

Fred Kay



Substantial Public Offering

MODERATED BY TIM EIGO
PHOTOGRAPHS BY
JOHN BECKETT

Long the home of excellent legal work under sometimes trying conditions, public lawyer careers come in a broad array of practice areas, including virtually every legal area imaginable. ARIZONA ATTORNEY recently sat down with some public lawyers with varying practices and levels of experience.



Tim Eigo: Welcome to another ARIZONA ATTORNEY roundtable. A large percentage of our State Bar membership works as public lawyers or in public interest careers. For that reason, we want to share with readers some of your views on your work—the satisfactions and the drawbacks.

Let's start with introductions and descriptions of your practice.

Patricia Madsen: I work for Community Legal Services in their central Phoenix office. I am in the Family Law Unit. I've been there since late 2001. Prior to that, I

worked for Southern Arizona Legal Aid in their Domestic Violence/Legal Advocacy Program that's also in Phoenix. I've been practicing since May of 1999.

Eigo: What kind of cases do you handle?

Madsen: Clients for Community Legal Services are low income, and we do have other priorities for case acceptance, which, for family law, includes domestic violence. It's mostly divorce, custody, paternity establishment sometimes, custody modification—the never-ending adjustments that need to be made. That's my practice.

PARTICIPANTS (L to R):

Margaret Lopez
Office of the Attorney General

Patricia Madsen
Community Legal Services

Moderator **Tim Eigo**

Fredric Kay
Federal Public Defender

Steve Heeley
Deputy General Counsel,
Gila River Indian Community



Fred Kay: I'm with the Federal Public Defender's Office, and we have an office in Tucson and in Phoenix; our headquarters is in Tucson because that's just where I happen to be. We have about 44 lawyers, and we represent people that are charged with crimes in federal court whenever they're entitled to a lawyer, and that's anytime that they could be facing incarceration. Our clients are typically Native American. We also have a lot of alien clients, and we have a lot of drug clients, and some white-collar

I spent about seven years in D.C., where I was an attorney for Senator McCain; I worked with the Senate Indian Affairs Committee and worked on his Indian Affairs legislation. I spent some time working on the House Resources Committee working for the Native American Affairs Subcommittee there for Congressman George Miller of California. I was the Staff Director for the Senate Indian Affairs Committee when Senator McCain became the chairman of the committee; he then

years, I've been doing transactional work with the tribe, representing them in negotiating the building of a resort hotel, opening a golf course. We're also negotiating a water-rights settlement.

Margaret Lopez-Erpenbeck: I'm an Assistant Attorney General. I'm located out of the East Valley office in Mesa. I work for the Protective Services Section, Child and Family Protection Division, which means that I litigate severances and dependencies on a daily basis. So I'm in court about three

the SalaryGAP

Recent news reports have detailed the soaring first-year salaries for new attorneys in private practice. Not surprisingly, that has not been the trend in public lawyer positions.

Based on survey responses, the National Association for Law Placement determined that the national median salary for private practice attorneys from the Class of 2000 is \$80,000—twice what was reported for government attorneys, and \$46,000 more than that reported for public interest lawyers (see www.nalp.org).

And law school loans are an important part of that picture. A survey of new Pennsylvania lawyers found that 37 percent felt it would take them six to 10 years to repay their loans; 20 percent said it would take 11 to 15 years.

It is clear that debt burden can control career choices. In response, ABA President Robert Hirshon appointed a special commission in 2001 to address that burden. This comes amid increased calls for states to aid in paying student loans in exchange for public law service. For example, Georgia has enacted a law requiring the state to pay education loans for prosecutors, public defenders and state lawyers; that initiative is not yet funded.

Public employers in Arizona will be exploring this possibility. For information, contact the Arizona Bar Foundation at 602-340-7356.

—Tim Eigo

cases, too—a pretty good variety for a federal court. We don't get the street crimes, the burglaries and robberies that you would in state court, but we get some of those off the Indian Reservation. I've been in that office since 1971.

Steve Heeley: I'm the Deputy General Counsel for Gila River. I've been a public lawyer since I graduated from law school in 1985. I started at Four Rivers Legal Services at the Gila River Indian Community Reservation, and worked a couple years there. I went on to work with the tribe as an in-house counsel. At that time, there were two of us.

resigned his chair to become chair of the Energy and Commerce Committee of the Senate.

At that point, I came back to Arizona to practice at Gila River. By that time, the office had grown; we have 11 or 12 attorneys now. It's set up in the same fashion as the state Attorney General's; we have a criminal division that handles prosecutions in tribal court. Tribes have concurrent jurisdiction over crimes within the reservation; where a U.S. Attorney may prosecute a crime, the tribe has the jurisdiction to prosecute that crime, as well.

Currently and for the last three or four

days a week on average. I've been working with the Attorney General's Office since December of 2000; I graduated in December 1999. Prior to the AG's Office, I was working with a private law firm, Ortega & Associates, from my first year in law school up until when I made the transition to become a public lawyer.

Eigo: What expectations did you hold as you entered law school? Did you expect to be a public lawyer?

Lopez: I went in with the purpose of getting a dual degree in my MBA and my JD, and I thought corporate law would be in my future. But once I started law school, I real-



Available from the
National Association for Public
Interest Law (www.napil.org):

**Action: Creating Law School
Loan Repayment Assistance
and Public Interest
Scholarship Programs**
Price: \$10 for students,
\$20 for others

To order, call 202-466-3686
or go to www.napil.org

ized that did not interest me, and I realized that public law did. I wanted the experience that would come with being a public lawyer, not only the trial experience but the general courtroom experience. I figured choosing a position as a public attorney immediately out of law school would enable me to fine-tune those skills sooner rather than later.

Eigo: Has anyone ever received less-than-positive feedback from fellow lawyers, family or friends about your being a public lawyer?

Madsen: I do have an aunt who is an administrative assistant for Morrison & Foerster in San Francisco, and she was really behind me going to law school and very excited by my getting a law degree. But she's holding out the hope that one of these days I'll choose a private firm. Other than that, my friends and family have been really supportive.

Heeley: I got some pressure on that. I've always wanted to work with Indian tribes. The major opportunity to work with a tribe is in the public sector. When I got out of law school, I had a huge student loan to pay, and they said the best way to do that is to go to a big firm, go to the mill, crank out and you'll be earning all kinds of money, that way you can pay off your loans, and then you can do what you want. I decided I wanted to do what I want right out of law school. I had a few tough years with Legal Services in terms of the salaries that they pay, but I was doing what I wanted to and it was working directly with Indian tribes. I went to UC-Berkeley, and at Boalt Hall you had the big firms coming in and the cattle call, but there were very few opportunities [to practice Indian law].

I ended up doing a fellowship through the Legal Services Corporation at Gila River, which was one of the few opportunities to get to the reservation and practice. One of my favorite memories is when my mom came out to visit. I grew up outside of Boston and am originally from Canada, so she wasn't familiar with Arizona. When I showed her where I was working, and she saw how the people lived, she compared it to our reservation in Canada, and she said, "You're doing the right thing," which was really gratifying to hear.

"They say the best way is to go to a big firm, you'll be earning all kinds of money, that way you can pay off your



Patricia Madsen

Steve Heeley



loans, and then you can do what you want. I decided I wanted to do what I want right out of law school."

— Steve Heeley

Kay: My family never really pushed me in any direction. I think if my folks were alive today, they'd be proud of me. I always kind of planned in law school that I'd wind up in a private firm. But I'm happy where I've been.

Eigo: For those who have interviewed new lawyers for your agency, have the people coming in changed over time, either in their background, their commitment or their expectations?

Kay: I think they've changed over the years. Today, we see a lot of people who have come from the big firms, the best and the brightest in law school. They've made the big money, and they become slightly disenchanted through the years and they decide that they want to do some trial work, and they want to represent what they tell us are "real clients." I think that means that they have their own clients and they can deal with them from beginning to end and do the appeals. I don't think that was necessarily true years ago.

The stress of the big firm is something that they haven't appreciated. I'm not say-

ing that [our office] doesn't have stress either; we do. But I think they find the work somewhat more gratifying. The compensation is reasonable, and they definitely like the type of work. Our lawyers regularly argue before the Ninth Circuit, and we've had a few at the U.S. Supreme Court.

Eigo: Are there lawyer retention problems?

Madsen: I think turnover is always a problem. I think in hiring, salary and workload would be the two main questions. And at least in Legal Services it's almost a tradeoff. The salary is going to be lower than in a private firm, but in many respects the workload's more manageable. You're not expected to work an 80-hour week, and you don't have to worry about things like advertising and drumming up business. But you do have to worry about or feel discomfort in the fact that you can't serve everybody that you know is applying for services.

Eigo: In terms of lawyer hiring, do you still have more applicants than positions?

Kay: We have a tremendous number of applications, and I don't believe it's going to change. I think this is considered a good,

high-quality legal job.

Madsen: There may be a few openings at Community Legal Services. It's not as competitive as the Federal Defender's Office. There are a lot of salary concerns from applicants. Legal Services nationwide is still operating on the 1990 census figures, and that's what determines the budget for Legal Services, and that's probably not going to change until about 2003. So things are tight, and that limits the ability to pay more, and limits the ability to add new positions that are really needed. But we usually get a good number of applicants for each position.

Eigo: How are public agencies doing at training new lawyers?

Lopez: I had excellent training when I was hired. I had approximately a month of training, while going into minor hearings with other attorneys' supervision, to discuss all of the elements involved in my job. Since then, I've had a nice gradual progression in terms of the type of trials for which I have assumed responsibility. In terms of how I was broken into the job, it was wonderful.



"I thought corporate law would be in my future. But once I started law school, I realized that did not interest me."

— Margaret Lopez-Erpenbeck

Kay: I got very little training when I first started, but today we try to see that our lawyers do get training. I think they are not going in there unprepared.

Eigo: Before you began as a public lawyer, did you ever hear horror stories about the workload? Were you told you'd have too many cases and always be behind?

Kay: In our office, we're extremely fortunate that we are better funded than most agencies, and our caseloads, though they're heavy, are manageable. People aren't forced to do more than they can really do.

Heeley: Historically, we haven't been able to offer the comparable salaries that people could get off-reservation, and that made recruiting a challenge. The benefits we saw were, you don't get the person who's billing hours; that's a frustration among a lot of young attorneys when they get into a private firm: You're always on the clock and you always have to bill hours.

I think service is really the focus of this practice area. Do you feel like you have the hours to provide the service to your clients? rather than focusing on the hours in the day that you need to be billing. Our problem is that we just don't have enough slots sometimes to handle the number of inquiries we get. I think part of that has to do with the number of Native Americans who are graduating from law school.

Eigo: In reading widely on public lawyers' practice and their salaries in particular, the word I've seen a number of times is "demoralizing." While salary is rarely the first concern of a public lawyer, does it become demoralizing as the gap between public and private pay widens so dramatically?

Lopez: That was a major concern in my continuing to pursue a job as a public attorney. However, there is a large benefit from the amount of hours that a public attorney is expected to work in a week. And when you average out salaries per hours per week, the hourly rate is pretty consistent. And I appre-

ciate the ability to have a life outside of my profession, which being a public lawyer allows me to do.

Madsen: I think the gap comes into play when you talk about retention. A lot of people might go to work for Legal Services for a couple of years right out of law school. And then there's that comparison where people figure they're not getting where they want to be as fast as they want to get there or they are not able to purchase a home, not able to keep up with the people who are in private practice.

Eigo: Did law school loans play a part in your decision of where to work?

Heeley: That was a load I carried from undergrad. I carried my loans from Dartmouth to law school, and then from law school out. It did affect my decision of whether to stay a lawyer at Four Rivers Legal Services, because about the time when the grace period ends and the loans are due is about the time I started thinking, I need to do something else. At that time, the tribe was looking to hire another attorney; they paid considerably more than what Legal Services was offering at the time.

Eigo: Were you well trained by law school for your jobs as public lawyers?

better job from my outsider's viewpoint than they were when I first came out. I frankly didn't know too much what I was doing; I learned on the job and by making mistakes. What I observe now in this state, there's a lot of clinical programs that just weren't there years ago. I think that they offer law students a lot more practical training to get out there and be a lawyer than they did when I came out.

Madsen: I would completely agree—even in making the decision to work in public interest law. My law school offered a seminar in public interest law, so we got a good historical background and got to meet a lot of speakers and cover a lot of issues. From that, I did an internship at Community Legal Services in Phoenix, and that clinched it for me.

Eigo: Have any of you heard from lawyers in private practice that they would like to have aspects of your practice?

Kay: Some of them have been in private practice for a number of years; particularly if they're with a large firm, they may just be doing a lot of paperwork, as opposed to a smaller firm where you tend to do more on your own. Some of them, even though they've been a member of the Bar for five or six years, they have never tried a case or they've never had much court experience. That's the nice thing about an office like ours: You get that, and you get it quickly.

They thirst for that; they lust for it.

Eigo: How would you describe the benefits of your practice?

Kay: It's very satisfying to see when you're

"In terms of satisfaction and gratification, you can see the fruits of your labor. There is a real sense of moral obligation."

— Steve Heeley

Lopez: I think as a public attorney, a lot of your experience is going to come on the job. I was trained very well in my job. I intentionally volunteered in extra-curricular oral argument competitions to try to prepare myself for that. But no, I don't think law school adequately prepared me for the courtroom environment.

Kay: I think law schools are doing a much

helping somebody. And as opposed to some private practices, you don't have this pressure to drum up business, which, from what I hear, can be very onerous. We've had lawyers who came out of private practice and come into our office, they are just so thankful they don't have to think about overhead anymore, they don't have to worry about the cost of insurance, or paying a secretary.

We have the resources, the research tools, the investigators and the paralegals.

Eigo: What else do your staff enjoy?

Heeley: The independence and the ability to be able to manage a case themselves and not having somebody telling them how to handle strategy and how to handle a particular case. If you're going to work for a tribal government, it's going to be trial by fire. You have to know a little about a lot of different things. In terms of satisfaction and gratification, you can see the fruits of your labor. You're not in a more antiseptic environment where you may see the client periodically; the client is right outside your door, and you'll hear from them, whether you are planning to or not. So there is a real sense of moral obligation in doing that type of work.

Eigo: When you go to work every day, do you have a sense of that moral obligation?

Lopez: I knew coming into the profession that I'd be spending a lot of time and energy as an attorney, and I did not want to feel as though it would be spent on a cause that I didn't completely support or completely

believe in. I appreciate the fact that my time and energy is coming back into the community. I feel that when I go into work on the weekend or if I come in late to work on a case, that it's coming directly back as it relates to the community around me.

Eigo: When we hear the phrase "believing in your cause," it has an admirable ring. But is there any downside to a "cause" mentality? After all, it is a very intense practice.

Kay: We all have certain causes that we're interested in, but I think you've just got to moderate yourself. It's very gratifying work. Clients come in all different shapes and forms; some of them don't like you because you're a public lawyer and they're not paying you, whereas if they cross the street and borrow \$1,000 to pay somebody, they'll feel so much better—but they might not get the same representation. But some of them are very gracious. I know of at least two women criminal defense lawyers that have had children in the family named after them after they've represented one of the parents, they were so gratified.

Madsen: Especially in the family law area of Legal Services, there's a lot more demand than the ability to provide the services. So we're able to choose cases based on the cause or the issues involved and how important we think they are to the community or how important they seem to be to the client with the children involved, rather than whether the client has enough money to put down for a retainer. It's the day in-day out part of the job that's the cause. And another goal of Legal Services is that we try to empower the client community.

Eigo: Is that a benefit to your practice, that you sometimes can help people even outside the legal realm? Are you able to see your clients in a different way?

Heeley: Those who are working in our children court system, for example, they see these kids grow up—sometimes for good, sometimes for worse. That child grows up in front of you. There's an emotional aspect to that that's difficult for attorneys. But on the flip side, the emotional investment we make, there's the gratification. ▲