Speedier Access for Attorneys Becomes a Reality

By J.W. Brown
Maricopa Lawyer

Express screening is now available for lawyers who have spent the past two years frustrated and angry by long lines and delay at the entrances of Superior Court buildings.

The plan has always been to give attorneys express lanes, however, there were glitches that needed to be worked out with the FBI office before this option was workable. For many years before that change, the cards allowed lawyers to bypass long lines filled with court customers, jurors and visitors at the entrances.

The loudest complaints about the change that eliminated the bypass came from lawyers coming to court frequently. Some even many times a day. They complained that the lines, x-ray machines and scanning often made it difficult to get to court on time.

Presiding Judge Barbara Rodriguez Mundell recently issued an administrative order to ease the restriction and once again provide expedited access to court buildings to active members of the bar. The change became effective on July 1.

“I am hopeful that lawyers will find the express lanes quicker and more efficient than the previous method of entering the building,” Mundell said. “It is extremely important for the Court to secure the buildings and have the court users feel protected and safe. However, I think this can be accomplished while also allowing the attorneys to have express lanes provided for them.”

There are several requirements for obtaining a security express privilege. Lawyers who are members in good standing of the Arizona State Bar must:

- Submit an FBI background check, signed application and payment fee of $25 to the Court Security Department, 201 West Jefferson, Phoenix, 85003.
- Pay the background check cost and administrative costs of processing the application and issuance of the attorney express card.
- Utilize the express screening privilege card solely at designated entrances, where each lawyer is subject to go through metal detection, with inspection of briefcases, boxes and hand-carried items.
- Notify the court administrator of any pending court or disciplinary case.
- Accept suspension of express privileges in the event of a pending family or criminal court case, order of protection, injunction against harassment, eviction or disciplinary proceeding following a State Bar complaint.

Revocation of express privileges is absolute if suspended or disbarred from the practice of law.

Lawyers’ staff members, including investigators, paralegals, expert witnesses and administrative aides, are not eligible for express privileges. However, individuals who assist disabled lawyers in getting to the courthouse may apply for an express card in conjunction with the lawyer with the disability.

All attorney express cards expire annually on December 31. Fees are based on date of application and issuance of the card. FBI background investigations are to be conducted every two years for lawyers who maintain a court badge beyond one year.

Applications and more details are available on the Superior Court Security Web site: www.superiorcourt.maricopa.gov/security/forms.asp

Additional information is available by contacting Nelda Hudson at 602-506-7034.
What Clients Love

Summer is usually the time to travel, attend bar conventions in exotic places and escort potential clients to expensive events to demonstrate how much you want their business. Although attending summer events and luxurious destinations is a great opportunity for client development, don’t forget that clients don’t make their outside counsel decisions based solely on how much “bling bling” a firm can throw around. In-house counsel with the power to give away business look for talented lawyers who can not only meet their needs but who can also exceed those by identifying solutions to problems they themselves have not yet identified.

Like most, I have attended rainmaking seminars, but I must admit that I have learned the most from Harry Beckwith’s short but comprehensive book titled “What Client’s Love—A Field Guide to Growing Your Business.” Although the book focuses on corporate business development, I have learned some very valuable client development tips that I believe are transferable to the legal services market. The following are a few gems about “what clients love” that I think we all should keep in our client development toolbox:

Gem #1 Mistrust Confidence

Being confident is a pre-requisite to being a lawyer. It is, the “overconfidence bias,” however that causes us to be wrong more often than we want to admit. Clients love lawyers who can demonstrate confidence under pressure, but who are flexible in their problem solving ideas and are willing to question themselves and their processes for the sake of identifying global solutions to myopic problems.

Gem #2 Beware of Common Sense

Common sense is neither common nor always sensible. Albert Einstein called common sense “the collection of prejudices we acquire by age 18.” Common sense can protect you from colossal mistakes, which every client expects; but it cannot inspire enormously innovative breakthroughs in legal strategic planning, which is what clients love.

Gem #3 Embrace Impatience

When providing legal services to big bureaucratic type companies or small mom and pop operations, firms tend to believe that clients’ legal needs tend to stay stagnant and that the current level of services is sufficient for future needs. Law firms that move with the trends in legal services and strive to expand their knowledge base in specific industry areas are most successful attracting new clients and is the love of loyal clients.

Gem #4 – Avoid Perfection

Since everyone can’t agree on what is perfect and agreeing on and implementing perfection is a feet in and of itself, lawyers should try avoiding attempting to display perfection in attempting to gain or retain clients. Clients know that perfection is unattainable and avoid lawyers who attempt to portray that they are perfect. Clients love lawyers who are striving for professional and personal excellence.

Now that you have filled your toolbox with the newfound and necessary gems for successful client relationship management, consider professional associations as a great place to share them.

Specifically, MCBA networking events, CLE programs and section and committee meetings can be the best place for you to work on your client development skills and share with others “what clients love.”

Division Gears Up for PACE Review Course

The MCBA Paralegal Division recognizes the importance of certification and wants to help paralegals in our legal community achieve the honorable distinction. To do so, the division is getting ready to hold another Paralegal Advanced Competency Examination (PACE) review course in the fall. PACE is offered by the National Federation of Paralegal Associations. Those who successfully complete the exam are entitled to use the registered paralegal (RP) designation. Currently there are only 13 paralegals in the state of Arizona who have achieved the RP designation. You could be the next!

PACE is a four-hour computer-generated test administered at six local testing facilities in Arizona equipped with various computer stations. It is offered year-round and can be scheduled for a date and time convenient to the examinee. The results of PACE are immediately available upon completion. After passing the examination, examinees are required to obtain at least 12 hours of continuing legal education credit with at least one hour of ethics every two years. If the applicant does not successfully complete the exam, then they must wait six months before retesting. Exam topics are very broad, but the questions are very specific. Therefore, the test is intended for the experienced paralegal.

If you are interested in pursuing the registered paralegal designation and would like more information about PACE and its criteria, then we welcome you to come join us for an informative meeting at 5:30 p.m. on July 19, 2006 at the MCBA offices. Following the presentation, some of Arizona’s registered paralegals will be present to answer any questions you might have about the examination. There is no charge and all are welcome to attend.

You can also get more information by logging on to the MCBA Paralegal Division’s Web site at www.maricopaparalegals.org or feel free to e-mail Nancy Youngerman our Review Courses Subcommittee chair, at pace@maricopaparalegals.org.

MCBA YLD Committed to Serving You

It has been a busy year for the MCBA YLD so far. We kicked off 2006 with our popular Barristers Ball, moved right into Law Week and then our Domestic Violence Committee’s Mother’s Day project. Now we begin planning for the Necessities Drive, Race Judicata and mock interviews. As we reach the halfway point in the year, MCBA YLD is doing a little overdue spring cleaning.

During the summer months and continuing into the fall, the MCBA YLD Membership Committee will be assessing the needs of our members. What projects would you like to see your MCBA YLD membership valuable to you? While we pride ourselves on being an organization that offers so much to the outside community, we have similar commitments to our own members.

MCBA YLD will be conducting a survey of our events and services this year. We will be asking people to let us into their firms to speak about the division’s value, and, more importantly, we will be listening to our members’ suggestions about how we can best serve young lawyers. If you are contacted by the MCBA YLD, please take the time to chat with us about how we are doing. Take a minute and fill out a survey form. Help us continue to make the MCBA Young Lawyers Division a great organization for all Arizona young lawyers. If you were a volunteer with one of our projects this year, and have any input on how the event went, or if you have any specific comments you would like to share, please contact Matt Meaker at mmeaker@stinsonmoheck.com or me at Julie.Lafeave@bryancave.com.

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Court Team Combats Cycle of Frustration for Mentally Ill

By J.W. Brown
Maricopa Lawyer

Mental illness isn’t—and shouldn’t be—a crime.

A task force of Superior Court judges and administrators agrees and has dedicated several months studying and evaluating the impact mental illness has on courts in Maricopa County. With the data gathered and analyzed, they formulated a program to address the huge impact the mentally ill have on the courts and focuses on stopping the revolving cycle of arrest, incarceration, freedom, arrest, treatment, release.

The newly created Comprehensive Mental Health Court allows a unique approach to the phenomenon.

“Our goal is to provide continuity of care, regardless of the type of case that brought the seriously mentally ill person into court,” said Superior Court Judge Karen O’Connor, who presides over the Probate and Mental Health Department. “Communication is critical to maintain a continuity of treatment.”

Success, she said, can be gauged by a coordinated treatment program that assures a seriously mentally ill individual can function appropriately and stay out of jail.

“The Comprehensive Mental Health Court program assures early identification of seriously mentally ill parties in Superior Court and increased communication between various court departments that interact with the same seriously mentally ill (SMI) parties.

“Through collaboration, judicial officers, attorneys, mental health treatment providers and correctional service personnel work together to overcome fragmentation in the continuity of care provided to mental health consumers who become involved with the justice system,” O’Connor said.

In mid-May, Presiding Judge Barbara Rodriguez Mundell ordered the creation of the Comprehensive Mental Health Court, “to address increased communication among the various courts and their departments, Correctional Health Services, the Maricopa County Sheriff’s Department and outside agencies that provide services to SMI parties to improved continuity of care and coordinated case management for SMI persons within the justice system.”

Other issues being addressed include methods to reduce recidivism of SMI defendants in the criminal justice system and techniques to reduce reoccurring civil commitments into the county’s mental health hospitals. The court also will be utilizing appropriate release conditions for SMI defendants who are incarcerated in the county jail.

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See Mental Illness page 15
**MCBF Awards to VLP and MCBA Young Lawyers Division**

By Patricia Nolan
Special to Maricopa Lawyer

The Maricopa County Bar Foundation, the charitable arm of the Maricopa County Bar Association, has awarded its 2006 grants.

The largest of the grants was awarded to the Volunteer Lawyers Program, a joint project of the Maricopa County Bar Association and Community Legal Services, which provides legal services to people in the community who could not otherwise afford them. Three distinct programs within VLP will benefit from the foundation grant this year.

The Children's Law Center which strives to protect and advocate for vulnerable children and teens who need assistance for safety and care.

The Tenants' Rights Project which provides services to low-income families so that they can understand their rights and responsibilities as tenants and also to provide legal assistance to remedy unsafe housing conditions, to avoid improper evictions and to stop illegal ousters.

The HIV/AIDS Law Project which allows those living with AIDS access to full range of civil legal services such as estate planning, tenants' rights, health care access, benefits, insurance, employment rights and discrimination.

MCBA Law Week, a program sponsored by the Maricopa County Bar Association’s Young Lawyers Division, will also benefit from this year’s foundation grants. Law Week is designed to provide access to the legal process for the community and benefits numerous people each year. It includes “Ask-a-Lawyer” and Phone-a-Lawyer fairs where volunteer attorneys respond to legal questions on topics ranging from landlord-tenant disputes to criminal matters. It also features an essay contest for seventh and eighth graders using the National Law Day theme developed each year by the American Bar Association.

The YLD Domestic Violence Committee also received a sizeable foundation grant. This committee works with numerous domestic violence shelters to provide critical information regarding protective orders as well as other family law issues that arise in abusive relationships. In addition, the division’s annual “Necessities Drive” provides women and children living in these shelters with basic items such as groceries, toiletries, hair products and cosmetics.

Other grants from the foundation will support a community service fair planned by the MCBA Membership Services department and a student outreach program that matches volunteer lawyers with local schools.

“The breadth of the programs we were able to help this year is really quite gratifying,” said Don Powell, president of the foundation.

The mission of the Maricopa County Bar Foundation is to raise and distribute funds to projects that relate to numerous factors. Developing the technology can be found at its Web site, www.maricopabar.org/foundation.

Nolan serves as the 2006 Grants Coordinator for the foundation.

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**MCBF Awards to VLP and MCBA Young Lawyers Division**

**Electronic Filing Update**

For years, electronic filing has taken place across the country. In May, members of the Maricopa County Clerk’s Office and Division Two of the State Appellate Court presented a CLE on e-filing. The class sold out and another session is planned for August. With federal and superior courts quickly moving toward an electronic business method, the interest continues to grow in how e-filing will impact you and your practice.

**Timeline**

Recent demand for information has focused on a timeline. The Clerk’s Office periodically receives calls from frantic practitioners and paralegals who have just heard a rumor that e-filing will be mandatory in all cases by the end of the week, or some other immediate and anxiety-causing timeframe. Unfortunately, rumors seem to travel faster than fact. Through regular publications, trainings, demonstrations, and now continuing legal education seminars, the Clerk’s Office is providing timely, accurate information to the legal community.

The timeframe for e-filing to take the place of paper as the regular mode of business is subject to numerous factors. Developing the technology, working with vendors who will accept and process e-filings, and recruiting judicial officers into the pilot all influence the speed and effectiveness with which the clerk and court can implement e-filing. There are also numerous policy considerations that vary by case type. For these reasons, a hard-and-fast date for complete implementation is not possible. The clerk and court are moving aggressively toward implementing electronic filing and an electronic court record. The best approach is to prepare now, and seek out trainings and information on electronic developments in the courts.

**Pilot programs**

Two things are clear from history and the experience of other agencies involved in e-filing: there will come a time when e-filing is mandatory to a great extent, if not completely; and paper will always be involved, even if on a limited and specific basis. This fact alone may help calm the nerves of some practitioners. The real world complexity of implementing a universal way of electronically doing business creates a moving target for completion dates. The best way to manage this change is through pilot programs. Piloting e-filing in limited case types and divisions allows the clerk and court to go slowly now in order to go fast in the future. All new initiatives face hurdles that must be overcome to move ahead with a superior product for the future. In Maricopa County, it has been effective to introduce mandatory e-filing in one to three judicial divisions at a time. As the number of incoming e-filings increase from hundreds to
Mapping Success is No Challenge for This Attorney

Born and raised in Phoenix, Michael Tiffany received an undergraduate business degree from Arizona State University and a bachelor of laws degree from the University of Arizona.

The legal profession calls Tiffany after a year of active duty with the Air National Guard during the Berlin Crisis and another year of working with a family construction business. He entered law school to better prepare for the future and emerged a driven lawyer.

After a year of serving as law clerk to Judge Henry S. Stevens at the Arizona Court of Appeals for one year, Tiffany began private practice. Four decades later, he is still with what is now Tiffany & Bosco, PA.

Ask the expert

In addition to practicing finance and real estate law, Tiffany frequently speaks and writes about both. He began focusing on issues relating to these areas of law after the real estate market crashed in the late 1980s.

“In addition to improving my legal knowledge, that process gave me a better understanding of business issues and practical legal solutions.”

He continues to enhance his career by presenting legal topics, which furthers both his credibility and his referral base.

People person

When it comes to work, Tiffany is passionate about his clients. “Servicing our clients by providing competent legal work, on time and for a fair fee, has always been important to me.” He also enjoys difficult transactions because of the complexity and the individuals involved.

The desire to be the best that he can be fuels Tiffany and being rated AV by his peers has been the most satisfying accomplishment in his career thus far.

As managing partner of his firm, he enjoys seeing both the firm and lawyers succeed and prosper. Remaining objective and allowing the democratic process to work is the most difficult part of the role.

Tiffany realizes it is crucial to understand both sides of a transaction or a dispute. Even as an experienced attorney, he is constantly working to keep things simple and fair, with our forgetting clients’ goals.

Enriching life

Tiffany is currently active with the Thunderbirds and the Japanese Friendship Garden of Phoenix, Inc. Both benefit his quality of life. “I have enjoyed meeting and working with so many diverse and interesting individuals, many of whom have become good friends.” These and other organizations allow him to contribute time and money to worthwhile causes. “I have been blessed in many ways, and it is my desire and duty to give others the opportunity to achieve their goals.”

Life in the balance

His biggest challenge is one many attorneys can relate to—the ever elusive balancing act. “I do not want my obituary to read ‘he was a good lawyer.’”

By always staying focused and working hard, Tiffany has created a successful life. However, his real secret to success is his wife. “She keeps me balanced.”

To maintain that balance, Tiffany does quite a few things in his spare time, including brewing his own beer and baking his own sour dough bread. Team roping is his passion. He also spends time with his nine grandchildren and enjoys exercise, gardening and reading.

Map of success

Because Tiffany has always set goals and visualized achieving them, where he expected to be in life 10 years ago is not far from where he actually is now. But he far exceeded those expectations, in part because of luck and a vigorous local economy.

And in 10 years from now, although much will stay the same, he will still be seeking new challenges. “My life has been full and rewarding.”

It’s safe to say Tiffany will continue to map out a life of achieving success—both personally and professionally.

Involvement Helps Young Lawyers Make the Most of Emerging Careers

Many first-year lawyers are coming to terms with a reality harsher than the summer sun—there is no summer vacation in the real world. That’s right; while most of us grew accustomed to spending the month of May looking forward to having an obligation-free June and July, we now are forced to realize those days no longer exist!

However, summer can offer opportunity for new involvement. You’ve spent this past six months figuring out if you are coming and going and now may have some time to donate to other activities and organizations. Remember, your legal career should be a lot more than the hours reported on your billing statements.

This is a great time to become involved with the MCBA Young Lawyers Division. The division participates in numerous projects throughout the year, most of which raise money for various community service organizations. As the dog days of summer creep along without a vacation to look forward to, consider branching out to some new involvement in the legal community. Below is a list of the projects the MCBA YLD organizes. These committees can take as little or as much time as you would like to dedicate. Being involved in the MCBA Young Lawyers Division is a great way to expand your network and to grow as a professional, not just an attorney.

Barristers Ball

Each spring, YLD organizes an elegant dinner at a high-end Valley resort or hotel for the legal and judicial communities. The evening begins with a silent auction, where bidders compete to outdo one another for a shot at obtaining coveted auction items. All proceeds from the silent auction are donated to a beneficiary chosen by the YLD. After a three-course dinner, attendees have the opportunity to have their number called and receive one of the high value items raffled off. The evening is complete with music and dancing.

Race Judicata

Race Judicata 5K is an annual run and walk, drawing attorneys, judges, paralegals, assistants, secretaries, law students, and law professors together with their friends and families. The event includes music, balloons, a Moon Bouncer for the little ones and a Kids’ Dash immediately following the 5K Race. Participants also receive goodie bags filled with various items such as water bottles, key...
He was eventually tried on 20 counts of sexual exploitation of a minor for images downloaded over a six-year period. No single child was the victim in more than one charge.

Dangerous liaisons

Under A.R.S. § 13-3553(A)(2), a person commits child sexual exploitation by knowingly "[d]istributing, transporting, exhibiting, receiving, selling, purchasing, electronically transmitting, possessing or exchanging any visual depiction in which a minor is engaged in exploitive exhibition or other sexual conduct." If the crime involves a child younger than 15, it is a dangerous crime against children.

The jury convicted Berger of all counts.
The statute made each image a separate offense and required the trial judge to impose consecutive sentences for each offense involving a child under 15; the presumptive term is 17 years, the maximum 24, and the minimum 10. The trial court imposed the minimum term for each count, resulting in a mandatory prison stay of 200 years without any possibility of early release. The judge rejected Berger’s argument that the sentence was excessive. A divided court of appeals affirmed, so Berger turned to the Supreme Court.

Analytical approach

Justice W. Scott Bales wrote the majority opinion affirming the sentences. He began his analysis by warning Berger that he faced a very heavy burden. "[C]ourts," he wrote, "are extremely circumspect in their Eighth Amendment review of prison terms." "[N]oncapital sentences are subject only to a ‘narrow proportionality principle’ that prohibits sentences that are ‘grossly disproportionate’ to the crime," he continued. "Only in ‘exceedingly rare’ cases will a sentence to a term of years violate the Eighth Amendment’s prohibition on cruel and unusual punishment."

The first question was to determine how to conduct the analysis. On this point, guidance from the United States Supreme Court is not crystal clear. Bales had to resort to the opinions of two justices, Justice Anthony M. Kennedy’s concurring opinion in Harmelin v. Michigan, 501 U.S. 957 (1991), and Justice Sandra Day O’Connor adoption of it in Ewing v. California, 538 U.S. 11 (2003). Under that approach, the court analyzes each sentence separately—without looking to their cumulative total—to determine whether the Eighth Amendment was violated. Bales therefore re-focused to look at the amalgamated total of 200 years that Berger received. "For purposes of our analysis," he wrote, "Berger committed 20 separate, and very serious, felonies." He noted that "[a] defendant has no constitutional right to concurrent sentences for two separate crimes involving separate acts."

The analysis is a two-step process. The court first determines whether the legislature could reasonably believe that its sentencing scheme substantially advances the goals of the criminal-justice system. Only if the law comes up wanting does the court "then consider[] if the sentence of the particular defendant is grossly disproportionate to the crime he committed."

Bales acknowledged that Arizona’s statute "severely punishes the distribution or possession of child pornography." But he had little trouble concluding that a 10-year sentence for possessing child pornography was not excessive. He pointed out that the courts must defer substantially to the legislatures’ policy judgments in this area. The Eighth Amendment, he wrote quoting the Supreme Court, ‘does not require strict proportionality between crime and sentence’ but instead forbids only extreme sentences that are ‘grossly disproportionate to the crime.’ ‘

Guilty possession

Bales noted the state’s compelling interest in protecting children from sexual exploitation, including mere possession—‘as opposed to production—of child pornography. Criminalizing possession is ‘inseparable from efforts to deter its production and distribution,’ he wrote. ‘Given that the distribution and production of this material occurs underground, the legislature must be permitted to stamp out this vice at all levels in the distribution chain.’ ‘

‘Given the principles established by prior decisions,’ Bales decided, ‘we cannot conclude that a 10-year sentence is grossly disproportionate to Berger’s crime of knowingly possessing child pornography depicting children younger than 15.’ He explained: ‘The images for which Berger was convicted, graphically depicting sordid and perverse sexual conduct with pre-pubescent minors, were well within the statutory definition of contraband. Nor did Berger come into possession of these images fleetingly or inadvertently.’ ‘

Taken together, Bales concluded, ‘Berger’s sentences are ‘amply supported’ by evidence indicating his long, serious pursuit of illegal depictions and are ‘justified by the State’s public-safety interest’ in deterring the production and possession of child pornography.” Joining him in that conclusion were Chief Justice Ruth V. McGregor and Justices Michael D. Ryan and Andrew D. Hurwitz.

Time match the crime

Calling Berger’s cumulative 200-year sentence ‘extraordinarily long,’ Vice Chief Justice Rebecca White Berch dissented, arguing primarily that the court had taken the wrong approach. She advocated undertaking ‘an objective inquiry as a part of our determination of whether a sentence gives rise to an inference of gross disproportionality.” A further irony she argued, ‘demonstrate that Arizona’s sentence for this crime is by far the longest in the nation and is more severe than sentences imposed in Arizona for arguably more serious and violent crimes.” This fact, she suggested, would ‘support finding an inference of gross disproportionality.”

Berch noted that Berger’s sentence “is longer than that imposed in Arizona for many crimes involving serious violence and physical injury to the victim.” She pointed out that second degree murder also has a minimum 10-year sentence, but it ‘may be served concurrently with sentences imposed for other crimes,’ and the minimum sentence for possession of an image of child pornography is longer than the presumptive sentence for rape or aggravated assault. A further irony she noted was that the presumptive sentence for possession of two images of child pornography (34 years) is harsher than the sentences for second degree murder or sexual assault of a child under 12 (20 years).”

Unique state

She felt that the court should take those factors into account and believed that her colleagues had misinterpreted the U.S. Supreme Court’s precedents on the subject. Those, she opined, were appropriate only in dealing with sentencing schemes much different than Arizona’s.

"[I]n determining whether a total sentence is grossly disproportionate,” she wrote, ‘we must…not shield ourselves from the full impact of the sentence by analyzing only one charge and sentence.” The combined features of ‘very long, mandatory sentences that must be served consecutively and fully, with no possibility of probation, pardon, or early release,” she opined, ‘affect the real-world sentences defendants must serve, and we should not allow these unique features and the resulting sentences to escape review by focusing only on the sentence for one charge.”

Justice Hurwitz penned a response agreeing in principal with Berch’s opinion, ‘[T]here is much to commend Justice Berch’s suggestion that the cumulative sentence imposed upon Mr. Berger was unnecessarily harsh, and my personal inclination would be to reach such a conclusion.” But he felt shackled: “[A] Justice Berch candidly admits, the [court] has expressly eschewed this very approach.” ‘

In the other case, the court faced a straightforward issue of statutory construction on the crime of luring a minor for sexual exploitation. Section § 13-3554(A) makes it felony to ‘offer[] or solicit[] sexual conduct with another person knowing or having reason to know that the other person is a minor.” Subsection (B) anticipates possible sting operations by stating that “[i]t is not a defense to a prosecution for a violation of this section that the other person was a peace officer posing as a minor.” In Mejak v. Granville, No. CV-05-0299-P (Ariz. May 24, 2006), the question was how far the exception goes.

Reality TV

The case grew out of a television station’s investigation into Internet sexual predation. One of its reporters posed as a 13-year-old girl and chatted with Jeremy Mejak in a chat room. They arranged to meet to have sex. When Mejak arrived at the arranged trysting spot, he was met instead with television cameras. The station gave videotapes of the confrontation to the police, and Mejak was later charged with luring. Mejak moved to dismiss, arguing that he could not be convicted because the person with whom he agreed to meet was neither a minor nor a police officer posing as a minor. Reasoning that the legislature intended ‘to criminalize the offer of sexual conduct with a person a Defendant believes to be a minor’, the trial court denied the motion. The Supreme Court unanimously reversed, concluding that § 13-3554’s language ‘requires that the person lured be a minor or a peace officer posing as a minor.”

Minor offense

Justics Ryan’s opinion first noted that the statute requires the defendant to ‘[k]now[] or hav[e] reason to know’ that the ‘[p]erson being lured’ is a minor.” The latter phrase ‘suggests that the crime cannot be committed without the luring of an actual minor,” and there is only a single exception to that requirement: a ‘peace officer posing as a minor.” Ryan also noted the statute’s penalty provision, which makes the act punishable as a dangerous crime against children “if the minor is under fifteen years of age.” By using the “minor” there, Ryan reasoned, the legislature signaled its “intention that, unless subsection (B) applies, the statute is violated only when an actual minor is lured.” Ryan noted that in enacting the statute, the legislature anticipated and permitted “law enforcement to investigate Internet predation and therefore included the exception in subsection (B). But its specific language encompassed only law enforcement stings. Ryan took care to note that the decision did not leave the state impotent. He pointed out that Mejak could still be charged with attempted luring or attempted sexual conduct with a minor.”
The True Value of Escrow Accounts

This month’s Ask-the-Expert is Kelly Conner, vice president of executive banking for Alliance Bank of Arizona’s Phoenix Midtown office. A 15-year veteran of banking, Conner specializes in banking services for law firms, partners and attorneys. Alliance Bank of Arizona opened in 2003 and is one of the fastest-growing banks in the United States with over $600 million in total assets.

Conner shares what escrow accounts are and how they function. She also explains why they are important to managing your client’s assets.

Q

What is an escrow account?

A

Escrow accounts are typically established with a bank, title company or escrow company serving as a third party agent for the purpose of holding and dispersing funds from private placements, real estate syndications, litigations settlements, bankruptcy and trustee accounts and merger and acquisition transactions. Escrows may be short-term accounts (three days) or long-term accounts (up to 10 years).

Q

What is the importance of an escrow account?

A

Nearly all escrow accounts are arranged due to a specific escrow requirement set forth in the agreement. Many real estate, commercial transactions and individual business arrangements require an unaffiliated third party to hold funds, documents or assets in escrow until the transaction is successfully completed or other conditions are satisfied. The goal of an escrow arrangement is to safeguard assets while waiting for certain events to occur.

Q

How do you select an escrow agent or company?

A

Depending on the type of transaction, you will need to select a bank, title company or escrow company to handle your escrow account. For example, the sale of a personal residence or commercial building is typically handled by a title company. Mergers and acquisitions or real estate subscriptions are typically handled by a bank or escrow company. It’s important to keep in mind that not all banks offer escrow services and not all title companies handle various escrow services. An escrow account is typically an interest-bearing money market account, so keep in mind that rates and fees on the escrow account may vary by institution. In addition to rates and fees, experience and turnaround time are also important factors to consider when choosing an escrow agent.

Q

What is the function of an escrow agent?

A

The escrow agent (i.e. bank, title company, escrow company) functions as an independent third party and will follow the instructions set forth in the signed escrow agreement. In addition, the escrow agent should handle all 1099 statement mailings and prepare any other interim statements as necessary. The escrow agent typically works with in-house counsel to review drafts of the escrow agreement. Some escrow agents may also provide escrow agreement templates which may be used.

Q

Who is considered the bank’s customer in an escrow arrangement?

A

If a bank establishes an account in the name of a third party, such as a real estate agent, who is acting as escrow agent, then the bank’s customer will be the escrow agent. If the bank is the escrow agent, then the person who establishes the account is the bank’s customer. For example, if the purchaser of a personal residence directly opens an escrow account and deposits funds to be paid to the seller upon satisfaction of specified conditions, the bank’s customer will be the purchaser. Further, if a company in formation establishes an escrow account for investors to deposit their subscriptions pending receipt of a required minimum amount, the bank’s customer will be the company in formation (if not yet a legal entity, the person opening the account on its behalf).

Q

What documentation is required to open an escrow account?

A

To open an escrow account with a bank, federal banking regulations require the following information be obtained:

- name
- address (must be residence)
- date of birth
- photo identification
- social security number

A bank will not be required to look through the trust, escrow, or similar accounts to verify the identities of beneficiaries and instead will only be required to verify the identity of the named account holder. However, based on the bank’s risk assessment of a new account opened by a customer that is not an individual, the bank may need to obtain information about individuals with authority or control over such an account, including signatories, in order to verify the customer’s identity.

Conner may be reached at 602.629.1700 or via e-mail at: kconner@alliancebankofarizona.com. Alliance Bank’s Web site is www.alliancebankofarizona.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.

### JULY 2006

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**YLD**  
**continued from page 5**

chains, and healthy snacks. All money raised from this annual event supports future YLD projects throughout the year. The first-ever race was held last December at Kiwanis Park in Tempe and was a huge success.

**Domestic Violence Awareness**

YLD prides itself on helping others during times of need and raising awareness regarding this important issue. Each year, YLD organizes a Necessities Drive and a Mother’s Day Project. These combined activities provide the women and children residing in domestic violence shelters with much needed items, as well as general information regarding their legal rights.

**Law Week**

Each spring, MCBA YLD recognizes National Law Day (May 1) by putting on a week-long celebration. In an effort to reach a broad spectrum of the community, Law Week includes a number of events, including the Ask-a-Lawyer and Phone-a-Lawyer Fairs, which provide free answers to the general public’s legal questions; an essay contest for students; and a continuing legal education seminar and happy hour for attorneys.

**Mock Interviews**

MCBA YLD holds this program in conjunction with the Sandra Day O’Connor College of Law at ASU. YLD members conduct mock interviews with law students, honing the students’ interviewing skills, as well as helping them with fine-tuning their resumes. The interviews are conducted in the spring and fall each year.

**Student Outreach**

MCBA YLD is dedicated towards helping elementary and secondary school teachers in the classrooms. Through various projects, MCBA YLD organizes volunteers to provide educational opportunities and programs to Arizona’s K-12 students.

**YLD Statutes of Limitation Guide**

MCBA YLD members participate as editors in the routine updating of a Young Lawyers Division publication and tradition, the Arizona Statutes of Limitation Guide. A helpful resource for any practitioner, the guide provides statutes of limitation organized into generalized and specific subject matter. Searching for the correct statute or rule limiting a cause of action is made quick and easy with the help of the guide. The proceeds from the sale of the guide are used to fund the MCBA YLD’s philanthropic activities. The guide was updated and reproduced this year and is currently on sale through the MCBA.

The MCBA YLD Board meets the second Monday of each month at the MCBA offices. All MCBA members who are either 36 years of age or younger, or have been in practice for five years or less (whichever occurs later) are welcome and encouraged to attend. If you have any questions about getting involved in the MCBA YLD, or any of its projects, please contact YLD President Julie LaFave at julie.lafave@bryancave.com.

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**COUNTY:** County: Maricopa **STATE:*** State:* Arizona **ZIP CODE:** 85004 **CITY:** Phoenix **TEL:** 602-257-4200 **FAX:** 602-257-4201 **EMAIL:** info@maricopabar.org **WEB:** www.maricopabar.org **LOCATION:** 3003 N. Central Ave. Suite 1850, Phoenix 85012, Arizona **MEMBERSHIP:** 5,000 + **OFFICERS:** President Julie LaFave, Vice President Arif Ahmed, Treasurer Richard Bove, Secretary Paul Frankel, Past President Simon M. Wright **VOLUNTEERS:** 1,000 + **QUALITY BOOKS:** 50+ **LEGAL DOCUMENTS:** 1,000+ **CLASSROOM RESOURCES:** 100+ **LEGAL INFORMATION:** 100,000+ **LEGAL HELPERS:** 1,000+ **MEMORIALS:** 20 **COMMITMENTS:** 100+ **ATTORNEYS:** 2,000+ **UNIVERSITY:** Arizona State University **COLLEGE:** Sandra Day O’Connor College of Law **SCHOOL:** Phoenix College **OPTIONS:** 500+ **MEMBERS:** 5,000+ **.yellow**

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which currently consists of representatives from 30 law schools, 13 bar associations and 20 mining, oil and gas associations.

Strunk (J.D., 1985, University of Kansas) is a member of Fennemore Craig’s three-person management committee and focuses on securi-
ties, mergers and acquisitions, general contracts, corporate law and governance. Active with the Rocky Mountain Mineral Law Institute since 1992, she is partner and chair of the Board of Social Ventures Partners.

John E. Cummerford, a shareholder at Greenberg Traurig, LLP, has been selected to serve on the board of directors of Casa, the Center for Prevention of Abuse and Violence. Formed in 1973, Casa’s mission is to provide quality prevention and treatment programs that reduce the impact of abuse and violence, particularly among women and children.

The organization also seeks to raise public awareness of abuse and violence, while advocating for social change.

Cummerford (J.D., 1983, Columbia University) practices in the firm’s intellectual property department. In addition to his work with Casa, Cummerford is a member of the ASU Technopolis board.

■ Nancy Philippi has been named director of diversity and community outreach at Quarles & Brady.

Philippi is responsible for providing direction for diversity efforts and community outreach initiatives at all of the firm’s offices.

■ Sarah A. Strunk, a director at Fennemore Craig, has been elected to the Rocky Mountain Mineral Law Foundation’s Board of Trustees as the Arizona Mining Association representative.

The Rocky Mountain Mineral Law Foundation is an educational organization dedicated to providing scholarly research of the laws and issues affecting domestic and international mineral and water resources. Organized in 1955 as a non-profit Colorado corporation, the foundation is governed by a Board of Trustees which serves on the Arizona Humane Society, the Phoenix Theatre, the Phoenix Film Foundation, the 2006 City of Phoenix Citizens Bond Committee and the Governor’s Council on Health, Physical Fitness and Sports.

■ Mark Briggs, a partner of Quarles & Brady Streich Lang LLP, was confirmed by the Arizona Senate to serve on the Commission on Appellate Court Appointments, having been appointed by Governor Janet Napolitano.

The commission includes five attorney and 10 non-attorney members and nominates three candidates to fill each open seat on the State Courts of Appeals and Supreme Court. The governor then appoints one of those candidates to fill the position.

Briggs (J.D., 1994, University of Iowa) is a partner in Quarles & Brady Streich Lang’s Corporate Services Group and serves on the boards of the Arizona Humane Society, the Phoenix Theatre, the Phoenix Film Foundation, the 2006 City of Phoenix Citizens Bond Committee and the Governor’s Council on Health, Physical Fitness and Sports.

Don’t Let a Disability Disable Your Business

Northwestern Mutual has been chosen to offer MCBA members an endorsed program for disability insurance. This program ensures quality service at competitive rates while easing members’ burden of having to shop around for coverage. By protecting against unexpected events through disability income protection, a small business owner can keep employees satisfied and secure while laying the foundation for the company’s continued development.

Bravest small business owners carry insurance policies to protect their companies against unexpected events – fire and other property damage, product liability and risks stemming from officers’ and directors’ errors or omissions. They carry coverage for company-owned vehicles, and they may offer employees such benefits as life and health insurance. But many small business owners fail to prepare for an event that could threaten the company’s success and, perhaps, its very survival: the real possibility that they or key employees would have to stop working because of a permanent or long-term disability. According to the American Council of Life Insurers (ACLI), small business owners often pass up disability coverage in the mistaken belief that the risks are small.

Understanding the risks

In its 2001 “Life Insurers Fact Book,” ACLI asked small employers to assess the disability risk of a worker between ages 35 and 65. Nearly half of the respondents significantly underestimated the risk as a one in 50 chance. Only 10 percent knew the actual likelihood, which is one in three, according to the council.

Citing findings from the Bureau of Labor Statistics’ “Employee Benefits in Private Industry, 2000” study, the ACLI notes that among small private firms with between five and 100 full-time employees, just 22 percent of workers have short-term disability coverage, and only 13 percent have long-term disability protection. Considering demographics, that’s a shortsighted view. Just as the U.S. population is aging, so is its workforce. And because of that age creep, the Social Security Administration anticipates a 37 percent increase in disability incidences over the next decade.

Currently, the average age of a new long-term disability claimant is about 44, according to the 2001 Disability Fact Book published by John Hewitt and Associates (JHA), a disability risk-management consulting firm. The risk of disability is not limited to older workers, however. JHA noted that a 30-year-old employee is 41 times more likely to become disabled from an illness or injury than die unexpectedly.

In its 2003-2004 Disability Fact Book edition, JHA cites “The Field Guide to Estate Planning, Business Planning & Employee Benefits,” published by the National Underwriter Company, which concludes that 43 percent of
A few months ago in this column I expressed my dismay over the declining quality of customer service at Dell Computer Corporation. I suggested that its business model of overly aggressive price competition was bound, in time, to diminish the quality of both its products and customer service. I received a lot of support for that view from the readers of this column. One reader told me the following story which I share with you (with permission) just as I received it:

I read your article regarding outsourcing of Dell support services after looking for any resources to repair my Dell Laptop without having to call tech support again. Between my daughter and myself, we have spent over 20 hours phone time, trying to resolve a computer crash that has left my grandson in tears. He worked very hard at all kinds of odd jobs to earn half the cost of a new Inspiron 6000— I paid for the other half. Three months after the purchase it took a giant dump. I spent seven-and-a-half hours on the phone in one day, speaking with nine different technicians with absolutely no resolution; three of the techs actually hung up on me, and I had kept my cool the entire time. Since we had purchased in-home tech support, I finally refused to go through hours more of system tests, and demanded in-home service. I was finally given a “yes” on the service, and told that the person would arrive within two business days. After the second business day went by with no service, I called the number of the last tech I spoke to (by this time, I had gone through six different toll-free numbers). Of course, I was not allowed to talk to the tech who agreed to the in-home service, and the new support person said there was nothing in my case file that indicated this would be done! I finally lost my cool. Then she proceeded to tell me that the hardware department was shipping me a new motherboard. I asked her where that request came from, and she replied, “It must have come from a higher source.” I hung up. Needless to say I don’t expect to get the mother board, but would rather spend some time in a room with all the techs I spoke with, armed with a cast iron fry pan. Yes, but all one of the technicians were (off shore) and [they] found it more important to go through each letter of my name with a corresponding word; after my corrections, they still insisted calling me “Barry” instead of “Betty.” I shall never ever ever again buy a Dell product—ever!

Deja vu

Betty’s experience tracked mine almost exactly. My last Dell PC was a lemon. I called Dell Support and was forced to take a clearly defective computer apart piece by piece as a precursor to receiving the in-home support that I had paid for. The fine print in my warranty said that in-home service was only available if Dell was unable to resolve the problem over the telephone. After listening to a Dell tech read instructions from his monitor for several hours, the lemon still didn’t work. The tech still refused to call in-home service unless I submitted more of his instruction.

I gave up and it was only through the good offices of American Express that I was able to get the deal charged back to Dell. Even so, there was a $30 item that lingered. I could not resolve that one either, although I wrote many letters. Of course I did not pay. And, of course, Dell Computer Corporation reported the refusal to TransUnion and Equifax before writing off the $30, which had risen to over $50 after several exorbitant charges and penalties.

Like Betty, “I shall never ever ever again buy a Dell product—ever!” and, as I read on the Internet blogs and Web sites, I am not alone. Even Consumer Reports has dropped Dell from its one-time lofty perch. Now Wall Street is jumping in as Dell stock drops like a rock and the end is neigh!

What is Dell’s response? The company announced this week that it will begin to partially copy the highly successful Apple retail outlets in upscale malls but, unlike Apple, the Dell stores will be demonstration sites only. No products will be available to carry out. As my kids would say “I don’t think so!” It is looking at the wrong end of the horse. Dell built a company on a service model it has now abandoned. It is where it is for a reason.

Customer matters

Some years ago Apple Computer virtually destroyed itself by not paying attention to customer service. Apple then, like Dell today, had allowed a bean counter to take over the company. In Apple’s case it was Gil Amelio from National Semiconductor who put Apple near bankruptcy in 1996. In Dell’s case it is Kevin Rollins, an erstwhile “management consultant,” who used to be Michael Dell’s personal bean counter.

As Apple lay on its deathbed, Steve Jobs returned to the helm of the company and restored it to glory. History there proved once again that high quality products coupled with high quality customer service spell success in the extraordinarily competitive personal computer market. The competitive roadway is strewn with the wreckage of companies that sought to achieve success in the computer market based on price alone.

In my opinion, Dell is on the verge of doing the same. While Dell has cut prices by cutting customer service, Hewlett Packard, its main rival in the Windows PC business, has done the opposite. Hewlett Packard was almost forced out of the personal computer business just a few years ago. But a new chief executive officer with a track record of paying attention to little things like customer service has turned the company around. As Dell’s profits have plummeted, Hewlett Packard’s profits have soared and the company appears poised to regain its position as the world’s top producer of high quality personal computers.

Taking stock

The stock market, a pretty good gauge of which business plans are working and which are not, has consistently dropped the price of Dell’s stock. At the same time Hewlett Packard stock is rising again.

It may take a few more quarters before this obvious trend becomes apparent to the Dell Board of Directors but when it does they will be forced to replace their conceptually challenged chief executive officer with a person of vision.

Perhaps Michael Dell will like, Jobs before him, return to the battle and restore the company that he gave birth to. For now, however, Hewlett Packard has adopted Dell’s direct sales model (HPstore.com) even going so far as to sell golf balls emblazoned with the company logo. But it still sells the best equipment and it is the way to go if you are buying a PC.

Many years ago, somebody accused me of being a shill for HP printers. I still am and I am starting to like its computers as well! Since I don’t play golf, I may even try one of those cool floating pen stands with the HP logo sold only at HPstore.com!

Go count your beans, Mr. Rollins.

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602-257-4200
Michael A. Yarnell joined the Phoenix School of Law as assistant to the dean. Yarnell (J.D., 1971, University of Illinois) will assist the dean in the growth of the college's student centered legal education program, including development of the student externship program. He retired from the Maricopa County Superior Court bench in 2005.

Ann Woodley has also joined the Phoenix School of Law as an associate professor.

Woodley (J.D., 1981, ASU) will be teaching Property I to first year law students. Previously she was chief counsel of the litigation section of the Arizona Attorney General’s Office’s Civil Rights Division. She also worked as a professor of law at Arizona State University and was director of its Lodestar Mediation Clinic.

Stephen C. Newmark has joined Jennings, Strouss & Salmon, P.L.C. as an associate.

Newmark (J.D., 1977, ASU) practices in the fields of state and local taxation, estate planning and probate. He is also a certified tax specialist.

Lance R. Broberg joined Tiffany & Bosco, P.A. as an associate.

Broberg (J.D., 2005, UA) practices in the firm’s civil and commercial litigation department. He previously served as an extern for the White House Office of National Drug Control Policy as well as the U.S. Bankruptcy Courts for the District of Arizona.

Le Bertha Umbreit and Ille M. Hardy recently opened The Law Offices of Hardy and Umbreit, P.L.L.C.

The firm focuses in the areas of immigration, real estate, bankruptcy, domestic relations and business law. The office is located in Phoenix’s downtown Roosevelt District.

Vince Lujan has joined Rothstein, Donatelli, Hughes, Dahlstrom & Schoenburg, LLP as an associate.

Lujan (J.D., 1999, ASU) previously worked in public service for both federal and tribal governments.

Karen Cooper has joined Gust Rosenfeld as an associate.

Cooper (J.D., 1997, Loyola University) joins the firm’s real estate practice. Prior to joining the firm, she focused her practice on commercial real estate transactions, the financing of start-up projects and the refinancing and expansion of existing projects.

Tait Elkie has joined Maassen & Associates, P.C. as an associate attorney.

Elkie (J.D., 2002, California Western) focuses on DUI and criminal defense.

Richard Ross, Meghan Cocci, Mark Daliere and Bruce Martin have joined Sonnenschein Nath & Rosenthal LLP as partners, and David Heidenreich, Alan Kierman and Scott Stein have joined as associates.

All become members of its global hospitality/leisure practice group and previously worked at Squire, Sanders & Dempsey L.L.P.

Geoffrey S. Kercsmar recently formed The Kercsmar Law Firm P.C. The litigation boutique, located in Scottsdale, focuses on commercial and intellectual property litigation, employment disputes, class actions, and complex consumer claims.

Kercsmar (J.D., 1998, Pennsylvania State University) was previously with Snell & Wilmer L.L.P.

The Supreme Court has 12 staff attorneys. Armstrong fills the vacancy created with former Superior Court Judge Alan Kamin’s decision to move from Arizona to be closer to family back east. Armstrong earned an impressive resume of assignments and awards while on the bench.

The things of which he is most proud include his early involvement in developing and formulating the Judicial Performance Review system that would be impartial and fair and strike a balance between judicial independence and accountability.

He also admits to significant pride in his service to the Family Court—as a trial judge, two terms as presiding judge of the department and a term as presiding judge of Integrated Family Court. He notes that while presiding over Family Court, it “enjoyed a significant increase in judicial resources” and new programs.

His third point of pride is the strides made in addressing domestic violence by developing a comprehensive plan including Domestic Violence Court, Domestic Violence Prevention Center (which became a model statewide) and educational programs for judges about domestic violence.

If there is a twinge of regret, it is “that I didn’t have the experience that I now have, when I started,” he said. “There is a lot of maturing, as a judge… as with life.”

As he retires, Armstrong leaves his last assignment—presiding judge of the Arizona Tax Court—a position he has had for the past two years. He also served two and one-half years as Superior Court’s associate presiding judge, assisting then-President Judge Colin F. Campbell. Armstrong’s other assignments were in the civil, criminal, and juvenile.

In 2003, Armstrong was presented the Henry Stevens Award as Judge of the Year by the Maricopa County Bar Association. In 2004, he received the University of Arizona College of Law Distinguished Alumnus Award. And last year he received the Arizona Supreme Court’s Distinguished Award: Improving Trust and Confidence in the Arizona Courts.

Since 1978, he has taught—always the law, whether business, constitutional, criminal, or family. And he admits that if he has another career move in him, “the only thing I can think of now is teaching. I hope to stay in the job at the Supreme Court for at least five years.”

But, he said he has permission to teach as well. Part-time, that is.

Tell Us!

Have you won an award? Is your law firm involved in an interesting community project?

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The Courthouse – Getting There Was Half the Fun

For most Maricopa County lawyers the trip to the courthouse in the early years of Arizona statehood was not a major expedition. Members of the bar in Phoenix generally officed within walking distance of the old Maricopa County Courthouse at the southwest corner of First Avenue and Washington.

Almost half of the 70 members of the Phoenix bar in 1916 could be found working from offices in the Fleming Building, directly across the street from the courthouse at 116 North First Avenue. Another 20 were a block away at the corner of Washington and Central, in the Goodrich Building or the National Bank of Arizona Building. The remaining legal offices were scattered within a two block radius.

“Ride a mile and smile the while”

Those with business in the state appellate court or the state boards and commissions had a short, five- to 10-minute trolley ride to the capitol building for a nickel. The Phoenix Railway Co.’s bright yellow cars could be caught going east or west on Washington every 15 minutes from six o’clock in the morning until 10:45 at night. Depending on the weather, passengers could choose seats in the open air sections at each end of the car, or in the fully enclosed central section.

Carmen (motormen and conductors) in their blue serge jackets with brass buttons and transit caps, issued tickets and transfers and made change from the five dollars they carried. Carmen were not permitted to smoke or chew on duty, but passengers were allowed to smoke in the rear of the car. The clanging of the trolley bell as the car passed each intersection provided a persistent background soundtrack to the legal comings and goings around the courthouse.

In the short trolley ride to the capitol, the county’s best legal minds had time to scan the daily papers. In the fall of 1913, riders would have seen stories about a pair of lawyer brothers, Bob and Joe Morrison, who faced off in local courtship ritual—moonlight trolley rides to Glendale were a young bachelor’s dream date.

Attorneys from surrounding communities faced more of an excursion to get to the county and state courts in Phoenix. Most would have likely driven their own cars or taken the auto stage. Glendale lawyers like Joe Porter had a choice of the Phoenix-Glendale stage line or the Phoenix Street Railway Trolley. The stage line charged its fares about 50 cents each way, and the much maligned trolley charged its passengers 35 cents to carry them on one of the 10 daily trips from the Glenwood Hotel in Glendale to downtown Phoenix.

The delightful ride from Glendale by the railway lasted about an hour and ten minutes and passed by “alfalfa ranches, wheat farms, orange groves, beet farms and the ‘Glendale Sugar Factory.’” Many Phoenix barristers likely had occasion to take this same route as part of a local courtship ritual—moonlight trolley rides to Glendale were a young bachelor’s dream date.

For most Maricopa County lawyers the trip to the courthouse in the early years of Arizona statehood was not a major expedition. Members of the bar in Phoenix generally officed within walking distance of the old Maricopa County Courthouse at the southwest corner of First Avenue and Washington.

Almost half of the 70 members of the Phoenix bar in 1916 could be found working from offices in the Fleming Building, directly across the street from the courthouse at 116 North First Avenue. Another 20 were a block away at the corner of Washington and Central, in the Goodrich Building or the National Bank of Arizona Building. The remaining legal offices were scattered within a two block radius.

“Ride a mile and smile the while”

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Catching the stage

Lawyers, like A.E. Price of Chandler, G.W. Silverthorn and W. J. Galbraith of Mesa, or D.W. Windes of Tempe, likely relied primarily on auto stages to transport them reliably to the county courthouse. Businesses like Fike’s Auto Livery, located at 110 North Central Ave., provided automobile transportation leaving Phoenix and Mesa every half hour from 7 a.m. until 6 p.m., and then, every hour until 10:30 p.m. The ride took about an hour, with a stop midway in Tempe. Fike’s competed for fares with its next door neighbor, the Salt River Stage Co. at 116 North Central and the Union Auto Stage Co., just down the street at 18 South Central. Union was a partnership of five local men, each driving his own new Model T Ford, purchased for $565 each. Buckeye had a stage line that served downtown Phoenix, as did Globe and Scottsdale. The Scottsdale Autostage transported its passengers from the Owl Drug store at First Avenue and Adams to Scottsdale twice per day for 50 cents.

When local barristers had a case in Gila County, they would likely take the Globe-Phoenix Stage Co., departing from 37 South Second Street and proceeding east through Tempe and Mesa, via the Apache Trail to Roosevelt Dam, then southeast to Globe-Miami. Cars traveled each way daily. The tiring trek took passengers over dusty, jarring and “scenic” dirt roads, without air conditioning or heat.

Assuming no washouts, rock slides or breakdowns, the trip took about 8 hours and cost $15 each way. The weary road warriors could in a best case be back in their own beds after only two nights away. It was just such a trip that is blamed for the untimely death from pneumonia of one of Arizona’s pioneer woman lawyers, Sarah Sorin. Sorin traveled from Globe to a Tax Commission hearing in April of 1914 and died a few days later.

Riding the rails

Occasionally, the courthouse that called prominent Maricopa County attorneys was not across the street but was in Pasadena or San Francisco, or even Washington, D.C. The logistics of attending hearings/meetings in these far-flung forums during the first few decades after statehood usually involved rail travel.

In the early years of statehood, Phoenix’s state capitol was, on not a main line—the two major east-west rail routes were through northern Arizona—Window to Flagstaff to Williams to Ash Fork to Kingman, or through the southern part of the state—Tucson to Yuma.

The northern franchise was operated by the Santa Fe Railroad and the southern by the Southern Pacific. Fortunately both railroads recognized the value of Maricopa County commerce and built connecting tracks to Phoenix and other major cities.

The Santa Fe, Prescott and Phoenix Railroad operated a 194-mile (about eight and one-half hours) spur from Ash Fork through Prescott, to Phoenix. The Southern Pacific connected to the Arizona Eastern spur line at Maricopa. The 35-mile trip took about one hour and 15 minutes.

The stations for these two competitors were located on opposite sides of Jackson Street, between First Avenue and Central. Early schedules were confusing, as the Arizonan Eastern trains ran on Southern Pacific time (one-half hour earlier than city time) and the SPF&P ran on Santa Fe time (one-half hour later than city time). The time confusion was partially eased when Arizona Eastern adopted Mountain Standard Time to match the Santa Fe times in late 1910.

In 1913, a lawyer could board the Arizona Eastern train at 6:15 a.m. and with luck could reach Los Angeles by 7:30 p.m. of the same day. Opposing counsel could depart via the SPF&P from Phoenix at 7:15 a.m. and reach LA by 10:15 p.m. Overnight trains were also available.

Connections to points east over both lines usually routed through Kansas City and passengers were served their meals at convenient stops, including the famous Harvey Houses.

Harvey Girls and dishwashers

The main distinction between the two routes was the dining accommodations. The Santa Fe route during this time did not provide dining cars west of Kansas City and passengers were served their meals at convenient stops, including the famous Harvey Houses.

Railroad employees would collect passenger meal orders at least one stop prior to the scheduled eating stop and wire the orders ahead so that the meals would be prepared when the train arrived and all the passengers could be fed during the relatively short layover. Gourmet meals were served on fine china and white linen by the Harvey Girls all across the west.

Meanwhile a hungry barrister, like Arizona Attorney General Wiley Jones, traveling east on the Southern Pacific to argue the Trux ex case before the Supreme Court in 1915, was treated to a first-class dining experience in the railroad’s renowned dining car service. Champagne, roast duck (dixieland), shrimp, fresh vegetables, cheeses, and desserts galore were standard fare, with a typical meal around one dollar.

In a four-day trip, 1,450 meals would be served in the dining car; each meal entailed 15 pieces of china, plus silver and glassware. On such a trip, 22,000 dishes would be washed by hand, by one man, in a sink 24 inches long, 18 inches wide and 10 inches deep—only one of the minor miracles performed by Attorney General Jones’ railroad hosts in an effort to assure him a safe, comfortable and elegant trip to court.

All in all, getting to the courthouse in Arizona’s early days may well have been more than half the fun.

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, 303 E. Palm Lane, Phoenix, AZ 85004; fax to 602-257-0522, or e-mail to: kbrieske@mcabar.org

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Making the Most Out of Quotations

Quotations in a legal document are like that little girl from the nursery rhyme who “had a little curl right in the middle of her forehead”: when they are good, they are very, very good, and when they are bad, they are rotten. Most legal writers know that too many quotations in a document make it cluttered and unreadable, yet many struggle with how to use quotations effectively. Generally, there are three areas of concern: when to quote, where to place the quotation, and how to punctuate the quotation.

When to quote: In legal writing, the use of authority is important to show that an argument is well-supported. This does not mean that authority should always be quoted, however. Generally, paraphrases (with proper citation) are the best way to ensure the document incorporates authority seamlessly. Quotations should be used in one of the following three scenarios: when the language is well-written and its essence would be altered by paraphrasing; when the language itself is being analyzed, such as statutory language or definitions; and when the author of the language is well-known and quoting that author would lend credibility to the document.

Where to place the quotation: The general rule is to put quotation marks around quoted language that has fewer than 50 words and leave the quoted language as part of the sentence. If the quotation has 50 or more words, the quotation should be a block quotation without quotation marks. A block quotation is set off by a colon, started on a new line, put in single space, and indented on both sides.

How to punctuate the quotation: This concern is hotly debated by most writers because there are two competing rules. The American rule requires that commas and periods always go inside the quotation marks; the British rule requires that commas and periods go outside the quotation marks. It would be an easy rule to follow if all American writers used the American rule, but this is not the case. On the one hand, many magazines and newspapers follow the British rule, and many elementary schools taught the British rule. On the other hand, most courts (as well as most other formal writing) follow the American rule. A legal writer needs to be aware of these differences and follow the American rule. The good news is that the rules are the same for other punctuation marks. Semicolons and colons always go outside the quotation marks, while question marks and exclamation marks go outside the quotation marks unless those marks were part of the original quoted language.

In the words of T.S. Eliot, “It’s not wise to violate the rules until you know how to observe them.”

U.S. Supreme Court refuses to postpone deportation

The United States Supreme Court denied a 32-year-old woman’s request to remain in the United States with her husband and 19-month-old son, who are both U.S. citizens. Justice Samuel Alito denied the motion for a stay of deportation after the 8th U.S. Circuit Court of Appeals similarly denied the woman’s request.

Myrna Dick, who came to the United States from Mexico with her parents twenty years ago, was prosecuted for allegedly claiming false citizenship during a border crossing in 1998. As she prepared to leave the United States for Tijuana, Mexico, Dick said she would not give up on her struggle to live in the United States, and urged “the many, many families who are in a situation like ours” to continue to fight for fair immigration reform. “Immigration reform won’t work unless they make laws that satisfy American families.”

British lawyers scratching heads over wearing wigs

The traditional horsehair headdress worn by British lawyers is drawing increasing criticism in that country’s courtroom hallways and lawyers’ chambers. The Washington Post reports that although many young lawyers like the wigs because they serve as a “leveler” against those who have more experience, critics say the wigs are “fusty, if not ridiculous.” Kirsty Brimelow, a criminal lawyer in London, told Post reporters that “English judges can look plain silly at International courts in the Hague when, seated amid colleagues from other European countries, they struggle to fasten headphones over fake curls to listen to translations.”

Other lawyers complain that the wigs are expensive, yellow with age, and smell bad as the years go by. But some lawyers, such as criminal lawyers who appreciate the degree of anonymity they offer judges and lawyers dealing with defendants who might want to seek revenge on them outside the court, prefer to keep the wigs.

In 1992, judges on the commercial court were scheduled to vote on scrapping the wigs, but reconsidered, reasoning that all 55 judges on the Queen’s Bench Division should discuss and debate the issue. A senior judge at the time remarked on the court’s acquiescence that resulted in retaining the wigs, stating: “There is no urgent need to go discarding something which has been out of date for at least a century.”

B.C. bill allows for honest apology without liability

British Columbia has introduced legislation that will allow people, businesses and organizations to offer an apology without fearing legal liability. The bill provides that evidence of an apology is not admissible in legal proceedings.

Attorney General Wally Opal said “[i]f there are times when an apology is very important and appropriate but the legal implications have long been uncertain.” This bill will “allow[] parties to express honest regret or remorse,” said Opal.

Florida judge orders lawyers to play game to settle dispute

Two Florida lawyers who could not agree on a place to hold a deposition asked United States District Court Judge Gregory A. Presnell to decide for them. After considering their motion, Presnell ordered the two to play a game of “rock, paper, scissors” in order to settle their dispute. Counsel was ordered to choose a neutral place agreeable to both parties to play the game on the steps of the U.S. Courthouse in Tampa, Florida.

The order delineates that “[t]he winner of this engagement shall be entitled to select the location for the [ ] deposition,” so long as it is held within the county. Presnell further ordered appeals to the outcome of the game to be filed in his courtroom.

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Disability

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all people age 40 will have a long-term disability event before they reach 65. The same source notes that “in the last 20 years, deaths due to the ‘big three’—cancer, heart attack and stroke—have gone down significantly. But disabilities due to those same three are up dramatically. What used to kill now disables.”

Have a plan in place

For a small company to survive an owner’s or employee’s disability, it’s crucial to have a good disability plan in place, for two reasons. First, it lets a business owner protect the company from the upheaval that occurs when an owner or employee is no longer able to work. Second, a plan can avoid any ill will that might be created if the company cannot compensate a disabled employee or if it becomes necessary to discontinue that pay. Remaining employees may sympathize with the disabled person’s situation, or they may resent him or her for the loss in company profits. Such dissension could end up encouraging them to look elsewhere.

A business owner can choose from two basic types of disability coverage—a group or an individual disability policy, or some combination.

Group plan

A basic group plan can provide the owner and employees with replacement of earned income lost due to disability. Most group plans have a cap on the benefit amount. Also, many cover only the base salary, not pension and profit sharing contributions, deferred compensation, commission income and incentive bonuses. Coverage under a group plan generally ends when the employee leaves the company, but individual disability plans can supplement it.

Individual plan

An individual disability insurance plan can provide additional income to cover financial obligations and living expenses. For the business owner, a group or individual disability plan can also serve as a valuable employee recruitment and retention tool. In a competitive job market, companies that include disability protection as part of their benefits package can help sway a candidate weighing two similar offers.

Products to consider

Disability Overhead Insurance: If an owner is unable to work, this insurance reimburses a business for office rent, utilities, salaries and other overhead expenses while the owner either recovers and returns to the business or prepares for its sale.

Key Person Disability Insurance: If a critical employee becomes disabled, this coverage can help protect the company from both the loss of income and costs associated with recruiting a replacement.

Disability Buyout Insurance: This insurance enables healthy owners to buy out a totally disabled owner and keep the business going while fairly compensating the disabled owner for his or her share in the business.

Michael W. Leed is a financial representative with Northwestern Mutual Financial Network, the marketing name for the sales and distribution arm of The Northwestern Mutual Life Insurance Company (NM), Milwaukee, Wisconsin, its affiliates and subsidiaries. Financial Representative is an agent of NM based in Arizona. Securities offered through Northwestern Mutual Investment Services, LLC, member NASD and SIPC. NM is not a broker dealer.

For more information on the insurance benefits available to MCBA members, contact Amy Jean Ham, MCBA Membership Services Director at aham@mcbabar.org or 602-257-4200.

Clerks Corner

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thousands, the clerk and court can monitor and respond to issues as they arise.

Electronic court record

The Clerk’s Corner column often provides updates on how technology is improving the business and customer service of the courts. The electronic court record (ECR) is an umbrella term for the ways technology is used to process the court record. Understanding terminology and examples of how those individual parts are used helps clarify the overall process. The electronic court record in the Clerk’s Office includes scanning paper filings to create a digital image that is maintained in an electronic repository. By way of several electronic filing pilot programs, filings are also entering the repository as digital images. Minute entries by e-mail, automated workflow processes, and public access terminals that allow viewing images of filed pleadings are all parts of the overall electronic court record.

Due to strict quality control standards, the clarity and quality of scanned images makes the ECR easy to read and use directly from a computer screen. Actions behind the scenes at the Clerk’s Office allow consistently readable documents for processing the court record. Practitioners and the public may view the ECR from public access terminals at Clerk’s Office locations throughout the Valley.

The Clerk’s Office is developing methods to securely share access directly to the ECR for counsel. In the coming months, attorneys will have remote access to their cases from their own office or PC using a password and registration format. This will eliminate the need to travel to a public access terminal. The Attorney General recently joined Clerks Office staff, judicial staff, the County Attorney, Public Defender, and other court users who have direct access to this large electronic repository of images.

Change is inevitable

The Clerk’s Office is currently presenting a change management class to all internal staff entitled, “You Can Never Step Into the Same River Twice.” One of the messages delivered through this presentation is that change is constant and surrounds our personal and professional lives. Embracing that change and harnessing it to its fullest and best potential has served the Clerk’s Office well in its mission to serve the court user. Electronic filing and the electronic court record are a change from the well worn paper path. We cannot meet tomorrow’s demands with yesterday’s devices; this positive change takes us in the right direction for meeting tomorrow’s demands for service.

Mental Illness

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- Rule 11 competency proceedings which determine whether a criminal case defendant is mentally able to understand the charges pending and assist the attorney defending the pending charges.
- Probation status review hearings and probation revocation proceedings for all defendants assigned to the Adult Probation’s Seriously Mentally Ill Unit.
- Bail review hearings and requests for special release conditions pertaining to incarcerated defendants who have been identified as having a serious mental illness.
- Any other criminal court calendars and hearings designated by the Presiding Judge for the Criminal Department and the Presiding Judge for the Probate/Mental Health Department.
- Some components of the Comprehensive Mental Health Court have been in place for the past few months, but Mundell’s administrative order guarantees it is an official status as a program “to overcome fragmentation in the continuity of care provided to mental health consumers who become involved with the justice system,” she notes.
Leader Sought to Further MCBA Commitment to Serving Members and Community

The Maricopa County Bar Association has launched both a local and national search to identify a qualified candidate to lead the organization. The MCBA Executive Search Committee is seeking an executive director who possesses strong general and staff administration experience along with well-developed finance management and public relations skills.

According to Executive Search Committee Co-Chair Jay Zweig, “the right fit for the role will be someone who can enhance our already successful Lawyer Referral Service and Continuing Legal Education programs, as well as our 11 sections and four divisions of law.”

The committee is also seeking someone who will look to further services to MCBA members as well as access to justice for our community. “We are seeking someone to build off of the bar’s momentum and heighten its dedication to its members, the legal and judicial communities and the community-at-large,” said Zweig.

MCBA members are encouraged to recommend qualified candidates to the MCBA Executive Search Committee. The complete job description is as follows:

MCBA Executive Director

The Executive Director will: report to the Executive Committee and Board of Directors and serves as chief staff executive responsible for administering the affairs and resources of the Maricopa County Bar Association. The Executive Director will be responsible for the effective operation of the staff and finances; act in the best interest of the membership and the public in accordance with the stated mission, policies and directives of the officers and board of directors; participate in broad formulation of policies and objectives of the association; promote interest and active participation in the association among membership and affiliated groups; and communicate on behalf of the bar to members, the community and the media. The Executive Director will advise and assist the Executive Committee and Board of Directors in all matters and will serve as organization liaison to the Bar Foundation.

Responsibilities

Responsibilities include but are not limited to: general administration, including formulating, implementing and recommending policies and procedures to further the organization’s mission and directives; contract negotiation and execution; public relations; staff and benefits administration; financial management and budgeting, including coordinating annual audit and long-range financial planning; and foundation administration, including fundraising planning and development.

Qualifications

Qualifications include: bachelor’s degree, master’s degree desired; Demonstrated experience in executive management, professional services experience preferred; highly professional, reliable, flexible, motivated and positive; strong program and event management skills; commitment to professional development; skillful in resource management, finance, and budgeting; excellent public and media relations skills; proven problem solving skills; excellent oral and written communication skills, including public speaking.

Salary

Salary is commensurate with experience and qualifications.

Contact

Please submit your cover letter, resume, and references to Executive Search Committee Co-Chair Jay Zweig, Maricopa County Bar Association, 3003 N. Central Ave, Suite 1850, Phoenix, AZ 85012. Fax: (602) 257-9727. E-mail: jaz@gknet.com.