona prisoners at the state prison in Florence were allowed to wear non-striped prison uniforms, to attend a prison school, to host luncheons for religious groups, and to participate in the construction of modern prison buildings and Arizona highways in exchange of reduced sentences.

Hunt told the legislature, "I am gratified at the results of my prison policy. I have found that a prisoner's sense of honor, when put to a test, is a more effective guard than a man with a rifle. It is a new principle of penology that a man reforms only as he is trusted and made to rely upon himself."

Hunt's anti-capital punishment notions were frustrated in the election of 1914. After tirelessly campaigning for the passage of an initiative for the abolition of the death penalty and personally repriming the death sentences of every prisoner on death row, the struggle to abolish capital punishment was itself killed by a sound majority of Arizona voters.

Warden R.B. Sims announced that he would resign his position in Florence rather than carry out the executions by hanging of the 11 men the governor had previously reprieved. In a dramatic acquiescence to the will of the people, Hunt hid his eyes behind his hand as he announced that he would not intervene with what he contended were "judicial murders."

To his credit, Hunt's persistent efforts were eventually successful, at least temporarily. He convinced reluctant voters to eliminate the use of the gallows and replacing it with what he thought to be a more humane execution method—the gas chamber. Unfortunately, it took the grimy decapitation of Eva Dugan, the first and only woman executed in Arizona to finally put an end to hanging as the preferred form of capital punishment.

Dugan, reportedly somewhat overweight and in her early 50s, was convicted of the murder of an elderly Tucson rancher in 1927. She protested her innocence to the end, and contended that the murder was committed by a drifter known only as "Jack." She complained that "if I was a flapper with pretty legs, I never would have been convicted and given the death penalty.

Dugan entertained around 300 visitors in the 24 hours before her sentence was carried out, including many "gentlemen of the press" from each of whom Eva extracted a one dollar donation to her "coffin fund." She had no intention of being buried in a simple pine box in the prison cemetery.

In front of about 70 onlookers, including a handful of women and representatives of the Maricopa County legal community, Dugan's execution was carried out with hideous results. Four women fainted and within a few years, supported by progressive policies and conservative sensibilities, Arizona abandoned forever the use of the gallows.

-
Stephen E. Traverse has joined Shughart Thomson & Kilroy, P.C. as a shareholder in its real estate practice group.

Traverse (J.D., 1980, University of California, Hastings) focuses on providing comprehensive legal guidance to commercial real estate and other business clients, including negotiating and drafting purchase and sale agreements, leases, and real property secured loan documents.

David Selden, Julie Pace and Sharon Jutila have joined Ogletree, Deakins, Nash, Smoak & Stewart P.C. as shareholders, and Shayna Balch, Eva Herrera and Heidi Nunn-Gilman have joined as associates.

All six lawyers were most recently with Stinson Morrison Hecker L.L.P., in its labor and employment section.

Terry L. Stewart has been appointed director of administrative services for the Justice Courts.

Prior to his appointment, Stewart (M.B.A., ASU) served as chief of investigations and special assistant to the Maricopa County Attorney. Before joining the county attorney’s office, he was a corrections and law enforcement consultant to the U.S. Departments of Justice, State and Defense, traveling to Iraq and Haiti to assist in rebuilding their criminal justice systems.

Mark L. Collins has joined Gust Rosenfeld P.L.C. as a member while Blaine M. Searle has joined as an associate.

Collins (J.D., 1974, UA) has more than 30 years of experience in complex commercial litigation and real estate and business transactions, including mergers and acquisitions.


Bryan S. Bailey, Joseph M. Parker, and William C.B. Underwood, associates at Gallagher & Kennedy, P.A., have been elected to shareholder effective January 1.

Bailey (J.D., 2000, ASU) has a broad-based practice in health care law and business transactions, focusing on representing physicians, physician groups, clinics, ambulatory surgery centers, imaging facilities and other health care providers in a variety of matters.

Parker (J.D., 2000, ASU) practices tax and business law, focusing on federal taxation of businesses and individuals, entity selection and formation, real estate tax planning, drafting and negotiation of joint venture agreements, and the purchase and sale of businesses.

Underwood (J.D., 1997, Indiana University) practices environmental law with an emphasis on air quality, regulatory compliance and environmental auditing, represents various industrial, municipal and tribal clients.

Bradley D. Pack has joined Engelman Berger.

Bradley (J.D., 2005, UA) focuses on bankruptcy and litigation.

Douglas A. Schwab has joined Maassen & Associates, P.C. as managing attorney.

Schwab (J.D., 1998, Southwestern University) focuses on DUI and criminal defense.

Cyrus B. Martinez has joined Littler Mendelson as an associate.

Martinez (J.D., 2001, Northwestern University) advises and defends employers faced with claims of harassment and/or discrimination based on gender, disability, age, race, national origin, and religion; as well as claims alleging wrongful termination, breaches of contract, and other torts.

Maria Salapska has opened her own law firm, Law Office of Maria Salapska, PLLC. She was formerly with Perkins Coie Brown & Bain, PA.

Salapska (J.D., 1998, Rutgers University) practices in the area of civil litigation with focus on intellectual property and commercial disputes.

The Phoenix School of Law welcomed several new faculty members: Ted Miller, Ann Woodley, Julie Carroll, MaryAnn Pierce, Victoria Salzmann, Karol Schmidt, and Ryan Johnson.

Miller (J.D., 1971, Rutgers University) is the new dean of students.

Carroll (J.D., 1990, Wayne State University) has joined as director of the Center for Professional Development.

Pierce (J.D., 1988, Thomas M. Cooley Law School) is the director of clinical programs and associate professor.

Schmidt (J.D., 1989, John Marshall Law School) has joined as director of the school’s Academic Success Program.

Woodley (J.D., 1981, ASU) has joined as an associate professor.

Salzmann (J.D., 1999, Baylor University) has been brought on as assistant director.

Johnson (J.D., 2004, ASU) has joined as a lawyering process instructor.

The Phoenix School of Law also welcomes new adjunct professors: Mark Armstrong, Richard L. Brooks, the Hon. David R. Cole and Lynda C. Shely.

Armstrong (J.D., 1977, UA) is a retired Maricopa County Superior Court judge and current staff attorney to the Arizona Supreme Court.

Brooks (J.D., 1974, Villanova University) currently serves as a director of the Arizona Literacy and Learning Center and is director and member of the executive committee and general counsel of the Greater Phoenix Urban League.

Cole (J.D., 1976, UA) is a Maricopa County Superior Court judge.
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The Trouble with Pronouns: Part Two

There are two other troubles with pronouns that sometimes plague legal writers: (1) how to punctuate possessive pronouns and (2) how to use demonstrative pronouns clearly. Although these two troubles appear to be elementary grammar points, a search of case law shows that these troubles exist in complex legal documents, such as contracts and legislation.

Possessive pronouns

Simply put, a possessive pronoun is a word that shows ownership. Some possessive pronouns can be used alone in a sentence: hers, his, mine, yours, ours, and theirs. An example of this use would be the following: “The book is hers.” Other possessive pronouns modify a noun: her, his, my, your, our, their, and its. An example of this use would be the following: “Her book is missing.” Although most writers understand these basic constructions, many writers do not understand how to punctuate these possessive pronouns. The questions are always the same: Where does the apostrophe go? Should the sentence read “The book is hers” or “The book is her’s?”

The answer: The apostrophe does not go anywhere.

Possessive pronouns do not take any punctuation, including apostrophes. There is no exception to this rule, even though the word “it’s” appears to be one. “It’s” is a contraction and not a possessive pronoun; this contraction always means “it is.”

Demonstrative pronouns

A demonstrative pronoun is one that points out a noun: this, that, these, and those. The best way for a legal writer to ensure clarity is always to include a concrete noun after the demonstrative pronoun.

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Thus, the good news is that these potential confusing pronoun uses indeed have elementary solutions to keep a legal writer out of trouble.

U.S. Supreme Court okays same-day oral argument transcripts

Beginning with the October 2006 Term, the United States Supreme Court will post same-day written transcripts of oral arguments on its website, www.supremecourts.gov. Posted transcripts will be organized by case name and the date of the oral argument.

Ninth Circuit dissent cites law blog as authority

Four Ninth Circuit judges comprising the dissent in a denial of en banc review in Harper v. Povay Unified School District, ___ F.3d ___ (9th Cir. July 31, 2006), cited as authority a law professor’s law blog posting that criticized the original Ninth Circuit decision. Legal commentators and bloggers, such as Yale Denniston of SCOTUSblog, and Howard Bashman of How Appealing have predicted the increase of the citing of law blogs as authority, calling such activity “digital amici advocacy” and viewing Internet law blogs as a “vast amicus brief.”

Others, noting the timeliness of law blog postings in contrast to scholarly law review articles, point out that no law review article criticizing Harper could have been written, submitted, edited and published in a traditional law review within the three-month time frame that elapsed between the original Harper decision and the Harper decision relating to the denial of en banc review. Bashman believes that “when the blogosphere offers assistance in the form of insightful commentary about pending cases from law professors and lawyers with particular expertise in the subject matter under consideration, a judge’s consultation of those blog posts is… just another form of permissible legal research.”

Law blogger Carolyn Elefant suggests that some of the ramifications law blog citation could have on legal practice include appellate lawyers going out and finding possible bloggers who will post on their behalf or appellate lawyers making a point of posting briefs online to attract bloggers to support their position. Similarly, firms that file “glamour” amici in order to attract bloggers or appellate lawyers making a point of posting briefs online to attract bloggers to support their position. Similarly, firms that file “glamour” amici in order to attract their name to a case may blog about the case instead.

Native Americans seek en banc review

American Indians have asked for en banc review of a July ruling of a U.S. Court of Appeals panel for the District of Columbia in Cobell v. Kempthorne. The ruling removed trial Judge Royce Lamberth from deciding a ten-year old lawsuit against the United States government. The suit accuses the Department of the Interior of mismanaging more than $100.00 billion in royalties from tribal lands. Lamberth was removed after the Court of Appeals panel determined that he had lost his objectivity in deciding the case.

Louise Cobell, the lead plaintiff in the case, said that “[i]t is unprecedented for a federal judge to be reassigned under these circumstances, especially where, as here, the judge has presided over a complex case for 10 years.” Cobell, a banker and Blackfoot Indian from Montana, first filed the suit on behalf of 500,000 Indians in 1996.

A Senate Indian Affairs Committee hearing scheduled for August to work out the details of an 8 billion dollar settlement with plaintiffs was postponed after Senate Indian Affairs Committee Chair John McCain (R-Ariz.) met with Bush administration officials.

The Cobell plaintiffs are also asking for en banc review of the DC Court of Appeals panel ruling that vacated a ruling entered by Lamberth to protect individual Indian accounts from further damage due to security breaches in the Interior Department’s computer systems.

Golf for a Good Cause: Comerica Pro Bono Golf Classic

On October 28, 2006, the Maricopa County Bar Foundation and the Volunteers Lawyers Program, in conjunction with Comerica Bank, will hold the 2006 Comerica Pro Bono Golf Classic at Silverado Golf Course in Scottsdale. This annual event is the only charity golf tournament for the entire legal community held in Maricopa County. Each year, over 100 lawyers and other professionals enjoy a morning of golf, fun and relaxation while benefiting VLP, a legal aid organization that arranges for low income clients to receive legal advice and assistance from volunteer attorneys.

Golfers will be treated to a breakfast before a morning of golf on the Silverado course, regarded as one of the most enjoyable golf courses in Arizona. Lunch will follow along with a raffle drawing, which features luxury prizes like Ping golf equipment and a box at a Suns’ game, courtesy of Quarles & Brady Streich Lang.

TJ Ryan, an associate with Frazer Ryan Goldberg Arnold & Gittel in Phoenix, enjoys the opportunity to help a worthy charity like VLP. “Why do I play in the Comerica Pro Bono Golf Classic? It’s the one event each year where lawyers are encouraged to ‘go low’ and are rewarded for doing so,” says Ryan, who has twice been a member of the winning foursome.

Golfers of all skill levels are welcome to participate. In addition, tournament organizers are actively seeking sponsors and donors of raffle prizes. Registration and sponsorship information can be found at www.maricopabar.org.

Have something newsworthy to share?

Have you changed employment? Has your law firm named new partners? Send information for our Legal Moves column to: Maricopa Lawyer, MCBA, 3003 N. Central Ave., Suite 1850, Phoenix, AZ 85012; fax to 602-237-0522; or e-mail to: khriske@cbar.org
Counterpoint

Law Firm Organization in a Changing World

By Mark A. Winsor

Our firm took a common sense approach in organizing our firm’s support staff. Our paralegals are trained paraprofessionals qualified to work with our attorneys in specific areas of law. Most of their time can be billed to a client. Our legal assistants are assigned to one or more specific attorneys and provide any assistance those attorneys need. Some of the legal assistants time may be billed to a client depending on the nature of the task performed. Legal assistants can be trained and promoted to the position of paralegal.

This system creates for our firm a wonderful dynamic that we feel benefits our clients, attorneys and our legal assistants and paralegals. For example, a legal assistant can perform some basic billable tasks at a lower rate than a paralegal. This saves our clients money while creating additional revenue for the firm. It seems like a common sense win-win situation.

After doing some research I was amazed at the debate and confusion over the terms “paralegal” and “legal assistant.” If the terms are truly interchangeable as the American Bar Association suggests, then it seems to reason that a firm should be free to use them to distinguish between a paraprofessional whose main function is to perform tasks typically billable to the client and an attorney’s assistant whose assignments may occasionally include tasks which are also typically billable to the client.

Winsor is the founding partner of Winsor Law Firm, PLLC which is located in Mesa.

Have something newsworthy to share? Have you changed employment? Has your law firm named new partners? Send information for our Legal Moves column to: kbrieske@mchabar.org

E-filing Expands to Attorneys in Criminal Case Types

As the ECR expands, the demand for more electronic records has increased. Currently, the Office’s digital repository contains nearly 11 million electronic documents, containing tens of millions of imaged pages. These include filings in criminal, civil, family court, mental health, and tax cases dating back to 2002, and probate cases dating to 1997. In the future, the project will involve converting the electronic images to microfilm. The back-scanning project will also provide essential space at the Clerk’s Office, as we continue to process over 40,000 pieces of paper each business day.

Technology continues to shape the operations of the court system and the direction and potential of the larger legal community. Continued cooperation and input allows our office to manage change and use technology to make improvements.

Now all 16 criminal trial divisions at the Court’s downtown Phoenix location are designated e-filing divisions, allowing for permis- sive e-filing. Initially, e-filing in criminal cases will only be available to county agencies, but the clerk and court will expand capability to private attorneys in the coming months.

Criminal case types are a logical step to expand e-filing to the public, due in part to the low percentage of unrepresented parties compared to other case types. For more information on e-filing and for links to the e-filing Web site and training materials, visit the clerk’s website at www.clerkofcourt.maricopa.gov.

Back-scanning court record underway

This summer, the Clerk’s Office contracted with a vendor to scan and image inactive case files. Civil cases from 1998 and 1999 will soon be available electronically. The project seeks to convert between five to six million pages of paper to electronic images in this phase, with an estimated 35 million images that could be captured from all inactive cases, regardless of case type or year.

The success of the electronic court record (ECR) has encouraged more judicial officers to turn to their computer for immediate access to court filings instead of ordering a paper file.

Point

Titles, Titles, Titles

By Monica Rapps

It is difficult to find your niche in the world, and titles either define your role or create confusion. Legal secretaries and other legal personnel are often referred to as “legal assistants,” and it is confusing to the legal community.

“Paralegal” and “legal assistant” are synonymous, much like “attorney” and “lawyer.” Legal organizations and courts throughout the United States recognize the interchangeability of the titles. The National Association of Legal Assistants (“NALA”) defines the titles as follows:

Definition: Legal assistants, also known as paralegals, are a distinguishable group of persons who assist attorneys in the delivery of legal services. Through formal education, training and experience, legal assistants have knowledge and expertise regarding the legal system and substantive and procedural law which qualify them to do work of a legal nature under the supervision of an attorney.


In August of 1997, the American Bar Association (ABA) added “paralegal” and addressed the interchangeability:

The current definition of “legal assistant/paralegal” replaces the definition adopted by the ABA Board of Governors in 1986. It adds the term “paralegal” since the terms “legal assistant” and “paralegal” are, in practice, used interchangeably. The term that is preferred generally depends on what part of the country one is from. The current definition streamlines the 1986 definition and more accurately reflects how legal assistants are presently being defined.

The current definition of “legal assistant/paralegal” was adopted by the National Federation of Paralegal Associations (“NFPF”) to adopt “paralegal” in 2002, and stated in part, that “legal secretaries had begun calling themselves, and signing correspondence which refers to themselves as, legal assistants.”

NFPF also raised ethical concerns in its 2002 resolution:

“WHEREAS, we, as paralegals and members of the legal community, have an ethical obligation to avoid misconceptions and to prevent confusion and even the appearance of an impropriety . . .


Aside from credentials, some paralegals pursue certification to distinguish themselves from other legal personnel. Two programs have strict requirements for education, training, and achievement of complex exams: the Certified Legal Assistant (CLA) and Paralegal Advanced Competency Exam (PACE) programs.

Unquestionably, all legal personnel deserve worthy titles. To avoid confusion and adhere to ethical responsibility, that title should not be synonymous with paralegal.

Monica Rapps is a certified paralegal at Gust Rosenfeld P.L.C. ■

Counterpoint

Law Firm Organization in a Changing World

By Mark A. Winsor

Organizing and running a medium- to large-sized law firm can be complicated. The task becomes easier if the roles of support staff are clearly identified and defined. The business world knows the importance of assigning appropriate titles to each position. An astute business leader also understands the need to redefine or change the title of certain positions to keep up with changing conditions. Titles such as “administrative assistant” and “executive assistant” developed as a result of intuitive business leaders making necessary course corrections to strengthen their organizations.

At times, social forces drive the change. At other times, plain and simple common sense made the difference. The legal industry could learn from the business world.

In organizing our firm I chose to distinguish between “paralegals” and “legal assistants” to better define their role. These titles have been interchanged and arguably misused over the years. The definitions and roles vary by area of the country. Some believe that the title of paralegal indicates a higher professional status.

The professional status of a paralegal would not stay the same if the title changed to ‘legal assistant,’ according to paralegals who responded to the [Legal Assistant Today] March/April issue’s My Opinion Survey. An overwhelming 94 percent of respondents said ‘paralegal’ denotes a higher professional status than ‘legal assistant.’

Paralegal vs. Legal Assistant, by Patrick Vuong, May/June 2006 Issue of Legal Assistant Today. www.legalassistanttoday.com/item_archive/myopinion_mj06.htm

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Civil Judges Taking Criminal Trials

By J.W. Brown
Maricopa Lawyer

Superior Court judges on civil calendar assignments are shifting their calendars to include criminal trials. The purpose is to reduce delay in resolving criminal cases that could be dismissed if not resolved within mandatory time limits.

The change creates minor adjustments to the civil department judges’ dockets and is not expected to cause unnecessary disruption in civil case matters. They will add criminal trials to their schedules on a rotating basis.

“This plan provides for an orderly and functional approach, but may delay civil trials for the one week per month that each civil judge will be assigned to assist the criminal divisions,” said Civil Department Presiding Judge Anna Baca.

Criminal trials take precedence over other pending cases because of “speedy trial” rules that require resolution of criminal matters within 180 days for defendants who are on bond awaiting trial and 150 days for incarcerated defendants awaiting trial.

Not all lawyers and parties with pending civil trials will be affected. Those impacted will be given advance notice if scheduled hearings and trial dates in their civil cases could be changed as the assigned judge serves on the rotating criminal trial assignment.

Superior Court Promotes Two in Human Resources

By J.W. Brown
Maricopa Lawyer

Two employment professionals with lengthy service in the human resources of the Judicial Branch of Arizona in Maricopa County have been promoted to new assignments.

Danna Quinn moved to the position of assistant human resources director, from her previous assignment as employment services administrator. Quinn’s promotion created another advancement opportunity and Andrea Grego was selected to move up from her job as senior analyst for human resources to the position of employment services administrator.

“With 19 years of service to the Judicial Branch, Danna Quinn is uniquely qualified for this challenge,” said Phillip E. Hanley, director of human resources and administrative services. “She will assist with the overall management of the human resources function. It is also anticipated that this change will allow us to provide more in-depth support to our many customers.”

Griego has been with the Judicial Branch for 11 years, starting her career as a juvenile probation officer. For the past seven years, she has worked in human resources. In her new job, she will be responsible for staffing and recruiting, benefits enrollment and records management.

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