



Arizona Attorney is proud to provide a forum for members to voice their opinions. Please limit letters to 250 words. We reserve the right to edit for length, grammar, punctuation and clarity. All letters should be signed and sent to Arizona Attorney, 111 W. Monroe, Suite 1800, Phoenix, AZ 85003 or by e-mail to: Tim.Eigo@staff.azbar.org

Speaking Up for Diverse Voices

The reaction Jim Kloss had to the 100 Women and Minorities Dinner (Soundoff, *Arizona Attorney*, Dec. 2000) was the opposite of my reaction. I attended the dinner and found that it was a celebration of the Arizona Bar. By recognizing the achievements of women and minority attorneys, attendees at the dinner could not help but feel that they were part of a diverse group of professionals whose different contributions have enriched the state of Arizona and our own personal lives. Justice Sandra Day O'Connor delivered an intellectually challenging keynote address. In her decisions from the Supreme Court, Justice O'Connor has championed the same notions of race and gender neutrality that Mr. Kloss championed in his letter (see, e.g., *Adarand Constructors v. Peña*, 515 U.S. 200, 1995; *Richmond v. J.A. Croson Co.*, 488 U.S. 469, 1989; *Mississippi University for Women v. Hogan*, 458 U.S. 718, 1982; striking down affirmative race and gender classifications). Justice O'Connor's historical

presence at the dinner was a testament to the benefits of eliminating barriers for women and minorities in our practice. Her words at the dinner also served as a reminder not to take the idea of "separate voices" so far as to balkanize our communities. Far from dividing and demeaning by categorization, the dinner recognized the achievements of a State Bar that has remained unified as it has become more diverse.

Joel E. Sannes

The Trials of Arbitration

I was pleased to read in *Arizona Attorney* (Nov. 2000) the critique of Arizona's mandatory arbitration process by David Abney and Mark Lines. It is refreshing to see in writing what I have felt for a number of years. They are to be congratulated on their candor.

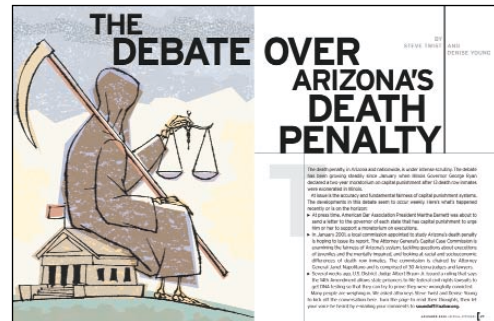
One issue that may be central and that was not developed in the article adequately is the fact that more often than not clients are astonished to learn of the mandatory arbitration rules. That process simply does not give litigants one of the facets of the judicial system they have learned to expect, namely, their "day in court." Judges administering this project will disagree with me and state that the system in fact does

give a litigant the satisfaction of knowing he or she had his or her day in court. That is not my experience, however.

I find clients are frustrated to know that they must pay to prepare for and present a "mini trial" within a time frame permitted by a volunteer or near-volunteer lawyer combined with the knowledge that the dissatisfied party is likely to appeal, necessitating yet a second trial. The other issue frustrating clients I have dealt with is the reality that the arbitrator, being randomly selected, may or may not have a background in the type of case being presented.

The suggestions made by Mr. Abney and Mr. Lines are appropriate and insightful. It will be interesting to see who is listening.

Arthur C. Atonna



Facts the Victim in Death Penalty Argument

Steve Twist's pro-death penalty article (*Arizona Attorney*, Nov. 2000) states that executions are needed to preserve the sanctity of human life. By this logic, the justice system should steal from the thief to protect the value of private property and rape the rapist to preserve the sanctity of bodily integrity. But the justice system doesn't inflict on the perpetrator the very behavior it seeks to expunge because doing so lowers the government to the criminal's level. Twist also says that if we don't execute convicted murderers they will continue to kill. This statement ignores the fact that non-executed convicted murderers spend life in prison rather than walk the streets.

Twist next cites an econometric study by Stephen Layson showing that each execution deters 18 murders. Layson's regression analysis rests on the discredited methods of Issac Ehrlich ("Each execution deters 8 murders"). Criminologists and the National Academy of Sciences have repudiated these conclusions. (Ronald Tabak, 83 *Cornell L. Rev.* 1431; see also Alan Fox, *Persistent Flaws in Econometric Studies of the Death Penalty: A Discussion of Layson's*



Findings, hearings on HR 2837 and HR 343, subcommittee on criminal justice of the House Committee on the Judiciary, 99 Cong., 1st and 2d sess. 334-347, 1985-1986). Layson himself has conceded that after methodological adjustments, the deterrent effect of capital punishment is “nonexistent” (House hearings, *supra*, at 312, testimony of Stephen Layson). The position contrary to deterrence is far more likely: The 12 states without the death penalty have substantially lower homicide rates than the 38 states with it (*New York Times*, Sept. 22, 2000, p. 1: “The homicide rate in states with the death penalty has been 48 to 101 percent higher than in states without the death penalty”).

Twist also states that no study has identified a single executed innocent person. Hugo Bedau identifies 23 of them (40 *Stan. L. Rev.* 21, 1987). Some of the 87 people recently spared from death rows because of innocence were within hours of execution. In a rejoinder to the Bedau article, authors Paul Cassel and Stephen Markman candidly admit that an effective death penalty entails tolerating the risk of executing some innocent people (41 *Stan. L. Rev.* 121, 1988).

*Rudolph J. Gerber
Peter J. O'Connor*

President's Message Appreciated ...

Regarding Kirk v. Karman's column (“I Blew It,” *Arizona Attorney*, Nov. 2000), down here in the second city I didn't hear much about our fearless leader's journey through the dung heap. I know, however, that an excess of hubris rarely helps any situation and, from that perspective, I appreciate President Karman's unadulterated apology. However, I hope no one loses sight of the fact that, in obtaining the result he bragged about, President Karman did his job! While successfully representing a killer may be nothing to brag about, the fact that everyone—guilty or innocent—has a right to competent counsel ought to be something we all brag about.

Mark Rubin

... But Black Mark Remains

Not only did the Bar President's mistake put a black mark on the image of Arizona attorneys, but the recent sentencing of Bobby Chouinard, the former Diamondbacks baseball player who put a gun to his wife's head yet got 12 months to be served three months at a time over four years, is a stain on the entire justice system in Arizona. Since when is the career of a male sports figure who has taken a gun to another person more important than the life and safety of the victim? Or is it because the person he took a gun to was his wife? How soon we forget the lessons of O.J. Simpson. There should be no doubt about the failure of our “justice” system to even layer a thin veneer of equality over their treatment of cases of violence against women. Women and their lives simply do not matter.

Dianne Post

**Attorney General,
Police Condemn Racial
Profiling**

PHOENIX—The State of Arizona issued its first proclamation condemning the practice of law enforcement targeting people based on skin color or ethnic background—known as **racial profiling**. At a historic press conference, Arizona Attorney General Janet Napolitano and law enforcement leaders from across the state pledged that the issue would become one of their top priorities. The plan set forth seeks to educate new and veteran police officers about the issue and to scrutinize police procedures to track its use; it does not set out disciplinary procedures for officers who fail to abide by the standards.



**EXECUTIONS RISE AS
CRIME FALLS, SAYS ABA**



WASHINGTON, DC—A report issued by the American Bar Association in December reported that the rate of executions in the United States increased 158 percent over the seven-year period from 1993 to 1999. The ABA Criminal Justice Section found that more than 3,500 prisoners have been sentenced to death since the reinstatement of

capital punishment; it found that African Americans are disproportionately represented among death row inmates. The ABA supports a moratorium on the use of the death penalty. The report, titled *State of Criminal Justice*, also pointed out that, in 1999, four states were responsible for nearly two thirds of all executions. The section found that the crime rate is at its lowest level since 1973. However, state prison expenditures almost doubled between 1990 and 1996 and more than tripled between 1984 and 1996.

BREAKING INTO THE BROKER'S WORLD



Real estate brokers and their relationships are the focus of a new book chapter by Bruce May, a real estate attorney at Quarles & Brady Streich Lang in Phoenix. The chapter, titled "Real Estate Brokers: Agreement and Conduct," appears in the third edition of the *Commercial Real Estate Transactions Handbook*, edited by Mark A. Senn (Aspen Publishers, 800-447-1717, Ext. 305). The chapter is aimed at the general practitioner or real estate lawyer who wants to learn more about relations among brokers, clients and lawyers.

And There Are No Late Return Fees

The ABA Center for Continuing Legal Education has made available **two training videos**. *Starting Out Right: Ethical Issues in Forming the Client Relationship* is a one-hour video covering issues such as conflicts, competence and confidentiality. It costs \$195. *Discovery in Employment Litigation* is a three-videotape program examining discovery and other techniques in a typical case. It costs \$245 (membership discounts on these videos and other products are available online at www.abanet.org/cle/ecl or by calling 800-285-2221).