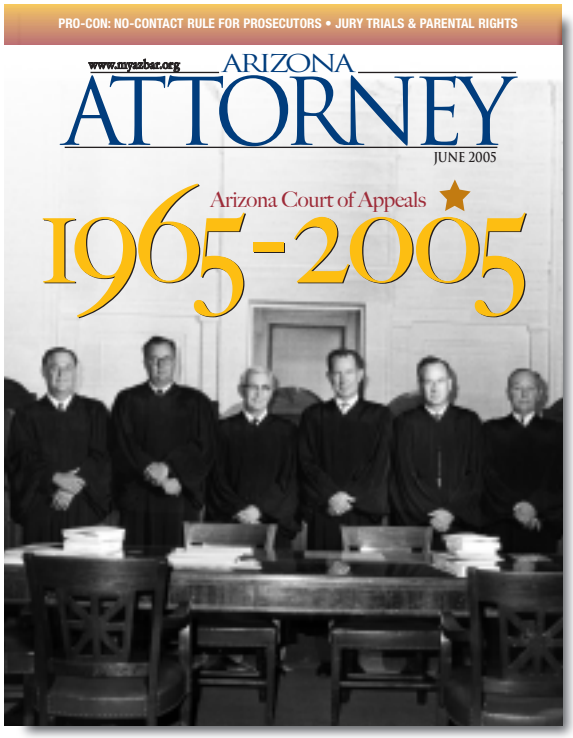
SOUNDOFF

HISTORY'S ENDURING APPEAL

I read with great interest the comments of former Chief Judge of the Arizona Court of Appeals, Division II, John F. Molloy (ARIZ. ATTORNEY, June 2005). As a young man, during my high school and college days, I had the unique opportunity to spend time with Judge Molloy. His son, Craig, was my best friend. I spent many a day with Craig and his dad, Judge Molloy, playing chess at their home, biking to the YMCA, playing competitive badminton at the Y and eating pizza at the local pizzeria.

Through ordinary activities I learned many lessons from Judge Molloy that he probably never knew he was teaching. You see, I learned from watching his example. Judge Molloy never bored Craig and me with dogmatic discussions about the law; instead he talked to us about more important issues, such as respect, keeping your word and how to convince someone of your position.



One memory has always stuck with me. Judge Molloy was driving Craig and me to the YMCA. Craig and I, as usual, were in a heated argument about some long-forgotten topic. Our voices were at a fever pitch. Judge Molloy glanced in his rearview mirror and, in a calm, almost bored voice, said to us, "It's not how loudly you say it; it's what you say that counts." Now, almost 18 years into the practice of law, in argument before the bench, when I find my voice rising, I remember Judge Molloy's words and redouble my efforts to say something worth hearing.

—Robert J. Campos
Robert J. Campos & Associates PLC, Phoenix

As Judge James Duke Cameron's very first law clerk when Division I of the Court of Appeals opened right after the first of January 1965, and knowing how "Duke," Francis Donofrio and Henry Stevens got things started, the nostalgia of the articles brought back a lot of wonderful memories. I vividly remember the chaos of first starting up the Court, and some of the "issues" Judge Henry Stevens had with the Supreme Court which were described, one of which not mentioned was how sharing their courtroom to hear our own oral arguments on appeal sometimes were tense, if not awkward, if those words would be apt descriptions.

I also enjoyed reading the part about Judge Cameron being handed the responsibility of building the State Courts Building. Over the years after I left to practice, I remember having a number of conversations with him about it, as I like to think I remained a very devoted friend and admirer. And I have often wondered, what with Judge Cameron's extreme longevity on both the Appellate and Supreme Courts (I believe he is credited with writing more opinions than any other Judge or Justice of those courts in Arizona's history) why the State Courts Building has never been dedicated to him, especially now that he is no longer with us. There is no question in my mind that he certainly was the driving force behind, and the one who should be credited with, its eventual completion. Maybe it's a thought, honor and goal worth pursuing.

Thanks for taking the time to listen.

—Michael L. Rubin
Michael L. Rubin PC, Prescott

LAMENTING "A PARENTAL LAMENT"

Judge Gerst's article "A Parental Lament" (ARIZ. ATTORNEY, June 2005) certainly qualified as a "guns blazing" and shockingly one-sided critique of the right to a jury trial in severance cases. Some balance to this argument is in order.

Judge Gerst starts out by setting out his fictional "facts." Naturally, these fictional "facts" include a parent who has no care or consideration for her children and who has consistently and horribly abused and neglected them. While there are certainly a large number of such parents in the system, Judge Gerst overlooks the many, many parents who are in the system for much less severe allegations. Dare we also mention that there are parents in the system who do not deserve to have their rights severed? Consider the U.S. Marine father accused of abusing his teenage children for sending them to their room with no dinner when they refused to do their homework. Or consider the mother who is reported to CPS for abusing her children by her ex-husband bitter over losing a custody battle. Or consider the children who enjoyed a loving home and caring parents who were removed and severance requested because of a single incident of spanking. I could go on. There are lots of these cases in the system as well.

Judge Gerst carefully points out the fact that the Attorneys General who prosecute these cases are overworked. I do not think Judge Gerst mentioned that they are also underpaid, but that is also true. On the other hand, the court-appointed attorneys for the parents and the children involved in these cases are also overworked and underpaid. Attorneys in my county are paid only

$750 to litigate a dependency case from start to finish. A case that proceeds to severance trial, with a judge or a jury, receives only an additional $500. A dependency case that proceeds to the jury trial that Judge Gerst laments conservatively takes 45 hours of court hearings, client meetings, investigation, preparation and trial time to properly litigate. That is an hourly rate, at best, of only $27.78. These attorneys are usually the newest and least-experienced attorneys in the bar. Often they take this work as a stepping stone in their career or as a way to start a solo practice. Knowing the financial pressures of legal practice today, it should not come as a surprise that these often well-meaning attorneys are able to devote very little time in preparation of these cases. It should also come as no surprise that these attorneys very rarely ask for the jury trial that Judge Gerst laments.

We absolutely must protect society's children from abuse and neglect. Turn on the news and the importance of the task and the implications of failure are horribly obvious. But the highest courts in our land have consistently and properly held that our right to parent our children free from the interference of government is among our most fundamental of rights. We are not wrong to insist on a system that protects those rights as much as possible and severs those rights only when necessary.

Assuming Judge Gerst believes that the system is overloaded, overcrowded and generally a mess, I wholeheartedly agree. But the system was overloaded, overcrowded and generally a mess before the legislature added the option for a jury trial. We will not fix the system by taking rights away from the people involved in the system for the sake of efficiency. Our fundamental problem is that this state and others simply refuse to dedicate the resources necessary. We continue to insist on operating a child welfare system on the cheap and dedicating our limited resources to endless layers of administration. There are bigger fish to fry here than to simply sit back and lament the right to a jury trial.

—Mary K. Boyte
Boyte & Minore PC, Yuma

Arizona Attorney is proud to provide a forum for members to voice their opinions. Send letters to Tim.Eigo@staff.azbar.org

I saw Judge Gerst's complaint in ARIZONA ATTORNEY about offering a right of jury trial to parents who seek a right of jury trial in parental termination proceedings. He must have presided in a different jurisdiction than the ones where I practiced.

Judge Gerst's article mostly complains that a demand for a jury trial will be used for leverage to obtain more services fro abusive or negligent parents who should have their parental rights terminated. What does this tell you? It tells you that the authorities, including the juvenile judges, will generally sacrifice the interests of abused and neglected children in order to avoid the inconvenience and expense of jury trials. That Judge Gerst is willing to admit to this in print without embarrassment tells us all that we need to know about how quickly the "best interests of the child" are subordinated to practically every other interest at juvenile court.

The secrecy of the system has served judicial malpractice as much as it has protected juveniles. The "best interest of the child" too often means "we can do whatever is convenient for us," as Judge Gerst obliquely admits. My experience was limited as that of a general practitioner, but I have had the Maricopa County Juvenile Court, cocooned in the secrecy of the juvenile court, arraign a juvenile client on delinquency charges in absentia. The Coconino County Juvenile Court once determined in a dependency proceeding that a half-Indian child abused by her Anglo stepdad was too Anglo to live with her non-custodial Indian father. This wasn't so long ago, either. When the Court of Appeals reversed such a blatantly racist decision for a lack of evidence (after an "expedited" nine-month appeal process) on remand, the trial court simply continued the matter six times for another nine months over my objection, until completely new and different reasons for denying custody to my client could be arranged. The child lived in foster care all of this time. The Arizona juvenile court had no problem with placing 10-year-old children in foster care for months at a time, as form of human receivership. The only thing positive about the system was the Foster Care Review Board, which seemed to provide the only source of horse-sense and human decency to the process. The Board members, of course, were members of the community and not juvenile court.

Thanks, Judge Gerst, but I'll take my chances with a jury any day.

And thank you, Arizona state legislators, for protecting us against a juvenile judiciary that is better at congratulating itself than in doing its job.

—Peter Breen, Santa Fe, NM

Editor's Note

Following the publication of "Arizona Civil Verdicts: 2004" in the May 2005 ARIZONA ATTORNEY, we received a comment about one additional large verdict. That verdict had not been reported by the author's source. The case was *Grabinski and Crotts v. National Union Fire Ins. Co. of Pittsburgh, PA*, Maricopa County Superior Court. In that case, plaintiffs Grabinski and Crotts were officers of Baptist Foundation of Arizona who were insured under a directors' and officers' insurance policy with National Union. The Arizona Corporation Commission issued a cease and desist order against the Baptist Foundation of Arizona, which allegedly caused its business to decline and to seek bankruptcy protection. Plaintiffs demanded defense and coverage from National Union for the civil and criminal suits that followed. National Union asserted there was no coverage because of policy exclusions and misrepresentation. Plaintiffs alleged breach of contract and bad faith against National Union. The jury awarded $4,024,000.