

Making History

Even more than most vocations, law is a field that builds on history—through precedent—to foster a future. That history is a collection of steps and missteps that often controls the path on which our legal system treads.

Knowing your history is one thing, but making history is quite another. We may all strive in our own lives and practices to make a mark and leave a legacy, but we know that our actions will be erased with the passage of time.

A recent development in the Arizona Code of Judicial Administration provides a new way to make a little history—or at least to designate something as historic. By filing a motion with a court, you can recommend that any case be designated

“historically significant.” And any person can take part.

We heard something about this process in a seminar at the June State Bar convention. To learn more, we sat down with three people who helped shepherd the new rule to fruition:

Dr. Melanie Sturgeon,

Director of the State Archives (in the History and Archives Division of the Arizona State Library, Archives and Public Records)

Carol Schreiber,

Associate Clerk, Maricopa County Clerk’s Office

Jennifer Greene,

Esq., Policy Analyst, Administrative Office of the Courts

ARIZONA ATTORNEY: I understand the new historic designation process was created as part of a review of the records retention policy in the Arizona Code of Judicial Administration. How did your review process work?

CAROL SCHREIBER: This process began when the Supreme Court put together a statewide committee to review the current records retention schedule and update it. During that three or four years that the committee was doing its work, we realized that there was no statewide written protocol for the process of designating a case as historically significant—though there may have been local protocols. But the committee wanted something in writing for a statewide standard and process.

The new records retention schedule was approved by the Supreme Court on March 21, 2006. That was the first Supreme Court document that provided the guidelines for the process. Jennifer, Melanie and I have now gone out to try to “advertise” that there is a Supreme Court process, with buy-in from the Archives.

AZAT: So you need to alert lawyers and others about the new way of designating cases as historic.

SCHREIBER: Yes. We want to get the word out that it’s so easy to ask the court to designate a case. And if you do that in accordance with these guidelines, then the clerks around the state will ensure that they will take care of it.

JENNIFER GREENE: Before this, there was a lot of preservation going on, but not all turned over the State Archives. Part of the committee’s goal was that the counties could turn the records over to a professional archives.

AZAT: When you first began looking, were you pleased to discover that a lot had already been saved?

GREENE: Under the previous standards, they were required to hang onto most of their case files permanently. Not everything was well preserved, but it was not being thrown away.

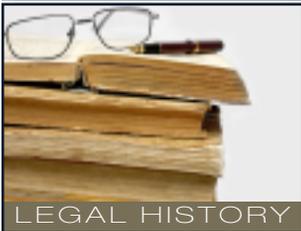
SCHREIBER: But the goal was that, if something had been microfilmed, the original case would come to the Archives, not the microfilm.

Our hope is that if a case is designated as historically significant, we can then have the county attorneys turn over all of the evidence that would go with that case, so that we have a full record.

For instance, we have a lot of the Winnie Ruth Judd [murder trial] materials that the county attorney turned over to us. Along with some of the court records, it makes a really full history. This makes an incredible research package for historians.

AZAT: The change in the retention schedule—to 50 and 75 years, depending on the type of case—still seems like a lot of storage. How has the plan been received?





DESIGNATING A CASE AS HISTORIC

The process for designating a case as historically significant is a simple one. Anyone—not necessarily a lawyer or a party to the case—can file a motion in the case (using the original case number) requesting that the judge designate the file as “historically significant.” Historically significant could mean newsworthy or otherwise high-profile cases, which may feature a unique legal issue or controversy, or a well-known party.

The motion must set forth the factual basis for the recommendation and cite to the legal authority—ACJA § 3-402(F). Once the label goes on, the clerk’s office will segregate the file for long-term preservation by the Arizona State Archives.

Those who have a recommendation of a case that should be so designated must file the motion with a state court presiding judge. A proposed motion form is available on the Supreme Court’s Web site:

[www.supreme.state.az.us/selfserv/
Historically_Significant/MotionDesignHistSignif.pdf](http://www.supreme.state.az.us/selfserv/Historically_Significant/MotionDesignHistSignif.pdf)

requires that either the clerk have the custody or Archives have the custody.

AZAT: Have there been any filings yet moving a court to designate something as historically significant?

GREENE: I don’t think we’ve seen any motions yet.

SCHREIBER: I’m not aware of any in Maricopa County. When the three of us made a presentation in June [at the State Bar Convention], we each had several persons come up to us rattling

SCHREIBER: Everyone we’ve heard from—the bench, the bar, archivists, clerks—seem to be pleased with the final product. Some people still think, “Seventy-five years! Oh my gosh, that’s so long.” And I look at them and I say, “Compared to ‘forever,’ it’s not really that long at all.”

AZAT: Have you heard from clerks that they are running out of room for old case files?

SCHREIBER: Absolutely. That’s a statewide problem.

MELANIE STURGEON: And we talk to county officials all the time, and that’s a common complaint, not just for clerks of court but for just about everyone in the counties. That’s always at the bottom of the budget. The people in charge don’t look at historical records the same way we do. We’ve lost some material just because the mice got into them before they had proper storage. That’s a real concern.

AZAT: What is your process once you receive materials?

STURGEON: We start with our territorial cases because they are the oldest and the

most at risk. So our territorial cases are pretty much taken care of.

We have to do a lot of cleaning and conservation. We can’t always do it at once, because we might get 500 boxes from one clerk’s office.

AZAT: When is the new Archives building to be completed?

STURGEON: It’s supposed to be finished at the end of May 2008. We’re anticipating a move in September.

AZAT: Will it be filled with files the moment you move in?

STURGEON: No. we have at least 30 to 50 years of growth. It was designed with movable shelving and other elements, as compactly as possible.

AZAT: From the clerks’ point of view, you could await motions from lawyers or others to designate a case as historic, or you could simply box everything and send it to the Archives. Is that right?

SCHREIBER: Yes, either way. The clerks have the option to preserve the things in their custody for the prescribed time, or to turn them over to State Archives. State law

off case numbers and names. It’s kind of disappointing, and we’re hoping to get the word out more.

STURGEON: And there is a lot of historical significance beyond the legal precedent a case might represent. We get a lot of researchers looking at cases not for legal reasons. For instance, we had a Ph.D. student looking at women going through the courts in the territorial period—What were they convicted of? Where did they go? Did they have prior records? How were they treated?

We’ve had someone come in looking at Chinese women specifically. Or how have children been treated in the courts in the 19th century versus the early 20th century? What do they tell me about the culture? What do they tell me about society?

AZAT: Case files hold a lot of history.

STURGEON: The reason court records to me are some of the most historically significant records out there is that they are the one place where you can find records of people from all classes, all cultures, all races, all economic status. They are all in those court records. They are incredibly valuable.

We’ve got some suits between Anglos

and Chinese. And you can tell by the testimony that the Anglos are describing the Chinese through their eyes, and the Chinese are trying to describe the Anglos through their eyes. And there's a real culture clash, because they're not really trying to understand each other, but they've got their own way of looking at things. It's like a great picture of a time when people were trying to interact and not having much success.

GREENE: I recall that Melanic has done research on brothels in Arizona. The women who owned those were often fairly well off people. And they would get in legal disputes. The court records show just how caught up they were in the local economy.

There were also a ton of bigamy cases. Men would come out here from back east without their families, and no real prospect of ever bringing their families, so why not get remarried? Who's going to know? That came out in probate cases, because after the guy passed away, all of his wives showed up, or his children from his second wife and his children from his third wife.

AZAT: In the Code of Judicial Administration, there are "historically significant cases" and there are "landmark cases." Are the landmark cases those that are legal groundbreakers—like *Miranda*?

SCHREIBER: Exactly.

AZAT: And who reviews the motions, should any be filed?

SCHREIBER: The Code requires that the motion be presented to the presiding judge.

AZAT: What would a motion be comprised of?

SCHREIBER: You have to explain to the judge why you think the case is historically

significant. It's great if you can phrase that well.

AZAT: Of course, deciding what's historic could be a political thing. There are cases that are not proud moments for the courts.

SCHREIBER: Absolutely. I'd assume that if a motion were presented and denied, and the attorney felt very strongly that that denial was inappropriate, that ruling could be appealed, as anything else can be.

Lawyers should talk with each other about cases they've handled or that they remember that may have been newsworthy or notable in some respect. If we don't have people come forward to recommend designation, it's going to disappear.

GREENE: In fact, we've had a hard time deciding whether we could have one case be the first to be very publicly so designated. But we could anger people or groups with our choice. Or we could choose a feel-good case we could identify; but people don't go to court if they're feeling good usually.

AZAT: I imagine you're seeing more and more turned into microfilm before you can get your hands on it?

GREENE: Clerks are converting things to electronic images. From a historian's perspective, the original paper has a quality

about it that you are losing in a microfilm copy.

SCHREIBER: And if we don't have people come forward to recommend designation, it's going to disappear. One county, for instance, had lost a lot of their case files, and didn't know where they were—still don't—and hadn't microfilmed. They are now lost. Just gone.

AZAT: So if a lawyer were to read this article, what would you like her or him to do?

SCHREIBER: I think we'd like to point out that the proposed motion form is available on the Supreme Court's Web site [as well as on various county sites].

GREENE: And the motion is supposed to use the original case number. Lawyers should talk with each other about cases they've handled or that they remember that may have been newsworthy or notable in some respect. We hope to hear from people whose memories go back beyond 1980.

STURGEON: And I think lawyers need to think outside the legal box and say what broader cultural or political themes I'm seeing in the case that would make this historical.

SCHREIBER: We seek that whole perspective of all the different people in the world and what is important to them: That's what we want. Give us the case that to you has value for these reasons. I really wouldn't think too many courts are going to disagree with most of these proposals.

And what we wrote into the schedule on purpose is that any person may submit a motion to the court; it doesn't have to be a lawyer, it doesn't have to be your case. It doesn't have to be a clerk, or a historian. We're open to all input.

That was by design, so we would catch some that otherwise might be missed. 