

**DEVELOPING A HISTORICALLY SIGNIFICANT COURT  
CASES CYBER-ENCYCLOPEDIA**

Institute for Court Management  
Court Executive Development Program  
2009-10 Phase III Project  
May 2010

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## ***ACKNOWLEDGMENTS***

Many thanks must be given to Dr. Melanie Sturgeon, State Archivist of the Arizona State Library, Archives and Public Records for her inspiring work and her support. Court records really are gems!

A special thank you goes to Dr. Todd Lutes, political science professor at the University of Arizona South for his help, encouragement, and use of interns on our other court history projects.

I am very appreciative of the encouraging words and the letter of support from the Hon. Rebecca White Berch, Chief Justice of the Arizona Supreme Court.

Carrie Gustavson, Director of the Bisbee Mining and Historical Museum has so often served as my muse and is a kindred spirit in all-things-history.

Thank you to Lee Shainen, Richard Prouty, Sue Hall, and Robert Palmquist for your advice - it made a difference in this effort.

No one had better behind-the-scenes support which came from Mary Edie, Render Gregory, Fran Ranacelli and Teresa Rockrich of the Cochise County Clerk of the Superior Court's office.

It was always great receiving inspiring emails from my CEDP class group, "The Devos" – Sonya Kraski, Karen Kringlie, Amy McDowell, and Neil Nesheim.

My advisor, Dr. Matt Kleiman of NCSC, showed true patience and gave me strong, excellent guidance. Any failings of this paper are mine alone.

Lastly, to my family: mom, Providencia Lundin, sisters, Diana and Doris Lundin. You let me blab incessantly about this for the past year and never wavered. And to my fiancé, Hon. Fred Newton, "Yes, my paper is done!"

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# **DEVELOPING A HISTORICALLY SIGNIFICANT COURT CASES CYBER- ENCYCLOPEDIA**

**By Denise I. Lundin**

## ***ABSTRACT***

On February 14, 2012, Arizona will be celebrating its state Centennial. In preparation for these historical festivities, activities are underway to produce research projects that commemorate the 100<sup>th</sup> anniversary of Arizona's statehood. Research projects are aimed at the use of primary resource materials which will preserve and showcase historical records for generations to come.

The goal for this study is to explore the importance of the third branch of government, the judiciary, in Arizona's bid for statehood and subsequent impact on its development as an independent state. Specifically, this paper explores the creation of an indexed, descriptive list of historically significant and landmark court cases in Arizona that would be accessible online – a “court cases cyber-encyclopedia” – as one method to highlight the judicial branch's contributions.

After the commemoration of the nations' bicentennial which included the preservation of the U.S. Supreme Court's history, some states began to systematically uncover and publicize their legal histories. Despite the benefits that are reaped by these kinds of efforts, there are still many states, Arizona among them, that have yet to comprehensively embark on this path. It is this void that this study seeks in part to fill. Through literature review and state stakeholder surveys, the following questions were asked:

- What is Arizona presently doing to document its historically significant and landmark cases?
- Is this effort important and how can it be improved and expanded?
- What public education projects exist around the country that feature significant state court cases?
- How can collaborative partnerships, resource materials and funding sources be used to build and sustain a court case cyber-encyclopedia?

An extensive search of state court and court-related websites from across the country ensued, uncovering a number of innovative legal and judicial history projects. Three questionnaire-styled surveys were sent to the Arizona Clerks of the Superior Court; key stakeholders from across Arizona (judges, attorneys, court leaders, educators, researchers, historians, authors, media, librarians, law enforcement, and public leaders); and public court historians from other states.

The results from the surveys were analyzed and it was found that:

- 1) Arizona's procedure to document its historically significant and landmark cases is not being utilized to its fullest;
- 2) Stakeholders overall believed it to be very important to formally designate and preserve court cases of historical significance and that the information should be disseminated through the use of a website and publications;
- 3) There are many potential options for collaboration to develop an indexed, descriptive list of historically significant and landmark court cases, however there are concerns regarding expenses and staffing levels to accomplish the task.

The study concluded with four recommendations to bring the benefits of court case stories to a broader audience. They include the following:

- Convene the Landmark Cases Committee and expand its scope
- Implement a strong outreach effort to publicize cases as “historically significant”
- Commemorate Arizona’s Centennial through public education efforts about the state’s legal heritage
- Develop two websites for high profile and “historically significant”/landmark cases

The Arizona legal community and the general public should know its rich legal heritage and innovative models now exist to help make this a reality. The “Gunfight at the OK Corral” and Miranda v. Arizona’s “You Have the Right to Remain Silent...” ruling will be intriguing court cases for people to begin the journey, but the telling lessons reside in the quieter cases that so often inspire new perspectives of understanding as the critical issues of yesterday juxtaposition with today.

## ***INTRODUCTION***

### **Cases from the Past**

There is much to be gained from studying Arizona's court cases of the past. The legal issues decided long ago against the backdrop of compelling stories still resonate and intertwine with current events. Presented creatively they can provide tableaux to build deeper and greater understanding in multi-disciplined learning environments. The stories behind court cases, with their interplay of politics, society, culture, science and economics, leave no stone unturned in examining the development of people and a state. Arizona's court cases can be colorful, painful, thought-provoking, and more. But they need to be brought to a larger audience for study. Two cases to illustrate:

In 1904, Irish-Catholic orphans in New York, while "white," were considered to come from an inferior class. But when 40 of these abandoned children were transported to the town of Clifton in the Arizona Territory in what was called "Orphan or Baby Trains" for adoption by Mexican-American mining families, the Anglo townspeople intervened. The children were taken from either their new families or their foundling hospital guardians and immediately placed in Anglo-American homes. This incident captured Arizona's and the nation's attention and ultimately led to a custody battle that landed on the doorstep of the United States Supreme Court.<sup>1</sup> It dismissed the appeal and let stand the Arizona Supreme Court's decision which upheld the taking of the children: The best interests of the children superseded any jurisdictional

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<sup>1</sup> Linda Gordon, *The Great Arizona Orphan Abduction* (2001).

or custody issues.<sup>2</sup> To this day, the identities of these children are not publicly known. The debate on orphaned children staying in their own culture is still occurring.

Flash-forwarding eight decades, the popular television shows with the “CSI” brand make solving crimes with science an almost routine and expected conclusion. Deoxyribonucleic acid - “DNA” testing has become so commonplace that it could soon become a product that one can buy off the shelf at the grocery store. But in 1988, when the 9 year old murder victim’s body was found in a forest in Flagstaff, Arizona, DNA testing was still a foreign-sounding and little-understood scientific testing procedure that had many skeptics as to its reliability and applicability in a legal setting. Prosecutors wanted to use DNA evidence to convict the killer, Richard Lynn Bible, but before it could be admitted this scientific method had to pass a legal standard in court proceedings – a “trial within a trial” as this was the first time in Arizona that this type of evidence would be introduced. While the Arizona Supreme Court decided that the probability section of the evidence was improperly admitted (Bible’s conviction was affirmed on other grounds), this is the Arizona case that ruled that the legal standard for admitting DNA scientific evidence has been met and Arizona trial courts no longer need to hold hearings regarding the general acceptance of this theory.<sup>3</sup>

How can cases of historical significance like these be resurrected, collected and formatted for general use? How important is it to do? Who should do it and how? How are these kinds of cases defined in Arizona and across the country? What public education efforts on legal and court history by the courts or entities related to it exist? In addition to these questions, this paper will:

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<sup>2</sup> New York Foundling Hospital vs. Gatti, 203 U.S. 429 (1906).

<sup>3</sup> State of Arizona vs. Richard Lynn Bible, 175 Ariz. 549 at 576, 858 P.2d 1152 (1993).

- *Explore terms and definitions relating to high profile and significant cases*

Arizona has a protocol which defines and addresses these types of cases. It will be reviewed and expanded upon through literature search and surveys.

- *Diagnose how Arizona’s Historically Significant and Landmark case protocol is working*

Through surveys of in-state stakeholders, responses regarding the familiarity and effectiveness of the protocol will be examined.

- *Survey the possibility of expanding the protocol’s scope by creating a web-based descriptive index – a Court Cases Cyber-Encyclopedia*

The same surveys mentioned above will gauge the importance, benefits, and barriers of this proposition.

- *Examine court history and public education projects from around the country that feature court cases*

Information from literature and web-site searches and results from an out-of-state survey will illustrate these projects.

- *Recommend ways to use collaborative partnerships, resource materials, and potential funding sources to build and sustain a cyber-encyclopedia while promoting civics education*

An examination of other states’ projects and results from in-state surveys will yield best practices that could serve as models for Arizona.

### **“No Child Left Behind” Standards have left behind the Study of Civics**

Chances are high that if you asked the nearest American to name the three branches of government he or she would be unable to do so. Any further in-depth inquiry, particularly on the functions of the judicial branch, would also lead to a blank stare. A recent and widely-publicized survey indicated that only about one-third of the public knows the answers. “This is

something to worry about,” newly retired U.S. Supreme Court Justice David Souter said to the American Bar Association convention attendees on August 1, 2009.<sup>4</sup> “Consider the danger to judicial independence when the people have no conception of how the judiciary fits within the constitutional scheme,” he said.<sup>5</sup> Souter plans to work on renewing civics education programs, a cause also taken up by retired Chief Justice Sandra Day O’Connor who has partnered with Georgetown Law and Arizona State University to develop an interactive website named, **Our Courts** “designed to teach students civics and inspire them to be active participants in our democracy.”<sup>6</sup> Judge Brian Mackenzie, a district court judge in Michigan, stated,

“The court, literally, the courthouse, used to be the center of public life. It’s where people held meetings, the public used the building. Over time, the court has stepped away from that role. In a way, what is called community outreach is really a return to the more central role courts used to have in community life.”<sup>7</sup>

A 1999 ABA survey on perceptions of the U.S. justice system found there was a “need and demand for public education efforts.”<sup>8</sup> Minnesota Supreme Court Associate Justice Paul H. Anderson wrote, “We want to live in a civil society governed by the rule of law, but in many ways we have come to take our Constitution, laws and traditions for granted.”<sup>9</sup> The nation’s main education law, “No Child Left Behind,” has mandated standards in reading, math and science but no such standards for civics education. As more energy and resources must be devoted to “teaching to the tests,” civics education has become a hit or miss proposition.

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<sup>4</sup> Abdon M. Pallasch, “Many in dark about judiciary: Souter” *Chicago Sun-Times* August 2, 2009.

<sup>5</sup> Annamarie Timmons, “Civics instruction Souter’s priority” *Concord Monitor* August 3, 2009, page one.

<sup>6</sup> <http://www.Ourcourts.org>

<sup>7</sup> **Public Education and the Courts, Guide for Individual Judges** (2003) American Bar Association, Division for Public Education, page 14.

<sup>8</sup> **Ibid**, page 19.

<sup>9</sup> Paul H. Anderson, *Civics Education is Essential in a Civil Society*, MSBA Journal, Sept./Oct. 2008, page 13.

The federal government has many programs to support its court and legal history and that has been the area of greatest focus. But “95% to 98% of all litigation begins and ends at the state courts.”<sup>10</sup> Having the basic material from the state level readily available would facilitate curriculum development and researching. Four years ago the Arizona Supreme Court, the Arizona state archivist and superior court clerks developed a statewide protocol for designating court cases with the status of either “Historically significant” or “Landmark” to ensure primary sources are collected and archived.

### **The Arizona Protocol and General Definitions**

The Arizona Supreme Court has administrative supervision over all the courts of the state<sup>11</sup> and has established a Records Retention Schedule which is codified in its administrative code.<sup>12</sup> After an extensive vetting process, it was adopted within this code, effective March 21, 2006.<sup>13</sup> A *historically significant* case, as defined in the code, “means a case involving a unique legal issue or controversy, prominent party or other high profile, or newsworthy aspects and that has been so designated...”<sup>14</sup> In order for a case to be designated historically significant, a motion “shall be filed by either a member of the public or on the court’s own motion.”<sup>15</sup> Once granted, this ensures that the original case record will be appropriately labeled and transferred in paper format by the clerk of the superior court to the Arizona State Library, Archives, and Public Records (ASLAPR), the state body that is the central depository of “all official books, records and documents not in current use of the various state officers and departments of the state, the

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<sup>10</sup> Edward F. Hennessey, *Judges Making Law* (1994), page ix.

<sup>11</sup> **Arizona Constitution**, Article VI, Section 3.

<sup>12</sup> **Arizona Supreme Court Code of Judicial Administration**, Chapter Four, Section 3-402, pages 1 – 29.

<sup>13</sup> **Arizona Supreme Court Administrative Order No. 2006-29**, March 21, 2006.

<sup>14</sup> See Note 33 *supra*, page 1.

<sup>15</sup> **Ibid**, page 28.

counties...”<sup>16</sup> and that permanent records status will apply rather than falling under the retain/dispose timelines of the procedure delineated in the code.

The entity given responsibility by the supreme court for designating *landmark cases* is the Arizona Historical Records Advisory Board, a board established by state statute<sup>17</sup> and whose members are appointed by the director of ASLAPR. This board is to consult with a committee convened by said board for this purpose. The code further outlines the makeup of the committee, how the designation is applied, and other details. Most importantly, it lists the factors to be considered by the committee and board in determining landmark case status:

- “(a) The frequency with which the case has been cited;
- (b) Whether the case has been designated as historically significant;
- (c) Whether the case caused a change in policies or laws;
- (d) Whether the case affected a large portion of the community and was controversial;
- (e) Whether the case is generally viewed by the community as important;
- (f) Whether the case involved a famous or notorious individual or was the subject of a well-known book or feature film; and
- (g) Any other factor considered relevant.”<sup>18</sup>

Landmark status shall be conferred for any case “that has been the subject of a published opinion of the United States Supreme Court.”<sup>19</sup> The full text of this protocol can be found in Appendix A.

Of the countless potentially historically significant or landmark case files tucked away in superior court clerk’s offices today, only a handful have been officially deemed historically significant. No landmark cases have yet to be designated as slashed government budgets have

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<sup>16</sup> **Arizona Revised Statutes** §41-1339.

<sup>17</sup> **Arizona Revised Statutes** §41-1355.

<sup>18</sup> See Note 33 *supra*, page 29.

<sup>19</sup> **Ibid.**

not yet allowed for the advisory committee to be convened. (Note: As this paper was being finalized the committee held its first meeting.) Arizona has come far in its attempt to preserve the history of its legal cases by providing the foundation and process. A new phase must be entered to actually implement the protocol in a large scale manner and perhaps expand the vision. State Archivist Dr. Melanie Sturgeon stated,

“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.”<sup>20</sup>

Researchers from a multitude of disciplines also find significance beyond legal precedent in these cases. They paint pictures on how people acted and were treated within different cultures, ethnicities, societies, etc.<sup>21</sup>

Having information on important local and state cases readily available to the public will stimulate more interest in relating these cases to illustrate and educate on national issues. It is infinitely better for the court, with its partners, to define itself rather than special interest groups and apathy taking the lead. It is perhaps analogous to the “problem solving” wave now embraced and more readily accepted as a sphere of the judiciary’s purposes and responsibilities.

The Arizona Supreme Court, State Bar of Arizona, and Arizona Foundation for Legal Services do have vibrant public education programs. None focus on our state’s legal heritage. No society or foundation exists in the state to support projects relating to court or legal history. The Friends of Arizona Archives (FAZA), an organization formed to preserve Arizona’s archival material, does have a page, “Historical Court Cases” on its website.<sup>22</sup> It succinctly explains the

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<sup>20</sup> “Making History” *Arizona Attorney*, October 2007, page 40.

<sup>21</sup> **Ibid.**

<sup>22</sup> <http://faza.org/cases/cases/html>

Historically Significant/Landmark Cases protocol and features one court case – the one it filed a motion to designate – on it. The law libraries from the state’s law schools retain valuable material but no comprehensive compilations suitable for the general public. The latest statistics (from 2003/04) show that the percentage of history majors in American higher education has declined from 18.5% to 10.7%.<sup>23</sup> Humanities majors in general dropped from a 30% total to less than 16%.<sup>24</sup>

The State of Arizona is a relatively young state to the Union: it will celebrate its 100<sup>th</sup> anniversary as a state in 2012. Plans are underway to commemorate this milestone as a benchmark in which “we look in three directions – backwards, around, and ahead.”<sup>25</sup> In its strategic agenda, the Arizona Supreme Court listed as one of its initiatives, “Create a committee on the ‘Centennial Celebration of the Arizona Judiciary’ to plan for and participate in the 2012 centennial celebration.”<sup>26</sup> It has met once. Elected officials are called upon by a House Concurrent Memorial to play a role in commemorating this event.<sup>27</sup> On the Arizona Library, Archives and Public Records centennial website, organizations may apply for Legacy Project status for meaningful projects that will stand the test of time, add to the rich history of this state, and educate its citizens.<sup>28</sup> Some courts in other states have also taken these moments of reflection and remembrance to produce works related to their court and legal history.

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<sup>23</sup> William M. Chace, *The Decline of the English Department*, *The American Scholar*, Autumn 2009, page one, <http://www.theamericanscholar.org/the-decline-of-the-english-department/>

<sup>24</sup> *Ibid.*

<sup>25</sup> **Arizona Centennial Plan**, Arizona Historical Advisory Commission Benchmark 2007, February 14, 2007, pg. 6.

<sup>26</sup> **Arizona Supreme Court Strategic Agenda, “Good to Great” 2005 – 2010**, Arizona Supreme Court, pg. 15.

<sup>27</sup> **House Concurrent Memorial 2006**, State of Arizona House of Representatives, Forty-eighth Legislature, First Regular Session, April 4, 2007.

<sup>28</sup> <http://www.azcentennial.gov>

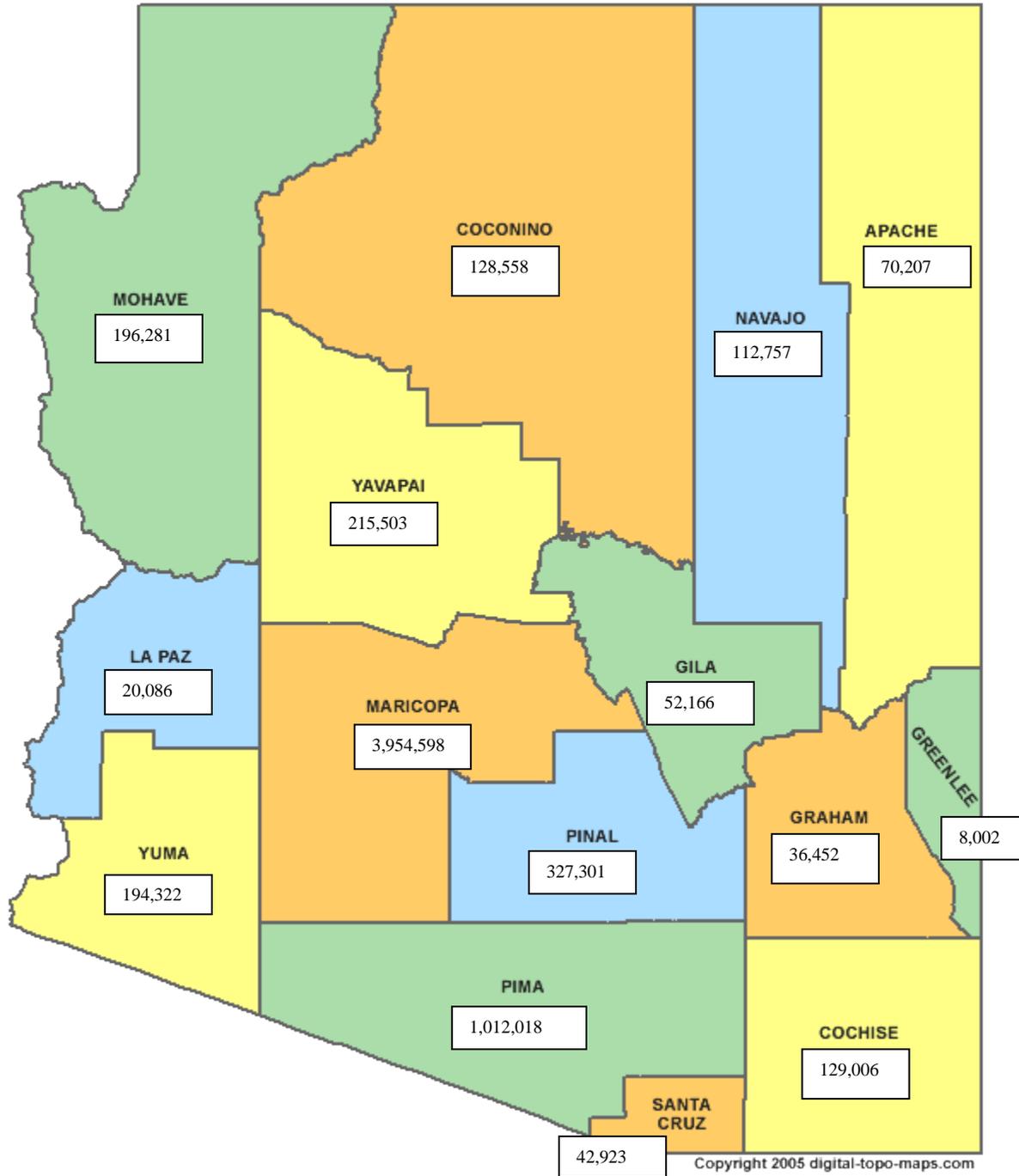
The state archivist was not aware of any other state that has produced neither a statewide protocol of this nature nor a comprehensive indexed, descriptive list of historically significant and/or landmark court cases. Arizona may actually be one of the better states to attempt this project due to its relative “youth” as the nation’s 48<sup>th</sup> state, its territorial status before then was for a fairly short duration, its jurisdictional composition of only 15 counties, and its sparse population until the last quarter century. While not a unified judicial system, the Arizona court system contains elements of one as the 15 counties act as general jurisdiction districts. There are 174 superior court (general jurisdiction) judges serving throughout the state. They are elected in non-partisan general elections (four year terms) in 13 of the 15 counties and clerks of superior court are elected in all counties (four year terms) and are officers under the judicial branch. In the two “urban” counties, judges are appointed by the governor from a list provided by a judicial selection panel and stand for retention every four years. The supreme court consists of five governor-appointed justices (six year terms – retention election) who elect the chief justice for a five year term and a court of appeals, Division One sitting in Phoenix consisting of 16 judges, and Division Two sitting in Tucson consisting of 6 judges (also six year terms – retention election).<sup>29</sup>

Illustration 1 shows a map of Arizona with its 15 counties and population estimates for each.

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<sup>29</sup> <http://supreme8ar2008/orgcharholder.htm> On Arizona Supreme Court’s intranet, not publicly available.

**Illustration 1 – Map of Arizona Counties**



src="http://www.digital-topo-maps.com/county-map/arizona-county-map.gif"><br>  
<http://www.digital-topo-maps.com/county-map/arizona.shtml>  
(Map has been modified to include 2008 population figures estimates)

## ***LITERATURE REVIEW***

A main premise of this project is that if court leaders are *just* doing their jobs then they are *not* doing their jobs. Because of the nature of the judicial branch and the high respect naturally accorded to it, it enjoys a “bully pulpit” in the community. Court participation in mock trials, Law Day events, school visits to the courtroom and other like activities are hopefully *de rigueur* at the time of this writing. The bar must now be raised. In this age of devolved budgets, partnerships with diverse entities will be integral in moving forward with the next level of public outreach programs. This section will examine the importance of significant state court cases, the impact of the trial court performance standards in relation to this project, and the efforts and resources that already exist in Arizona and other jurisdictions.

### **Importance**

The legal history of American trial courts is largely unexplored. In discussing the history of courts in the bibliographical essay of his book, *The History of American Law*, Lawrence M. Friedman wrote, “The trial courts, alas, are if anything more obscure than in the colonial period.”<sup>30</sup> He also stated, “Historical studies of the actual work of American courts – the flow of business through them; the kind of disputes they handle – are also not common.”<sup>31</sup> He cited but three studies of state courts: *The Court of Appeals of Maryland A History* (1928) by Carroll T. Bond, *The History of the Law in Massachusetts: The Supreme Judicial Court, 1692 – 1992* (1992) edited by Russell K. Osgood, and *A History of the Tennessee Supreme Court* (2002) edited by James W. Ely, Jr.<sup>32</sup> Even though over 18 years had elapsed between Friedman’s 2<sup>nd</sup> and 3<sup>rd</sup> editions his quotes on this topic have remained unchanged.

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<sup>30</sup> Lawrence M. Friedman. *A History of American Law*, 3<sup>rd</sup> ed. (2005) pg. 587.

<sup>31</sup> **Ibid**, pg. 588.

<sup>32</sup> **Ibid**.

Four other references to books of this nature have been located: *Trusting Nothing to Providence: History of Wisconsin's Legal System* (2000) by Joseph A. Ranney, *A History of Michigan Law* (2006) edited by Paul Finkelman and Martin Herschok, *The Judges of the New York Court of Appeals, A Biographical History* (2007) edited by Albert M. Rosenblatt (contains landmark cases) and *150 Years of Leading Decisions* (New York Court of Appeals) by Stewart Sterk.<sup>33</sup> In addition, a lovely treatment of the legal history of Maricopa County, Arizona by Stan Watts showcases the county's legal community, historical cases, events and concepts using vintage photographs and short essays.<sup>34</sup> The archival resources he used to produce this book would be invaluable to the presently contemplated project.

It is important to note that the proposed project to produce a descriptive index of historically significant and landmark Arizona court cases is not meant to be a work of high academic nature, nor to be a substitute for legal research on specific legal issues, rather it is contemplated to be a framework or starting guide to springboard all-comers to learn, educate and use the information in state civics programs, as background for reporters/media, as inspiration for writers and, hopefully, in ways not yet currently imagined. Online accessibility will be crucial if a goal to engage students is deemed important. William M. Habermehl, superintendent of Orange County, California school district stated, "In five years, I think the majority of students will be using digital textbooks."<sup>35</sup> Students in Vail, Arizona are learning with lesson plans created by teachers using the Beyond Textbooks initiative in which reliable internet sites provide presentations and research materials.<sup>36</sup> And now GoogleScholar has legal opinion

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<sup>33</sup> <http://www.nycourts.gov/history/cases.htm>. (no publishing date available).

<sup>34</sup> Stan Watts, *Images of America – A Legal History of Maricopa County* (2007).

<sup>35</sup> Tamar Lewin, "In a Digital Future, Textbooks are History" The New York Times August 9, 2009, page one.

<sup>36</sup> **Ibid.**

search functionality (still in beta testing) allowing for free access to full-text state and federal opinions. It is not yet complete but cases are continuously being added to the database.<sup>37</sup>

## **Impact**

The court leader who is keeping current with professional development educational opportunities should have a basic tool-kit to refer to when undertaking any new project. The following principles from the leading publications relating to court performance standards were reviewed for potential impact to the contemplated project:

Trial Court Performance Standards Implementation Manual, published by the Bureau of Justice Assistance and its Monograph:<sup>38</sup>

Trial Court Performance Standard 4.4: Public Education - *The trial court informs the community about its programs*. This standard requires trial courts to inform and educate the public about its programs and ties into Standard 5.3: Judicial Independence and Accountability – *The public perceives the trial court as independent, not unduly influenced by other components of government, and accountable*. In order for the public to see the trial court as an independent branch of government there should be more educational programs sponsored or co-sponsored by the court itself. Otherwise, the sensational “fast-food-type” television shows, social media postings and special interest propaganda campaigns will continue to be the major source of information regarding judicial proceedings and functions to the public. A review of the manual did not yield survey information relevant to this project.

Core Competency Curriculum Guidelines:<sup>39</sup>

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<sup>37</sup> <http://scholargoogle.com/>

<sup>38</sup> **Trial Court Performance Standards Implementation Manual Monograph**, Bureau of Justice.

<sup>39</sup> **Core Competency Curriculum Guidelines: What Court Leaders Need to Know and Be Able to Do**, NACM.

Several of the Guidelines will provide the backdrop to this initiative: Purposes and Responsibilities.<sup>40</sup> The knowledge that the courts are a separate branch of government and the importance of an impartial and independent judiciary must permeate all we do. There will be many opportunities when cases are highlighted to illustrate the role of the judiciary in balancing “social order vs. liberty.”<sup>41</sup> Leadership.<sup>42</sup> Multi-disciplined partnerships and collaborations using social media and networking will require dynamics that won’t be found in a handbook. A leader taking on something not tried before must trust in the process and be willing to pause – perhaps even stop – and take stock as events unfold. “Do skillful and continual diagnosis”<sup>43</sup> – both internally and externally would be an appropriate mantra. Visioning and Strategic Planning.<sup>44</sup> It is important that the goals and objectives of any public history project mesh with the court’s strategic plan and vision. Communicate the vision at the time coalitions and partnerships are being built.<sup>45</sup> Essential Components.<sup>46</sup> Once again, educating the public about the role and purpose of the court and managing the Essential Components for orderly judicial and administrative support must be meshed as knowledge of the court record keeping function and records retention schedule play key roles in the project.<sup>47</sup> Court Community Communication.<sup>48</sup> This guideline may hold the biggest impact to the proposed project. Finding from the research and surveys will emphasize two ways of communicating information about important court cases. With information more widely available, the public may become inspired

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<sup>40</sup> **Ibid**, pages 7 – 11.

<sup>41</sup> **Ibid**, pg. 10.

<sup>42</sup> **Ibid**, pages 17 – 20.

<sup>43</sup> **Ibid**, pg. 17.

<sup>44</sup> **Ibid**, pages 23 – 28.

<sup>45</sup> **Ibid**, pg. 25.

<sup>46</sup> **Ibid**, pages 28 – 31.

<sup>47</sup> **Ibid**, pg. 30.

<sup>48</sup> **Ibid**, pages 32 – 36.

to get more involved in the democratic fashion our founders intended.<sup>49</sup> Education, Training, and Development:<sup>50</sup> The present CEDP class is composed of several court leaders with history degrees. If representative of the greater pool, Arizona court personnel with this skill set can be recruited to help design curriculum on legal and court history for judicial branch education classes. When cross-pollination of disciplines occur, funding authorities are more likely to grant funds to bolster educational resources, particularly when programs would be open to the public as well as court employees.<sup>51</sup> Information Technology Management:<sup>52</sup> Contemplating that a descriptive, indexed listing of court cases would be made available on-line, this project is now possible due to the maturation and standardization of systems hardware, software and IT process management practices. The need will come more from the business side in the areas of design, data elements, and cataloguing. The basic operating platforms are there. Still, it will be up to business process experts working closely with IT managers to implement a successful project.<sup>53</sup>

CourTools: Measure 9.<sup>54</sup>

While outside the scope of this paper, it could be argued that a court demonstrating active involvement in court and legal history education programs which include court staff participation would find enhanced job satisfaction as part of processing tomorrow's history today which might well lead to improved service to the public. Consideration should be given to measuring court employee satisfaction surveys on at least a local level, both before and after implementation of a new program. Survey questions might well need to be modified to ensure capture of the

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<sup>49</sup> **Ibid**, pg. 33.

<sup>50</sup> **Ibid**, pages 49 – 54.

<sup>51</sup> **Ibid**, pg. 53.

<sup>52</sup> **Ibid**, pages 55 – 60.

<sup>53</sup> **Ibid**, pg. 59.

<sup>54</sup> **CourTools**, *Measure 9*, NCSC.

importance and impact of training staff on local and state courts' legal history. The following questions from Measure 9 are most relevant: Question (9): The Court is respected in the community; Question (12): I understand the connection between the work I do and the mission and goals of the court; Question (14): I feel valued by my supervisor based on my knowledge and contribution to my department, unit, or division; Question (18): My coworkers care about the quality of services and programs we provide; Question (20): I am proud that I work in the court.<sup>55</sup>

### **Efforts and Resources in Other Jurisdictions**

The Federal Judicial Center was established in 1967 with the statutory mission to “conduct, coordinate, and encourage programs relating to the history of the United States government.”<sup>56</sup> It also provides assistance to courts on their own judicial history programs.<sup>57</sup> In 2004 it published *Initiating a Federal Court Historical Program* that provides a comprehensive summary of federal court history programs which include such activities as records preservation efforts, collection of basic reference materials, oral history projects,<sup>58</sup> publications on court histories (books, newsletters, journals, and Web sites),<sup>59</sup> exhibit displays,<sup>60</sup> lectures, symposia, and reenactments,<sup>61</sup> and educational programs.<sup>62</sup> Many of these programs are made possible by historical societies, others by committees consisting of volunteers and court staff.<sup>63</sup> Some courts do have in-house programs that operate with minimal cost and staffing.<sup>64</sup> One program offers

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<sup>55</sup> **Ibid.**

<sup>56</sup> **Initiating a Federal Court Historical Program**, Federal Judicial History Office, Federal Judicial Center, 2004.

<sup>57</sup> **Ibid**, end page.

<sup>58</sup> **Ibid**, page 5.

<sup>59</sup> **Ibid**, page 7.

<sup>60</sup> **Ibid**, page 23.

<sup>61</sup> **Ibid**, page 26.

<sup>62</sup> **Ibid**, page 27.

<sup>63</sup> **Ibid**, page 5.

<sup>64</sup> **Ibid.**

stipends to graduate student who research using federal court records, another offers prizes for students who engage in the research of legal history.<sup>65</sup>

“[W]riting a survey of the court’s history is an essential step in developing support for other historical projects.”<sup>66</sup> Interestingly, it was the nation’s bicentennial that spurred efforts from bicentennial committees which resulted in “the first generation of modern court histories.”<sup>67</sup> Its home web site is <http://www.fjc.gov/history/home.nsf> which includes educational materials, units and guides on “notable federal trials and great debates in U.S. history.”<sup>68</sup>

The center’s efforts also led to “compil[ing] a guide to the diverse and scattered manuscript sources available for studying the men and women who have served on the federal bench.”<sup>69</sup> *The Directory of Manuscript Collections Related to Federal Judges, 1789 – 1997* was published in 1998. It was created by searching the principal national catalogs of manuscript collections through name searches, surveying repositories and federal court historical programs, searching numerous online repository catalogs, posting an announcement of the project on the Archives Listerv, and receiving information from archivists and librarians.<sup>70</sup> The official records of the federal courts are held in the National Archives. For the most part, the documents pertain to collections containing “papers of a federal judge, that a federal judge was represented in a significant way, or that a federal judge was listed as a correspondent.”<sup>71</sup> The updated directory is

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<sup>65</sup> **Ibid**, page 28.

<sup>66</sup> **Ibid**, page 7.

<sup>67</sup> **Ibid**, page 8.

<sup>68</sup> **Ibid**, page 27.

<sup>69</sup> **Directory of Manuscript Collections Related to Federal Judges, 1789 – 1997**, Federal Judicial Center 1998.

<sup>70</sup> **Ibid**, page one.

<sup>71</sup> **Ibid**.

now available online<sup>72</sup> and would be helpful in survey compilation and the researching of Arizona territorial judges' papers for any insight on high profile cases as they were federal judges until Statehood in 1912. Additionally, several state judges have been appointed to the federal bench over the years.

There are many high-quality websites devoted to United States Supreme Court cases. The first stop should be the Supreme Court Historical Society's website, [www.supremecourthistory.org](http://www.supremecourthistory.org), as its many links will lead to reliable sources. Although over ten years old now, this site contains a PDF version of an annotated resources list with information on the Supreme Court, its justices, procedures, opinions, architecture and history.<sup>73</sup> **Oyez** is a website containing, among other things, audio recordings of U. S. Supreme Court proceedings.<sup>74</sup> Landmark Supreme Court cases can be found at <http://www.landmarkcases.org/> by Street Law, Inc., which also has a site section on "Web Sites About the Supreme Court."<sup>75</sup> These could all serve as models for any effort to develop a state court history website or pages.

A search of all 50 state courts' websites was conducted along with a review of the websites for their state archives or libraries, state bar associations, legal and/or court societies and foundations, and other archive repositories deemed to be the court's official archives, for significant or high profile court case listings, collaborative partnerships, innovative public education programs and use of media, and funding sources. Highlights include:

INDIANA: Indiana's Supreme Court is a shining example of a court's public education outreach efforts. In 2001 the chief justice hired Elizabeth Osborn, PhD., its first formal court

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<sup>72</sup> <http://www.fjc.gov/history>

<sup>73</sup> [http://www.supremecourthistory.org/works/images/SCHS\\_researching-the-court.PDF](http://www.supremecourthistory.org/works/images/SCHS_researching-the-court.PDF)

<sup>74</sup> <http://www.oyez.org>

<sup>75</sup> <http://www.streetlaw.org/en/page.scwebsites.aspx>

historian and director of public education.<sup>76</sup> Its *Courts in the Classroom* (CITC) project webcasts lectures, courtroom events, CLE seminars, dramatic reenactments and all oral arguments. The events are archived and available for podcasting.<sup>77</sup> It has formed partnerships with the state's historical foundations, institutes, universities, schools, state archives, the Indiana Department of Education, and others to produce CITC and publications. Its website contains many high quality programs and links,<sup>78</sup> including an electronic database index of Indiana Supreme Court records from 1816 – 1872.<sup>79</sup> CITC received the American Associations of State and Local Historian Award of Merit in 2006. Impressively, it operates all this with a modest budget which was first implemented during an economic downturn.<sup>80</sup> Indiana's legal and court history is being preserved and promoted at the same high quality civic education is being offered to all citizens of the state.<sup>81</sup>

FLORIDA: Florida's Supreme Court has also produced a CyberCourt project although it appears that only older cases now contain curricula.<sup>82</sup> It started as a joint project in 1997 of the chief justice and the president of Florida State University.<sup>83</sup> The satellite transmissions were used by all major television networks to broadcast the two court sessions in Bush v. Gore.<sup>84</sup> The technology and delivery is being operated and hosted by Florida State University's Public Broadcasting Service (PBS).<sup>85</sup> Florida has also developed a Justice Teaching Institute which spends five days every summer training Florida teachers on court and law related topics. In turn,

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<sup>76</sup> Elizabeth Osborn, "Courts in the Classroom: Indiana's Educational Outreach Through the Web," *The Justice System Journal*, vol. 27, no. 3 (2006), page 286.

<sup>77</sup> **Ibid**, page 287.

<sup>78</sup> <http://www.in.gov/judiciary>

<sup>79</sup> **Ibid**, page 294.

<sup>80</sup> **Ibid**, page 298.

<sup>81</sup> **Ibid**, page 300.

<sup>82</sup> <http://www.floridasupremecourt.org/education/cybercourt/index.html>.

<sup>83</sup> *Courts in the Classroom*, education article, [ncsonline.org/WCPublications/Summary/CTCArticles/CTC8](http://ncsonline.org/WCPublications/Summary/CTCArticles/CTC8), page 2.

<sup>84</sup> **Ibid**, page 4.

<sup>85</sup> <http://www.wfsu.org/gavel2gavel/index.php>

these teachers train educators in their local jurisdictions.<sup>86</sup> The Florida Bar Foundation partially funds the Florida Law Education Association's efforts in offering a website on law related educational materials and programs for Florida youth at [www.flrea.org](http://www.flrea.org).

Nine years ago the Florida Supreme Court initiated a High Profile Cases section on its website. The public can read the summary of the case and download the filings and docket. Once finalized, the case information is still available in its archives section.<sup>87</sup> This is an excellent tool and establishes a baseline for many other potential public education projects as well as compiling the court's history.

MICHIGAN: In 2003 the Michigan Supreme Court Historical Society formed a Significant Cases Committee which spent almost a year determining which 20 state supreme court decisions "had a profound effect on the everyday lives of Michigan citizens of the then and now."<sup>88</sup> No claim was made that these are the top, or most important, decisions of the state, only that the cases "would work together to tell the story of the decisional history of the court as a whole."<sup>89</sup> A history professor and author, Paul Moreno, was hired to write the history of these cases and the Michigan State Bar Foundation provided partial monetary support to the project. It was completed in 2008 and made available in print and online formats. Lesson plans have also been developed for distribution to educators.

NEW YORK: The Historical Society of the Courts of the State of New York was created in 2003 with the goal of "preserving the legal and judicial history of the State of New York."<sup>90</sup>

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<sup>86</sup> <http://www.floridasupremecourt.org/education/index.shtml>

<sup>87</sup> [http://www.floridasupremecourt.org/pub\\_info/index.shtml](http://www.floridasupremecourt.org/pub_info/index.shtml)

<sup>88</sup> <http://www.micourthistory.org/verdict.php>

<sup>89</sup> **The Verdict of History**, Michigan State Historical Society, 2009, page one.

<sup>90</sup> <http://www.nycourts.gov/history/About.htm>

Its website lists a variety of programs and activities underway, of particular interest is its Library section in which information is available on-line under six general subject areas: (1) History (2) Judges, (3) Courts, (4) Events, (5) Research, (6) Constitution.<sup>91</sup> It also features the full text of the 55 New York State Court of Appeals decisions which were reviewed by Stewart Sterk in the publication, “*150 Years of Leading Decisions*”.<sup>92</sup>

States with similar sized populations to Arizona (pop. 6,595,778 – ranking – 14th) were examined to compare what is being done in support of legal and court history preservation and documentation. They are: Indiana (pop. 6,423,113 – ranking – 16th) and outlined above, Massachusetts (pop. 6,593,587 – ranking 15th), Missouri (pop. 5,987,580 – ranking – 18th), Tennessee (pop. 6,296,254 – ranking 17th) and Washington (6,664,195 – ranking 13th).<sup>93</sup>

Massachusetts Supreme Judicial Court has a unique partnership with the Social Law Library, the state government’s law library which is 60% privately funded.<sup>94</sup> The Supreme Judicial Court Historical Society was formed in 1989 and produces educational programs and exhibits, and publishes an annual journal.<sup>95</sup> A web search found no route to a listing of significant state court cases. The Missouri Bar Association offers lesson plans on its website featuring 32 Missouri civil court case scenarios for students from grades six through 12 to participate in mock hearings and trials.<sup>96</sup> The Tennessee court system had no links to its legal history; however, the Tennessee Bar Foundation has a Legal History Project that, since 1998, has been conducting video oral interviews of senior attorneys.<sup>97</sup> The state of Washington formed a

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<sup>91</sup> <http://www.nycourts.gov/history/library.htm>

<sup>92</sup> <http://www.nycourts.gov/history/cases/htm>

<sup>93</sup> <http://factfinder.census.gov> states by population ranking page, July 1, 2009 estimates.

<sup>94</sup> <http://www.sociallaw.com/article.htm?cid=9975>

<sup>95</sup> <http://www.h-net.org/announce/show.cgi?ID=126182>

<sup>96</sup> <http://www.mobar.org/teach/civil.pdf>

<sup>97</sup> <http://www.tnbarfoundation.org/legal.aspx>

courts historical society in 1999. In November 2009 it held a day-long seminar, “Through the Years – Important Washington Cases and Their Enduring Significance”<sup>98</sup> that featured 13 presentations covering significant cases heard by the Washington Supreme Court.

States with court historical societies seem to be in the best position to start linking their legal and court history research to judicial branch websites. Connecticut has a very active supreme court historical society which was founded in 2005.<sup>99</sup> Its judicial branch law library has pages devoted to, “A Dose of Connecticut Legal History”<sup>100</sup> See Illustration 2 for the webpage and Illustration 3 for a page-link to one of its featured cases.<sup>101</sup> It illustrates significant cases and events in Connecticut’s legal history beginning with pre-Statehood.

## Illustration 2

The screenshot shows the website for Connecticut Judicial Branch Law Libraries. The page title is "Tapping the Scales of Justice - A Dose of Connecticut Legal History". The main content area features a list of historical topics, including "A Case of Tories, Treasure and Trespass", "America's First Court Reporter Ephraim Kirby", "Civil Rights in Connecticut", "Connecticut Thanksgiving Proclamation", "Katherine Harrison and the Adoption of Rules of Evidence", "Lafayette S. Foster: Connecticut Statesman, Jurist and Acting Vice President of the United States", "New London Courthouse - A Connecticut Landmark", "Prudence Crandall - State Heroine", "Samuel Huntington (July 16, 1731 – January 5, 1796), The First President of the United States?", "Roger Sherman and The Connecticut Compromise", "Tapping Reeve and the Litchfield Law School", "The Charter Oak", "The 'Chip Smith' Charge", "The Code of 1650 or Ludlow's Code", "The Danbury Hatters Case", "The Public Defender System - A Connecticut First", "The Right to Privacy", "Witches and Witchcraft - the First Person Executed in the Colonies", and "Zephaniah Swifts' First Legal Texts in America". To the right of the list is a small image of a historical scene. The footer includes a copyright notice for 2010 and a logo for the State of Connecticut Judicial Branch.

<sup>98</sup> <http://wacourthistory.org//programs.html>

<sup>99</sup> <http://www.jud.ct.gov/historicalsociety>

<sup>100</sup> <http://www.jud.ct.gov/lawlib/History/default.htm>

<sup>101</sup> <http://www.jud.ct.gov/lawlib/History/civilrights.htm>

### Illustration 3

**Tapping the Scales of Justice - A Dose of Connecticut Legal History**

**Civil Rights in Connecticut**

Long before the Civil Rights movement of the 20<sup>th</sup> century, a group of kidnapped African natives bound for the Cuban slave trade revolted aboard their ship, *Amistad*. Attempting to sail back to Africa, the men were captured off Long Island and taken to New Haven, Connecticut. What followed was a complicated trail through federal courts beginning in Connecticut debating the issues of human rights versus property rights. The question of slavery was yet to be decided by a civil war, and the bulk of civil rights legislation would not become a reality for over one hundred years.



See: *Gedney v. L'Amistad*, 10 Federal Cases 141 (District court, District of Connecticut, January 7, 1840)

*The Amistad*, 40 U.S. 518, 15 Peters 518, 10 L.Ed. 826 (January Term, 1841)

Also in New Haven, a little known civil rights case was decided in Superior Court in 1939. The case centered around the claim of overcharging based on racial bias. Plaintiff claimed discrimination in treatment, in violation of Connecticut statute. Connecticut law created a cause of action "in favor of persons deprived, on account of alienage, race or color, of the full and equal enjoyment of privileges of places of public accommodation, or discriminated against, on that account, in the price of the enjoyment of such privileges." The action was, one senses, pursued out of principle rather than for the damages awarded (\$80). The memorandum also details some interesting technical history of civil rights laws in Connecticut. Of further interest, however, is the fact that counsel for the plaintiff, Attorney Harry Watstein, later in his career served for a period of ten years as Librarian at the New Haven County Law Library.

See: *Ross v. Schade*, 7 Conn. Supp. 443

**"We know through painful experience that freedom is never voluntarily given by the oppressor; it must be demanded by the oppressed."**

Martin Luther King, Jr. – Letter from Birmingham Jail, 1963

[Dose of Connecticut Legal History](#)

Nevada's Judicial Historical Society<sup>102</sup> was founded in 1988 and has been active in a variety of court history projects. One of them is a "Ten Cases of the Nevada Supreme Court" that is linked to the Nevada State Library and Archives website.<sup>103</sup> Its format is similar to the examples from Connecticut. The Texas Supreme Court Historical Society was founded 20 years ago as the result of the court's committee to commemorate its sesquicentennial.<sup>104</sup> Its website indicates that "over 115 years of legal history are virtually unknown."<sup>105</sup> Steps are being taken to correct this as among other objectives in its agenda, the sponsorship of court history publications is foremost. The New Hampshire Supreme Court Society has a link to its home webpage labeled, "Landmark Cases Forthcoming"<sup>106</sup> and will be a good site to monitor for future additions.

Some states have Judicial Learning Centers which are physically housed at or near the state supreme court building. Among other displays relating to the states' court and legal

<sup>102</sup> <http://lawlibrary.nevadajudiciary.us/legalCommunity/judicialHistoricalSociety.php>

<sup>103</sup> *Ibid.* then click on "Ten Cases of the Nevada Supreme Court" [authorization now required].

<sup>104</sup> William S. Pugsley, *Preserving and Celebrating History – Texas Supreme Court Society Turns 20*, Texas Bar Journal, December 2009, Vol. 72, No. 11 at page 930 found at <http://www.texasbar.com>

<sup>105</sup> <http://www.texascourthistory.org/projects.html>

<sup>106</sup> <http://www.nhsupremecourtsociety.org/virtuallibrary.html>

history, they feature important cases in the courts' histories. Most notable are examples from Hawai'i<sup>107</sup> and Ohio.<sup>108</sup> Ohio's website has a timeline which includes a few significant cases. It also has a state statute that allows for a court of appeals "to certify its record in any civil or misdemeanor case that the court finds "to be of 'public or great general interest.'"<sup>109</sup> Perhaps the website with the most extensive compilation of court history belongs to North Dakota.<sup>110</sup> It was developed to celebrate the centennial of the State Bar Association of North Dakota. It does not feature many court cases, however. The Iowa Judicial Branch's public information webpage has a very nice history section<sup>111</sup> that contains landmark cases and some small photo illustrations.

It is estimated that over 200 separate websites were reviewed for this segment. Easily, some very fine state court websites could have been overlooked, or they contained similar content to the above mentioned sites. The above are fine examples to review for those wanting to embark on creating a state court and legal history section on their court website. They demonstrate the importance that these states give to their judicial history.

## **Arizona Resources**

In the course of the literature review and the two In-State Stakeholders Surveys, information regarding the important publications, documents, and materials on Arizona court and legal history was requested so that the compilation of an Arizona Resources Directory could be started for researchers to be able to "mine" through them for court cases that may be suitable for

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<sup>107</sup> <http://www.jhchawaii.net>

<sup>108</sup> <http://www.ohiojudicialcenter.gov>

<sup>109</sup> <http://www.sconet.state.oh.us/JudSystem/>

<sup>110</sup> <http://www.ndcourts.com/History>

<sup>111</sup> [http://www.iowacourts.gov/Public\\_Information](http://www.iowacourts.gov/Public_Information)

Historically Significant or Landmark designation. These materials take the form of in-house produced booklets at the local court level, books on a specific case or a specific person involved in a case, memoirs of judges and other court personnel, oral histories or interviews, studies of the history of Arizona's legal system, online catalogs, and named collections in the document repositories of Arizona. While newspapers and other media are also important resources, they are outside the scope of this research project. This directory is located in Appendix B.

The librarians of Arizona State Library, Archives and Public Records have compiled a list entitled, "Landmark Cases, Arizona (this list is NOT comprehensive)." It is included here as Appendix C. On the Arizona State Library, Archives and Public Records website there is housed a one-stop web page for its "Cultural Inventory Project" – a directory guide to more than 600 repositories and societies in the state. It provides information regarding the repository's name, location, type, subject search and resources. Many are linked directly to the repository's home webpage. This is a valuable service for researching the general to the obscure. It can be accessed at <http://cip.lib.az.us>.

There are other databases that are not available to the public and permissions should be sought for access to be given for their use by all assigned to this project. An excellent article titled, "Internet, the Electronic Media and Historical Research" (2003) by Wendy Plotkin of Arizona State University<sup>112</sup> assists in navigating through many of the electronic research tools now available for historical research.

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<sup>112</sup> <http://www.public.asu.edu/~wplotkin/History300/ResourcesOnLine.htm> at pages 1 – 18.

## ***METHODS***

The literature review and website searches yielded information generally related to high profile and significant cases and examined court history and public education projects occurring across the county. To answer questions regarding the implementation of Arizona's protocol, the importance of developing a descriptive index of these kinds of cases, and the impact of doing so, state stakeholders – clerks of superior court, attorneys, judges, court leaders, educators, etc. would need to be contacted for their thoughts and ideas. Informal telephonic interviews were conducted with the state archivist, a museum director, clerks of superior court and staff, an attorney/author/historian, a university professor, a judge, and a state supreme court public educator (PhD) in Indiana for suggestions on direction for data collection. Emails were exchanged with the chief justice of the Arizona Supreme Court and her staff regarding support of the project.

From the oral interviews, it became clear that written surveys would be the best method to learn more about the actual implementation of the protocol since its adoption and the feasibility of expanding it to a more public education focused, web-based application. Many of the same people initially contacted formed the pre-test team for the questions on the first two surveys. The Arizona Historically Significant and Landmark case protocol, lodged within the superior court records retention schedule, formed the nucleus of the project. It is found in Appendix A and was included in the first two surveys as important background. The survey period for both surveys lasted approximately two weeks. The first survey (called Survey No. 1) was sent out by email in September to 14 of Arizona's 15 clerks of the superior court. This population was chosen because the protocol requires that motions to designate cases as Historically Significant are to be filed in their office and they are the record keepers and the

preparers of the court files referred to in the protocol. Eleven clerks returned the surveys for a 78% response rate. The introduction and survey questions can be found at Appendix D and selected responses provided by the clerks or their designees are located in Appendix E.

The second survey (called Survey No. 2) was distributed in November by email to a much larger universe: people considered potential state stakeholders of the project. Their professions or areas of expertise included: judge, attorney, educator, historian, court leader, museum director, author, librarian, media, archivist, law enforcement, genealogist, and general government. They were selected as those most likely to have some knowledge of the protocol and/or opinions relating to the development and utility of an indexed, descriptive list of Arizona historically significant court cases. Approximately 150 people were sent a survey with 35 responding, a return rate of 23%.

The diverse population of the second survey required well-honed questions and letters of introduction and support. The pre-testing process took much longer than anticipated. It is believed that supporting letters from the chief justice of the Arizona Supreme Court and the state archivist contributed to the respectable return rate. The supporting letter from the chief justice is found at Appendix F and the supporting letter from the state archivist is found at Appendix G. The introduction and questions to Survey No. 2 is found in Appendix H. Selected answers to this survey are compiled together and provided in Appendix I.

Due to the delays involved in composing Survey No. 2 and its concomitant delay in distribution, work on Survey No. 3 was pushed into the winter holiday season. Approximately 50 people were contacted through the court historian subgroup of the American Association for

State and Local History with two responses. The introduction and survey questions are found in Appendix J with the responses in Appendix K.

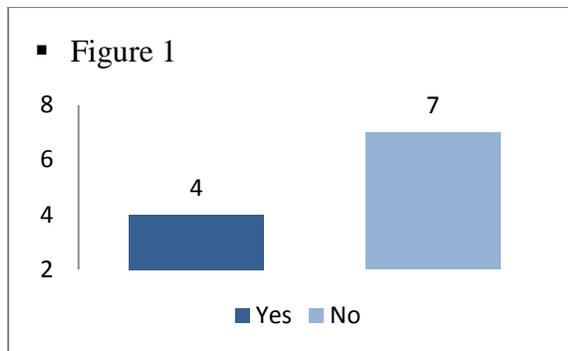
## ***FINDINGS***

This section contains a summary of the results from the three questionnaire-type surveys. Selected responses from the first two surveys are highlighted in the Appendix section. Full responses from the third survey are also located in the appendices.

### **Survey of Clerks of the Superior Court (Survey No. 1)**

This first survey was developed to gain the perspectives of the Arizona clerks of the superior court as to how the Historically Significant and Landmark case protocol is working, the importance of documenting these cases, and the feasibility of expanding the protocol's scope to develop a publicly available, indexed, descriptive listing of these cases.

#### **Question 1. Have any cases in your county been designated Historically Significant?**



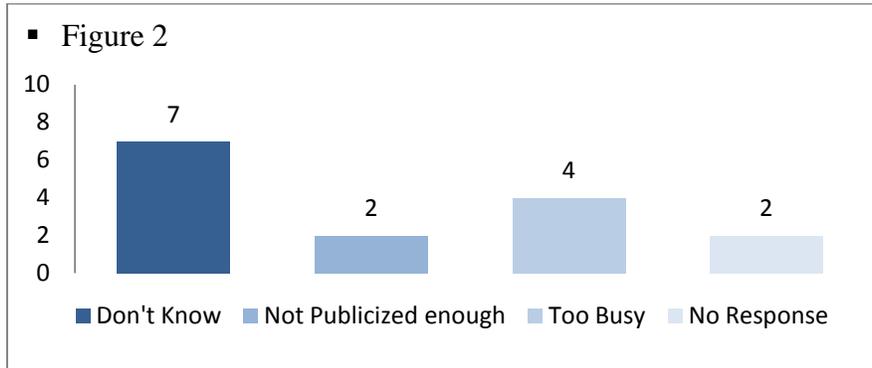
#### **Question 2. If yes, please list them and the occupation or affiliation of the person(s) who filed the motion to designate them (if known) and briefly describe the facts of the cases.**

To date, eight cases have been designated Historically Significant in the state. See Appendix L for case titles and case numbers.

**Question 3. Have all the cases in your county that should be designated Historically Significant been officially designated by your presiding judge?**

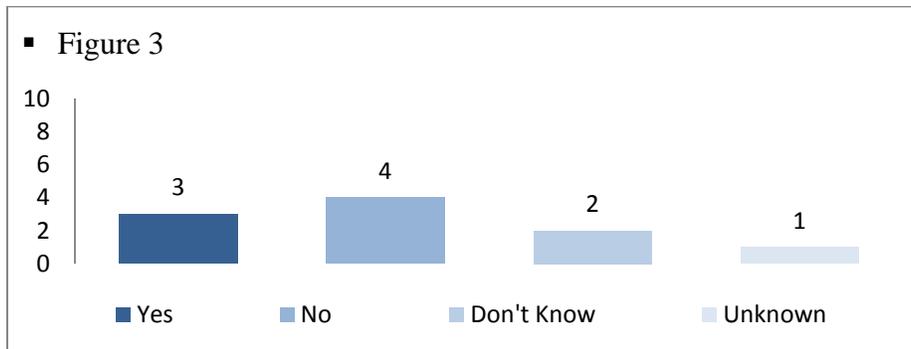
Only one clerk believed that all have been designated in her county.

**Question 4. If not, why not?**



“Not publicized enough” (2) and “too busy” (4) were the dominant reasons given. There were seven “don’t know” responses and two others did not respond to the question.

**Question 5. Do you consider the Historically Significant designation procedure as outlined in ACJA Section 3-402 to be successfully implemented in your court?**



Three clerks consider the procedure to be successfully implemented while seven indicated either in the negative or didn’t know.

**Question 6. How could the current Historically Significant designation procedure as outlined in ACJA Section 3-402 be improved to increase its use?**

Three clerks found the procedure to be understandable or clear, of those one stated that there was no staff or resources to implement the procedure. Another thought it to be fine as is and one suggested that the protocol be streamlined so that the clerk of court could make the designation and then follow-through on the preparation of the case file without a court order.

**Question 7. Does your office have a local procedure in place that provides for special handling of high-profile cases as part of records management?**

Seven clerks responded in the negative or gave no response. Two managed cases “on the fly.” One had some “basic procedures” and another had procedures for minors.

**Question 8. If yes: Is it in writing or a local culture, word-of-mouth training procedure?**

Two clerks reported having written procedures although one relied on a basic administrative order with the remainder of the procedure being local culture and word-of-mouth. Three described their procedure as “not written down.”

**Question 9. What is your criteria for handling a case as a high-profile case?**

Some clerks reported that media and community interest and attention triggers them to handle the case differently than regular cases. One mentioned that in cases with first degree murder charges, it would be up to the clerk or administrative staff to suggest it be preserved due to their nature.

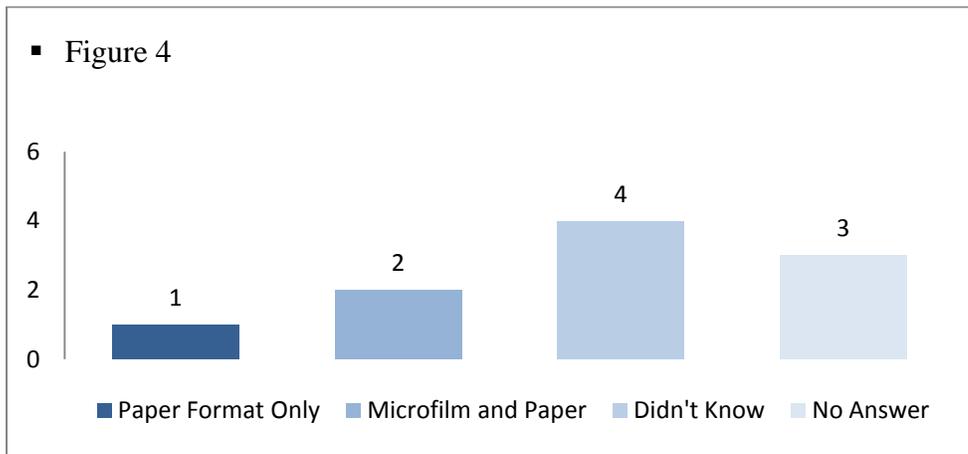
**Question 10. Does your office currently have a high-profile cases inventory list?**

No clerks reported having a high-profile cases inventory list. One mentioned having a website with one high-profile case listed on it.

**Question 11. If a researcher came to your county would you be able to give him or her guidance as to how to find high-profile (and potentially Historically Significant) case files?**

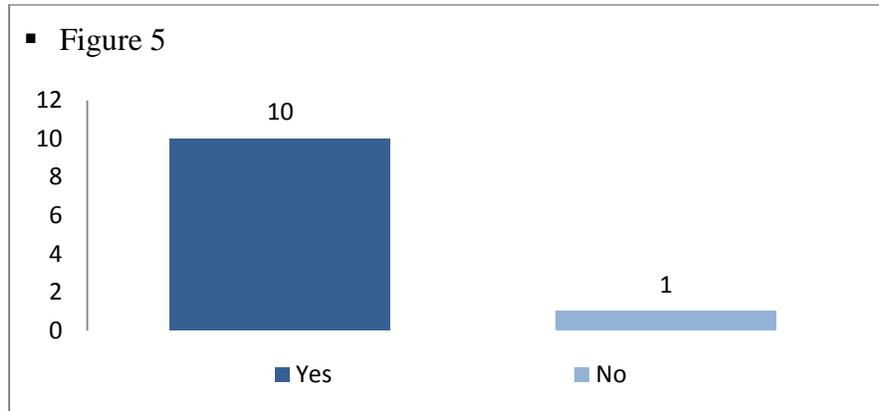
Two clerks reported that they could locate the cases if given name of party or case number. Three responded that the researcher would be referred to the clerk of court or that through memory or historical knowledge they could give guidance. Three responded in the negative.

**Question 12. Approximately what percentage of these high-profile cases are: In original paper format only; on microfilm/fiche; on both paper and film; kept at Arizona State Archives; lost or destroyed; don't know.**



One clerk mentioned that the office doesn't track high profile cases. The clerks who did respond to "paper format only" and "microfilm and paper" all indicated that 100% were kept in that format.

**Question 13. Is there a long time employee (or someone recently retired) in your office who knows where “everything is buried?”**



This might seem like a trite phrase but it was common practice in Arizona to move and/or dump old public records into various inferior out-buildings over the decades.

**Question 14. What do you perceive the benefits would be to the public by having a Historically Significant court case list/index?**

If placed online, it could help researchers do more of their own work and reduce work on the clerk’s office. One wrote that it might get the public to notice what’s not on it and designate cases themselves. A few clerks commented that it would be informative, provide easier access and create interest.

**Question 15. Does your court have any locally-produced booklets or materials on court and/or legal history?**

Almost all responded in the negative. One believed the court had materials; another indicated that some booklets had been prepared by members of the community and churches.

**Question 16. On a scale of one to ten, one being the least important, how important is it for the state and citizens of Arizona that these Historically Significant case records be designated and preserved as outlined in ACJA Section 3-402?**

**Table 1**

| Least Important |   |   |   |   | Most Important |    |   |    |    |
|-----------------|---|---|---|---|----------------|----|---|----|----|
| 1               | 2 | 3 | 4 | 5 | 6              | 7  | 8 | 9  | 10 |
|                 |   | x |   | x | xx             | xx | x | xx | xx |

**Average = 7**

**Question 17. How long have you served as Clerk of the Superior Court?**

Length of service ranged from seven to 34 years with the average being 14 years.

**Question 18. How long have you worked in the court or justice system?**

Length of service ranged from 11 to 40 years with the average being 26 years.

**Question 19. Is there anything else you'd like to comment on that is not specifically addressed above?**

Two clerks stated that exhibits should be included as part of what is preserved in a case that is designated historically significant. Because the records retention period is short, it would be best to designate these cases sooner rather than later as storage space is limited. Three clerks stated that budgetary and staffing constraints would impede pursuing this project. One clerk wrote that she included copies of newspaper articles and other published materials with the historically significant case files that were sent to state archives. Another wrote of her concern about losing legibility of the important case documents “that are handwritten on very fine onion skin.” Lastly, two clerks requested assistance in determining what cases could be candidates for historically significant designation.

## Survey No. 1 Analysis and Commentary

When the average scores in Question 16 (the importance of designation and preservation for the public) were grouped by high, medium, and low, length of service really played a part. The five clerks who gave scores between 8 and 10 served longer in their positions than those giving rankings of 7 and below as evidenced by Table 2 below.

**Table 2**

|             | Average Score | Average /Years of Service |
|-------------|---------------|---------------------------|
| Group A (5) | 9.2           | 19                        |
| Group B (2) | 7             | 12.5                      |
| Group C (4) | 5             | 9.25                      |

Notably, since survey administration, three of the five clerks in Group A have now retired.

Arizona statutorily defines “urban” and “rural” clerks by population size of the county. For courts, this makes a difference in the election or appointment of judges, clerks’ salaries and whether clerks or appointees of the presiding judge serve as jury commissioner. Maricopa and Pima counties are considered, “urban,” the other 13 counties are considered “rural”. In comparing these two groups, the “urban” counties average ranking is ten, while the “rural” counties’ average is 6.6.

While the overall ranking of importance of these cases records is a 7, only four counties have officially designated these as historically significant with only two superior court clerks, those closest to the record, having filed motions in their court to accomplish this. Interestingly, the clerk who ranked the importance with a 3 score is one of the clerks who filed a motion with the presiding judge to gain Historically Significant designation for a case in her county.

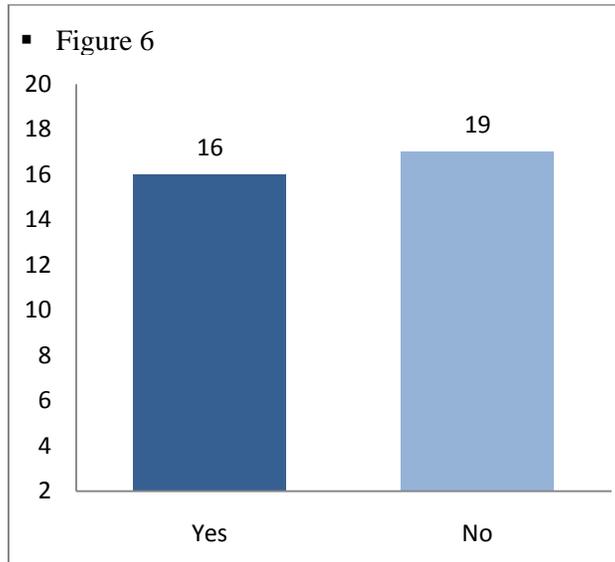
Three of the clerks found the protocol to have been successfully implemented, presumably as a process, as only one believed that all cases in her county have been so designated. Four clerks indicated that the reason the protocol wasn't being used was "too busy" while two others responded that the protocol hadn't been publicized enough. The rest didn't know or had no response. Clearly, the protocol, from the perspective of those closest to seeing it implemented, is being underutilized.

The clerks indicated generally that placing this information online might provide easier access and generate interest. One mentioned it might get members of the public to move to get cases designated. There was an underlying concern permeating throughout the comments in the survey that while the concept was good, the staffing and resources were not there for the clerks to more fully engage in the process of pursuing designation of these cases.

### **Survey of State Stakeholders (Survey No. 2)**

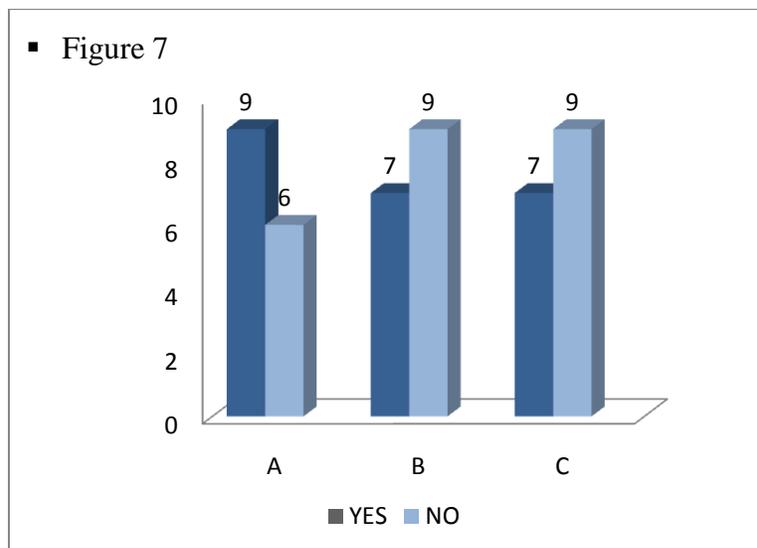
This second survey was designed to ascertain what Arizona professionals who work in or around the field of law knew of the existence and operation of the protocol, the importance and impact of it and what populations would benefit from it and any expansion of it. It also sought to elicit ideas for potential funding sources and collaborative partnerships.

**Question 1. Before this survey, were you aware of Arizona’s protocol to designate court cases as Historically Significant and/or Landmark?**



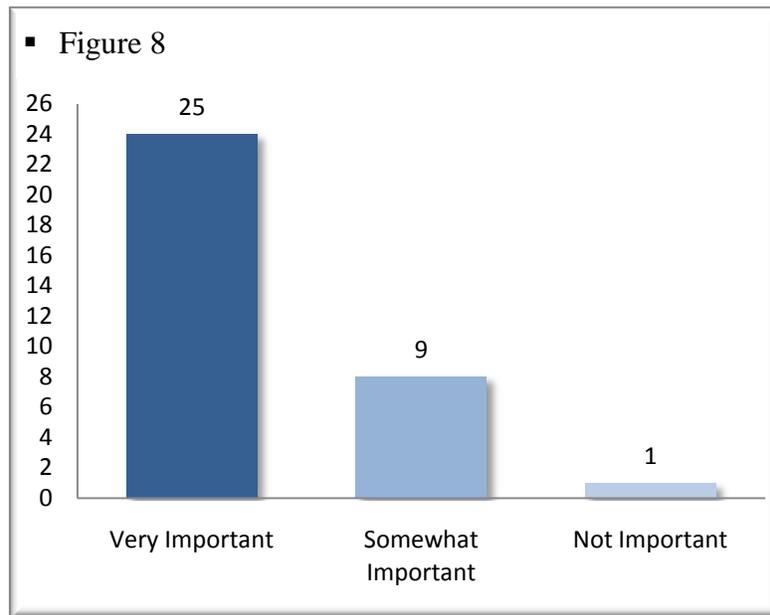
Many court leaders were aware of the protocol but only four judges and two attorneys had knowledge of it before the survey.

**Question 2. If “Yes” to question no. 1 – Prior to reading the accompanying materials, was it clear to you: A) What is meant by an Arizona Historically Significant or Landmark court case? B) How they are designated? C) How they are used?**



Less than half of the respondents to question one (16 of 35) were aware of the protocol. Of those who did know, their level of detail about the actual meaning, process and use dropped off.

**Question 3. How important is it for the state and citizens of Arizona that the types of cases as outlined by the protocol in ACJA Section 3-402 be formally designated and preserved?**



The individual giving the “Not Important” response was a judge. No patterns could be discerned from the responses by occupations.

**Question 4. What individuals or classes of people, (e.g. Students) would most benefit from an indexed, descriptive list of Arizona Historically Significant and Landmark court cases?**

Almost all respondents stated that professors, teachers, and students, either in general, or of law, political science, journalism, legal or Arizona history, would benefit. Many mentioned researchers, academics, attorneys, judges, historians, writers. Several mentioned “all” or citizens. Others listed government officials, legislators, public policy makers, court employees,

movie makers, political scientists, people new to Arizona, National History Day participants, investigative reporters, media and journalists. There were a couple mentions of senior citizens.

**Question 5. For each individual or classes of people listed in question No. 4, in what ways might they benefit?**

Responses were quite varied but touched on some themes: Appreciation of the evolving law; the study of Arizona history; obtaining material to teach; understanding the judicial branch of government; primary research sources for writing and programs; analytical groundwork laid in the designation process; increase students' ability to navigate in the largely unfamiliar world of legal cases and materials. Four quotes in particular captured the essence of the ways that people might benefit:

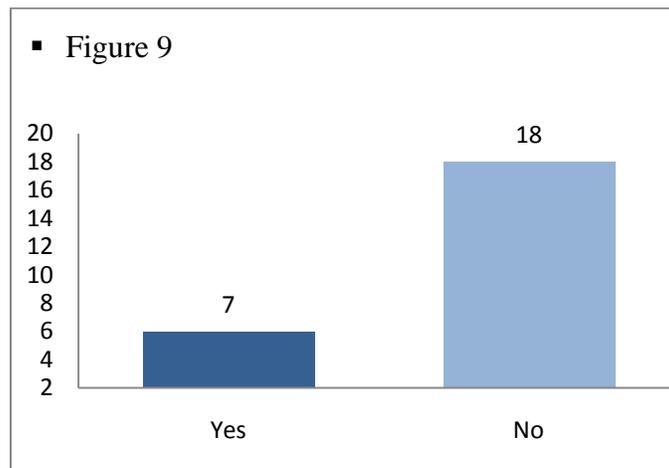
- “These cases offer a fascinating window into particular moments in Arizona history. People looking for vivid, accurate information about the times in which the cases occurred, and people looking for good stories, will find these cases very interesting and useful.”
- “It would promote awareness of Arizona’s legal history and provide historical perspective for those who are in critical positions of making policy and creating legislation.”
- “We have failed to properly educate our citizens about the independence of our judicial branch and the separation of powers. In addition, these landmark cases literally changed our government and our way of life.”
- “These cases can be researched and cited in historical accounts, news stories, movies, museum, etc. to provide a rich historical context for developments in our state.”

**Question 6. How should this indexed, descriptive list of Arizona Historically Significant and Landmark court cases be disseminated?**

Twenty-seven of the respondents suggested the information should be disseminated by website with two mentioning social media to push the information out to ensure broad awareness. Nine said that the information should be in a printed format, and two mentioned

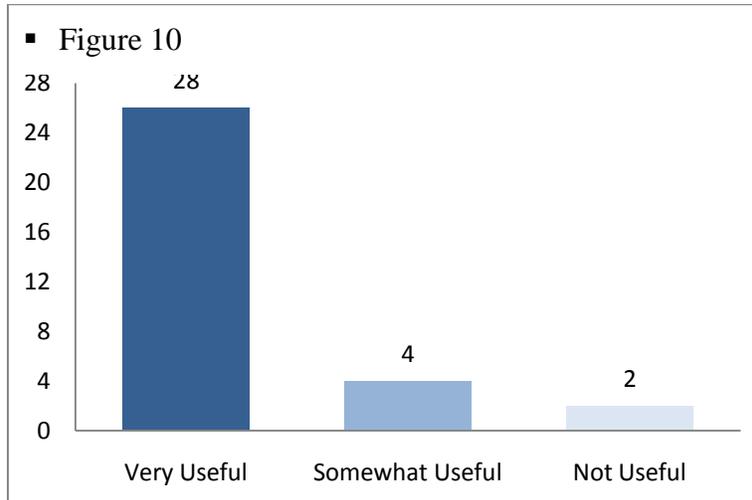
Arizona’s Centennial as a reason to commemorate in print form. Several people would like to see the site housed at or linked to the Arizona Supreme Court website and others stated that links should be made to Arizona State Archives, State Bar, Arizona Foundation for Legal Education, universities, law libraries, community colleges, museums, secretary of state and public library and other public interest websites. Two suggested incorporating the list into teaching materials and there was one comment that the Arizona Council for Social Studies would be helpful in disseminating the list. Another suggested the list be given to the media on a monthly basis. A respondent stated that links to the actual digitized case records should be built. There was a suggestion to partner with local bar associations in cooperative projects and another recommended that the list be grouped by county and topic.

**Question 7. Do you think that any interested groups might be excluded as outlined in your response to Question No. 6? If “Yes” response: a) Please state which group(s): B) And Why:**



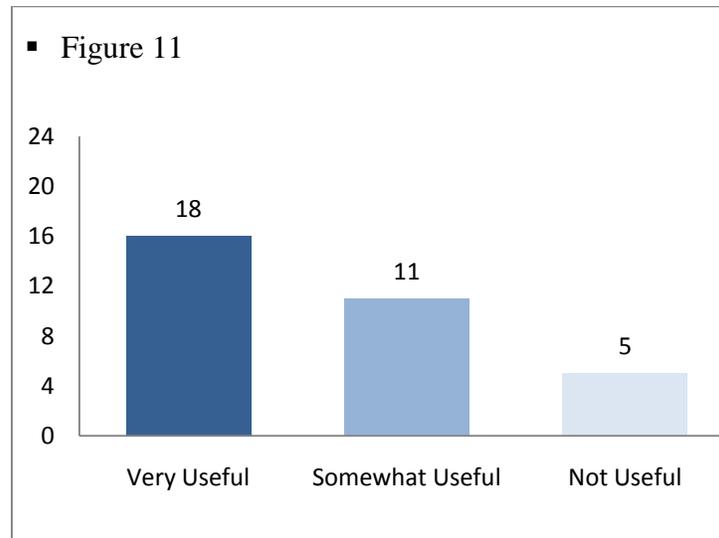
There was a comment that this should be done comprehensively so as not to exclude anyone. Another suggested being reliant on civic groups and/or schools to make the information available in a format they can understand and access. Taking questions 6 and 7 together, there was a strong belief that the list should be available in on-line and print formats.

**Question 8. How useful would it be for Arizona Historically Significant and Landmark cases to be listed and described on a website?**



A respondent suggested that the cyber-encyclopedia could be housed within the Arizona Memory Project website which is fully text-searchable and already contains other Arizona government documents in digital format. The two “Not Useful” responses came from judges. The occupations of those who indicated the website would be “Somewhat Useful” were court leaders (2) a court reporter and an attorney.

**Question 9. How useful would it be for the public to be able to suggest cases for possible Arizona Historically Significant designation by means of a website?**



Overall, the majority of attorneys and judges surveyed responded that it would be useful for the public to be able to suggest cases. The occupations of those indicating “Not Useful” include attorney, librarian, judge and court leader (2).

**Question 10. What do you perceive the benefits would be in having an Arizona Historically Significant/Landmark Court Cases Cyber-Encyclopedia (an indexed, descriptive list available in a web-based format)?**

Comments ranged from, “I’m not sure this would be useful” to “It would be greatly beneficial to the general public and researcher wishing to expand their knowledge of such cases.” Almost all respondents cited that it would bring greater and/or easier access to the information as a benefit. A respondent who is a retired law librarian, attorney and author summed it up by stating,

“Indexing would be great (name, topic). Online searches using Westlaw and Nexis cannot identify ‘Historically Significant’ cases, only the ones most cited or those using the keywords entered in a search, etc. Having such a list would be like having a book written by an expert, the most knowledgeable person on a topic. It brings a qualitative

approach that machines cannot duplicate. It is a way of having our state's legal history (not done in a comprehensive way of primary sources) in an accessible format for everyone if distributed via web pages.”

Overall, 90% of respondents gave positive comments in describing the benefits of a cyber-encyclopedia.

**Question 11. What might be some barriers to having an Arizona Historically Significant/Landmark Court Cases Cyber-Encyclopedia because of its web-based format?**

Six respondents mentioned a concern regarding sustainability - the resources needed to build and keep the site updated. One suggested the need for translation tools and ensuring it was formatted for those with disabilities. Another wrote of legal terms needing to be addressed for the general user. There were concerns of about the misuse of content and any personal information. A respondent stated that determining which cases in each county to be included is a main barrier.

**Question 12. Please list any specific resource materials that you think would help identify Arizona court cases as Historically Significant and/or Landmark.**

Contained in Appendix I under this question is a detailed listing from respondents as to the resource materials available, as well as suggested methods, to help identify cases. Frequently cited by respondents was the use of historical newspapers and the surveying or interviewing of long-time attorneys and judges. Another suggested interviewing newspaper editors. One respondent suggested a process in which a multi-disciplined panel of legal professionals could review cases submitted by a nomination panel. Another suggested that there should be greater outreach to the bar and the designation process should be made easier.

**Question 13. Please list any funding or grant sources that you think might be available for an effort to identify Arizona Historically Significant and Landmark court cases and make available in a Cyber-Encyclopedia format.**

Respondents suggested many possible sources:

- American Bar Association
- Arizona Bar Foundation
- Arizona Centennial grant funds
- Arizona Foundation for Legal Services
- Arizona Historical Records Advisory Board
- Arizona Humanities Council
- Arizona Supreme Court
- Corporations
- County Bar associations and foundations
- Historical Societies
- Law firms
- Library of Congress
- Library Services and Technology Act grants
- Museums
- National Association of State and Local History
- National Endowment for the Humanities grants
- National Historic Records Preservation Association
- National Archives
- Private foundations
- University foundations

A comment for the times: “Any sources I know are struggling themselves right now.”

**Question 14. Please list any entities or organizations that you think might want to sponsor or collaborate on an Arizona Historically Significant and Landmark court cases Cyber-Encyclopedia project.**

A list of potential sponsors or collaborators is found in Appendix I under this question.

Many suggested the organizations listed above as well as the different state judges associations, the State Bar Association, minority bar associations, leadership organizations, Friends of the Arizona State Archives, the Arizona Historical Society Library and Archives, local historical organizations, the Arizona Memory Project and retired judges and lawyers. A suggestion was made that law firms that participated in historically significant cases may want to help. Another suggested corporations that are headquartered in Arizona.

**Question 15. What is your occupation/area of expertise?**

Respondents were asked to check all that apply and there were some multiple selections.

- Attorney 7
- Author 4
- Court Leader 10
- Educator 4
- General Government 2
- Historian 4
- Judge 13
- Law Enforcement 1
- Librarian 4
- Media 1
- Researcher 3
- Other 3 (archivist, court reporter, foundation executive)

**Question 16. Is there anything you'd like to comment on not specifically addressed in the survey?**

Ten people expressed strong support or interest in the project. Another thought it would not be worth the time put into it. One expressed concern that the time it would take to identify these cases would be disruptive to court staff. One remarked on an early Arizona case that was remanded from the Arizona Supreme Court to the trial court for which the record of the final outcome was lost. It was a significant case dealing with the development of master-servant law.

**Survey No. 2 Analysis and Commentary**

An attempt to determine if there were meaningful differences in the responses by the occupations of those surveyed did not call up anything of striking note. When building the list of individuals for survey distribution, names of authors, historians, educators, librarians, court leaders, judges who held leadership posts or served on important state committees, the media, and attorneys who also research and write on Arizona legal history were gathered and then contacted. Many, as shown in Question 15, checked multiple boxes. Certainly there was

already a “niche” population selected for survey distribution as the intent was to survey those who already had a potential stake in the project. Most telling, perhaps, was the absence of responses from the college and university cohort.

While the majority of the survey participants were not aware of Arizona’s Historically Significant/Landmark case protocol, 71% considered it very important that these cases be so designated and preserved. A wide variety of classes of people were named as those that might benefit. There was also a diverse listing of ways that these populations might benefit. Dissemination of a descriptive, indexed list was recommended by both on-line and print formats. Results, while leaning more positively, were not as strong when it came to the usefulness of the public being able to suggest cases for designation by means of a website. Many ideas were gathered regarding potential funding sources, collaborations and partnerships. A strong concern was expressed about the funding and sustainability of this type of project.

### **Survey of Out-of-State Stakeholders (Survey No. 3)**

The purpose of this survey was to ascertain what other similar-type projects from jurisdictions outside Arizona existed or were contemplated. While the websites for the U. S. Supreme Court and state supreme courts were reviewed in the Literature Review section, no search of other federal courts or their associations or societies was conducted. It was hoped that this survey would have uncovered those efforts.

One responder indicated that her court (a U. S. District Court) did not maintain a list but thought it would be a great project for a graduate student intern. The other responder (from Michigan Supreme Court) did have a “twenty top historical cases” list entitled *The Verdict of*

*History* which is discussed in the Literature Review section. Because of the low response rate, no findings could be made.

## *CONCLUSIONS*

Results from Survey Numbers 1 and 2 indicated that it is important to document Arizona's legal heritage and educate its citizens. Arizona is two years away from commemorating its centennial, a time more likely to produce public history projects. Institutional memory of court staff lasts, at best, a few decades. Without documentation and standardization at the local level, there is a high risk of rich primary sources being lost to the ravages of time.

Arizona's Historically Significant and Landmark protocol is not being utilized to its fullest. Survey No. 1 results showed that since the adoption of the Historically Significant and Landmark case protocol in March 2006, only eight cases in four counties have been officially designated as historically significant. It has taken four years for the Landmark Cases committee to have its first meeting.

While many respondents from the first two surveys voiced concern over the economic problems the state is experiencing, efforts to document Arizona's legal heritage and commemorate its centennial should still occur but be appropriate to the times. Survey results showed strong support for the development of a descriptive index of significant court cases that should be made available both on-line and in print format.

The literature and websites review found that several states, often but not exclusively through judicial historical societies, have begun documenting their legal heritage, sharing it with the public, and developing educational components. Many have leveraged their limited resources through collaborative partnerships.

## ***RECOMMENDATIONS***

### **ONE: THE LANDMARK CASES COMMITTEE SHOULD CONVENE AND THE SUPREME COURT SHOULD CONSIDER AMENDING THE CODE.**

It is the responsibility of the Arizona Historical Records Advisory Board to convene a Landmark cases committee. As this paper was being finalized, the first meeting was held on March 25, 2010. The charge to this committee is to “review all published appellate opinions no less than five years and no more than nine years after they are issued to determine which cases should be designated as landmark cases” and the landmark case designation notice must be issued “no more than ten years after the opinion was issued.” (See Appendix A for text.) By failing to meet these last four years, some cases worthy of landmark designation will now fall out of consideration due to the time limits. The supreme court may want to amend the code to expand the window in the modern era. After the committee has met a few times, the Arizona Historical Records Advisory Board should monitor its work and consider the possibility of requesting the Arizona Supreme Court to enlarge its scope to consider cases from earlier time periods.

When cases are designated landmark, there should be a media release and a listing of the cases, at the least, should be available on a website that is linked to stakeholder organizations’ websites with push capabilities.

### **TWO: THERE SHOULD BE A STRONG OUTREACH EFFORT TO PUBLICIZE AND NOMINATE CASES AS HISTORICALLY SIGNIFICANT.**

Initially, there were outreach efforts to the state bar in 2006. The Friends of the Arizona Archives organization has placed information about historically significant cases on its website

and the supreme court's website has the sample motion to designate in its self-service forms section. A stakeholders group could adopt the outreach project and set goals – perhaps even tying it to a “*Countdown to the Centennial.*” Local bar associations, law schools and history students could commit to nominating one case a year. Arizona State Library, Archives, and Public Records should list the cases on its website once they have been designated and the clerk of court transfers the file to state archives. The supreme court, state bar, and other organizations should be linked to the site. A training program should be developed to help clerks in identifying cases as historically significant. All superior courts should place any high-profile (cases generating public and media attention) on a high-profile link on their websites. When the case has concluded, this information should be archived as having potential for consideration of designation.

### **THREE: THE COMMEMORATION OF ARIZONA'S CENTENNIAL SHOULD INCLUDE PUBLIC EDUCATION ABOUT ITS LEGAL HERITAGE.**

Court leaders in each of the counties should form centennial commemoration committees consisting of local historians, bar association members and other interested individuals or organizations. They could set goals for nominating cases by the centennial celebration date and work with local newspapers to provide an insert commemorating court and legal history. Essay contests could be held for high school students to write about a local historically significant court case. Each county's effort should be collected centrally so that a statewide publication (in print and on the web) could be produced. A group of volunteers from around the state could be recruited to meet with counties requesting help to form committees and set goals.

Key will be a central point – perhaps the supreme court, in conjunction with the Arizona Foundation for Legal Services and/or the State Bar Foundation, for editing and publishing this commemorative booklet. Other outside funding grants could be sought. Whatever is produced should be archived with Arizona State Library, Archives and Public Records. Arizona could then be on its way from having the material gathered to eventually producing a cyber-encyclopedia when financial constraints aren't so tight.

**FOUR: IF RESOURCES WERE FOUND TO HIRE A PROJECT MANAGER TWO WEBSITES SHOULD BE DEVELOPED.**

Two websites should be developed as part of project implementation. The first website would be a High Profile Cases page following the Florida model so that, besides keeping the public informed, an archive could be begun for cases that may later be deemed historically significant or landmark. Arizona is moving quickly toward a paperless court format<sup>113</sup> and the technology is now in place for all 15 county clerks of superior court to be able to identify and then post the documents determined to be electronically available to the public. Each county court could display the cases with a short description and also send the information to a centralized section on the supreme court's main page.

The second website would be the Historically Significant and Landmark cases Cyber-Encyclopedia, what has been previously referred to as a descriptive index. Key fields of information might be: title of action, name of county and case number, date of filing, assigned judge and attorneys, subject area(s), description of case, facts and law, outcome(s) and appellate history. The cases could be listed chronologically and by county on the website, however the

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<sup>113</sup> Chief Justice Ruth McGregor's State of the Judiciary Address, March 23, 2009 at [www.supreme.state.az.us/media/archive/2009/2009stateofthejudiciary.pdf](http://www.supreme.state.az.us/media/archive/2009/2009stateofthejudiciary.pdf) at page 5.

data would be formatted so that searches by all elements, including word and term searches would yield customized reports. In order to leverage existing resources, this site could become a collection of *The Arizona Memory Project*, a nationally funded website of the Arizona State Library, Archives, and Public Records agency with links to the Arizona courts' sites. It would be catalogued using the state library's Metadata Guidelines<sup>114</sup> which is based on the Dublin Core, a simple, international system created to allow indexes to work together.<sup>115</sup> It would also provide a platform for the project to be able to add digitized information – be it documents, photos, pod and webcasts, etc. An added feature is that the material is searchable worldwide. History organizations are now thinking about the next steps beyond offering digital media online, particularly with the decreasing costs of technology.<sup>116</sup> There are no costs to place the collection here other than the staff time it would take to digitize the records and catalog the information.

It is proposed that the 2<sup>nd</sup> website would have an interactive feature in its design so that social networking could be conducted. The public would be able to suggest cases for consideration and engage in discussions on the merits. Website design standards have become fairly settled at this writing. The American Association of Law Libraries has developed a bibliography that references sources available either online or in print on website usability and judging information quality.<sup>117</sup>

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<sup>114</sup> Metadata Guidelines at <http://azmemory.lib.az.us/cdm4/policies/DigitalProjectGuidelinesv3.5pdf>

<sup>115</sup> **Ibid**, pages 13 – 14.

<sup>116</sup> Tim Grove, “*New Media and the Challenges for Public History*” Perspectives on History, May 2009 pages 31 - 33.

<sup>117</sup> <http://www.aallnet.org/committee/aelic/bibliography.html>.

## ***CLOSING***

Tom Shirley beat his opponent three-to-one in the election for a seat on the Apache County Board of Supervisors in 1972. Before he could assume office, a preliminary injunction order was sought by his defeated opponent and others and was granted, preventing the board of supervisors to certify him as a duly elected county supervisor for his district. Among other reasons, the petitioners cited that Shirley, a Native American living on the Navajo Reservation, was not subject to Arizona state taxes and therefore could not hold that office. The matter went briefly to the federal court, was remanded to the superior court where it could not be settled, and nine months later the Arizona Supreme Court quashed the injunction and Tom Shirley became the first Navajo to be elected to office in that county.<sup>118</sup>

Recently Shirley was honored at a public event where he reminisced that racism was suspected. Peggy Scott, a current manager for Apache County said, “It’s an embarrassing chapter in state history that most Arizonans aren’t aware of.”<sup>119</sup> Our state court history matters. We now have the tools and the talent to be able to preserve our documentary heritage and educate the citizens of our state.

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<sup>118</sup> Tom Shirley v. Superior Court, 109 Ariz. 510, 513 P.2d 939 (1973).

<sup>119</sup> Cindy Yurth, “A Leader with Backbone,” *The Navajo Times Online*, Sept. 3, 2009, page 3 at <http://navajotimes.com/politics/2009/0909/090309supe.php>

## APPENDICES

### APPENDIX A

#### ARIZONA CODE OF JUDICIAL ADMINISTRATION

##### Part 3: Superior Court

##### Chapter 4: Administration

##### Section 3-402: Superior Court Records Retention and Disposition

**A. Definitions.** In this section the following definitions apply:

“Case file” means the original documents or other material, regardless of physical form filed in an action or proceeding in a court, either in paper or electronic format.

“Closed” means that the case is no longer subject to modification pursuant to Rule 94(h), Rules of the Supreme Court.

“Date received,” means the date records are received by the clerk or court.

“Destruction” or “destroyed” means to discard by burning, shredding, recycling, or by depositing in a public landfill.

“Dispose” means to destroy a record or transfer a record to archives, depending upon the context.

“File” or “filed” means the record was delivered to and file-stamped by the Clerk of Court.

“Historically significant case” means a case involving a unique legal issue or controversy, prominent party, or other high profile or newsworthy aspects, and that has been so designated pursuant to the process established in subsection (F) of this section.

“Landmark case” means a case that meets the requirements of Rule 111(b), Rules of the Supreme Court, has been the subject of a published appellate court opinion as that term is defined by Rule 111(a)(1), and has been so designated pursuant to the process established in subsection (F) of this section.

“Microfilming” means the reproduction on microfilm of the original record in accordance with the minimum standards for microfilming as established by nationally accepted records and information management process standards.

“Purge” means to remove and destroy records in a case file pursuant to subsection (D)

of this section.

“Retention period” means the period of time during which records must be kept before they may be disposed of, usually a period of years and sometimes contingent upon an event, such as entry of judgment or after reference value served.

...

**F. Historically Significant and Landmark Cases.** Clerks shall comply with the following procedures for designating and archiving historically significant and landmark cases:

1. Designation of historically significant cases

a. Purpose. Certain cases filed in Arizona courts may be identified as historically significant because of the unique legal issue or controversy involved, the prominence of one or more of the parties to the action, or because of other high profile or newsworthy reasons. When there is reason to believe that a case falls into this category, the following procedures shall be observed to ensure these records are maintained for historical purposes, rather than destroyed under the term found in the records retention schedule.

b. Procedure for designating an historically significant case. A motion to designate a case as historically significant shall be filed either by a member of the public or on the court’s own motion. The motion shall identify one or more reasons for designating the case as historical.

c. Processing and archiving. The motion requesting historical case designation shall be filed prior to the transfer of the case file to ASLAPR. The clerk shall file the original order granting or denying the motion for historical case designation in the case file. The presiding judge or justice of the peace shall decide the motion. If the motion is granted, the clerk shall transfer the original intact case file, if any, and the microfilm, if any, to ASLAPR for permanent retention in accordance with the applicable schedule. Identification of the case as historically significant shall be prominently noted on the master index transferred along with the case file to the ASLAPR.

2. Designation of landmark cases

a. Identifying landmark cases

(1) The following factors shall be considered in deciding whether a case is a landmark case:

(a) The frequency with which the case has been cited;

(b) Whether the case has been designated as historically significant;

(c) Whether the case caused a change in policies or laws;

(d) Whether the case affected a large portion of the community and was controversial;

(e) Whether the case is generally viewed by the community as important;

(f) Whether the case involved a famous or notorious individual or was the subject of a well-known book or feature film; and

(g) Any other factor considered relevant.

(2) Any case that has been the subject of a published opinion of the United States Supreme Court shall be designated as a landmark case.

b. Procedure for designating a landmark case.

(1) The Arizona Historical Records Advisory Board shall designate landmark cases eligible under section (F)(2)(a)(1) in consultation with a committee convened by the Board for this purpose. The committee shall consist of Board members, retired appellate court judges or justices, law professors, historians, or other like persons who have objective, informed views about the long-term significance and effect of eligible published appellate opinions. The committee shall meet periodically to review all published appellate opinions no less than five years and no more than nine years after they are issued to determine which cases should be designated as landmark cases.

(2) No more than ten years after the opinion was issued, and with the Board's approval, the Director of the Division of Arizona History and Archives shall provide written notice of landmark designation to the clerk of the superior court in the county of origin, the clerk of the appropriate division of the court of appeals, and the clerk of the supreme court who shall apply the process for landmark case file processing contained in retention and disposition schedules applicable to their respective courts.

(3) Landmark designation under subsection (1)(B) herein shall be made by the clerk of the superior court in the county of origin.

c. Processing and archiving. The landmark case designation shall be made prior to the transfer of the case file to the Arizona State Library and Archives. The clerk shall file the original notice of designation in the case file. If the case file has not yet been purged, the clerk shall transfer the original intact case file and microfilm, if any, to the Arizona State Library, Archives and Public

Records for permanent retention in accordance with the applicable schedule. Identification of the case as a landmark case shall be prominently noted on the master index transferred along with the case file to the ASLAPR.

*Adopted by Administrative Order 2006-29 effective March 21, 2006.*

## APPENDIX B

### ARIZONA RESOURCES DIRECTORY

#### BOOKLETS:

*The Superior Court in Arizona 1912 – 1984 A History of the Court in Each County Since Statehood* (1985) published by the Arizona Supreme Court

*Justice in Arizona: From the Wild West to the Computerized Courtroom* (1997) by Marshall Trimble

*Cochise County Courthouse Diamond Jubilee Commemorating 75 Years 1931 – 2006* (2006) edited by Denise Lundin

#### BOOKS:

*Report of Cases argued and determined in the Supreme Court of the Territory of Arizona 1884 – 1911* reports by the Supreme Court of Arizona

*Report of Cases argued and determined in the Supreme Court and the Court of Appeals of the State of Arizona*

*Memories of an Arizona Judge* (1932) by Richard E. Sloan

*Laws, Courts and Lawyers Through the Years* (1970) by James M. Murphy

*Colonel Greene and the Copper Skyrocket* (1974) by C.L. Sonnichsen

*The Supreme Court Justices 1863 – 1912, Arizona Territorial Officials, vol. one* (1975) by John S. Goff

*Forging the Copper Collar – Arizona's Labor Management War of 1901 – 1921* (1982) by James W. Byrkit

*A Courtroom of her Own: The Life and Work of Judge Mary Anne Richey* (1997) by Barbara Atwood

*Cochise County Stalwarts – A Who's Who of the Territorial Years* (2000) by Lynn R. Bailey and Don Chaput

*On the Border: Portraits of America's Southwestern Frontier* (2000) by Tom Miller

*Law in the Western United States* (2001) edited by Gordon Morris Bakken

*The Great Arizona Orphan Abduction* (2001) by Linda Gordon

*Murder in Tombstone – The Forgotten Trial of Wyatt Earp* (2004) by Steven Lubet

*The Trunk Murderess: Winnie Ruth Judd* (2006) by Jana Bommersbach

*The Reaper's Line: Life and Death on the Mexican Border* (2006) by Lee Morgan

*A Legal History of Maricopa County* (2007) by Stan Watts

*Shootout at Miracle Valley* (2009) by William R. Daniel

*Borderline Americans* (2009) by Katherine Benton-Cohen

#### JOURNALS:

Arizona Bar Journal

Arizona Historical Review

Arizona Law Review

Cochise County Historical Journal (formerly Cochise Quarterly)

Journal of Arizona History

## APPENDIX C

### LAND MARK CASES, ARIZONA

(list is NOT comprehensive)

Adage Towing & Recovery, Inc. v. City of Tucson (towing, motor vehicles) 187 Ariz. 376 (1996)

Arizona v. Fulminante. 111 SCt. 1246; 499 US 279; 113 L.Ed. 302; 161 Ariz. 287; 193 Ariz. 485 (1999).

While incarcerated in a federal prison in New York, Fulminante, in exchange for a promise of “protection”, “confessed” to a paid informer re: murder of his step-daughter.

Held: trial court erred in admitting “involuntary” confession.

Arizona v. Roberson<sup>120</sup>. 485 US 675 (1988).

Held: “Suspect who has expressed desire to deal with police only through counsel is not subject to further interrogation ... until counsel has been made available ... “

Arnold v. Arizona Dept. of Health Services, i.e. “Arnold v. Sarn”. 160 Ariz. 593 (1989)  
(re: quality of mental health services provided by the state)

Baird v. State Bar of Arizona. 401 US 1 (1971)

Petitioner passed Bar exam but refused to answer question 27<sup>121</sup>.

The Committee on Examinations & Admissions declined to recommend admission to the Bar.

Held: Question 27 was constitutionally infirm under 1<sup>st</sup> & 14<sup>th</sup> amendments.

Bates v. State Bar of Arizona 433 U.S. 350 (1977)

Re: attorneys & advertising

Capson v. Superior Court of the State of Arizona, Maricopa County 139 Ariz. 113 (1984)  
(towing)

Gault, In Re: 387 U. S. 1; 87 S.Ct. 1428 (1966)

Requires that child & parents be given written notice ...; requires that juveniles & their parents be informed of right to counsel & right against self-incrimination.

Judd, Winnie Ruth<sup>122</sup>

State v. Superior Court of Maricopa County

39 Ariz. 242 (1931)

Judd v. State 41 Ariz. 176 (1932)

State ex rel. Arizona State Board of Pardons

& Paroles, 12 Ariz. App. 77 (1970); 12

Ariz. App. 228 (1970)

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<sup>120</sup> Re: Don Bolles murder.

<sup>121</sup> “Have you ever been a member of the Communist Party ... ?”

<sup>122</sup> Famous “Trunk Murderess” case

Kent Decree<sup>123</sup>: “Hurley v. Abbot, United States, intervenor”, March 1, 1910. 259 F. Supp. 669 (1910)

Klahr v. Williams / Klahr v. Goddard  
313 F. Supp. 148 (1970); 303 F. Supp. 224; 289 F. Supp. 829; 250 F. Supp. 537 (1966)  
Re: legislative apportionment / redistricting

Klahr, Application of<sup>124</sup> 102 Ariz. 529 (1967)  
State Bar Committee on Examinations and Admissions ordered to grade applicant Klahr’s examination papers &, if grade was passing, admit applicant to membership.

Kotterman v. Killian<sup>125</sup>, 193 Ariz. 273 (1999); 528 U. S. 810; 528 U. S. 921

Miranda v. State of Arizona. 384 U.S.<sup>126</sup> 436; 85 S.Ct.<sup>127</sup> 1602; 16 L. Ed. 2d<sup>128</sup> 694 (1966)

Norris v. Arizona Governing Committee for Tax Deferred Compensation. 486 F. Supp<sup>129</sup> 645; 671 F.2d<sup>130</sup> 330; 459 U.S. 904; 463 US 1073; 464 U.S. 805(1983)

Porter v. Porter. 67 Ariz. 273 (1948)  
Re: mingling separate & community funds.

Phoenix Newspapers, inc, v. Superior Court of Maricopa County. 140 Ariz. 30 (1983)  
Held: If release of transcript of “in camera” proceedings does not damage on-going investigation; public “right to know” is paramount.

Ring v. Arizona. 536 U.S. 584<sup>131</sup> (2002)

Tison v. Arizona. 481 U. S. 137, 107 S. Ct1676, 95 L.Ed. 2d 127<sup>132</sup> 1987)

Tom Reed Gold Mines Company v. Morrison 26 Ariz. 281 (1924)  
Held: In a personal injury trial it is improper for plaintiff (or plaintiff’s attorney) to mention defendant’s liability insurance coverage.

Yniguez v. Arizonans for Official English

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<sup>123</sup> Established a formula for Indian reservation water rights & allowed Salt River Valley Water Users’ Association (later: Salt River Project) to build a dam on the Verde River which flooded all of Fort McDowell Indian Reservation’s irrigable bottom lands.

<sup>124</sup> Alternate title: Application of Klahr.

<sup>125</sup> School tax credit case

<sup>126</sup>U. S. Reports / United States Reports

<sup>127</sup> Supreme Court Reporter

<sup>128</sup> Lawyer’s Edition, 2<sup>nd</sup> Series

<sup>129</sup> Federal Supplement

<sup>130</sup> Federal Reporter, 2d Series

<sup>131</sup> Supreme says juries, not judges must decide critical sentencing issues

<sup>132</sup> Eighth Amendment does not prohibit death penalty in case of defendant whose participation in felony results in murder.

69 F.3d 920; 116 S. Ct. 1316; 517 US 1102;134 L. Ed. 469 (vacated); 117 S. Ct. 1055; 520 US 43; 137 L.Ed. 2d 170; on remand 118 F. 3d 667 (1997)

Held: Ariz. Const., Art. 28, "Official English" was overly broad.

## **LAND MARK DECISIONS, U.S. SUPREME COURT**

Congressional Quarterly's "Guide to the  
U. S. Supreme Court"

Various encyclopedias

World Almanac

<http://www.landmarkcases-org/>

<http://educatetheusa.com/sbody2.shtml>

Use; Planning & Zoning; State Land Open  
Space Preservation; Study Commission)  
Election, Nov. '98, Prop. 303 L'2000, 4<sup>th</sup>  
s.s.<sup>133</sup>, ch.1 (Growing Smarter Plus)

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<sup>133</sup> Special session.

## APPENDIX D

### (Survey No.1)

September 3, 2009

Dear Clerks of Superior Court:

As part of the ICM Court Executive Development program requirements, I am to submit a research paper on a court related topic. I have chosen to study the feasibility of creating an Arizona Historically Significant and Landmark court cases Cyber-Encyclopedia. I believe it is a timely topic as we prepare to commemorate the Arizona Centennial with meaningful and lasting projects. I plan on surveying three populations with three separate surveys: AZ Clerk of Superior Court, AZ Stakeholders and court and legal history-related persons in other states. Your input is very important to my project and I would appreciate it if you could return it to me by September 18<sup>th</sup>. If you have any questions regarding the survey please give me a call.

Thanks so much,  
Denise

#### **SURVEY TO AZ CLERKS OF THE SUPERIOR COURT – ARIZONA HISTORICALLY SIGNIFICANT AND LANDMARK COURT CASES CYBER-ENCYCLOPEDIA**

**Question 1. Have any cases in your county been designated Historically Significant?**

**Question 2. If yes, please list them and the occupation or affiliation of the person(s) who filed the motion to designate them (if known) and briefly describe the facts of the cases.**

**Question 3. Have all the cases in your county that should be designated Historically Significant been officially designated by your presiding judge?**

**Question 4. If not, why not? (check all that apply)**

**Question 5. Do you consider the Historically Significant designation procedure as outlined in ACJA Section 3-402 to be successfully implemented in your court?**

**Question 6. How could the current Historically Significant designation procedure as outlined in ACJA Section 3-402 be improved to increase its use?**

**Question 7. Does your office have a local procedure in place that provides for special handling of high-profile cases as part of records management?**

**Question 8. If yes: Is it in writing or a local culture, word-of-mouth training procedure?**

**Question 9. What is your criteria for handling a case as a high-profile case?**

**Question 10. Does your office currently have a high-profile cases inventory list?**

**Question 11. If a researcher came to your county would you be able to give him or her guidance as to how to find high-profile (and potentially Historically Significant) case files?**

**Question 12. Approximately what percentage of these high-profile cases are:**

**Question 13. Is there a long time employee (or someone recently retired) in your office who knows where “everything is buried”?**

**Question 14. What do you perceive the benefits would be to the public by having a Historically Significant court case list/index?**

**Question 15. Does your court have any locally-produced booklets or materials on court and/or legal history?**

**Question 16. On a scale of one to ten, one being the least important, how important is it for the state and citizens of Arizona that these Historically Significant case records be designated and preserved as outlined in ACJA Section 3-402?**

**Question 17. How long have you served as Clerk of the Superior Court?**

**Question 18. How long have you worked in the court or justice system?**

**Question 19. Is there anything else you’d like to comment on that is not specifically addressed above?**

## APPENDIX E

### Noteworthy Excerpts to Survey No. 1

**Question 2. If yes, please list them and the occupation or affiliation of the person(s) who filed the motion to designate them (if known) and briefly describe the facts of the cases.**

The Powers Brothers case should be/should have been but I don't know the status and have been unable to locate the file. Donya may have sent it to archives.

**Question 3. Have all the cases in your county that should be designated Historically Significant been officially designated by your presiding judge?**

No, not at this time. We have several cases that should be placed in this category, i.e. Little Colorado River Water Adjudication; Juvenile Case; Santa Fe vs. Spurlock.

**Question 8. If yes: Is it in writing or a local culture, word-of-mouth training procedure?**

Everything here was done by word-of-mouth training and the Powers Brothers matter was always kept in the vault next to the counter for ready access. Someone always wanted to see it. Each clerk explained to the next the importance of the case and kept it ready for researchers.

**Question 16. On a scale of one to ten, one being the least important, how important is it for the state and citizens of Arizona that these Historically Significant case records be designated and preserved as outlined in ACJA Section 3-402?**

As these case files age, we are losing some of the legibility of the important documents. We have cases that are hand written on very fine onion skin. The ink is fading and the onion skin is becoming fragile. Each of these pages would need to be very carefully handled as they are digitized. Our storage facility is not particularly kind to these records, too hot/cold.

**Question 19. Is there anything else you'd like to comment on that is not specifically addressed above?**

I have been scanning some of the cases that go back to the 1800's and have found that they are very difficult to get a good image quality. But, there is another item that I think is just as important as the filings. The exhibits are also important to the case and they may be harder to preserve due to their size, type, age. We had a surveyor looking for a map that had been used in the water case back in the early 1900's. We were able to locate a copy of the map, but not the original that was admitted as the exhibit. Exhibits have been moved several times since my tenure as clerk and I do not know what happened with exhibits prior to that. Currently, the older records are stored off-site in sea-crates that get very hot in the summer and very cold in the winter. These conditions

are not the best for the long-term storage of fragile records. The county provided me with additional storage in a metal building, but the building is infested with crickets which will eat paper. I have had my storage area fumigated, but the rest of the building is a haven for pests. Funding for preservation seems to be low on the priority scale here in my county.

In addition to preservation of the case record, transcripts and associate materials, Rules should be changed to allow for the case exhibits to also be retained and transferred to State Archives on H.S. and Landmark cases. This would, of course, require a designation of H.S. sooner rather than later as the Clerk could not retain all Exhibits for the currently prescribed time frames as set forth in ACJA 3-402 – storage space is simply not available.

One of the things I found was helpful as part of putting the historically significant case together in the Schmid case and the Adamson case, were newspaper accounts. A court file many times does not tell much of the story about the “guts” of the case, but other documents do. In the Schmid case, there was a book, newspaper accounts and internet information that gave an overall history of the occurrences. In fact, there was also a spread in Life magazine on “The Pied Piper of Tucson.” I copied all of these and made them a part of the file for information sake. The same with the Don Bolles murder. There was only one small newspaper article on the Billingsley case that I included. I think this additional information brings a lot more of the history about the case - rather than just the legal/court history.

While I think it is a nice idea to have this historically significant list in each county; if a Clerk performs all the responsibilities of the Clerk of Superior Court as outlined in the State Constitution, Statutes, Rules and Code little time would be left for projects that is just a nice idea.

## APPENDIX F



### Supreme Court STATE OF ARIZONA

FROM THE CHAMBERS OF  
REBECCA WHITE BERCH  
CHIEF JUSTICE

1501 WEST WASHINGTON STREET  
SUITE 434  
PHOENIX, ARIZONA 85007-3231  
(602) 452-3555  
FAX (602) 452-3553  
RBerch@courts.az.gov

November 16, 2009

Re: Arizona Centennial Project  
Compilation of Significant Arizona Cases

Dear Arizonan,

Citizens across Arizona have begun working on projects to commemorate the State's centennial in 2012. It is a time to reflect on the past, look around the present, and prepare for the future. One proposed project is to determine the feasibility of compiling historically significant Arizona cases into a Historically Significant Court Cases Cyber-Encyclopedia.

This letter accompanies a short survey that I encourage you to complete. Denise Lundin, Cochise County Clerk of the Superior Court, is conducting the survey and research project as part of the National Center for State Courts, Institute for Court Management Court Executive Development Program (CEDP) requirements.

Arizona has a rich history of significant cases that should be gathered and highlighted. With your participation, we hope that valuable information can be compiled to help make this idea a reality. Ms. Lundin and I would greatly appreciate your responses.

If you have any questions regarding this survey or project please contact Ms. Lundin at 520-432-8571 or by email at [dlundin@courts.az.gov](mailto:dlundin@courts.az.gov). Thank you for your participation.

Sincerely,

A handwritten signature in cursive script that reads "Rebecca W. Berch".

Rebecca White Berch

RWB:jrr

## APPENDIX G



ARIZONA STATE  
LIBRARY, ARCHIVES AND PUBLIC RECORDS

GladysAnn Wells, Director



HISTORY AND ARCHIVES DIVISION

MELANIE STURGEON  
Division Director

October 27, 2009

To whom it may concern,

Please accept this letter of support for the Denis Lundin's project to survey both Arizona's County Clerks of the Court and Arizona citizens about the importance of historical court cases. In addition this letter supports her efforts to have a web presence that allows people to see which court cases have been deemed historical and to provide information about those cases.

In addition to setting legal precedence, Superior court cases document race, gender, class, culture, and the social, economic, and political environment of a population. As a result, they are one of the richest sources of historical documentation available to historians, legal scholars, sociologists and others who study the past.

Some of the cases from these courts of original jurisdiction will go through the appeals process and a few will go to the U.S. Supreme Court. Most of them will not. Some of them will be landmark cases—the majority of them will not.

Some of these cases are what we would call "historical cases." These cases go beyond questions of fact. They embrace broader historical themes. Many of them will not show up in Reporters, ALR, West Law, AmJur's or Lexus-Nexus. Value to the scholar is in the verbatim testimony, the evidence presented and so on. Some of these cases—or series of them together, document social and cultural trends, even trends in crime.

Ms. Lundin's efforts to publicize the rich information in cases that are deemed historical will encourage researchers to use them and will encourage citizens to present more cases to county presiding judges to have them deemed historical.

Sincerely,

Dr. Melanie Sturgeon, State Archivist

Director, History and Archives Division

**Polly Rosenbaum Archives and History Building**

1901 W. Madison Street • Phoenix, Arizona 85009 • Home Page: <http://www.lib.az.us/archives/>

Phone: (602) 926-3720 • FAX: (602) 256-7982 • E-Mail: [archive@lib.az.us](mailto:archive@lib.az.us)

An Equal Opportunity Employer

## **APPENDIX H**

### **(Survey No. 2)**

November 24, 2009

Dear Arizona Professional,

Arizona's legal history is a rich resource for people from a multitude of disciplines to research and use for a wide variety of reasons. No simple way exists, however, to access an indexed, descriptive list of superior court cases which have made an impact on society. While a protocol for designating these cases "historically significant" and "landmark" has been in place since 2006, only a handful have received this designation.

This short survey is intended to gain your perspective on an effort which would compile this information and make it available in a web-based format, called a cyber-encyclopedia. It is supported by the Hon. Rebecca White Berch, Chief Justice of the Arizona Supreme Court, and Dr. Melanie Sturgeon, Arizona State Archivist (see attached letters).

Also attached is the Arizona Historically Significant/Landmark case protocol (incorporated in the Superior Court Records Retention Schedule – see pages one, 28 and 29). A quick review of those pages will help put the survey questions in context. Thank you in advance for any help you can give to this project. Please return the survey by December 4<sup>th</sup>.

Sincerely,

Denise I. Lundin

Cochise County Clerk of the Superior Court

Member, Arizona Historical Records Advisory Board,

Arizona Courts Centennial Commission

### **ARIZONA HISTORICALLY SIGNIFICANT/LANDMARK COURT CASES CYBER-ENCYCLOPEDIA SURVEY**

(See attached Arizona Code of Judicial Administration section 3-402, pages 1, 28 and 29 for definitions and protocol)

**Question 1. Before this survey, were you aware of Arizona's protocol to designate court cases as Historically Significant and/or Landmark?**

**Question 2. If "Yes" to Question No. 1 – Prior to reading the accompanying materials, was it clear to you:**

- A) What is meant by an Arizona Historically Significant or Landmark court case?**
- B) How they are designated?**
- C) How they are used?**

**Question 3. How important is it for the state and citizens of Arizona that the types of cases as outlined by the protocol in ACJA Section 3-402 be formally designated and preserved?**

**Question 4. What individuals or classes of people, (e.g. Students) would most benefit from an indexed, descriptive list of Arizona Historically Significant and Landmark court cases?**

**Question 5. For each individual or classes of people listed in Question No. 4, in what ways might they benefit?**

**Question 6. How should this indexed, descriptive list of Arizona Historically Significant and Landmark court cases be disseminated?**

**Question 7. Do you think that any interested groups might be excluded as outlined in your response to Question No. 6?**

**If “Yes” response, please state which group(s) and why:**

**Question 8. How useful would it be for Arizona Historically Significant and Landmark Cases to be listed and described on a website?**

**Question 9. How useful would it be for the public to be able to suggest cases for possible Arizona Historically Significant designation by means of a website?**

**Question 10. What do you perceive the benefits would be in having an Arizona Historically Significant/Landmark Court Cases Cyber-Encyclopedia (an indexed, descriptive list available in a web-based format)?**

**Question 11. What might be some barriers to having an Arizona Historically Significant/Landmark Court Cases Cyber-Encyclopedia because of its web-based format?**

**Question 12. Please list any specific resource materials that you think would help identify**

**Question 13. Please list any funding or grant sources that you thin might be available for an effort to identify Arizona Historically Significant and Landmark court cases and make available in a Cyber-Encyclopedia format.**

**Question 14. Please list any entities or organizations that you think might want to sponsor or collaborate on an Arizona Historically Significant and Landmark court cases Cyber-Encyclopedia project.**

**CONCLUDING**

**Question 15. What is your occupation/area of expertise? (check all that apply)**

**Question 16. Is there anything you’d like to comment on not specifically addressed in the survey?**

## APPENDIX I

### Noteworthy excerpts to Survey no. 2

#### **Question 4. What individuals or classes of people, (e.g. Students) would most benefit from an indexed, descriptive list of Arizona Historically Significant and Landmark court cases?**

There are many people who would benefit from this list of Historically Significant and Landmark court cases. Of course, students of Arizona History are included, but I would say that any Arizona resident needs to understand the court as a branch of government where significant impact is made through the decisions of our Judiciary. It is only in understanding the impact of this branch that one begins to comprehend the importance of merit selection rather than 'popular elections.' Also, understanding the impact of the court encourages the awareness of the separation of the branches of government and how each branch has a distinct role to play in the continuance and development of our state. These cases will also bring understanding of how one individual with one court case can change the way that laws are interpreted and lives are affected.

A number of academics including law faculty and students, historians and political scientists. I also imagine those working in public policy, judicial system, corrections and social services would benefit. Some members of the general public may take pride in the effective administration of justice demonstrated by these cases, which are often adjudicated under extraordinarily challenging political and social circumstances.

#### **Question 5. For each individual or classes of people listed in Question No. 4, in what ways might they benefit?**

All would benefit from more direct access to the cases and from the analytical groundwork laid in the designation process. Easier access to these important records would permit more analysis and more research that would lead to a better understanding of the context and issues addressed.

For those who research and historians it will aid them in their understanding of and writing about Arizona's history related to the development of the law in this state and across the country. For students and court employees it will educate them about Arizona's legacy in the law and the role our Judiciary has played in shaping the law in Arizona and across the nation.

They would better understand the significance to the legal system and to society of various judicial decisions.

They would have benefit by being able to review actual case records, with all the details and nuances of each for comparisons, trends, projections and findings of specific research topics of interest to them.

Education, knowledge of history/significance of case decision in state and federal law making or rights of individuals, understanding of development of law.

These cases offer a fascinating window into particular moments in Arizona history – people looking for vivid, accurate information about the times in which the cases occurred, and people looking for good stories, will find these cases very interesting and useful.

They would be able to write about, and bring life to, these cases so that more people can learn from and enjoy the historical value.

It will assist in their research efforts, to categorize and better understand the holdings and significance to the courts and decisions of today.

The cases can be researched and cited in historical accounts, news stories, movies, museums, etc. to provide a rich historical context for developments in our state.

I believe all citizens benefit from a fuller understanding of the past; but in this context they learn that justice does indeed happen – a perspective that is deteriorating amongst the general population.

We have failed to properly educate our citizens about the independence of our judicial branch and the separation of powers. In addition, these landmark cases literally changed our government and our way of life. For example, the Colorado River litigation enabled Arizona to develop in areas and magnitude otherwise impossible. Furthermore, cases of significance regarding notorious criminals, politicians, and others create a colorful history of our Wild West heritage.

**Question 6. How should this indexed, descriptive list of Arizona Historically Significant and Landmark court cases be disseminated?**

On a website. As the number of cases may be expanded, publishing would not be the best tool to keep the index current. However, for the centennial and because there are still those who prefer to “read a book,” a hard copy document should be made available.

The dissemination of this list should be broad and accompanying information appropriate to the target audience. It seems like limiting the list to only the code specified entities would not be conducive to increasing knowledge/awareness to the public at large and certainly not to youth. I would suggest that schools, civic education groups, courts, and other requesting entities be provided with the list, updates, and access to the resources for further study as desired.

Supreme Court public education; State Bar and Foundation legal education materials or presentations, available on State Bar or Supreme Court websites, teaching materials for legal topics in classrooms developed by Foundation, public education panels/boards in courthouses across the state to celebrate the history and importance of AZ law, examine partnerships with local bar associations for information in newsletters, and cooperative projects or posting/links on other public interest websites.

I think the list should be available on the web, but it needs to be accompanied by some “push” technologies to ensure broad awareness. In addition to the usual press releases and paper mailing you might consider RSS feeds, Tweets and targeted emails when new cases are added. Adding community discussion opportunities such as blogs specific to individual cases would perhaps enhance public involvement. Perhaps the most important part may be linking from the list to records of the case itself, which would support the kind of discussion you hope to generate here!

The information should be electronic and widely broadcast on the most commonly visited websites such as YouTube, Facebook and MySpace. We should consider more traditional sources of distribution to libraries, schools, etc. and use the AZ Foundation for Legal Services and Education.

**Question 10. What do you perceive the benefits would be in having an Arizona Historically Significant/Landmark Court Cases Cyber-Encyclopedia (an indexed, descriptive list available in a web-based format)?**

Indexing would be great (name, topic). Online searches using Westlaw and Lexis cannot identify “historically significant” cases, only the ones most cited or those using the keywords entered in a search, etc. Having such a list would be like having a book written by an expert, the most knowledge(able) person on a topic. It is a way of having our state’s legal history (not done in a comprehensive way of primary sources) in an accessible format for everyone if distributed via web pages.

As AZ reaches its 100<sup>th</sup> birthday, some benefit may come from indexing AZ significant court cases, but not sure that unless there is interest from the users, how much of state resources should be utilized to catalog these cases. If there is an interest from the public to index, etc. cases, then let the public step forward and help out.

A 5<sup>th</sup> Grade class I spoke to gave me a book entitled *Sensational Trials of the 20<sup>th</sup> Century* by Betsy Harvey Kraft. They used the book and the program sponsored by the State Bar to study civics. I found the students to be more aware than most because of that exposure to the legal system.

Ready access to the entire body of cases will promote a complete and accurate accounting of history and historical trends, resulting in a better educated public and an enhanced sense of history.

One central source to find landmark cases would be a great benefit to the public, especially for students attending learning institutions since the younger generations are really relying on the internet to find information.

Useful because not all researchers use Lexus or Westlaw and it would provide equal, up to date, access to everyone.

**Question 11. What might be some barriers to having an Arizona Historically Significant/Landmark Court Cases Cyber-Encyclopedia because of its web-based format?**

If other means of access were not eliminated, then the barriers are minimal. Attention, though, will need to be made to provide translation tools, formatting for those with disabilities, and access at public places for those without home internet connections.

It would have to be user-friendly, self-explanatory. Legal terms may not be known by the reader. Cases may contain personal information that shouldn't be broadcast on the web. (Thus, are permissions an issue? Would redacting be necessary in some cases? Might depend upon age of case).

I am wondering who would want to access a general list of "Landmark" cases. I would think the traditional means of researching a legal issue would suffice.

The biggest issue might be working the process into continuously adding them to the database into someone's work schedule. It seems like it would be an ongoing process.

Seems rather difficult to manage for the benefits. When somebody needs to know about a significant case for example when writing a brief or making a ruling they will find that case, on say Westlaw or now even on Google, if their research skills are worth anything.

Should be available in paper form as well. Older people in particular – a group most likely to be interested in these materials – may not have the requisite computer skills.

Lack of internet access by some people such as Native Americans.

Only the cost of placing the information on the internet.

Individuals without computer access may be hampered; but, if accessible through computers at public facilities such as libraries, this could be overcome.

Cost of initial set-up, cost of ongoing system maintenance, possible copyright issues, and possible misuse of content.

The classic issue is sustainability. Who will pay to host and maintain this, and add to it over time?

**Question 12. Please list any specific resource materials that you think would help identify Arizona court cases as Historically Significant and/or Landmark.**

Arizona Supreme Court website, Arizona Reporter, Arizona Republic, Arizona Daily Star archives, Capitol Times archives, and literature written on the subject.

The first that comes to mind are media groups/entities, law schools, history departments, historical societies, surveys from State Bar members, and the courts.

Murphy's Laws, courts and lawyers through the years in Arizona. Treatises on Arizona law (State Bar books), Arizona law professors' textbooks (such as *Community Property Law* by Thos. Jacobs, originally by Prof. Charles Smith), books and articles by historians on legal cases.

I would recommend that Prof. Toni McClory at Glendale Community College be aware of this project. Her "Understanding the Arizona Constitution" is a great read and her new 2<sup>nd</sup> edition is coming out this spring from U of A Press.

Surveying the entire State Bar membership

Possible practitioners in different areas of law, and law professors with different areas of specialization, could be asked to ID different landmark cases. Examples: John Lacy, UA on mining and public law; Robert Glennon, UA, on water matters; Rebecca Tsosie, ASU Law School, on Indian-related cases. The Tombstone courthouse's AZ Territory Justice forum (ATJ) might make suggestions, since they have to come up with a new case for study each year. Historians such as Dr. Katherine Morrissey at UA, who deals in Arizona History and also in environmental history, and Dr. Bruce Dinges, editor of the *Journal of Arizona History*, could be asked to nominate or suggest cases.

These are more process suggestions not resource materials: Develop a panel of multidiscipline legal professionals to make the final decision – attorneys, court staff and judges. Develop a process for individuals to submit cases such as a nomination panel.

Various works concerning the history of Arizona, such as but not limited to; *Wyatt Earp: The Life Behind the Legend* by Casey Teferteller and *Arizona Sheriffs* by Jane Eppinga.

Greater outreach to the Bar and an easier means of designation may be a start. The current process may be overly time-consuming for busy counsel and there is always the risk that the PJ will deny the request after time is spent preparing it.

In the 100 women and minority dinner honoree applications in 2000, there were some documented significant cases, which the honoree had won or was a cause for change at the time. Dinner organized by MCBA and they may still have the original applications with supporting materials. (They had fires at its offices so I am not sure if this history was destroyed.) Contact sister Bar organizations because members can contribute personal knowledge of cases, Judge Elizabeth Finn, Glendale City Court presiding judge has many materials on court decisions from Arizona prohibiting discrimination; call to judges.

Period newspapers and periodicals.

An independent advisory committee could be of assistance. Otherwise, a list of criteria by which to identify a case as Historically Significant and/or Landmark is appropriate.

I would query the law school librarians and teaching staff; also, the appellate courts and their clerks would be good sources.

Surveys to law firms, judges and lawyers; review of AZ history books; review of museum contents and documents, Google search of web, Lexis-Nexis, etc.

The exact definition of what types of cases meet this criteria and the ability to have staff resources available to research and identify the cases that meet the criteria.

Former members of the AZ Supreme Court, major AZ organizations like the Chamber of Commerce and others.

I think it would be interesting to apply some quantitative methods to the process, counting references to a case in other cases, counting citations in the law reviews and law journals, estimating at the number of citizens directly impacted, etc.

There are a number of sources in the Arizona Historical Society Library and Archives, Southern Division which may be of value. The online catalog is:

<http://lista.azhist.arizona.edu>.

**Question 13. Please list any funding or grant sources that you think might be available for an effort to identify Arizona Historically Significant and Landmark court cases and make available in a Cyber-Encyclopedia format.**

This project has such global application (Masters Theses, monographs, historical research) that the Federal government, national archives, Library of Congress may want to participate. Any local library districts with endowment money may have money for this project.

Some years ago (late 1980's) the Arizona Bar Foundation funded some oral history interviews with long service attorneys in Arizona. I'm absolutely ignorant of the foundation's current financial status, but it would be worth an inquiry, as would queries to the State Bar and individual county Bar associations, and to UA and ASU law schools. The latter are currently strapped for cash, according to several folks I've talked with, but perhaps the law libraries could be sites for the online list, or make their website available for inclusion of the list.

MCBA Foundation and State Bar of Arizona foundation gives grants for law-related education programs. MCBA Foundation issues applications in Feb/March each year and the completed application is due by April/May. Awards are announced in June and money distributed in fall. Check with ABA to see if there may be grants for this type of archival from the litigation section, civil rights committee, etc.

State centennial grant funds, university grant funded projected (history depts., law schools, etc.), historical societies, museums, private foundations, e.g. Casey Foundation regarding youth issues (in re: Gault), Pugh, Ford, etc.

Any sources I know are struggling themselves right now.

**Question 14. Please list any entities or organizations that you think might want to sponsor or collaborate on an Arizona Historically Significant and Landmark court cases Cyber-Encyclopedia project.**

I'm fairly sure public libraries (and possible academic libraries) would want to collaborate.

In better times, the Arizona Foundation for Legal Services and Education – The Arizona Humanities Council, the universities' foundations, and corporations/law firms that participated in those cases. The State Bar of Arizona, the courts, the law schools, the Arizona Civic Coalition, and the ASU Civic Education department.

Arizona Supreme Court; State Bar of Arizona and Arizona Women's Association (plus special Bar associations); University of AZ College of Law, AZ State University School of Law, and Phoenix School of Law; AZ Historical Society; Local County Bar associations.

Arizona Memory Project for collaboration.

Local historical societies, preservationist groups, perhaps minority Bar associations.

The organizations cited in answer #15 would all make good sponsors, as would the Arizona Territorial Justice Project, and the Arizona Historical Society and Arizona Historical Foundation, Tempe, provided that you can get the right folks interested in a time when most such organizations are losing staff and funding.

State Bar of Arizona, State Bar Foundation, ACA, Magistrates Association, Justice of the Peace Association, General Jurisdiction Judges Association (AZ Judges Association), Inns of Court, leadership organizations, Arizona Historical Society.

Arizona State Library Archives and Public Records. Friends of State Archives.

State Bar of Arizona, County Bar Association, sister Bar organizations across the state; colleges of law (Phoenix School of Law, Sandra Day O'Connor ASU School of Law, James E. Rogers University of Arizona School of Law), Arizona Historical Society, Judiciary.

Local historical organizations.

State Bar Association, County Bar Association, AOC, Arizona Highways.

The Arizona Historical Society, Department of Library, Archives and Public Records, the Arizona Centennial Commission.

I would suggest soliciting the law firms whose attorneys argued or wrote the briefs to the cases identified.

Universities, historical societies, retired judges and lawyers, state and county Bar associations, American Bar Association, American Judicature Society, National Center for State Courts, justice at state, community service organizations (e.g. Rotary, Kiwanis, Lions, League of Women Voters, optimists), private corporations with headquarters in Arizona (DIAL/VIAD, Insight, Honeywell).

Supreme Court might be a good partner. This could be part of the courts contribution to the centennial project in 2012.

County libraries, Arizona Bar Association, Arizona Foundation for Legal Services.

Historical Society and genealogy researchers.

Arizona Foundation for Legal Services and Education; university and public libraries; Arizona Judges' Association; Arizona Historical Society.

**Question 16. Is there anything you'd like to comment on not specifically addressed in the survey?**

This project hit "home" for me in the research I've done on Arizona's 1<sup>st</sup> woman lawyer. One of Sarah Herring's early cases was Seaverns vs. Welch which went up to the Arizona Supreme Court and then back down again to the Cochise County court – whose record of the final outcome was lost. We'll never know the "rest of the story." This case happened to be a significant one in Arizona on the developing law of master-servant around the country (it applied to a miner hurt on the job).

We have several cases of historical significance that arose in Yuma including the Tison case and Zarabia vs. Bradshaw (Joe U. Smith case limits).

## APPENDIX J

### Survey No. 3

December 4, 2009

Dear Court Historian,

I am a court clerk from Arizona working on a project to determine the feasibility of developing an indexed, descriptive list of my state's historically significant and landmark court cases, to be accessed on the web in a cyber-encyclopedia format.

In Arizona, a Historically Significant case is defined as "...a case involving a unique legal issue or controversy, prominent party, or other high profile or newsworthy aspects..." and is so designated by the presiding judge upon his or her own motion or by a member of the public. A Landmark case is designated by the Arizona Historical Records Advisory Board in consultation with a committee and many factors are considered, to include whether the case has been cited frequently, has caused a change in policies or laws, affected a large portion of the community and was controversial, is generally viewed by the community as important, involved a famous or notorious individual, as well as any other factors considered relevant.

Your input on a short survey to assess what is occurring in other states would be valuable to me. Thank you in advance for any help you may be able to provide.

Denise Lundin  
Clerk of the Superior Court  
Cochise County  
Member, Arizona Historical Records Advisory Board  
Arizona Courts Centennial Commission  
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#### **Out of State Historically Significant/Landmark Court Cases Survey**

- 1) Does your court/jurisdiction or state maintain a list or inventory of its cases that have been designated historically significant and/or landmark (or some other like terminology to describe what is outlined above in the Arizona experience)?  
 Yes  No {If "No" response, proceed to Question No. 10}
- 2) What terminology is used to describe these cases?

- 3) Please list the data elements the list contains.
- 4) How was this information compiled?
- 5) How is it maintained?
- 6) Is a protocol in place to define what cases are suitable for this list?  
\_\_\_ Yes \_\_\_ No
- 7) Is this information available to the public?  
\_\_\_ Yes \_\_\_ No If "Yes" - In what format(s)?
- 8) What benefits does this list provide?
- 9) What challenges (if any) have you experienced in:
  - A) Developing it
  - B) Maintaining it
  - C) Making it Available
- 10) How important is it for your court to have (or develop) a list of its Historically Significant and/or Landmark cases?
- 11) Is a project of this type contemplated in the near future?  
\_\_\_ Yes \_\_\_ No
- 12) What is your position in the court?
- 13) Are you available for a follow-up call to discuss this topic in more detail? \_\_\_ yes  
\_\_\_\_\_ no contact phone number\_\_\_\_\_

**APPENDIX K**  
**Responses to Survey No. 3**

**First Response:**

Hi- I'm with the U. S. District Court for the Southern District of Indiana. I handle all historical matters for the court.

Out of State Historically Significant/Landmark Court Cases Survey

1) Does your court/jurisdiction or state maintain a list or inventory of its cases that have been designated historically significant and/or landmark (or some other like terminology to describe what is outlined above in the Arizona experience)?  
\_\_\_ Yes XX No {If "No" response, proceed to Question No. 10}

2) What terminology is used to describe these cases?

3) Please list the data elements the list contains.

4) How was this information compiled?

5) How is it maintained?

6) Is a protocol in place to define what cases are suitable for this list?  
\_\_\_ Yes \_\_\_ No

7) Is this information available to the public?  
\_\_\_ Yes \_\_\_ No If "Yes" - In what format(s)?

8) What benefits does this list provide?

9) What challenges (if any) have you experienced in:  
A) Developing it  
B) Maintaining it  
C) Making it Available

10) How important is it for your court to have (or develop) a list of its Historically Significant and/or Landmark cases? It would be a great project and I think researchers and attorneys would appreciate it. Sounds like a great project for a grad student intern to help with too.

11) Is a project of this type contemplated in the near future?  
\_\_\_ Yes X No

12) What is your position in the court? Historian and Administrative Specialist

13) Are you available for a follow-up call to discuss this topic in more detail? \_\_\_XX\_ yes \_\_\_\_\_ no

**Second Response:**

I have enclosed a copy of *The Verdict of History*, our publication of the Michigan Supreme Court's twenty top historical cases. Besides the answers below, please also read the introductions in the booklet, written by the project's researcher and our board president.

- 1) Yes
- 2) The individual cases that comprise the Verdict of History are simply identified as significant cases.
- 3) The Verdict of History provides an interpretive summary of the historically significant opinions. Links to the full opinion are available via our website.
- 4) The cases were selected by committee.
- 5) The project stands on its own. Opinions decided by the current court were not considered for the project.
- 6) N/A. We are not adding to the list.
- 7) Yes. The information is available on our website: [www.micourthistory.org](http://www.micourthistory.org); was published in four issues of the Michigan Bar Journal; and was compiled into booklet format (enclosed).
- 8) The Verdict of History provides an overview of the development of Michigan jurisprudence from the beginning of statehood to nearly present day. It shows the evolution of the Michigan Supreme Court and how the cases decided by the court affected the daily lives of citizens.
- 9) Challenges:
  - a. The primary challenge in developing the project was in how to choose the cases that would be featured.
  - b. N/A
  - c. The primary challenge in making it available is deciding how to distribute it and to whom in a targeted way. One solution has been to make it available to educators with a lesson plan.
- 10) The Court appreciated our efforts, however, the project was directed by the Board of Directors of the Michigan Supreme Court Historical Society.

- 11) No. The Verdict of History stands on its own.
- 12) The Michigan Supreme Court Historical Society is a 501(c)(3). We are separate from the Court. I am the executive director and only employee.
- 13) Yes

## APPENDIX L

### Arizona Historically Significant Cases Officially Designated as of February, 2010

1. **Maricopa Case No. CV2004-013105, Tee Time Arrangers, Inc. vs. Vistoso Gold Partners, LLC**

Case of first impression under the Arizona Uniform Anti-Trust Act

2. **Maricopa County Case No. CR2003-016197-001, State of Arizona vs. Thomas J. O'Brien**

Catholic Priest indicted in a hit and run case.

3. **Maricopa County Case No. CR1988-000246, State of Arizona vs. Evan Mecham.**

A sitting governor was indicted on six counts (perjury, willful concealment, filing a false campaign contribution and expense report). He was impeached before the trial's outcome and was ultimately acquitted of all charges.

4. **Pima County Case Nos. A-15054, A15028, A14656, A-15023 – Charles Schmid, Jr. "The Pied Piper of Tucson"**

Multiple Murder Case from 1960's; Filed by Clerk of Superior Court.

5. **Pima County Case No. A-10358 – Clementine Billingsley**

1956 Murder of husband with Spousal Abuse as defense); Clerk of Court filed.

6. **Pima County Case Nos. A-031567, A-093385 – John Harvey Adamson**

1976 Murder of Arizona Republic Reporter Don Bolles in Phoenix; Clerk of Court filed.

7. **Pinal County Case No. CV31933, Richard vs. Powercraft**

Filed in 1979. (Court of Appeals Case 2CA-CIV-5213 and Supreme Court Case 16656-PR-2

A motion was filed. The case is a civil law suit regarding new home warranties and their extension to subsequent purchasers in Arizona.

8. **Yavapai County Case No. CR8850, State vs. Michael Kent Poland and Patrick Gene Poland**

Clerk of Superior Court filed the motion to designate it historically significant. The defendants dressed as patrol officers and driving a car painted as a state DPS car stopped an armored car kidnapped the two security guards driving the armored car....placed them in canvas bags alive and dumped their bodies into a lake. The defendants were long time residents of Yavapai County having grown up in the area.

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