

THE BENCH & BAR

A Publication of The Lawyers Association of St. Louis

September 2009

Judicial Appreciation — Thursday, September 17

On Thursday, September 17, The Lawyers Association of St. Louis will host its annual Judicial Appreciation event at the Westin Hotel in Downtown St. Louis. Although all Judges serving in the St. Louis Metropolitan area will be honored, special recognition is given to those Judges celebrating their 25th anniversary on the bench.

This year's 25th anniversary honorees are the Honorable **Thomas C. Mummert, III** of the United States District Court, Eastern District of Missouri, and the Honorable **James R. Hartenbach** of the 21st Judicial Circuit (St. Louis County). **Bob McCulloch**, St. Louis County Prosecuting Attorney will be the featured speaker.

This cost for attending is \$50 for Lawyers Association members and \$60 for non-members. Judges are complimentary. RSVP to Jim Susman at 314/991-5297 or susgrp@charter.net

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President's Column Matthew J. Devoti

Margaret Bush Wilson graduated from the Lincoln University School of Law. So began her legal career. What an understatement. Margaret Wilson practiced law for more than 60 years. And, along the way, Ms. Wilson knocked down a number of barriers that previously impeded both African Americans and women in the practice of law in the State of Missouri. She was the second person of color admitted to the Bar, she played an essential role on the legal team that challenged racial restrictive housing covenants, worked in various counsel positions for both the State and federal governments, and served nine terms as the chair of the NAACP Board of Directors.



Along the way, Ms. Wilson represented scores of St. Louisans in private practice and served as a beacon to generations of civil rights activists. I have heard people refer to her as "a pioneer" and "role model." For others, Margaret Bush Wilson remains merely a hero.

In 2006, the Lawyers Association bestowed its Award of Honor on Margaret Bush Wilson. The Award is the Association's highest honor. The charge, engraved on the Award plaque presented to each recipient, states:

In keeping with the well recognized custom of stressing individual and personal responsibilities by bestowing some public acknowledgment upon men and women in the various walks of life who have satisfied these responsibilities, and in as much as the attainment of

Margaret Bush Wilson

as a lawyer and her record of honorable service in the profession and her career as a citizen merit such recognition

The Lawyers Association of St. Louis does hereby confer upon her this Award of Honor

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To Facebook or Not To Facebook?

Recent Web 2.0 Developments That You Should Know About

By John F. Mahon, Jr., Williams Venker & Sanders LLC

The Internet is in a constant state of evolution, especially in the arena of social networking. There are various sites of potential interest to litigation attorneys, particularly those involved in personal injury litigation. Social networking sites, such as Facebook.com, Myspace.com, Twitter.com, LinkedIn.com, Classmates.com, and Match.com, amongst others (also known as "Web 2.0"), can provide a forum for informal research that has the potential to impact the outcome of personal injury cases. The available information is fast, inexpensive, and increasingly valuable as society becomes increasingly reliant on the Internet as a communications tool. Web 2.0 users have the power to limit the amount of information that is publicly available on the Internet, which, in turn, can limit the effectiveness of Internet research. However, recent changes to Facebook privacy settings may indicate a radical shift towards more information being publicly available, making Web 2.0 not just a helpful tool, but a necessary component of personal injury litigation for both sides of a dispute.

Not Just for College Kids Anymore

Facebook, the most popular of the social networking sites, with over 250 million active users, has experienced interesting recent growth. More than 120 million users log on to Facebook at least once each day. More than two-thirds of Facebook users are outside of college, and the fastest growing demographic is those 35 years old and older. More than 1 billion photos and 10 million videos are uploaded to the site each month, in addition to other content, including web links, news stories, blog posts, notes, events, etc. Interestingly, there are more than 30 million active users currently accessing Facebook through their mobile devices, which allow users to post information about themselves in virtual real-time.

To Facebook or Not to Facebook?

Much has already been written on the usefulness of Web 2.0 in the litigation context. The information available through these sites is potentially helpful in preparing for all facets of a case: initial evaluation, depositions, hearings, settlement conferences and ultimately, trials. Even though there is certainly a question as to whether information gained through this method is admissible at trial, it is unquestionably useful as it can provide invaluable insight to a case, lead to other admissible information, or even be a bargaining tool. For example, in a personal injury case in which a plaintiff is claiming he/she can no longer participate in physical activities, plaintiff's Facebook page might show photos from plaintiff's recent ski trip to Aspen, video of plaintiff finishing a triathlon, or a posting of results from plaintiff's Monday night bowling league. Media can even be cre-

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as a memento that is emblematic of her distinguished and honorable career and is an example that may inspire others to similar noble purpose and honorable effort in the profession of the law.

Margaret Bush Wilson died on August 11. Nevertheless, her career continues to stand as a testament of individual and personal responsibility. Ms. Wilson was a professional, a person who inspired scores of lawyers - men and women, white and black - to the noble effort of assisting others in the practice of law.

Let us keep Ms. Wilson in our hearts and minds as we labor as lawyers. We are professionals who serve and work on behalf of those who cannot help themselves. Let us honor Ms. Wilson through our actions, words and conduct.

Community Service Project

Habitat for Humanity

Members of the Lawyers Association and their friends and family spent Father's Day, June 20, 2009 giving back to the community by participating in a Habitat for Humanity Build Day Project. Participants, Andrew Callahan, Matt Casey, Bob Dear, Matt Devoti, John Mahon, Ellis McMurtry, Judy Riley-McMurtry, Tom Schwartz, Mike Toth, Bob Tucker, Rachel Wiegert and Tracy Zuckett, assisted in the building of one of 28 houses undergoing construction in the JeffVanderLou neighborhood along Thomas Street and Sheridan Avenue in North St. Louis City. Projects undertaken by the Lawyers Association participants included interior painting, exterior staining and painting and installation of pergo flooring. Despite temperatures in the high 90s, everyone had a good time and enjoyed shedding their suits and briefcases for hammers and paint brushes. We look forward to turning the Habitat Build Day into an annual event and hope to see participation grow each year.

Baden, The Census, and Judges

By Tom Neill, Gray, Ritter & Graham, P.C.

On a recent Saturday, Baden held its first street fest in twenty-five years. The Baden neighborhood is located in North St. Louis but was once its own little town. In 1872, Baden and its 400 residents became part of the City of St. Louis.

The street fest had all the usual trappings, including a parade, bands, and BBQ. There was a booth at the fest staffed by the Census Bureau. Maybe you've noticed the Census Bureau's advertising for next year's Census.



The staff of the Census Bureau were quite friendly. But I wonder if they'll still be friendly once they have been going door-to-door for a few months. Census work must be pretty tough in places like St. Louis. With so many people to talk to, and so many houses and apartments to walk to, I suppose we can forgive them if they aren't quite as cheerful next summer.

In other parts of Missouri, the Census should be a bit easier to complete. Take Worth County, for example. According to the last Census, held in 2000, the county had less than 2,400 residents. That's about a third the size of Baden.

The folks at the Bureau must look forward to working in counties that are smaller than most neighborhoods in the City. They can probably wrap up Worth County over a three-day weekend. But at what point does a county simply become too small to stay afloat?

Missouri has the fifth most counties, or county equivalents, in the country. Our 115 counties average about 51,000 residents. If you throw out the nine largest counties and the City of St. Louis, the remaining 105 counties average less than 24,000 residents. That's slightly larger than Webster Groves, which has just over 23,000 residents.

Of course, the average county is still much larger than Worth County. The 2008 Census Bureau estimate found that County's population had declined steeply to just over 2,000 residents. There is a good chance the 2010 Census will find less than 2,000 residents. That's about the size of the Village of Hanley Hills, in St. Louis County. If there were a county for every 2,000 residents, Missouri would have 2,955 counties. Webster Groves alone would be 11 counties.

I suspect that the people in Worth County are glad that they have their own county. A county that size is probably quite responsive to the needs of its residents. There is a good chance the people know each other by name. One benefit of being a county, no matter how small, is that it has an associate circuit judge. Mo.Const Art. V, Sec. 16.

A couple of years ago, a bill was presented in Jefferson City that would have eliminated circuit judges in several counties, as well as in the City of St. Louis, while adding new judges elsewhere. Thankfully, that bill died on the floor. It was interesting that if the goal of the bill was to reallocate judges throughout the State, it didn't propose a Constitutional Amendment that would have eliminated the requirement that each county have an associate circuit judge. I'm not suggesting such an amendment would be a good thing. On the contrary, residents of each county should have a local judge to whom they can present their grievances. Of course, if there were an associate circuit judge for every 2,000 residents, then the City of St. Louis would need 175. And four would be in Baden.

Meetings to Come

Upcoming Lawyers Association Meetings:

Thursday, October 22
75th Anniversary Celebration
Sq Wires Restaurant Annex
5:30 p.m.

Friday, November 20
53rd Annual Gridiron
Chase Park Plaza

Wednesday, January 20
Annual Bowling Tournament

Thursday, February 18
Black History Month Dinner

Thursday, March 18
Program to be Determined

Saturday, April 24
Award of Honor

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ated and posted to the site without the knowledge of the subject - look at what happened to Michael Phelps! As such, Web 2.0 is useful to both sides in evaluating the strengths and weaknesses of their cases and achieving a positive resolution for their clients.

Facebook Messages to Become Public by Default?

In June 2009, Facebook announced via its blog (blog.facebook.com) that it is changing how it manages user privacy. Facebook announced that status updates and other user information may soon be available to the public by default, through a new beta version of its program "Publisher." Facebook claimed the change would only affect users who already chose to set their profile and status privacy to "Everyone." However, the New York Times article, "The Day Facebook Changed: Messages to Become Public by Default" clearly says more is coming.

"By default, all your messages on Facebook will soon be naked visible to the world. The company is starting by rolling out the feature to people who had already set their profiles as public, but it will come to everyone soon. You'll be able each time you publish a message to change that message's privacy setting and from that drop down there's a link to change your default setting. But most people will not change the setting. Facebook messages are about to be publicly visible. A whole lot of people are going to hate it. When ex-lovers, bosses, moms, stalkers, cops, creeps and others find out what people have been posting on Facebook - the reprimand that 'well, you could have changed your default setting' is not going to sit well with people."

The New York Times' prognostication of things to come regarding user privacy on Facebook is a valid concern. Facebook has every incentive to make more of its users' information available to the public to be searched via search engines like Google.com and Yahoo.com. As information from Facebook becomes increasingly available to those who use such information for a commercial purpose, such as consumer product marketing companies, the potential economic value of Facebook increases. In this context, the interests of litigation attorneys and marketing companies are intertwined. As more information from Facebook becomes available to the public, it becomes more important that attorneys to use it as a research tool. Any personal injury attorneys who have thus far resisted joining Facebook and other Web 2.0 social networking sites need to do so quickly, as the usefulness of it as a research tool is only going to increase with time.