Whose Finger is Really on the Trigger?

If a shooter kills a person with a gun that the shooter himself owns, is it possible for a third person to be liable for the victim’s survival for negligently entrusting that gun to its owner? Division Two of the Arizona Court of Appeals recently faced that question. It concluded that the plaintiffs did have a cause of action for negligent entrustment. Tissicino v. Peterson, 211 Ariz. 416, 121 P.3d 1286 (App. 2005)

Timothy Peterson shot and killed Zachary Tissicino with a gun that his father, Don Peterson, had given to him twenty years earlier. Don had taken the gun back after Timothy’s brother used it to commit a crime, keeping it in a drawer. When Don moved into a nursing home, his wife Juanita moved the gun to a typewriter case that she kept in a room where Timothy kept some of his belongings.

Eventually, Juanita asked Timothy to take the gun because she didn’t like having it around the house. She knew that Timothy had abused alcohol and drank regularly.

Saddened by Death of Former Judge O’Melia

By J.W. Brown
Maricopa Lawyer

Superior Court judges, administrators and employees expressed great sadness about the recent death of Judge Michael O’Melia, who served 20 years on the Superior Court bench before retiring July 1.

After leaving the bench, he began a new phase of his legal career—as an assistant U.S. attorney in Phoenix.

“O’Melia was a wonderful judge with a gentle soul and a kind heart. He had a stellar judicial career serving the citizens of Maricopa County for well over 20 years,” said Presiding Judge Barbara Rodrigue Mundell.

While on the bench, he was respected for his knowledge and application of the law, for his compassion, and for an unselfishness and willingness to share his legal expertise with others.

“Mike was gentle in manner yet strongly competitive; steadfastly loyal to old friends and welcoming to new ones. I will remember these qualities and how, when he spoke of his family, clearly he was talking about the most important thing in his life,” said Judge Brian Hauser.

Judge Barry Schneider said of O’Melia’s death: “A terrible loss. Mike was one of my best friends for over 30 years. He was loved by so many. He was tremendously generous and caring. He was also sharp as a tack and tough when he needed to be. He was one of a kind in so many wonderful ways. The pain of his loss will never go away.”

“Mike was a true gentleman and a proud and beloved father and grandfather,” said Judge Thomas O’Toole, a longtime friend.

“Besides being Irish gold, he was a great jurist who treated everyone with wisdom and fairness.”

O’Toole also recalled a love of sports that never wavered throughout O’Melia’s life. “He was a star on the Wisconsin Badgers basketball team in the early 60s (and continued to be a die-hard fan throughout his life). And he was an avid, if not rabid, golfer who loved the game and all it did to enliven the spirit,” O’Toole said. “He, Ken Clancy and Jim Leonard, lifelong friends – Phoenix attorneys Tim Berg, Rita Meiser and Mark Steinberg – who recalled favorite memories and joyful events experienced with their beloved friend.

Fellow judges expressed deep sadness with the news of Santana’s death. He was recalled as a scholar, a kind and gentle man who was upbeat, friendly and soft-spoken. From his death until the memorial service a week later, flags at Superior Court facilities around the Valley were flown at half-mast to honor him.

“He enriched us all by his service on the bench and in the community,” said Presiding Judge Barbara Rodriguez Mundell. “He was a dedicated jurist who continued to serve the court by working at home on a number of cases despite his health challenges.”

Former Presiding Judge Colin F. Campbell, who was Santana’s roommate in law school, said, “Those of us who went to school with Mark or worked with him, have lost a dear friend. Mark was loyalty and

Legal Community Mourns Death of Judge Mark Santana

By J.W. Brown
Maricopa Lawyer

Family members, judges, academic associates, lawyers, court officials and a variety of community leaders gathered on the sunny afternoon of December 29 to pay a final tribute to Superior Court Judge Mark Santana, 54, who passed away on December 22 after a lengthy illness.

He had served as a judge on the Superior Court bench since January 2001, with assignments in the civil department and on family court.

Hundreds of mourners attended the service, filling All Saints Episcopal Church on Central Avenue in Phoenix beyond capacity. Those who spoke included three lifelong friends – Phoenix attorneys Tim Berg, Rita Meiser and Mark Steinberg – who recalled favorite memories and joyful events experienced with their beloved friend.

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We Need Your Feedback!

Having moved through the leadership ranks of the MCBA to the position of president, most would agree that I have the power and authority, with the support of our board of course, to implement any new program, initiative or event at a moment’s notice; or at least at the next board meeting. That power, if it really exists, is useless, if when exercised, it is done without feedback from the very people that the programs or events were targeted to please. Neither the MCBA staff nor I can effectively serve you and provide services that meet your expectations and needs, unless we receive feedback from you.

Although we could rely on a matrix premised on membership renewals that doesn’t tell the whole member satisfaction story, my goal is to learn directly from you the member what services are most important to you, how services can be improved, and whether new services are needed. The quintessential question, however, is will you give us your feedback? If you are like me, when you receive some type of paper survey or questionnaire, especially the CLE ones or mailers, the answer is probably “no.” On the other hand, would you give us your feedback if you could provide it quickly and easily through an online survey system? You can answer that question quickly and easily right now by just sending me an e-mail that simply states “yes” to the following e-mail address: jsaintgeorge@yahoo.com. Because your membership is valuable to this organization and we want to provide you with services that are not based on a hunch or are a function of gueswork, your feedback is the only tool through which we can accomplish our goals. We have approximately 4,000 members and if we can get 300 of you to answer the above question by sending an e-mail, we will have accomplished our first goal: to find out if our members are willing to give us their feedback. You would agree that Fortune 100 companies don’t spend millions of dollars on customer satisfaction questionnaires unless they are valuable, and I believe they are. You may be sitting back in your office reading this column saying to yourself, this new president is crazy or eccentric, asking lawyers to provide feedback when they are inundated with work. Or you may be reluctant to send your e-mail response because you don’t want to receive any more spam e-mails, especially a survey from your voluntary bar association. Whether I am crazy—which I think most of us are to be in this profession—or eccentric, I hope you will send me an e-mail with your feedback and I promise that we will not overwhelm you with needless surveys that you will end up pushing the delete button on. If I don’t hear from you and you don’t receive any surveys from us, then you will know that no one wants to give their feedback, and we as an organization will be free to go back to our hunches and gueswork in pleasing you as a member. On the other hand, if we send you a survey in the future, it means feedback is important to this organization and your input is valuable. With that said, I solicit your support in this effort to obtain feedback from our membership. Send me an e-mail and provide your feedback.

Paralegals Helping Paralegals

The Maricopa County Bar Association’s Paralegal Division is sponsoring its sixth annual Paralegal Career Day on Saturday, March 4, 2006, from 8 a.m. to 1 p.m. The event is hosted by Phoenix College and held in their Dome Auditorium just northeast of the campus on 11th Avenue. This is an opportunity for paralegal students and other individuals interested in a paralegal career to gather useful information from practicing paralegals and professional associations. Additionally, it is a valuable opportunity to socialize and network with others in the paralegal field. In the past, the composition of attendees has included paralegal students or recent graduates of paralegal programs, as well as newly practicing paralegals.

Over the years, the event has included topics such as career development, networking, the attorney and paralegal team, developing organizational skills, alternative career options, resume writing and interviewing, and paralegal certification. There will be a number of guest speakers from the profession to offer their expertise and answer any questions. Accommodations include a continental breakfast and other refreshments throughout the event, thanks to the generosity of our sponsors.

We are thrilled that this year’s event is being co-sponsored by the International Paralegal Management Association. Together we are planning a spring suit event that will allow attendees an opportunity to purchase gently used suits or other professional apparel for a nominal fee in order to assist them in pursuit of their professional paralegal career. The proceeds will benefit the MCBA Paralegal Division’s Scholarship Fund. Each year, the division provides four $1,000 scholarships to a deserving student at each of the four ABA-approved paralegal programs in Maricopa County. The scholarships are awarded at the division’s annual conference in September. If you would like to contribute to this event by making a donation of professional clothing, then please drop off your donation to the MCBA offices no later than Monday, February 27, 2006. For more information or to reserve your seat at this year’s Paralegal Career Day, contact Jennifer Deckert, the Division’s Liaison at the MCBA at (602) 257-4200 Ext. 137 or jdeckert@mcbabar.org. You may also log on to our website at www.mariocoparalegals.org and register online.

Willing to Help Out a Heroic Cause?

The MCBA YLD has teamed up with the State Bar YLD to help support the Wills for Heroes program and we are seeking willing volunteers! Wills for Heroes offers free wills, living wills, and health care and mental health care powers of attorney for all first responders (and their spouses and/or domestic partners) in Arizona.

In 2005, 52 volunteer attorneys dedicated over 525 pro bono hours preparing 356 wills in 10 departments, including the Fry Fire District, Pima County Sheriff’s Department Corrections, Phoenix Fire Department, Coolidge Fire Department, Oro Valley Police Department, Tucson Fire Department, and Show Low Police Department.

As a volunteer, the State Bar of Arizona’s malpractice insurance covers your pro bono legal work performed on behalf of the program, and you need not be an experienced estate planner to participate. There are Wills for Heroes events all over the valley in the next few months. The next free Wills for Heroes CLE will take place on February 22.
Santana

continued from page 1

strength to all who knew him. He loved being a judge.”

Judges Andrew Klein and Santana worked together early in their legal careers and then served together on the bench.

“Our bench has just been diminished significantly by this tragedy,” he said.

“Mark and I frequently burned the midnight oil working on motions or doing research. Mark had an extremely quick mind, a wonderful wit, and a gentle soul,” Klein said. “His elevation to the bench gave me the inspiration of his father’s career as a judge. I will miss Mark very much: his sense of humor, his irreverence, his compassion for those less fortunate, and especially his smile.”

Judge Louis Araneta noted: “Mark was a friend, a strong lawyer and a strong judge. I will miss his decency, wit and compassion.”

Judge Jonathan Schwartz credited Santana’s value to the bench by noting, “His rulings were brilliant; he wrote so well.”

Prior to joining the bench, Santana was the Arizona Department of Environmental Quality’s Administrative Counsel for eight years. He was in private practice, specializing in construction and commercial litigation and surety defense. He was a partner with Jennings, Haug & Cunningham from 1982 through 1993 and was an associate with Levy, Mason, Spector & Sherwood from 1980 to 1982.

Santana served as an assistant attorney general, representing the Arizona Department of Health Services and also led consumer fraud prosecutions. He was a law clerk with U.S. District Judge James Walsh in 1976 and 1977.

Santana was born and raised in northern California. In 1973, he graduated from the University of California at Davis summa cum laude with a degree in political science and history. He then attended the University of Arizona College of Law in Tucson, receiving his J.D. cum laude in 1976. During law school he became the executive editor of the Arizona Law Review.

Santana was dedicated to serving his community throughout his life and volunteered countless hours of expertise to the City of Phoenix.

Former Phoenix mayor and current Arizona Attorney General Terry Goddard called Santana “an invaluable public citizen whose service provided a tremendous benefit to the city. He was very effective as a volunteer because of his level of professional excellence and intellectual sophistication. He was dedicated; he was highly motivated; and he was a tremendous role model. His death is a great loss.”

Santana served the City of Phoenix over the years as chairman of the Historic Preservation Commission, president of the Parks and Conservation Foundation and a member of the Environmental Quality Commission.

He also served as president of the Community Legal Services Board of Directors, was on the Maricopa County Association of Governments Air Quality Policy Committee and served as a member of the Phoenix Citizens Bond Committee. He was also involved in the United Way Impact Spending Committee.

Santana is survived by his wife Patricia Mariella and two step-children J.R. and Steve; his parents Joseph and Terry Santana of California; sister Julie Santana; and brother Randy Sheleman.

The inspiration of his father’s career as an attorney, coupled with the time he spent clerking with Walsh of the U.S. District Court, led to his life-long desire to be a judge.

Santana was committed to the highest standards of the legal profession, serving as president of the Maricopa County Bar Association, chair of the Community Legal Services Board of Directors and chair of the State Bar of Arizona Administrative Law Section.


Following the memorial service, Santana’s ashes were interred in the church’s ‘close,’ which is a sheltered piece of land, similar to a garden, adjacent to the cathedral.

VLP to Host its Annual Awards Luncheon

The Volunteer Lawyers Program will host its annual “For Love of Justice” awards luncheon on Wednesday, February 15, 2006. The luncheon recognizes outstanding pro bono work by members of the program. This year’s awards will be presented by the Honorable Ruth V. McGregor, chief justice of the Supreme Court of Arizona.

In addition to volunteer lawyers, awards for pro bono service during 2005 will honor program and litigation support volunteers. Many attorneys will receive individual recognition, including volunteer lawyers in Maricopa, Mohave and Yavapai counties. Honorees will also include the law firms of Alvarez & Gilbert, Osborn Maleden, Quarles & Brady Steich Lang, and Snell & Wilmer.

The prestigious Frank X. Gordon, Jr. Traveling Trophy award for innovative efforts to increase access to justice will be received by Governor Janet Napolitano’s office, and by organizations and individuals who led the response to provide legal services for evacuees who arrived in Arizona in the aftermath of Hurricanes Katrina and Rita.

Plan to attend the “For Love of Justice” luncheon from 11:45 a.m. to 1:15 p.m. on February 15, at the Phoenix Hyatt Regency. The deadline to RSVP is February 9, 2006.

For information and registration, contact Peggi Cornelius (602) 258-3434 ext. 2550 or pcornelius@clsaz.org.

MCBA Young Lawyers Division’s Barristers Ball

The MCBA Young Lawyer’s Division will be holding its annual Barristers Ball on Saturday, March 4, 2006, beginning at 6 p.m., at The Phoenician in Scottsdale. The chosen beneficiary of the ball’s silent auction is Arizonans for Children, Inc. See page 14 for complete details and page 16 for a registration form.

VLP For Love of Justice Awards

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2006 MCBA Section and Division Membership

Join an MCBA Section or Division to enhance your MCBA membership! Whatever your area of law, sections and divisions are perfect vehicles to network, gain professional experience and continue your legal education. For more information, contact Amy Jean Ham at 602-257-4200 ext. 128.
Inaugural Race Judicata a Running Success

On December 18, 2005, the MCBA Young Lawyers Division held its inaugural Race Judicata 5K at Kiwanis Park in Tempe. Nearly 300 runners, together with a few canines, ran a course around and through Kiwanis Park and its lake. The event raised money for the Young Lawyers Division, with proceeds helping to fund its annual community service projects, such as providing legal services to low-income families and providing necessities to the domestic violence shelters in the valley.

Planned as a family event, the race included a kid’s dash. After both races, participants enjoyed food and drink sponsored by Bruegger’s Bagels, Naked Juice, Great Harvest Bread Company, Circle K, and Cactus Rita’s. Additionally, each race participant received a t-shirt and a goody bag with items provided by sponsors LexSolutio, Hawkins and E-Z Messenger, Watermill Express, Westlaw, Ryley Carlock & Applewhite, Runner’s World, Avondale Toyota, Betsie & John Melter at Caldwell Banker, and Cactus Rita’s.

Race Judicata 5K is slated as an annual event for the MCBA Young Lawyers Division.

—

Michael F. Patterson is a shining example of why working together is much more fruitful than going it alone.

Take United States and Latin America for example. A partner with Titus, Brueckner & Berry, P.C., Patterson practices business, securities and cross-border transactions. He has lived in Costa Rica and Mexico and worked with both a Mexican and an international law firm, primarily assisting United States companies manage their legal needs throughout Central and South America.

He has managed cross-border transactions and litigation for multinational companies and has close relationships with most of the leading Mexican law firms, with expertise in virtually all practice areas.

Patterson reads, writes and speaks Spanish fluently. A graduate of Arizona State University College of Law, he also is a graduate of a seminary, the University of Houston Mexican Legal Studies Program, and the Instituto de Lengua Española in Costa Rica.

Born to run

Born in Texas, Patterson spent his childhood following his father’s construction team around the United States, living in Alabama, Tennessee, Kentucky, California, Illinois and eventually back home in Arizona.

Patterson revisited his wandering roots when he and his wife served as missionaries in Mexico and Costa Rica. They returned to Arizona when his father was diagnosed with aggressive Alzheimer’s disease.

Upon his return, Patterson began seeking a career that would help him catch up and put some college funds together, as missionary work did not allow for such savings.

Call of the law

Thus, law came calling.

“I was attracted to law because, as a minister, you essentially interpret biblical texts and apply them to problem solving in people’s lives, and dealing with the context and interpretation of words and texts in legal concerns is really not that far removed.”

Still drawn to Latin America, Patterson was also looking for a career that might take

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**RACE JUDICATA 5K RESULTS**

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<tr>
<th>Age Group</th>
<th>Male</th>
<th>Female</th>
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<tr>
<td>19 &amp; Under</td>
<td>Kevin Rayes</td>
<td>Andrea Lugo</td>
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<td></td>
<td>Jose Lugo</td>
<td>Vanessa Valenzuela</td>
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<td>Timmy Rayes</td>
<td>Taylor Ashworth</td>
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<td>20-29</td>
<td>Jason Boblick</td>
<td>Penny Tinker</td>
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<td></td>
<td>LaShawn Jenkins</td>
<td>Amanda Lorenz</td>
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<td></td>
<td>David Reeder</td>
<td>Katy Dray</td>
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<td>30-39</td>
<td>Christian Rossetti</td>
<td>Jennifer Green</td>
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<td>Randy Jue</td>
<td>Stephanie Groendyk</td>
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<td>Joe Kanelfield</td>
<td>Laura Smith</td>
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<td>40-49</td>
<td>George Esahak-Gage</td>
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<td>John Carter</td>
<td>Hil Zweig</td>
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<td>50-59</td>
<td>Robert Erzkoen</td>
<td>Barbara Rees</td>
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<td>Greg Martin</td>
<td>Sue Iverson</td>
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<td>Douglas Rayes</td>
<td>Sue Callahan</td>
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<td>60-69</td>
<td>Don Braamam</td>
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<td>Kenneth McKinney</td>
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<td>Ray Higuera</td>
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<td>70 &amp; Older</td>
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<td>Margie Gwen</td>
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Making Strides with Steptoe & Johnson’s Monica Goebel

Monica L. Goebel became managing partner at Steptoe & Johnson LLP’s Phoenix office in January. Not only does she hold the top position at one of Arizona’s largest firms, she is presently the only female managing partner among the Valley’s top 25 firms.

Mark A. Winsor, Maricopa Lawyer writer and member of the MCBA Task Force on the Recruitment and Retention of Minority and Women Lawyers, recently sat down with Goebel to talk about how she accomplished this feat within a relatively short amount of time and her continuing ability to lead.

Maricopa Lawyer: You have had tremendous accomplishments in your career, including involvement in many firm committees, community activities and bar association services. You also have two small children. How do you balance it all?

Monica Goebel: Most importantly I have a wonderful and supportive husband, Gary Goebel. Gary spent 7 years practicing law and then “reformed” himself and became a middle school social studies teacher. After we decided to have children, Gary agreed to put his legal and teaching careers on hold and become a full-time personality development coordinator (stay-at-home dad) for our two boys. He makes it possible for me to have the flexibility needed to be successful in my career. We frequently discuss legal issues, and his insights are always right on. I enjoy my job, and I treasure every minute I spend with Gary and my children, so I don’t feel that I am trying to balance obligations, duties and burdens. Instead, I feel lucky to have a wonderful family and the opportunity for a fulfilling career. I have developed great relationships with the other partners both in and out of the firm’s committees. I have cut back to those essential activities on which I can focus and succeed.

ML: Who have been some of your mentors and what have you learned from them?

MG: My partner Larry Katz seems to view everything through thick rose-colored glasses. He always assumes people are inherently good and trying to do the right things. I learned from him that stress can be eliminated if you approach life with a positive attitude. Then there is my partner, Floyd Bienstock, who taught me that while the continuous pursuit of excellence in my legal work is essential to success, I must never overlook the need to make time for fun. Another early mentor was Bruce Babbitt. I learned from him the value of creative thinking. For example, we once had a client with an issue we could not solve under the current laws. Bruce’s reaction was to declare we would instead draft a bill. He knew how to think outside of the box.

ML: What advice do you have for the young attorneys you mentor?

MG: It is important to understand your clients’ goals and objectives and ensure that everything you do is directed to achieving these goals and objectives. Ensure that your work product is always the best it can be. I encourage them to know their strengths and weaknesses as a person and a lawyer and to learn to use their strengths to serve their clients. Strive to strengthen weaknesses but always be yourself. The bottom line is client service. If you are not satisfying your client’s needs, then you cannot be successful as an attorney.

ML: What are some of your strengths that have helped you become a leader in the legal profession and managing partner at Steptoe & Johnson?

MG: I have been with the firm for my entire 17-year career and have served on many of the firm’s committees. I have developed great relationships with the other partners both in Phoenix and in Washington, D.C. I also believe I am known as a person who gets things done, and I push to accomplish goals. Let me share a funny story. Years ago I was in charge of the summer associates program. One attorney wasn’t completing the evaluations of persons who worked for him, so I went into his office with a ruler to smack his hands. Although he knew I was joking with the ruler, the evaluations were quickly finished. I believe strongly in setting goals and then following up to get them accomplished.

ML: You said you have a deep interest in further enhancing the diversity of your firm. What are your plans?

MG: I have been working to expand the visibility and activities undertaken by our firm’s diversity committee, and to encourage my partners to recognize the business case for diversity. Over the last few months, I have been identifying and learning more about local and national organizations whose purposes include supporting diversity in the legal profession. I have been encouraging our attorneys to join and support those organizations, and the firm has provided financial support to many of them. Involvement in these organizations will help us recruit talented attorneys and will send a message to our attorneys and clients that we value diversity at Steptoe & Johnson. One of our specific projects designed to enhance diversity within the legal profession is to fund a scholarship for minority students to take the LSAT preparation course. I feel that enhancing diversity helps our firm maintain its exceptional level of service to our clients and the community.
**Bench Continues to Experience Growth and Change**

By J.W. Brown

**Maricopa Lawyer**

During the upcoming weeks the Superior Court bench, again, is welcoming new judges, celebrating investitures of judges and commissioners who have joined the bench over the past several months and awaiting another gubernatorial appointment to fill a vacancy.

The events throughout this month punctuate the ever-changing character that has become the norm of the largest court in the state. Over the past year 11 retirements—of Judges Rebecca Albrecht, Jeffrey Cates, John Foreman, Frank Galati, Stephen Gerst, Robert Gottsfield, Barbara Jarrett, Michael O’Melia, William Sargeant, Penny Willrich and Michael Yarnell—have provided the governor with the task of appointing replacements.

The Dec. 22 death of Judge Mark Santan adds yet another vacancy, one that likely will be filled before the end of February. Also by the end of the month, investments will be held for five judges and five commissioners who recently joined the bench.

In order to fill the vacancy in a timely manner, the Maricopa County Commission on Trial Court Appointments is reviewing applications from 31 lawyers seeking appointment of Santana’s vacancy. Commission members will decide at their Feb. 6 meeting which applicants will be interviewed on Feb. 17. After the interviews, the commission will recommend at least three nominees to the governor, who will appoint the new judge.

Of the 31 applicants, 12 are current Superior Court commissioners and another one is a sitting Justice of the Peace.

It has been only a month since Governor Janet Napolitano made her latest Maricopa County judicial appointments. The first to take office is Glenn Davis, who was appointed Dec. 30 and took the bench as a judge on Jan. 6. Lisa Daniel Flores, appointed with Davis, starts her judicial duties on Feb. 13. They fill vacancies created by the retirements of Judges Rebecca Albrecht and Frank Galati.

Immediately prior to his appointment, Davis served the Superior Court as a commissioner since July 2004. Prior to that, he spent 10 years as general counsel to the state legislature’s minority. He also had been in private practice for several years, specializing in civil litigation. Davis is assigned to the civil department.

Davis is currently treasurer of the Maricopa County Bar Association.

Jay Zweig, immediate past president of the Maricopa County Bar Association praises Davis’ appointment. “Davis has demonstrated leadership skills, dedication to access to justice in our community and a thoughtful, judicial demeanor. We are fortunate that individuals like him are motivated to serve as judges. This is another of many examples of how the merit selection process for judges works for the people of Arizona.”

Flores brings a diverse legal background to the bench. Most of her legal career was spent in the public sector. She served as counsel for the governor prior to the Napolitano administration, was the state’s Elections director, worked as an assistant attorney general, specializing in civil law and had been a public defender for the City of Phoenix. She also had been a consultant to the Arizona Health Care Cost Containment System. Her first assignment as a Superior Court judge is with family court.

Although their investiture dates are still to be determined, there will be a flurry of ceremonial swearing-in events in little over a one-month period for five new judges and five new commissioners who have already donned their judicial robes and taken the bench. The ceremony dates are Jan. 27, Feb. 3, 6, 10, 14 and 28.

The location of all of the investiture ceremonies, which begin at 12:30 p.m., is at the Maricopa County Board of Supervisors Auditorium, located at 205 W. Jefferson (the round building in front of the Central Court Building).

Judge Kristen Hoffman kicked off the latest round of investitures with her ceremony on Fri., Jan. 27. Her judicial appointment followed four years of service as a court commissioner in family and criminal court departments. Her total service to the court started in 1997, having worked as a juvenile court hearing officer, pro tem judge and pro tem commissioner for family and juvenile court. Her judgeship fills the newly created court Division 92. Her assignment is with the court’s civil department at the downtown Phoenix court complex.

Judge Timothy Ryan, who also is assigned to the civil department in downtown Phoenix, celebrates his investiture on Fri., Feb. 3. His career in law included a three-year stint as a deputy public defender, and four years as a deputy county attorney in the family violence bureau and homicide bureau. He is a former partner with the Phoenix law firm of Begam, Lewis, Marks and Wolfe, where he specialized in personal injury, trial and appellate practice.

He was appointed to fill the vacancy created by the retirement of Judge Penny Willrich. Ryan is co-chairman of the Maricopa County Bar Association’s Bench Bar Relations Committee, which focuses on promoting improved understanding and professional conduct between members of the bench and bar.

Judge John Hannah’s investiture ceremony is set for Fri., Feb. 10. A specialist in criminal law, he practiced criminal defense as a member of Phoenix law firm of Hoidal & Hannah. He also practiced with the law firm of Meyer, Hendricks, Victor, Osborn & Male don and spent seven years as an assistant federal public defender. At the start of his legal career, Hannah served as a law clerk to Judge William C. Canby Jr. of the Ninth Circuit Court of Appeals. He is assigned to juvenile court at the Durango Juvenile Court Center. He fills the vacancy from the retirement of prominent Irish lawyers, started the Irish Open about 20 years ago, an annual golf tournament for their local Irish friends and wannabe Irishmen. It was held each St. Patrick’s Day and was always lots of good fun and laughs.”

U.S. Attorney Paul K. Charlton, in a message to his staff, said he felt fortunate to have O’Melia come to his office when he left the bench.

“Mike was a highly respected lawyer and jurist. He served 20 years as a Superior Court judge where he consistently received high marks on judicial performance reviews and acted as chairman of the Arizona Trial College,” Charlton said. “While here, Mike showed an enthusiasm and energy that were the markers of a prosecutor with a great future. Mike would surely have had a career here to have matched his stellar time on the bench.”

O’Melia joined the bench in 1984 and served on criminal, family and civil case assignments during his tenure. His destiny to become a lawyer was well founded in family history.

After obtaining his undergraduate degree from the University of Wisconsin in 1963, he received his law degree from Marquette University in 1968 and returned to Rhinelander, Wisconsin to join his grandfather, father and two uncles in the family law practice.

He was admitted to the Arizona State Bar in 1972 and practiced with the firm of Landermar, Began & Lewis until 1980, specializing in family and personal injury law. Between 1981 and 1984, when he became a judge, he was a sole practitioner.

He served as a faculty member of the Arizona College of Trial Advocacy since 1986, serving as chairman for a one-year term. The college focuses on teaching lawyers how to improve their trial practice skills. He also served as a member of the board of directors of the Arizona Bar Foundation and served on numerous training panels for the State Bar of Arizona and the Maricopa County Bar Association.

O’Melia is survived by his wife, Betty, five daughters, and 10 grandchildren.

Funeral services were held on Sat., Jan. 28, at Saint Francis Xavier Catholic Faith Community, adjacent to the Brophy/Xavier campus in Phoenix.

**Transaction Associate**

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**BOB ROSEPINK AND DAVID ESTES ARE ONLY A YEAR LATE IN PROUDLY ANNOUNCING THAT KATHRYN A. BRADLEY HAS BECOME A PARTNER IN THE LAW FIRM OF ROSEPINK & ESTES, P.L.L.C.**
The featured expert this month is Robert A. Gardner, CPP, a board certified security management professional and multi-state licensed private investigator. With more than 35 years of experience, Gardner provides security related consulting and investigation services to both public and private sector clients. He also serves as a forensic security consultant and expert witness.

Gardner offers suggestions for effectively selecting and utilizing qualified security experts both inside and outside the courtroom.

**How can a security expert help me? I don't handle security-related litigation.**

It’s true that security experts are most often retained for litigation. Expert opinions on issues of crime foreseeability, security adequacy, and security standards and practices can make or break a case. As such both plaintiff and defense attorneys are constantly in search of qualified security experts. But while the attorney who prevails for a client in litigation may be appreciated, the attorney that can keep a client out of litigation is a true hero.

Recommend that your clients retain a security expert to assess security adequacy and needs before something bad happens. This proactive approach increases your clients’ level of security and reduces their liability exposure. Your clients rely on you to protect them. Be proactive; be a hero.

Regardless of the focus of your practice, there may be a place for a qualified security expert in your legal tool kit. Consider making these suggestions to your clients:

- Have a qualified security expert conduct periodic surveys of your clients’ property, their management practices and their policies and procedures. This will identify security weaknesses before they create a problem. Include both business and residential locations.
- Before moving to a new business or residential location or committing to any real estate purchase or lease, have a qualified security expert evaluate the safety of the surrounding area and the physical security characteristics of the property.
- If security vendors such as alarm companies or guard services are used, have an independent qualified security expert evaluate their application and periodically audit their effectiveness. An independent qualified security expert should also perform a technical review of all security related bids and contracts.
- In employment situations, have a qualified security expert review policies and practices with regard to employee selection and screening, employee honesty, and workplace violence prevention and response.
- If your client is a public figure, celebrity or senior business executive, have a qualified security expert conduct periodic threat assessments and assist in developing a protection plan for the client, the client’s family and his home.

The above list is not exhaustive of the areas in which a qualified security consultant can help you protect your client’s interests but it provides a starting point.

**Is my security expert qualified?**

The security profession is a collection of specialties. While there are basic concepts common to all, each specialty requires its own unique blend of training and experience. Unfortunately, many so-called security experts claim almost universal expertise and often make claims that their documented training and experience can’t support. Look for the following in a qualified security expert:

- **Professionalism**: Membership in associations such as ASIS International and the International Association of Professional Security Consultants is an indicator of professionalism. Certifications such as the Certified Protection Professional (CPP) or Physical Security Professional (PSP) designation are also indicators; as are professional licenses, provided that they relate directly to your issue.
- **Issue Specific Training and Experience**: Regardless of their academic education, a qualified security expert must have advanced technical training and extensive hands-on work experience dealing with your specific security issue. Avoid the common mistake of automatically equating law enforcement experience with security expertise. Unless assigned to a special security function, most law enforcement personnel have little or no qualifying training or experience in the security disciplines.
- **Communication Skills**: Knowledge is useless if the expert can’t convey it clearly and intelligently both verbally and in writing.

Robert A. Gardner, CPP can be reached at (800) 327-3585 or via email at cpp@crimewise.com. His website address is www.crimewise.com.

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**HARRIS, PALUMBO, POWERS & CUNNINGHAM, P.L.L.C.**

IS PLEASED TO ANNOUNCE THAT

Tonya K. MacBeth

HAS JOINED THE FIRM AS AN ASSOCIATE

Ms. MacBeth will concentrate on the firm’s personal injury, wrongful death and medical negligence practice.

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Internet: hppc@hppc-law.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, 303 E. Palm Lane, Phoenix, unless noted otherwise. Other frequent venues include the University Club, 39 E. Monte Vista, Phoenix, Arizona State University Downtown (ASUD), 502 E. Monroe, Phoenix; and the Arizona Club, 38th floor, 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.

### February 2006

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<td>7</td>
<td>Barristers Ball Meeting (TBD), 5:30 p.m.</td>
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**Same-day CLE registrations/payments, $15 additional.**

- Family Law Meeting (Fresh Start), 5:30 p.m.
- Construction Law Section Meeting (A), noon
- CLA Review Course (A), 9 a.m.
- Barristers Ball Meeting (TBD), 5:30 p.m.
- MCBA EC Meeting (A), 7:30 a.m.
- YLD Board Meeting (A), noon
- Paralegal Board Meeting (A), 5:30 p.m.
- LRS Committee Meeting (A), noon
- Corporate Counsel Board Meeting (A), 4:30 p.m.
- Criminal Law Section Meeting (B), 5:30 p.m.
- EP Probate/Trust Board Meeting (A), 7:30 a.m.
- Task Force Brown Bag (A), noon
- CLA Review Course (A), 9 a.m.
- Minority & Women Task Force Meeting (A), noon
- Employment Law Section Meeting (A) 11:30 a.m.
- Litigation Meeting (B), 5:30 p.m.
- Barristers Ball (TBD), 5:30 p.m.

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Mastering the Mysterious Semicolon

It is a mystery why many legal writers do not use the semicolon in their writing. When asked, many writers usually reply with one of two explanations: (1) they do not know how to use a semicolon, or (2) they were told at one time that semicolons were not proper in formal writing. Richard Wydick, in his book *Plain English for Lawyers*, summed up these explanations as follows:

Some writers put semicolons and wild mushrooms in the same category; some are nice and some are not, and since it is hard to tell the difference, they should all be avoided.

If legal writers avoid using the semicolon, however, they are missing a powerful punctuation tool, especially for persuasive writing.

There are two general uses for semicolons: (1) joining independent clauses and (2) separating items in a complicated list. First, semicolons can be used to join two clauses that could each be a separate sentence in the document (independent clauses). Generally speaking, each clause must have a subject (an actor) and a verb (what the actor is doing), and the two clauses should either be closely related in subject or separated by transitional words (however, therefore, in fact, for example, moreover, etc.). If the clauses do not meet either criteria, it is best to leave the clauses as two sentences separated by a period or to use the more common method of joining independent clauses with a comma and conjunction (“and”, “for” etc.). An easy rule to remember is that the semicolon takes the place of a comma and a conjunction. Following are two good uses of the semicolon:

Plaintiff’s counsel asked for a continuation; the extra time gave her time to locate the key witness.

Plaintiff’s counsel failed to ask the defense counsel for her permission; in truth, the defense counsel had no objection.

Second, semicolons should be used to separate a series of items if that series is particularly long or if it already contains commas. The following example shows how the semicolon helps the reader decipher a complicated series:

I interviewed the following people: Greg Jones, the driver of the white sedan; Sandy Dryer, the store owner; Hank Keeley, the pedestrian in the crosswalk; and Elaine Williams, the 911 operator.

Thus, the mystery is solved. Using a semicolon lends variety to legal writing and keeps writing from reading choppily; indeed, flow is key to keeping a reader interested, especially in a persuasive document.

Text continued from page 4

his family back one day.

And it did. He and his family went back to live in Mexico City for four years, during which time he worked at two law firms.

They returned to Phoenix four years ago and Patterson continues an active cross-border practice.

Full plate

To say Patterson takes full advantage of all the legal community has to offer is an understatement.

In addition to being the current president of the Scottsdale Bar Association, he is a member-at-large of the Maricopa County Bar Association Board of Directors and serves on the board of the State Bar Securities Regulation Section. He also is a member of the Arizona Department of Real Estate’s Cross-Border Transactions Committee.

He was the 2003 Chairman of the Maricopa County Bar Association’s International Law Section.

Oh, and he is a member of the Arizona International Lawyers Group, the Governor’s Arizona-Mexico Commission, the Phoenix Committee on Foreign Relations and the Alzheimer Association’s Greater Phoenix Regional Leadership Council.

“I think attorneys in the Phoenix area are spoiled with an amazing group of sister bar associations and legal community options that provide great services to both them and the community.”

A perfect match

As Scottsdale Bar’s president, Patterson appreciates how the organization and the Maricopa Bar Association complement one another.

“The two bars recently co-sponsored a seminar in which MCBA did all the legwork and details and we provided the content.”

MCBA increases Scottsdale Bar’s membership through its “add-on” options to its application. In turn, Scottsdale Bar promotes, and a number of its members are active in, the MCBA Lawyer Referral Service.

Justice for all

Patterson thinks the Lawyer Referral Service is dynamic and an essential service the Valley needs.

“It is critical for the bar to keep this ‘back door’ open to people who aren’t sure that they can afford a lawyer.”

Sandra Day O’Connor came to speak to my law school class at ASU and told us that most of us could not afford an attorney if we needed one, and that if average Americans do not have access to legal counsel, then lack of access to justice would defeat the principles of justice we believe in.”

The speech impressed on Patterson the need to do pro bono work generally, but it also gives him a good reason to support the MCBA Lawyer Referral Service. “It helps people get a relatively inexpensive quick evaluation of their legal matter.”

Power of two

It is no secret that Patterson is driven most by working in a team setting.

“It motivates me to be at a firm where I can complement the talents of the other bright women and men around me and give the client a synergy result that is better than the sum of our individual strengths.”

He hopes his real success is still in the future but says if success exists at all, it is that he still has a family and a few true friends that love him.

Life partners

Patterson has many ways to balance out his thriving legal career. “I write poetry and songs to play on the guitar, mostly for my wife and kids.”

He also has become an athlete of sorts on the last few years.

“Two years ago, I watched my wife cross the finish line at her first marathon. I cried. I had no idea how far 26.2 miles was until that day, and couldn’t believe she had done it and done it so well.”

In the next year, with the help of his wife, Patterson ran two marathons of his own. “I am grateful to my wife for teaching me that we can tackle new challenges—even after 40.”

Down the road

Five years shouldn’t change much for Patterson.

“I hope that the coming years provide new and interesting challenges in practice. I hope that I can be a good mentor to the new attorneys in our firm so that they don’t have to repeat all of the stupid mistakes I’ve made along the way.”

And perhaps most importantly, Patterson will be forming many more mutually beneficial relationships.
Law Student Leads Drafting of Original Arizona Rules of Civil Procedure

At a little after 11 a.m. on Saturday morning, 25-year-old Leon S. Jacobs followed Governor George W. P. Hunt on a 15-block stroll from the Ford Hotel, at the corner of Second Avenue and Washington, to the Capitol.

A few minutes earlier an expectant crowd cheered news that a reluctant President William H. Taft had finally signed Arizona’s statehood proclamation. (February 14, 1912)

Jacobs joined the other newly elected members of Arizona’s first state legislature in a triumphant procession behind “King George” to the statehouse.

At noon, Hunt, a former waiter in a Globe restaurant, was sworn in by Chief Justice Alfred Franklin. Later, Jacobs, the youngest member of the new legislature, would also take his oath of office.

Hometown boy makes good
Leon Jacobs was a hometown boy—born in Phoenix in 1886, he attended public schools and graduated from Phoenix Union High School and then from Lamon Business College.

Jacobs attributed his election to the first legislature to the fact that the voters never got to see or hear him. Throughout the campaign and until the election was over, Jacobs was with his father, a prominent Jewish merchant, who had traveled to New York for eye surgery. During his term in the Arizona House of Representatives, Jacobs was a law student in the offices of J. M. Burnett and Judge Frank H. Lyman. By the end of his term in 1914, Jacobs was admitted to the bar.

At the time of his death in 1982, Jacobs was the last survivor of the momentous first Legislature, and still was a member of the Maricopa County Bar Association, practicing law into his 90s.

Revising the code
The young law student was assigned the important chairmanship of the Code Revision Committee of the House. As chair of this committee, Jacobs worked with Code Commissioner Samuel L. Pattee to bring order to the new state’s laws, including Arizona’s Rules of Civil Procedure.

It was reported that the “state laws are in many cases conflicting and in some cases not quite intelligible,” due to the grafting of new statutes onto the Territorial Code adopted in 1903.

Pattee, primarily responsible for the actual code drafting, was a Pima County lawyer who had been district attorney of Yavapai County. He was a good friend of Governor Hunt and soon was appointed by the governor to be a Superior Court judge for Pima County.

Pattee is remembered for presiding over two cases that continue to be controversial nearly a century later; one involving “the law of necessity” in justifying vigilante action in the Bisbee deportation case, and another involving strained racial definitions to annul a marriage and deny spousal support based on Arizona’s anti-miscegenation law.

When Governor Hunt called for the Second Special Session of the First State Legislature on February 3, 1913, revisions to the state code were a top priority.

The governor’s call for special session included 75 propositions (the call had to specifically address every matter that would be taken up by the legislature) and was characterized at the time as the “longest that has been ever sent to any deliberative body in the history of the United States.”

Mercifully, the governor determined at the last minute not to read his lengthy speech to the joint session of the legislature that morning and the formal authority for the lawmakers to undertake their difficult and wide-ranging work was transmitted to them in writing. The legislators responded with a resolution of thanks for the governor’s decision not to address them in person.

Social diversions
It is likely that a few of the lawmakers that morning were still recuperating from what the local “upper crust” considered the social event of the year. The Phoenix Country Club’s Masked Ball, the night before, was a smashing success.

The gala masquerade was attended by harem girls, French maids, Turks in turbans and robes, and cowboys. Miss Ruth Ann Ainsworth’s costume was widely heralded as the most original – she danced the night away as a bottle of Anheuser-Busch beer. However, it is unlikely that Ainsworth’s costume permitted her to dance the Turkey Trot, Honey Bug or Arizona Aztec.

The country club, along with the Woman’s Club and the local DAR chapter, had recently denounced these “rag” dances as one of the greatest menaces of the age.

Alternatively, a popular diversion for the political set that week was the appearance of the legendary comedic actor William H. Crane in his role as Senator Larkin in the “The Senator Keeps House.”

Crane was making his first trip to Phoenix in his more than 50-year career on the stage. His appearance at the Elks Theatre, at 352 W. Washington, was a critical and financial success. Patrons paid $1 to $1.50 for seats and the play was booked for an additional performance. For the slightly less highbrow politicos, the Coliseum, on the southwest corner of Monroe and First Street, presented Duke, “The Posing Athlete, in the Postures of Ancient and Modern Statuary.”

April fools

In what might be considered a most providential bit of legislative scheduling, S.B. 90, Arizona’s new Rules of Civil Procedure, was signed by the Governor on April 1, 1913.

The new rules were a compilation of rules from various sources scattered throughout the 1903 Code and rules initially established for the Territorial Supreme Court in December, 1865. As the earlier code had done, the new rules in Title VI, Section 331 authorized the Supreme Court to make and adopt rules of practice for the Superior Courts, and the Superior Courts were also authorized in Section 348 to establish local rules of practice.

The rules
For the next 20 years, with minor changes, the rules proposed by the committee led by a law student from Phoenix and adopted that spring of 1913 guided the practice of civil law in Arizona courts. In fact, no substantial revisions to the rules were made until 1940, when the Arizona Supreme Court issued completely revised rules based on the new Federal Rules of Civil Procedure.

The rules drafted by Pattee in early 1913 contain much that present day practitioners would find familiar. The rules describing complaints; the 20-day time to answer; determinations of proper venue; the need for some pleadings to be verified; trial procedures; and the awarding of costs to successful parties are similar, if not identical to current rules.

There are differences, however, that mod— See History page 15

The Phoenix office of Hinshaw & Culbertson LLP, a leading national law firm, is seeking an Attorney with at least 5 years of civil litigation experience to join its growing practice. Courtroom and deposition experience required. This is an excellent opportunity for candidates seeking a high level of responsibility in a diverse and progressive law firm environment.

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email: bholohan@hinshawlaw.com
www.hinshawlaw.com

Only candidates contacted for an interview will receive a response. EOE.
Debra Winiarski joined Bryan Cave LLP as counsel in its commercial litigation and class and derivative actions client service groups. Winiarski (J.D., 1985, University of Wisconsin) focuses her practice on professional liability, insurance, securities, and other complex corporate cases.

Bryan Cave LLP also added seven associates to its Phoenix office: Daniel Fredenberg, Andrew Gleason, Kyle Hirsch, Eric Hull, Maribeth Klein, Michael Latham and Landon Loveland.

Fredenberg (J.D., 1999, Willamette University) practices in the commercial litigation client service group.

Gleason (J.D., 2000, George Washington University) practices in the real estate construction and project finance client service group.

Hirsch (J.D., 2005, ASU) practices in the labor and employment and commercial litigation client service groups.

Hull (J.D., 2005, Iowa University) practices in the class and derivative actions and commercial litigation client service groups.

Klein (J.D., 2005, University of Minnesota) practices in the environmental client service group.

Latham (J.D., 2005, Brigham Young University) practices in the corporate finance and securities; technology, entrepreneurial & commercial practice; and transactions client service groups.

Loveland (J.D., 2005, University of Minnesota) practices in the class and derivative actions and commercial litigation client service groups.

Susan Dana-Koby has joined Burch & Cracchiolo, PA, as an associate attorney.

Dana-Koby (J.D., 1999, Western State University) will practice in a variety of areas, with a focus on construction defect law and insurance coverage litigation.

Raj Gangadean has been elected partner at Perkins Coie Brown & Bain.

Gangadean (J.D., 1998, Stanford University) is a corporate and transactional attorney at the firm’s Phoenix office.

Michelle Morris has been promoted to counsel at Perkins Coie Brown & Bain.

Morris (J.D., 1998, ASU) concentrates her practice in trademark counseling, prosecution and enforcement as well as corporate and transactional law.

In addition, ten associates have recently joined Perkins Coie Brown & Bain: Colin P. Ahler (J.D., 2005, Harvard University), Patricia A. Alexander (J.D., 2005, ASU), Rhonda L. Barnes (J.D., 2004, ASU), Jordan T. Ellet (J.D., 2005, University of Pennsylvania), Rhett B. Larson (J.D., 2005, University of Chicago), Lauren J. Lowe (J.D., 2005, UA), Aaron H. Matz (J.D., 2005, ASU), Steven J. Monde (J.D., 2005, University of Illinois), Craig A. Morgan (J.D., 2004, Syracuse University), and Liana W. Spendlove (J.D., 2005, Brigham Young University).

Four new attorneys recently joined Stonson Morrison Hecker LLP:

Matthew B. Meaker, M. Elizabeth Nillen, Heidi Nunn-Gilman, and John T. White.

Meaker (J.D., 2003, UA) is an associate in the business litigation division.

Nillen (J.D., 1997, University of Wisconsin) is of counsel in the employment and labor law and employee benefits division.

Nunn-Gilman (J.D., 2005, Lewis & Clark College) is an associate in the employment and labor law and employee benefits division.

White (J.D., 2002, ASU) is an associate in the business litigation division.

J. Blake Mayes has joined Galbut & Hunter, PC, as an associate.

Mayes (J.D., 2005, UA) concentrates his practice in commercial litigation and business & commercial transactions.

Seven associates have joined Fenimore Craig, PC.: James Bond, Pam Colquette, Gregory Monaco, Nicole Siele, James Wright, Matt Henriksen, and Debra Polly.

Bond (J.D., 2005, University of San Diego), Colquette (J.D., 2005, University of Southern California), Monaco (J.D., 2005, University of Iowa), Siele (J.D., 2005, University of Notre Dame) and Wright (J.D., 2005, Harvard Law School) practice in real estate.

Henriksen (J.D., 2005, S.J. Quinney University of Utah) practices in business and finance.

Polly (J.D., 2005, ASU) practices in estate planning and probate.

Mike Bielecki has joined Lewis & Roca as a principal.

Bielecki (B.A., ASU) will concentrate his practice with the firm’s government relations and Indian affairs groups. Prior to joining Lewis and Roca, Bielecki served as Deputy Chief of Staff for Phoenix Mayor Phil Gordon.
Court Watch
continued from page 1

She had consumed alcohol with him in the months before the shooting, and she knew that Timothy had once accidentally shot himself with a gun. Timothy shot Zachary shortly after Juanita asked him to take the gun. While drunk, Timothy had pointed the gun at Zachary and pulled the trigger, thinking that it was unloaded. He was wrong.

Timothy pleaded guilty to manslaughter and was sentenced to prison. Intelligence and proficiency tests revealed that he had below-average intelligence. Psychologists determined that he also had brain damage and a cognitive disorder. Juanita informed the sentencing judge that she had used alcohol while pregnant with Timothy and that he had suffered head trauma in a serious car accident. He also had had numerous motorcycle accidents. Juanita also said that Timothy had suffered from learning difficulties throughout his school career and had been put into special-education classes. She knew that he had abused alcohol since the age of 14.

Mother knows best?

Zachary’s parents, Kelly Tissicino and Kirk Nielsen, sued Juanita for negligent entrustment. Juanita argued that one cannot negligently entrust property to its lawful owner. The trial court agreed and also ruled that the plaintiffs had not presented enough facts to demonstrate that Juanita knew or should have known that providing the gun to Timothy posed an unreasonable risk of harm to others. The plaintiffs appealed, and the Court of Appeals reversed.

Judge Peter J. Eckerstrom first held ownership was not a necessary element of negligent entrustment. He applied § 390 of the Restatement of Torts, which imposes liability for negligent entrustment on “[o]ne who supplies...a chattel for the use of another whom the supplier knows or has reason to know to be likely because of his youth, inexperience, or otherwise, to use in a manner involving unreasonable risk of physical harm to himself and others.” It was not crucial, Eckerstrom held, for the defendant to own the item.

“Although Arizona courts have not yet squarely addressed this issue,” he wrote. “[T]here are cases that suggest a defendant’s ownership of a chattel is not a prerequisite to liability for negligent entrustment.”

Property control

The crucial element, Eckerstrom concluded, is the right to control the property. “A majority of other jurisdictions have defined the right to control the chattel as the essential element of a negligent entrustment claim, rather than ownership.” Eckerstrom and the court added Arizona to the majority.

Eckerstrom also concluded that there was enough evidence to allow a jury to conclude that Juanita had the right to control the gun. Don, her husband, had owned the gun and had given it to Timothy, but had taken it back, saying “I am going to hang onto it because you let your brother go into your room and take it.”

Don had kept the weapon for nearly 20 years without Timothy claiming it for himself.

“From these facts,” Eckerstrom wrote, “a jury could infer that Timothy had abandoned his ownership interest in it.” But even if Timothy still technically owned the gun, Eckerstrom continued, “an owner forfeits the legal right to regain possession and control of personal property from one who adversely controls it after the passage of two years.”

Eckerstrom rejected Juanita’s argument that Don had merely become the gun’s bailee, concluding that a jury could find otherwise. “Don’s reassertion of control over the gun, his statement implying that he was the arbiter of who could possess it, and Timothy’s arguable acquiescence for 20 years, all contradict Juanita’s theory that Don was holding the gun in trust for Timothy’s use.”

Eckerstrom concluded that “a jury reasonably could conclude that Juanita’s continued possession of the gun after her husband had moved to a nursing home, her act of hiding it in a typewriter case, and her ultimate decision to give it to Timothy for reasons of her own all indicated that the gun had been under her control when she had entrusted it to Timothy.”

Negligent awareness

Eckerstrom next turned to the issue of negligence. The trial court ruled that no reasonable jury could conclude that Juanita “knew or should have known that providing the firearm to her adult son presented an unreasonable risk of harm to Zachary.” To hold for the plaintiffs, the trial judge felt, he would have to conclude “that the law requires the owner of a firearm to thoroughly examine and consider the constellation of characteristics of an apparently competent person who may potentially present an unreasonable risk of harm to others.”

“While this may be a salutary policy,” the trial judge concluded, “it is not yet the policy or the law of the state of Arizona.”

Eckerstrom disagreed. He noted that the restatement specifically requires the actor “to consider the characteristics of the entrustee, such as youth, inexperience, or otherwise” in evaluating whether the latter might use the chattel in a manner that would pose an unreasonable risk of physical harm to himself and others.”

“Timothy’s ‘constellation of characteristics,’” Eckerstrom continued, which included “alcohol abuse, mental impairment including cognitive dysfunction,” and a prior accident with a gun—and Juanita’s undisputed awareness of them, together created a genuine issue of material fact on the question of whether Juanita should have known that an unreasonable risk of physical harm would be created if she gave Timothy the gun.”

Conscious liability

Finally, Eckerstrom rejected Juanita’s argument that any negligence on her part was not the proximate cause of Zachary’s death because Timothy’s reckless act was a superseding cause. He noted that liability is erased only when the intervening act was unforeseeable and extraordinary. “[A] jury,” he held, “could reasonably conclude that Timothy’s accidental shooting of Zachary was foreseeable to Juanita, given her awareness that he was mentally impaired, abused alcohol, and had shot himself accidentally on a previous occasion.”

Joining in the opinion were Judges Joseph W. Howard and J. William Brammer, Jr.

Under Arizona’s implied-consent law, drivers arrested for suspicion of driving under the influence of alcohol who refuse to take a blood-alcohol test can have their driver’s license suspended. A recent opinion of Division One of the Court of Appeals expanded the list of consequences attaching to a refusal to cooperate in a DUI investigation. State ex rel. Verburg v. Jones, 211 Ariz. 413, 121 P3d 1283 (App. 2005)

Refusing evidence

A police officer pulled over Andrew Phipps and began a DUI investigation. When the officer began to administer the horizontal gaze nystagmus test, Phipps stopped him and asked if it was a field sobriety test. When the officer responded that it was, Phipps said, “Well, then I don’t want to take any field sobriety test.”

At trial, the court allowed the prosecutor to elicit evidence of Phipps’ refusal. After he was convicted of driving while impaired, Phipps appealed to the Superior Court, arguing that allowing the evidence was erroneous. The Superior Court agreed, and the prosecutor filed a special action in the Court of Appeals.

The Court of Appeals, in an opinion by Judge Jefferson L. Lankford, held that the evidence was admissible. Lankford acknowledged that so holding “runs counter to a popularly held notion that a suspect can refuse field sobriety tests.” “If that idea were correct,” he wrote, “if a suspect has a legal right to refuse field sobriety tests—then evidence of the refusal would be inadmissible because it would unfairly penalize the exercise of the constitutional right to be free from unreasonable searches and seizures.”

Rightful power

But Lankford rejected the popular notion, holding that while motorists have the power to refuse, they do not have the right to refuse. “As with breath tests, which also require the suspect’s active cooperation, the suspect has the physical power but not the legal right to refuse field sobriety tests.”

“Our holding,” Lankford wrote, “rests on the proposition that, when supported by reasonable suspicion that a DUI offense has been committed, the administration of a field sobriety test is a lawful search.” It follows that “the suspect has no legal right to refuse it or interfere with it,” and “[i]f the suspect has no right to refuse, then evidence of his refusal is admissible.”

Joining Lankford in reinstating Phipps’ conviction were Judges Donn Kesler and James B. Sult.

Write a Letter!

We welcome letters to the editor. Letters generally should be no more than 300 words long. Maricopa Lawyer reserves the right to edit all letters for length.

Letters to the editor can be e-mailed to kbrieske@mchabar.org or mailed to:
Editor, Maricopa Lawyer, Maricopa County Bar Association, 303 E. Palm Lane, Phoenix, AZ 85004.
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Chief Justice John Roberts issues first year-end report

In his 2005 year-end report, United States Supreme Court Chief Justice John Roberts depicted the federal judiciary as “strong,” and suggested that Supreme Court justices taking the judicial oath today share the “same commitment to uphold the Constitution and to fulfill the Framers’ vision of [the] judicial branch” as had Chief Justice John Marshall more than 200 years ago. The Supreme Court justice’s first year-end report focuses on the importance of an independent judiciary.

Roberts, citing the previous year’s attacks on judges, judicial workers, and their families, underscored the “need for all branches of government [] to improve safety and security for judges and judicial employees, both within and outside courthouses” so that American judges “never face violent attack for carrying out their duties.”

Although Roberts said that the compensation of judges alone cannot guarantee judicial independence, he emphasized that a strong and independent judiciary is a trust whose values are as easily lost through neglect as direct attack. Roberts reported that in recent years, the budget for the federal judiciary, along with long appropriations processes, have taken a toll on court operations, and suggested that the failure to raise judicial pay is an even more direct threat to judicial independence. “If Congress gave judges a raise of 30 percent tomorrow,” wrote the chief justice, “judges would—after adjusting for inflation—be making about what judges made in 1969.”

Roberts called on the other two branches of government to take action to provide the federal judiciary with an ample budget and compensation so that the “men and women of the federal judiciary will faithfully discharge their heavy responsibility of ensuring equal justice under the law.”

Alabama Supreme Court justice chastises colleagues for condoning judicial activism

In a New Years Day op-ed piece in The Birmingham News, Justice Tom Parker of the Alabama Supreme Court accused his fellow justices of becoming accomplices to judicial activism when they issued an opinion that released a convicted murderer from death row because he was a minor at the time of his crime. Although Parker had to recuse himself from deciding the case against convicted murderer Renaldo Adams, he charged his colleagues with giving in to “unconstitutional activism” by citing Roper v. Simmons, a case decided by the United States Supreme Court last year that held it unconstitutional to execute convicted murderers who were juveniles at the time of their crime.

Parker wrote that “the proper response to such blatant judicial tyranny would have been for the Alabama Supreme Court to decline to follow Roper in the Adams case.” “By keeping Adams on Death Row, our Supreme Court would have defended both the U.S. Constitution and Alabama law (thereby upholding their judicial oaths of office) and, at the same time, provided an occasion for the U.S. Supreme Court, with at least two new members, to reconsider the Roper decision.”

Noting that “State Supreme Courts may decline to follow bad U.S. Supreme Court precedents because those decisions bind only the parties to a particular case,” Parker wrote that “if the new John Roberts-led court had taken the case, it could very well have overturned Roper.” “Even if, in the worst-case scenario,” wrote Parker, “the Roberts court had…failed to overturn Roper, the Alabama Supreme Court would have been none the worse for standing up against judicial activism.”

2006 Barristers Ball to Benefit Arizonans for Children

The Maricopa County Bar Association’s Young Lawyers Division is once again hard at work planning its annual Barristers Ball. This year, it will be held Saturday, March 4, at the Phoenixian. As in years past, the Ball will include a silent auction to benefit a local charity. This year’s beneficiary is Arizonans for Children, Inc.

The organization, a 501(c)(3) non-profit, exists to facilitate opportunities and provide effective solutions to alleviate hardships and improve the fragile lives of children in foster care. At present there are about 10,000 children in foster care in Arizona and about 5,000 of them are in Maricopa County.

Working exclusively with abused, neglected and abandoned children, Arizonans for Children’s goal is to improve the overall emotional development and physical well-being of the whole child while he is in foster care. It is commonly believed that once neglected and maltreated children are removed from their abusive environment, life becomes better for them and they can look forward to a “normal” childhood.

This is not always the case. When a child goes into foster care, a whole new world of problems opens up for him as he often finds himself helpless, isolated from his family and siblings and without access to pictures, information and records of his past.

This challenging journey through foster care often results in multiple moves that further impact the child’s healthy development through family instability, emotional trauma and inconsistent care giving. AFC is very sensitive to the day-to-day needs of children in protective custody and has developed several programs to help stabilize and bring comfort to their lives.

In January 2003, Arizonans for Children opened the first Children’s Visitation Center in downtown Phoenix. This center, which is the foundation for all of the organization’s programs, provides a safe home-like environment where supervised family visitations and bonding activities can take place. The facilities include of-street parking, outside fenced play ground, a gym, dance studio, computer room, tutoring rooms, instruction and game rooms as well as a kitchen, toddler room and nursery and a 1,800 square foot area that was converted into a warm and homey setting.

Supervised visits between birth parents and their children are required by the court to evaluate whether a parent has successfully incorporated the parenting lessons and counseling sessions provided by the state in its efforts to reunify the family and to determine parental suitability for the possible return of the children to their home.

But until this first center opened, there were no facilities in Arizona dedicated to supporting these visits. Parental visits were previously conducted at Child Protection Services offices with caseworkers or parent aides supervising and observing the visits. The rooms were often small, windowless, and bleak. Furniture consisted of desks or conference tables and chairs. This artificial setting did not promote spontaneous, natural interaction between parent and child. The visitation center has changed this situation and its success is demonstrated by its phenomenal increased usage.

In its first year the center served 1,573 people. This increased to 6,803 individuals in 2004 and finally to 14,840 in 2005. Since its inception, Arizonans for Children has provided services to 23,216 individuals. Until mid-2005 this was all accomplished by volunteers, an outstanding example of what a few motivated people can achieve. Due to the intense community need and the success of the first center, the organization has opened a second visitation center in Peoria in January 2006.

In addition to operating the two centers, Arizonans for Children organizes many special events for these children such as Art Day, birthday and holiday parties, train park picnic, train ride to Wickenburg, and distributes free tickets to many other community events. Presently, the organization is beginning a new life book program, which provides the means to connect foster children to their history, thereby promoting a sense of identity, stability and attachment.

For more information, please contact Ball co-chairs Erin McGuinness at 480-429-3026 or Jeff Kay kendall at 602-530-8032. For a registration form, please see page 16.

Special to Maricopa Lawyer
History
continued from page 10
ern practitioners would find either idyllic fantasy or nightmarish. Service of process and papers could be made on opposing counsel by delivery to the lawyer’s office between 8 a.m. and 6 p.m., but if no one is in the office, the documents could be left outside the office in a conspicuous place or taken to the attorney’s residence. Pleadings and papers could be typed, printed or neatly handwritten; and had to have covers with the case number and other critical information listed. No page limits were imposed. Judges were required to render their decisions within 60 days.

Motion practice was severely limited. Parties were required to give opposing counsel notice of the filing of a motion three days before a scheduled hearing and written responses and replies were rare. Motions were heard on Law and Motion Day. In Gila County, the rules required Law and Motion Day to be Saturdays, commencing at 9:30 a.m. Motions were heard in chronological order, and trial calendar was called at 10 on Saturday morning. Filing fees for complaints were $10 and answers were $5. Normal court hours were 10 a.m. to 5 p.m. and, in Gila County at least, civil matters were not heard in July or August.

The 1913, Rules of Civil Procedure contained no provisions for summary judgment; had no guidelines or requirements for disclosure or discovery; did not mention the word sanctions and made no provision for fee-shift. According to the rules, court reporters were to be employed in all Superior Courts. Court reporter applicants were required to be examined by a committee of three members of the bar. Applicants had to be able to write at a rate of not less than one hundred fifty words per minute for five consecutive minutes, and immediately read back from the notes taken. Within 24 hours, applicants were required to deliver an accurate typewritten transcript to the examining committee. Reporters were required to take notes of all proceedings, except for argument of counsel.

By statute, in Maricopa County reporters earned $2,000 per year and $0.15 per page (plus $.05 per page for carbon copies). In contrast, the Superior Court judge in Maricopa County earned $4,000 per year for his services (half paid by county and half by state). Supreme Court justices were paid $5,000 per year.

A different world

Today’s protracted and combative discovery and tactical motion practice in civil cases were unfamiliar concepts when the early rules were drafted. Litigation rules facilitated achieving a decision, not compelling a settlement. Nowadays, most parties haven’t even exchanged disclosure statements in the time the 1913 courts expected completion of a civil case. Just perhaps, if given a choice, some civil litigants might opt for the practices and rules framed by Pattee and shepherded through the legislature by Leon Jacobs.

Updates from the Clerk’s Office

Each new year brings changes for all of us. I am enthusiastic about the changes and opportunities taking place in the Superior Court and with the clerks across the state. Being in a state of constant change, there are growing pains from time-to-time, but the Clerk’s Office is well-prepared and building on prior years of successes with technology. Below are a series of events taking place in Maricopa County that will bring direct or indirect changes to the clerk and your practice.

Judges named to e-filing pilot

In 2006, e-filing will continue to expand in general civil court. Four additional divisions will join the electronic filing pilot in Superior Court. Judges Dunevant, Hilliard, Katz, and Schneider will begin designating cases by minute entry to take part in the pilot. If your case is selected, you will receive a minute entry on the case indicating when e-filing will be available and when it will become mandatory. Only cases notified by minute entry of participation in the pilot are allowed to electronically file. The pilot will continue to expand into additional divisions until e-filing is available throughout the civil casetype. At the same time, the clerk and court will analyze the impact and planning implementation of e-filing in other casetypes. Pilots in those casetypes will take place throughout the year.

Minute entry drop boxes ended

The attorney minute entry drop boxes in the clerk’s distribution center were discontinued at the start of the year. Attorneys who were picking up their minute entries from the drop boxes will now receive them by regular mail, or may sign up to receive their minute entries electronically.

The clerk’s Minute Entry Electronic Distribution System (MEEDS) is one of the office’s earliest success stories with using technology to improve service. Over 3,300 attorneys in Maricopa County currently receive minute entries by email from the MEEDS process. MEEDS has proven to be a fast, reliable and efficient way for legal counsel to save time and improve communication in their cases at Superior Court. To sign up for electronic distribution of minute entries, a downloadable form is available online at the clerk’s Web site at http://www.clerkofcourt.maricopa.gov/faxondemand/111.pdf. You are also encouraged to contact the Clerk’s Office distribution center at (602) 506-7773 for more information on MEEDS.

Sensitive data form implemented

Effective January 1, 2006, Rule 43(G) of the Arizona Rules of Family Law Procedure was implemented. Before filing, this rule requires that sensitive data be omitted or otherwise redacted from any family court filing, unless specifically requested by the court. Sensitive data requested by the court must be on a sensitive data form, which the clerk maintains as a confidential record, not subject to public review.

Rule 43(G) was written in conjunction with pending Supreme Court Rule 123. The implementation of Rule 43(G) is being monitored and will assist a review committee in preparation of a report to the Supreme Court on the implementation of a sensitive data form in all casetypes. When amended Rule 123 is implemented, it will affect several filers in every casetype. More information will be printed in this column as it becomes available.

Orders of Assignment shall contain sensitive data, but are closed to the general public. In Maricopa County, the Clerk’s Office maintains electronic images of documents, and this rule allows the paper version of the sensitive data form to be destroyed. This is a significant change because attorneys and unrepresented parties must carefully monitor their documents prior to filing to ensure sensitive data is not inadvertently recorded in the public record. It should be noted that the Clerk’s Office will not inspect filings to ensure compliance, and the Clerk’s Office does not intend to reject documents based on this rule. A sensitive data form will be included with self-service center packets distributed by the trial courts.

New administrative offices

On December 8, Maricopa County held a “Topping-Out Ceremony” for the downtown Justice Center, where the final steel girder was placed on the top of the new justice center. The five-story building will house nine county departments, including the Clerk of the Superior Court’s administrative offices, and five justice courts. The facility is scheduled for completion in the fall of 2006.

New service at Northeast Court

The Clerk’s Office is now processing passport applications at the Northeast Regional Court Center. Within the complex, the Clerk’s Office provides a filing counter with six windows to serve customers. The Northeast Office will accept filings for civil, family, probate, and tax cases, but will not accept filings in juvenile or criminal cases. The Clerk’s Office is located within the Northeast Office at 18380 North 40th Street, Suite 120, Phoenix, Arizona 85032, just east of State Route 51 at the Union Hills exit. For additional information about clerk’s services at the Northeast Office, contact 602.506.3360.
### What's Missing?

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### Barristers Ball — Saturday, March 4, 2006 at The Phoenician
Benefitting: Arizonans for Children, Inc.

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